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I. INTRODUCTION AND SUMMARY OF REQUESTED RELIEF

1. This is a civil rights lawsuit. Petitioner The Two Hundred includes many of California’s longstanding civil rights advocates, joined by former leaders in the Legislature and a former Cabinet member responsible for housing (members of the Democratic Party), as well as environmental and housing leaders. The Two Hundred is focused on increasing home ownership for California’s minority residents to overcome more than a century of an ever-evolving suite of racially discriminatory “redlining” housing practices implemented by public agencies and private institutions. Homeowners have forty-four times more wealth than renters and homeownership is by far the most successful pathway for American families to create wealth. Homeownership provides multi-generational advantages to families beyond stable housing, such as home equity that can be tapped to support college costs, provide down payment assistance to future generations, and fund households during the income downturns caused by medical conditions, job transitions, and old age.

2. The Two Hundred supports protection of the environment, and California’s commitment to be a global leader in the war on climate change. However, California’s power in this war must be made clear: greenhouse gas (“GHG”) emissions in California comprise less than 1% of anthropogenic global GHG emissions, and former Governor Jerry Brown recognized that California’s own efforts to reduce GHG would be “futile” unless other states and nations were persuaded to follow our lead.

3. The Two Hundred rejects the necessity and legality of Respondents’ decision to make California’s minority communities the collateral damage in their war on climate change through the promulgation of unlawful regulations adopted in December of 2018 that purport to implement the California Environmental Quality Act (Pub. Res. Code § 21000 *et seq.*, “CEQA”), which have and will continue to worsen the housing crisis and cause disparate harm to California’s minority communities.

4. Petitioners challenge five new CEQA regulations, one regulatory appendix, and two “underground” regulations, which collectively create more CEQA delays and litigation

1 obstacles to approved housing, and impose tens to hundreds of thousands of new CEQA
2 “mitigation” costs on the remaining fraction of new housing that can still be purchased by
3 California’s median income earners (a majority of whom are now racial minorities). These unlawful
4 revisions to CEQA, which are collectively referred to herein as “Redlining Revisions,” violate the
5 federal and state Constitutions, federal and state fair housing laws, and several state environmental
6 and administrative law statutes, as described in the fifteen causes of action set forth herein.

7 5. ***California’s housing crisis is real, is racially discriminatory – and it***
8 ***worsens climate change.*** In legislation approved and signed by the Governor in 2019,¹ the state’s
9 elected leaders concluded that California has an “unmet housing backlog of nearly 2,000,000 units”
10 and “at least 180,000 new housing units annually” is needed through 2025. California is achieving
11 barely over half of this production goal, and housing production has actually declined rather than
12 increased: less housing was permitted in 2018 than 2017, and less housing was permitted in 2019
13 than 2018. The housing crisis is getting worse, not better.

14 6. ***The housing crisis is not simply a shelter problem.*** Our elected leaders
15 concluded that housing “is a critical problem that threatens the economic, environmental and social
16 quality of life in California,” that “California housing has become the most expensive in the
17 nation,” and that California “has a housing supply and affordability crisis of historic proportions.”
18 Further, “[w]hen Californians have access to safe and affordable housing, they have more money
19 for food and health care; they are less likely to become homeless and in need of government-
20 subsidized services; their children do better in school; and businesses have an easier time recruiting
21 and retaining employees.”²

22 7. ***The housing crisis is not color blind: minority Californians are the most***
23 ***harmed.*** Our elected leaders concluded that the housing crisis has resulted in “discrimination

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26 ¹ Stats. 2019, ch. 654 (S.B. 330).

27 ² *Id.*

1 against low-income and minority households.”³ The housing crisis has virtually eviscerated the
2 housing equity progress made by landmark civil rights laws of the 1960s: California’s overall
3 homeownership rate is at its lowest level since the 1940s, and the majority of California renters pay
4 too much in rent – nearly one-third pay more than half of their income on rent. The housing crisis
5 has also led to California having the nation’s highest poverty and homelessness rates in the nation,
6 and minorities are disproportionately included in the ranks of the state’s poor and homeless.

7 8. ***Our own laws, regulations and other policy choices are a major cause of***
8 ***the housing crisis.*** Our elected leaders acknowledged that policy choices are partly to blame for
9 this historic and discriminatory housing crisis: “While the causes of this crisis are multiple and
10 complex, the absence of meaningful and effective policy reforms to significantly enhance the
11 approval and supply of housing affordable to Californians of all income levels is a key factor.”⁴

12 9. ***The housing crisis actually worsens climate change, undermining***
13 ***California’s role as a global climate leader.*** Our elected leaders agreed that our ongoing failure to
14 solve the housing crisis was increasing global GHG emissions instead of reducing them, as required
15 by California’s climate laws and desired role as a global climate leader:

16 An additional consequence of the state’s cumulative housing shortage is a significant
17 increase in greenhouse gas emissions caused by the displacement and redirection of
18 populations to states with greater housing opportunities, particularly working- and
19 middle-class households. California’s cumulative housing shortfall therefore has not
20 only national but international environmental consequences.⁵

21 10. ***Entrenched special interest groups, including environmentalists, block***
22 ***meaningful housing policy reforms.*** While SB 330 and other enacted legislative housing policy
23 findings present the legal and political truth, in the judgment of our elected representatives and their
24 experts, of the causes, discriminatory consequences, and negative environmental and climate
25 outcomes of the California housing crisis, fierce political battles are continuously waged among

25 ³ *Id.*
26 ⁴ *Id.*
27 ⁵ *Id.*

1 California’s powerful special interest groups over any reforms to state policies that would actually
2 allow for the more timely construction of less costly housing – the housing that is actually and
3 urgently needed by California’s voters and residents. Among the most entrenched, “third rail”
4 housing reform battlegrounds is CEQA, which is used by anonymous groups, business competitors,
5 labor unions, anti-development environmentalists, only-the-most-costly-housing-allowed climate
6 advocates, and residents who have concluded that adding more housing will further worsen stressed
7 public services and aging infrastructure and cause traffic gridlock. Any of these parties can threaten,
8 or file, a CEQA lawsuit against housing – and campaign against any local or state politician that
9 seeks to approve housing over their objections. The fact is that housing remains the top statewide
10 target of all CEQA lawsuits filed over the past decade, and in 2018 60% of all statewide CEQA
11 lawsuits challenging any form of development project targeted new housing.⁶

12 11. *Amending CEQA regulations to make housing more expensive and easier*
13 *to challenge in CEQA lawsuits, is not required for any authorized “environmental” purpose – it*
14 *is just another of a long list of discriminatory anti-housing “redlining” practices with the*
15 *intended and actual consequence of depriving minority Californians of homeownership.* CEQA
16 was enacted in 1970, before federal and state environmental laws to protect the coast, endangered
17 species, water, and air quality; to conserve energy and water; and to protect public lands and parks.
18 Environmental laws work – before the federal and state clean air laws were enacted in the early
19 1970s, smog was so bad that for weeks on end people could see, smell, and taste – and a nasty taste
20 it was – the air in the Los Angeles air basin. Over the next forty years, sweeping new legal
21 mandates to improve the air were implemented, and as of the last year of President Obama’s
22 administration the United States Environmental Protection Agency (“U.S. EPA”) proudly
23 announced that smog-forming tailpipe emissions from the nation’s fleet of cars and pickup trucks
24 had been reduced by 99%. Regulatory action dramatically improved air quality with mandates for

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26 ⁶ Hernandez, *California Getting In Its Own Way: In 2018, Housing Targeted in 60% of Anti-*
27 *Development CEQA Lawsuits*, Chapman University (Dec. 2019),
28 https://www.chapman.edu/communication/_files/ca-getting-in-its-own-way.pdf.

1 cleaner engine technologies and fuels – even as the nation’s population, vehicle fleet, and vehicle
2 miles traveled (“VMT”) all increased, as did the size of the economy. Progress to end smog-
3 creating tailpipe emissions was made via formal rulemaking procedures that were required to
4 transparently rank different potential regulations based on pollution reduction effectiveness and
5 costs to consumers and other stakeholders. The most effective and least costly measures were
6 undertaken first, and those which were ineffective or more costly were rejected or put on hold.
7 Tailpipe smog reductions also reduced by about 20%, as a non-planned outcome, tailpipe emissions
8 of carbon dioxide (“CO₂”) that we now are intent on reducing as a GHG. Now prioritized GHG
9 reductions, including electric and hybrid cars, are well underway. What was never approved as a
10 state statute or regulation, even as we reduced 99% of targeted emissions from cars, were radical
11 “environmental” proposals such as the forced reduction of populations, and mandatory prohibitions
12 on the use of cars. When openly debated and compared with other pollution reduction measures in a
13 transparent rulemaking or legislative context, these proposals never made the cut.

14 12. ***Reducing GHG emissions by increasing housing costs and litigation***
15 ***obstacles under CEQA is not an effective GHG emission reduction measure.*** Even at the height of
16 the war against emissions that produced smog, neither the Legislature nor any state agency
17 mandated that buyers and renters pay tens of thousands of dollars in CEQA “mitigation” fees to
18 have someone else, somewhere else, reduce smog to “net zero” and thereby offset the smog caused
19 by the construction and future occupancy of a new house. Similarly, the last war did not suggest
20 that buyers and renters must pay hundreds of thousands of dollars in CEQA “mitigation” fees to
21 have someone else, somewhere else, reduce “vehicle miles traveled” and offset the VMT produced
22 from the construction and occupancy of houses by people who depend on a car for their
23 transportation needs. With our new war on GHG emissions and climate change, but without any
24 authorizing legislation or regulations, the Redlining Revisions have done just this and simply
25 ignored the fact that neither the Legislature, nor any court interpretation of CEQA, allows any
26 agency during today’s housing crisis to impose hundreds of thousands of dollars of new cost

1 burdens and litigation obstacles on new housing. In contrast, the Redlining Revisions repeatedly
2 rely on an unlegislated non-regulation “Scoping Plan” approved by the California Air Resources
3 Board (“CARB”) in 2017 to stridently and repeatedly assert that significant but unknown quantities
4 of GHG emission reductions and VMT reductions must be extracted from new housing under
5 CEQA – and sternly exhort the hundreds of cities and counties responsible for approving housing to
6 figure the specifics out for themselves, for each project, to avoid approving housing that causes
7 significant impacts to global climate change. Reducing the most potent “black carbon” emissions
8 with serious efforts to prevent catastrophic forest fires, imposing GHG costs on luxury imports or
9 plane flights of the wealthy, and retrofitting older buildings with energy efficient features, will all
10 result in substantial and quantified GHG reductions that do not place yet another racially disparate
11 burden on housing crisis victims. In contrast, no Respondent has agreed to quantify either the
12 effectiveness or the cost of climate change benefits of the Redlining Revisions. Respondents do
13 proudly proclaim their conclusion that the Redlining Revisions will enhance “wellness” by
14 “encouraging walking and biking” – none of which is a statutorily authorized objective of CEQA.

15 13. ***Redlining Revisions intended to end attainable homeownership, and force***
16 ***new million dollar apartments with residents who work at home or ride the bus.*** Respondents’
17 avowed policy objective is that California’s new housing must be built in 6-20+ story buildings at
18 commuter bus stops and metro stations, where extraordinarily complex buildings and the high land
19 costs required to displace existing neighborhood uses mean that even small two bedroom family
20 units already cost \$1 million or more. Because small starter homes, duplexes and townhomes can be
21 built and sold to aspiring homeowners at less than half that price, Respondents have weaponized
22 CEQA to impose over \$400,000 per unit in new VMT and GHG mitigation fees to discourage what
23 they deride (but likely grew up in, and occupy now) as suburban “sprawl” – even though
24 California’s new housing must comply with solar rooftop and green building requirements, even
25 though California’s elected leaders have already mandated clean energy and clean vehicles, and
26 even though billions of transit dollars have not stemmed transit ridership losses, especially among

1 Latino and other minority workers who need to get to their job, on time, to be paid – and must drive
2 to do so. Respondents simply refuse to acknowledge the housing crisis, or any duty to help solve it
3 – because fewer people means less GHG generated in California, and thus advances their laser
4 focus on meeting California’s unlegislated 80% GHG reduction target by 2050, even if the state’s
5 future population is limited to the wealthy and what CARB calls “service population.” In
6 Respondents’ hardened climate silo, increasing all future housing prices to \$1 million or more and
7 driving “those people” (brownier, younger, poorer) to Texas is a dream come true, and cows rather
8 than people can occupy the 94.7 percent of non-urbanized California.

9 14. ***The Redlining Revisions are racially biased, and Respondents had actual***
10 ***knowledge that they would worsen the housing, poverty, and homeless crisis – and cause***
11 ***disparate harm to minorities.*** It is no coincidence that the GHG and VMT Redlining Revisions
12 place zero new cost burdens on California’s majority-white existing homeowners, even though far
13 more GHGs are emitted in heating and cooling drafty mansions (and other existing buildings) than
14 the small fraction of GHGs from energy-conserving new homes which must be built with solar
15 roofs and other costly GHG-reducing green building features. It is simply much easier, given this
16 inherent racial bias, for environmentalists (including those leading Respondent agencies during the
17 time the Redlining Revisions were adopted) to enforce redlining policies that cause disparate harm
18 to minorities. As reported by the immediate past president of the Sierra Club Board of Directors, as
19 well as numerous other sources, racism is pervasive in the environmental movement and the
20 Redlining Revisions represent the apex of the climate activism of the Brown Administration.⁷

21 15. ***Radical anti-housing CEQA expansions conflict with enacted pro-housing***
22 ***priorities.*** Any honest or transparent rulemaking process which ranks GHG reduction measures on
23 factors such as effectiveness, fairness, and avoiding racially disparate and economically regressive
24 impacts would confirm the Legislature’s own conclusion that imposing more costs on housing, and
25

26 ⁷ Mair, *A Deeper Shade of Green*, Sierra Club (Mar. 9, 2017),
27 <https://www.sierraclub.org/change/2017/03/deeper-shade-green>.

1 further exacerbating the weaponization of CEQA, is discriminatory, worsens climate change, and
2 undermines California’s climate leadership. The Redlining Revisions underwent no such
3 transparent rulemaking process, nor did CARB’s unlegislated, non-regulation Scoping Plan, which
4 requires VMT reductions and “net zero” GHG housing projects. Respondents’ purported economic
5 assessment of the Redlining Revisions promised non-existent, fanciful cost reductions over the
6 objections and observations of scores of experts and interested stakeholders including Petitioners.
7 Just under one year after the effective date of the Redlining Revisions, promised CEQA cost
8 increases have occurred, anti-housing CEQA lawsuits continue to proliferate, new housing
9 production is down, and the cost of housing has increased.

10 16. ***Litigation enforcing civil rights laws is Petitioners’ only viable remedy to***
11 ***rescind the Redlining Revisions.*** Although Governor Brown called CEQA reform “the Lord’s
12 work,” by the end of his two terms he acknowledged it was politically impossible.⁸ Governor
13 Newsom has made no progress with CEQA in his first year, and housing production has continued
14 to decline. Implementing even one of Respondents’ new CEQA expansions - requiring new housing
15 to actually reduce total (not per capita or per household) VMT in the area of the project - would add
16 hundreds of thousands of dollars to the cost of a new home, and disqualify 2,620,616 California
17 households from purchasing a median priced home. Those priced out are the same majority-
18 minority households that are already disproportionately victimized by California’s housing crisis.
19 Respondents’ Redlining Revisions have converted our housing crisis into a housing conflagration.

20 17. ***Judicial protection of civil rights against politically powerful extremists is***
21 ***urgently needed to address California’s ongoing housing crisis.*** During the closing hours of the
22 Brown administration, Respondents transformed CEQA from a quirky 1970 environmental statute
23 into a racist, anti-housing, anti-homeownership, civil rights abomination. This complaint provides
24 detailed factual and legal background on Respondents’ unlawful hijacking of CEQA, and concludes

25 _____
26 ⁸ Dillon, *Which California Megaprojects Get Breaks from Complying with Environmental Law?*
27 *Sometimes, It Depends on the Project*, L.A. Times (Sept. 27, 2017),
28 <https://www.latimes.com/politics/la-pol-ca-environmental-law-breaks-20170925-story.html>.

1 with fifteen causes of action pursuant to which the Redlining Revisions are unlawful, and should be
2 set aside by this court. Judicial enforcement of civil rights protections, as explained herein, is a
3 critical and ongoing need of California’s minority communities notwithstanding the proclaimed
4 “progressive” values of state leaders.

5 **A. The California Environmental Quality Act Has Been Hijacked to Block**
6 **Housing and Cause Disproportionate Harm to California’s Minority**
7 **Communities: CEQA Is “Redlining”**

8 18. Even before September’s enactment of SB 330, Governor Newsom
9 concluded California had a shortfall of 3.5 million homes, and California’s acute housing crisis was
10 an “existential” threat to the state.⁹ As described in a series of non-partisan reports prepared by the
11 California Legislative Analyst’s Office (“LAO”), this severe housing shortage has driven up
12 housing prices, forced departures of long-term residents, prompted the relocation of businesses to
13 other states where housing for employees is more affordable, and caused millions of Californians to
14 move to states with less costly housing led by Texas, Nevada and Arizona.¹⁰

15 19. Based on United States Census Bureau data, the housing crisis has also
16 caused California to have the highest poverty rate (and highest number of poor people) in the
17 nation.¹¹ In 2019, the Public Policy Institute of California and the Stanford Center on Poverty and
18 Inequality concluded that almost four in ten (36.4 percent) Californians live at or below the poverty

19 ⁹ Office of the Governor, In the Face of Unprecedented Housing Crisis, California Takes Action to
20 Hold Cities Accountable for Standing in the Way of New Housing (Jan. 25, 2019),
<https://www.gov.ca.gov/2019/01/25/housing-accountability/>.

21 ¹⁰ See, e.g., LAO, California Losing Residents via Domestic Migration (Feb. 21, 2018),
22 <https://lao.ca.gov/LAOEconTax/Article/Detail/265>. (“For many years, more people have been
23 leaving California for other states than have been moving here. According to data from the
24 American Community Survey, from 2007 to 2016, about 5 million people moved to California from
25 other states, while about 6 million left California. On net, the state lost 1 million residents to
26 domestic migration—about 2.5 percent of its total population. . . . [T]p destinations for those leaving
27 California were Texas, Arizona, Nevada, and Oregon.” See also LAO, California’s High Housing
28 Costs: Causes and Consequences (Mar. 17, 2015), [https://lao.ca.gov/reports/2015/finance/housing-
costs/housing-costs.pdf](https://lao.ca.gov/reports/2015/finance/housing-costs/housing-costs.pdf) (hereinafter “California’s High Housing Costs”).

¹¹ See Downs, *Census Bureau: California has the highest poverty rate in the U.S.* (Sept. 13, 2018),
[https://www.upi.com/Top_News/US/2018/09/13/Census-Bureau-California-has-highest-poverty-
rate-in-US/1611536887413/](https://www.upi.com/Top_News/US/2018/09/13/Census-Bureau-California-has-highest-poverty-rate-in-US/1611536887413/).

1 line and are unable to pay for routine monthly expenses, even after taking into account social safety
2 net programs to help pay for food, housing and medical care; the same study again confirmed that
3 California’s poor were disproportionately likely to be racial minorities, children, and seniors.¹²

4 20. Notwithstanding commitments of billions of dollars to combat homelessness,
5 California also has the nation’s highest homelessness rate, and the highest number of homeless
6 people, who live on streets and in parks, in shelters, or in their vehicles. Homelessness increased
7 substantially, again, in 2019.¹³

8 21. Our housing crisis has also made homeownership a nearly unattainable
9 objective for most Californians.¹⁴ For example, even experienced union construction workers
10 earning \$90,000 – classified as “moderate” or middle income earners because they earn well above
11 California’s \$71,805 median income level¹⁵ – cannot afford to purchase a median priced home in
12 any Southern California county touching the ocean, or any Bay Area county touching the San
13 Francisco Bay. These same counties collectively have far more jobs – and higher paying jobs – than
14 the rest of the state (“Coastal Job Centers”).¹⁶ Homeownership remains generally attainable for
15 even above-median income families like union construction workers only in inland California.¹⁷
16 Aspiring homeowners who can afford to purchase homes only in these inland locations then face

17
18 ¹² See Bohn et al., *Just the Facts, Poverty in California*, Public Policy Institute of California and
19 Stanford Center and Poverty and Inequality (July 2019), [https://www.ppic.org/publication/poverty-](https://www.ppic.org/publication/poverty-in-california/)
20 [in-california/](https://www.ppic.org/publication/poverty-in-california/).

21 ¹³ Stepman, *California’s Homelessness Crisis Is Reaching Epic Proportions*, National Interest (July
22 15, 2019), [https://nationalinterest.org/blog/buzz/california%E2%80%99s-homelessness-crisis-](https://nationalinterest.org/blog/buzz/california%E2%80%99s-homelessness-crisis-reaching-epic-proportions-67067)
23 [reaching-epic-proportions-67067](https://nationalinterest.org/blog/buzz/california%E2%80%99s-homelessness-crisis-reaching-epic-proportions-67067).

24 ¹⁴ Husing, *Impact of California’s Housing Prices on Construction Workers*, Chapman University
25 (Feb. 22, 2019), at 5-9,
26 [https://www.newgeography.com/files/HousingConstructionWorkers_FINAL_WEB%20\(1\).pdf](https://www.newgeography.com/files/HousingConstructionWorkers_FINAL_WEB%20(1).pdf).

27 ¹⁵ U.S. Census Bureau, 2017 American Community Survey (ACS) 1- Year Estimates, Median
28 Income in the Past 12 Months (in 2017 Inflation-Adjusted Dollars), Table S1903,
<https://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t> (search “S1903” in
topic or table name search field and “California” in state, county or place search field)(last visited
Nov. 12, 2019).

¹⁶ Stepman, *supra* note 13.

¹⁷ *Id.*

1 “supercommutes” of more than three hours, with even funded transportation improvements such as
2 commuter rail and carpool lanes bogged down for decades. California has four of the top 10
3 metropolitan areas with the largest percentage of “supercommuters” in the nation: Riverside-San
4 Bernardino in Southern California, and Modesto, Stockton and Merced adjacent to the Bay Area.¹⁸

5 22. While the state’s housing crisis has caused widespread harm, this harm has
6 disproportionately burdened California’s minority communities: workers, families, children and
7 seniors. For example, just under 70 percent of construction workers in Southern California are
8 Latinos,¹⁹ who – like other hard working middle income Californians such as teachers, nurses and
9 firefighters – are priced out of housing in Coastal Jobs Centers and must drive ever greater
10 distances to get to homes they can afford to buy. As shown in Figure 1.A, the median home price in
11 Santa Monica is \$1.7 million and the median monthly rent for a two bedroom apartment is over
12 \$4,000. Affordability increases with distance, but racial diversity follows the inverse pattern: only
13 20 percent of Santa Monica residents are Latino or African American, while 76 percent of San
14 Bernardino residents are Latino or African American.²⁰ Hard working families, disproportionately
15 members of minority communities, can and do still buy homes in California – but mostly outside
16 Coastal Job Centers.

17 23. Most non-partisan housing experts agree that California needs an “all-of-the-
18 above” strategy for solving the housing crisis: getting to 3.5 million new homes will require
19 cooperation from multiple stakeholders, and will require a mix of housing types in different

20 ¹⁸ Cox, *Increase in Long Commutes Indicates More Residential Dispersion*, New Geography (Aug.
21 1, 2017), [http://www.newgeography.com/content/005704-increase-long-commutes-indicates-more-](http://www.newgeography.com/content/005704-increase-long-commutes-indicates-more-residential-dispersion)
22 [residential-dispersion](http://www.newgeography.com/content/005704-increase-long-commutes-indicates-more-residential-dispersion) (cited in McPhate, *California Today: The Rise of the Super Commuter*, New
23 [York Times](https://www.nytimes.com/2017/08/21/us/california-today-super-commutes-stockon.html) (Aug. 21, 2017), [https://www.nytimes.com/2017/08/21/us/california-today-super-](https://www.nytimes.com/2017/08/21/us/california-today-super-commutes-stockon.html)
24 [commutes-stockon.html](https://www.nytimes.com/2017/08/21/us/california-today-super-commutes-stockon.html)).

25 ¹⁹ Kitroeff, *Immigrants flooded California construction. Worker pay sank. Here’s why*, Los Angeles
26 [Times](https://www.latimes.com/projects/la-fi-construction-trump/) (Apr. 22, 2017), <https://www.latimes.com/projects/la-fi-construction-trump/>.

27 ²⁰ Zillow, Median home purchase price data for each city, <https://www.zillow.com> (last visited Mar.
28 2019); Rent Jungle median apartment price data for each city, <https://www.rentjungle.com> (last
visited Apr. 2019); Statistical Atlas, [https://statisticalatlas.com/place/California/Santa-](https://statisticalatlas.com/place/California/Santa-Monica/Race-and-Ethnicity)
[Monica/Race-and-Ethnicity](https://statisticalatlas.com/place/California/Santa-Monica/Race-and-Ethnicity) and [https://statisticalatlas.com/place/California/Santa-](https://statisticalatlas.com/place/California/Santa-Monica/Race-and-Ethnicity)
[Bernardino-](https://statisticalatlas.com/place/California/Santa-Monica/Race-and-Ethnicity)
[County/Race-and-Ethnicity](https://statisticalatlas.com/place/California/Santa-Monica/Race-and-Ethnicity).

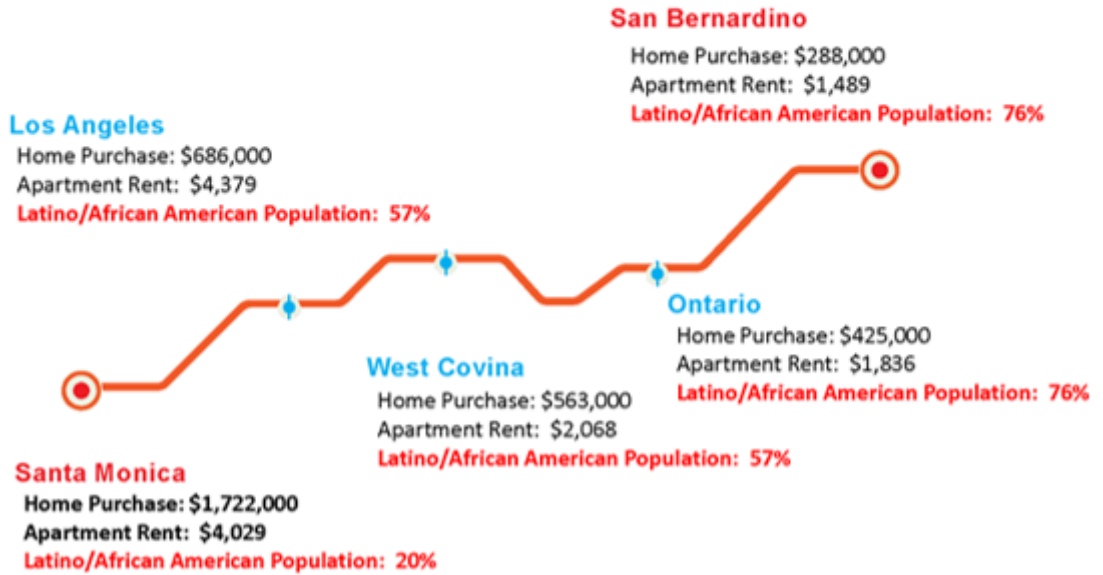
1 locations with different prices to serve the needs of all. Similarly, most non-partisan housing
2 experts – as well as the Governor and the California legislature (“Legislature”) – have rejected the
3 concept that there is a “one-size-fits-all” housing solution that works everywhere, for everyone.

4 24. As shown in Figure I.A, however, the stark housing pricing and racial
5 differences that exist today between Coastal Job Centers and inland communities like San
6 Bernardino include unacceptable (and unlawful) patterns of racial residential segregation, and are
7 undermining decades of civil rights progress against historic government discriminatory practices
8 such as redlining, exclusionary zoning, and mortgage financing programs.²¹ What is not acceptable
9 is any housing “solution” that perpetuates racial segregation and further erodes minority
10 homeownership.

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22 ²¹ This introductory Figure I.A, with reference citations is included as Figure 5 in the General
23 Allegations, *infra*, and included here for ease of reference. Although the data provided is for
24 Southern California, it is noteworthy that a similar residential racial segregation pattern holds true
25 for the San Francisco Bay Area “superregion” which now includes Central Valley communities
26 such as Stockton, Modesto and Sacramento. *See, e.g.*, Verma et al, Rising Housing Costs and Re-
27 Segregation in the San Francisco Bay Area, U.C. Berkeley Turner Center Urban Displacement
28 Project (Sept. 2018), https://www.urbandisplacement.org/sites/default/files/images/sf_final.pdf.
Because Asian and Pacific Islander population data, and mixed race data, is less readily available,
and less uniformly reported in data compilations, this Complaint focuses on statistical information
about California’s Latino and African-American data.

Figure I.A: Percent For-Sale Housing with Monthly Payments Affordable to Median Income Households

Figure 1: Geography of Southern California Region's Housing Cost Crisis
Housing Costs increase \$19,000 per Mile
Median 2BR Apartment Rents Increase \$33 per month per mile
(77 Mile Commute Distance to Coast)



25. The Two Hundred supports increasing the state's housing supply, decreasing the cost of housing, and decreasing the time required to complete housing, in response to the housing emergency. The Two Hundred also supports building new homes in existing communities, at higher densities, near transit services – but opposes this housing strategy to the extent it continues the shameful redlining practices of promoting the demolition and displacement of minority communities, excluding minority families from homeownership, and driving already exorbitant housing costs ever higher which disproportionately harms minority residents.

26. More specifically, The Two Hundred does not support undermining federal, state and local civil rights, housing and transportation laws, and does support preserving and enhancing access by California's minorities to attainable homeownership; depriving our families of homes they own does not just harm today's minority workers – it hurts our children, our

1 grandchildren, and their descendants. As explained by the LAO in its report, “California’s High
2 Housing Costs: Causes and Consequences,”

3 Homeownership helps households build wealth, requiring them to amass
4 assets over time. Among homeowners, saving is automatic: every month,
5 part of the mortgage payment reduces the total amount owed and thus
6 becomes the homeowner’s equity. For renters, savings requires voluntarily
7 foregoing near-term spending. Due to this and other economic factors,
8 renter median net worth totaled \$5,400 in 2013, a small fraction of the
\$195,400 median homeowner’s net worth. For many households in high
housing cost areas, though, homeownership’s benefits remain out of reach,
as higher home prices (relative to area incomes) mean fewer and fewer
households can afford to become homeowners.²²

9 27. California’s minority communities have fought civil rights battles for decades
10 to gain equal access to homeownership, and the pathway homeownership creates to achieving better
11 health, educational attainment, income, voter participation, and multi-generational family wealth
12 outcomes to help bridge inevitable income gaps, illnesses, and inter-generational family costs like
13 college tuition and down payment help for kids, and long term health care for seniors.²³

14 28. The California housing crisis is getting worse, not better. Notwithstanding
15 congratulatory press conferences for a “Housing Package” of legislation adopted in 2017, the
16 number of single family home permits actually fell by 12 percent and multi-family residential
17 permits fell by 20.1 percent through July 2019 even compared with the historically lackluster
18 number of permits issued in 2018 – the year after the 2017 housing reform laws took effect.²⁴
19 Homelessness has also substantially increased throughout California, with Orange County and
20 Alameda County alone experiencing a more than 40 percent increase in homelessness over the last

21 _____
22 ²² California’s High Housing Costs, *supra* note 10, at 28. Habitat for Humanity, the nation’s largest
23 non-profit organization building affordable housing that is owned rather than rented, has compiled a
comprehensive description of the scores of health, education, civic participation, and other benefits
of homeownership, a true and correct copy of which is attached as Exhibit A.

24 ²³ *Redlined, A Legacy of Housing Discrimination, The Two Hundred*,
<https://www.thetwohundred.org/redlined/> (last visited Nov. 7, 2019).

25 ²⁴ California Department of Finance, California Construction Authorized by Building Permits,
26 Seasonally Adjusted Residential Units to July 2019,
[http://www.dof.ca.gov/Forecasting/Economics/Indicators/Construction_Permits/documents/Constru](http://www.dof.ca.gov/Forecasting/Economics/Indicators/Construction_Permits/documents/Construction%20Residential%20Nonresidential%20SAAR.xlsx)
27 [ction%20Residential%20Nonresidential%20SAAR.xlsx](http://www.dof.ca.gov/Forecasting/Economics/Indicators/Construction_Permits/documents/Construction%20Residential%20Nonresidential%20SAAR.xlsx) (last visited Nov. 2019).

1 two years, a 17 percent two-year increase in San Francisco, a 50 percent annual increase in Kern
2 County, and a 12 percent annual increase in Los Angeles County.²⁵

3 29. As dozens of scholars, elected leaders, and non-partisan experts have
4 explained, California’s political leaders have been and remain paralyzed by powerful special
5 interests and contradictory environmental, climate, housing, poverty, and transportation policies
6 that have collectively created the current housing supply, housing cost, and housing-induced
7 poverty and homelessness crisis.²⁶ Even when voters fund bonds to produce housing for the
8 homeless – a humanitarian, health and environmental emergency in many of our communities – the
9 outcome is years of delay, and policy decisions that balloon the cost of producing each “affordable”
10 new rental apartment for a homeless or low income Californian to more than \$500,000 per
11 apartment in both Los Angeles and San Francisco.²⁷

12 30. California’s housing crisis disproportionately harms younger families and
13 non-homeowners, the majority of whom are racial minorities including Latinos, African Americans
14 and Asians/Pacific Islanders.²⁸ Apart from the disproportionately high number of homeless

15 ²⁵ Cowan, *Homeless Populations Are Surging in Los Angeles. Here’s Why*, New York Times (June
16 5, 2019), <https://www.nytimes.com/2019/06/05/us/los-angeles-homeless-population.html>.

17 ²⁶ See, e.g., Editorial Board, *Amid Political Paralysis, Housing Shortage Poised to Get Worse* (Aug.
18 2, 2019), <https://www.sfchronicle.com/opinion/editorials/article/Editorial-Amid-political-paralysis-housing-14277448.php>.

19 ²⁷ See, e.g., Letter and report from Ron Galperin, Los Angeles Controller, to Eric Garcetti, Mayor,
20 Michael Feuer, City Attorney, and Members of the Los Angeles City Council, Re: *The High Cost of*
21 *Homeless Housing: Review of Proposition HHH*, dated Oct. 8, 2019, at 1-2,
22 [https://lacontroller.org/wp-content/uploads/2019/10/The-High-Cost-of-Homeless-Housing_Review-](https://lacontroller.org/wp-content/uploads/2019/10/The-High-Cost-of-Homeless-Housing_Review-of-Prop-HHH_10.8.19.pdf)
23 [of-Prop-HHH_10.8.19.pdf](https://lacontroller.org/wp-content/uploads/2019/10/The-High-Cost-of-Homeless-Housing_Review-of-Prop-HHH_10.8.19.pdf) (“Building cost estimates [for homeless housing] skyrocketed from
24 \$350,000 for a small studio or one-bedroom unit and \$414,000 for a larger unit, as projected in
25 2016, to a median cost of \$531,000 per unit today. More than 1,000 [Los Angeles Measure] HHH
26 units are projected to exceed \$600,000, with one project topping \$700,000 per unit. The cost of
27 building many of these units exceeds the median sale price of a market-rate condominium in the
28 City of Los Angeles and a single-family home in Los Angeles County”); Daniels, *It would cost*
\$12.7 Billion to End Homelessness in the San Francisco Bay Region, a New Report Says, CNBC
(Apr. 20, 2019), [https://www.cnn.com/2019/04/10/cost-to-end-san-francisco-bay-area-](https://www.cnn.com/2019/04/10/cost-to-end-san-francisco-bay-area-homelessness-would-be-12point7-billion-report.html)
[homelessness-would-be-12point7-billion-report.html](https://www.cnn.com/2019/04/10/cost-to-end-san-francisco-bay-area-homelessness-would-be-12point7-billion-report.html) (“It estimated the average per unit cost of
housing each homeless person in the Bay Area region at \$450,000 but also noted that housing costs
in San Francisco are more than \$700,000 per unit when land is factored in”).

28 ²⁸ In accordance with the data classifications used in the U.S. Census Bureau American Community
Survey, “white” means “white alone, not Hispanic or Latino” and “Latino” means “Hispanic or

1 minorities, approximately one in four adult Californians aged 24 to 35 live at home with one or both
2 parents – and these young adults are much more likely to be minorities. In fact, nearly half of
3 California Latinos between 18 and 34 live with a parent. As summarized by a recent news report in

4 CalMatters:

5 Stereotypes of unemployed, shiftless man-children playing X-Box in their
6 parents' basement aren't really borne out by the data. More than 40% of
7 California stay-at-homers are enrolled in school of some sort, often
8 community college. The vast majority who aren't in school are working at
9 least part time.²⁹

10 31. The bottom line is that California's housing crisis is real and
11 disproportionately affects minority communities. We don't have enough housing, and the housing
12 we do have costs too much. California's minority communities suffer disparate harms as victims of
13 the housing crisis, losing homes and access to homeownership, as well as being driven into poverty
14 and homelessness by high housing costs.

15 32. As described in greater detail below, racially discriminatory conduct by
16 California agencies remains persistent, and harms minority communities. CEQA was enacted 50
17 years ago to protect California's natural environment and to protect people from environmental
18 hazards like pollution. In practice, and in the context of the housing crisis, CEQA's important
19 purpose has been distorted beyond recognition into an anti-housing "redlining" law to continue
20 historic, racially exclusionary housing policies and practices. Housing is the top target of all CEQA

21 Latino" in this complaint. The median age of California's Latino residents is 29.4 years, 36.5 years
22 for African-Americans, 39.5 years for Asians and 46.1 years for the state's white population. U.S.
23 Census Bureau, 2017 American Community Survey (ACS) 1- Year Estimates, Sex by Age, Table
24 B01001 series, <https://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t>
(search "B01001" in topic or table name search field and "California" in state, county or place
search field)(last visited Nov. 2019). Because the "Asian" Census Bureau category is reported in
some of the sources cited in this complaint, the minority data used herein focuses on the Latino and
African American minority communities.

25 ²⁹ Levin, *Nearly 40 Percent of Young Adult Californians Live with Their Parents. Here's*
26 *Everything to Know About Them*, CalMatters (Aug. 25, 2019),
[https://calmatters.org/housing/2019/08/young-adults-californians-living-with-parents-millennials-](https://calmatters.org/housing/2019/08/young-adults-californians-living-with-parents-millennials-ddata/)
27 [ddata/](https://calmatters.org/housing/2019/08/young-adults-californians-living-with-parents-millennials-ddata/).

1 lawsuits filed statewide, and in 2018 alone 60 percent of all CEQA lawsuits challenging
2 construction projects targeted new housing.³⁰ In the region that houses nearly half of California -
3 the five counties and 191 cities comprising the Southern California Association of Governments
4 (“SCAG”), 14,000 housing units were targeted in CEQA lawsuits over three consecutive years
5 (2013-2015).³¹ With assistance from the research staff at SCAG, here is what we know about these
6 challenged 14,000 housing units:

7 33. Virtually none of the anti-housing CEQA lawsuits sought to protect the
8 natural environment. Almost all – 98 percent – of the challenged housing units were in existing
9 urbanized “infill” areas like incorporated cities, or developed unincorporated county areas
10 surrounded by cities, on previously-developed and other infill properties.³² These infill locations
11 have long been planned and approved for development in city and county General Plans.³³ It is
12 noteworthy that these anti-housing “environmental” lawsuits sought to stop new housing in existing
13 communities, just at the time in the state’s history when racial minorities have become the
14 demographic majority of the state’s population – and minority communities are the population that
15 is most harmed by California’s housing crisis, and housing-induced poverty and homelessness
16 crises. As the California Supreme Court has recognized, CEQA is not a population control statute³⁴

17 ³⁰ Hernandez, *California Getting In Its Own Way: In 2018, Housing Targeted in 60% of Anti-*
18 *Development CEQA Lawsuits*, Chapman University (Dec. 2019),
19 https://www.chapman.edu/communication/_files/ca-getting-in-its-own-way.pdf.

20 ³¹ Hernandez, *California Environmental Quality Act Lawsuits and California’s Housing Crisis*, 24
21 *Hastings Env’tl. L.J.* 21, 30-31 (2018),
22 https://www.hklaw.com/files/Uploads/Documents/Articles/121317_HELJ_Jennifer_Hernandez.pdf
(hereinafter “Hernandez – Hastings”).

23 ³² *Id.*

24 ³³ The California Supreme Court has held that local general plans are the “constitution for all future
25 development.” *Leshar Communications, Inc. v. City of Walnut Creek* (1990) 5 Cal.4d 531, 540.
26 State laws require general plans to accommodate anticipated population growth, and prescribe
27 specific mandates such as a housing element that must designate lands for low income and other
28 housing, and a circulation and transportation element that must provide for transportation
infrastructure and policies to match housing and other elements. *See generally* Barclay & Gray,
California Land Use & Planning Law (2018) at 9-15.

³⁴ *Center for Biological Diversity v. Dept. of Fish and Wildlife* (2015) 62 Cal.4th 204, 220, as
modified on denial of reh'g (Feb. 17, 2016) (“*Newhall*”).

1 – but in practice, CEQA litigation is most commonly used to block local agency approvals of new
2 housing that would add to the population of existing communities.

3 34. Most of the anti-housing CEQA lawsuits targeted midrise and high-rise
4 housing in locations served by public transit. California’s environmental and climate agencies,
5 including but not limited to Respondents California Governor’s Office of Planning and Research
6 (“OPR”) and the Natural Resources Agency (“NRA”), as well as CARB and other state agencies,
7 have repeatedly insisted that local communities accept much higher-density housing in existing
8 neighborhoods located within one-half mile of frequent commuter public transit service like
9 commuter rail stations and bus stops. The environmental policy presumption of this high-density,
10 transit-oriented housing is that residents will use transit more, and drive less, and thereby reduce
11 VMT by personal automobiles and light duty trucks. The Respondents and other state agencies also
12 presume that lower VMT from high-density housing will meaningfully reduce vehicular air
13 emissions including traditional air pollutants as well as CO₂, the principal form of GHG from cars
14 and light duty trucks fueled by gasoline or other fossil fuels.³⁵

15 35. Notwithstanding the environmental policy presumption favoring these high-
16 density, primarily rental apartment projects, most of the anti-housing CEQA lawsuits have sought to
17 block precisely this type of housing. The most frequently challenged type of housing project in
18 CEQA lawsuits was higher density apartment and condominium projects (e.g., midrise buildings of
19 up to six stories, or high-rise buildings of eight stories or more) in neighborhoods served by
20 frequent transit. Approximately 70 percent of the challenged housing units were located in “Transit
21
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23 ³⁵ See generally CARB 2017 Scoping Plan-Identified VMT Reductions and Relationship to State
24 Climate Goals (Jan. 2019), at 6, https://ww2.arb.ca.gov/sites/default/files/2019-01/2017_sp_vmt_reductions_jan19.pdf; Taylor, Assessing California’s Climate Policies –
25 Transportation, LAO (Dec. 2018), at 8, <https://lao.ca.gov/reports/2018/3912/climate-policies-transportation-122118.pdf> (“CARB estimates that 70 percent of GHG emissions from California’s
26 transportation sector—and 28 percent of all GHG emissions in California—come from light-duty
27 vehicles (specifically, cars and trucks that weigh 8,500 pounds or less)”).

1 Priority Areas” and “High Quality Transit Corridor” neighborhoods (collectively, “TPAs”)
2 surrounding commuter rail stations and high frequency commuter bus stops.³⁶

3 36. Anti-housing CEQA lawsuits promote racial segregation. The vast majority –
4 78 percent – of lawsuits to block new housing have been located in the region’s whiter, wealthier
5 and healthier areas. These lawsuits use CEQA as a modern tool for racial discrimination that
6 reduces or eliminates the ability of the state’s poorer, non-white residents to live in higher-quality,
7 higher-opportunity neighborhoods. CEQA is almost never used, however, to block new housing in
8 the “environmental justice” communities identified by the California Environmental Protection
9 Agency as having disparately high levels of poverty and pollution, as well as a higher percentage of
10 minority residents.³⁷ As a result, when wealthier residents desire additional housing in the state, it is
11 far easier to develop new high-cost units in economically fragile and racially segregated
12 environmental justice communities and displace poorer residents by driving up housing costs. This
13 process of urban displacement, often call “gentrification,” is resegregating the state by forcing
14 lower income and minority residents to move to ever-more distant and less costly communities to
15 find housing they can afford to rent or buy, then enduring longer commutes to get to jobs for which
16 they must be physically present to get paid.³⁸

17 37. In practice, residents and other CEQA litigants in wealthy communities file
18 CEQA to oppose housing – population growth – which is more likely to be occupied by the

19 ³⁶ Hernandez – Hastings, *supra* note 31, at 31-32; Hernandez, Friedman, & DeHerrera, In the Name
20 of the Environment Update: CEQA Litigation Update for SCAG Region (2013-2015) (July 2016),
21 at 4,
[https://www.hklaw.com/files/UPloads/Documents/Alerts/Environment/InfillHousingCEQALawsuit
s.pdf](https://www.hklaw.com/files/UPloads/Documents/Alerts/Environment/InfillHousingCEQALawsuits.pdf).

22 ³⁷ Hernandez – Hastings, *supra* note 31, at 32.

23 ³⁸ See, e.g., Bay City News, *Waves of Displacement, Resegregation Affect Bay Area Communities*
24 *of Color* (July 10, 2019), [https://sfbay.ca/2019/07/10/waves-of-displacement-resegregation-affect-
25 bay-area-communities-of-color/](https://sfbay.ca/2019/07/10/waves-of-displacement-resegregation-affect-bay-area-communities-of-color/); Samara et al., Race, Inequality, and the Resegregation of the Bay
26 Area, *Urban Habitat* (Nov. 2016), at 3-5, 13,
<https://urbanhabitat.org/sites/default/files/UH%20Policy%20Brief2016.pdf>; Verma, *supra* note 21,
27 at 7-8; UCLA Department of Urban and Regional Planning, *Oriented For Whom? The Impacts of
28 TOD on Six Los Angeles Neighborhoods* (June 2, 2015), at 24,
http://www.urbandisplacement.org/sites/default/files/images/spring_2015_tod.pdf.

1 minority Californians most in need of housing. It is important to recognize that anti-housing CEQA
2 lawsuits can only be filed against approved new housing, i.e., the 3.5 million new homes mostly
3 needed by younger, and middle and lower income, majority-minority Californians. Although there
4 are many other challenges to obtaining approvals for housing, and to reducing the cost of housing
5 so that it is affordable to California’s hard working minority (and majority) families, CEQA is
6 unique in the nation in empowering anyone to sue to block housing, for any reason, anonymously,
7 under the purported banner of protecting “the environment.”

8 38. Also alone among the nation’s environmental protection statutes, CEQA
9 allows those filing environmental impact lawsuits to conceal both their actual identity and their
10 economic, racist, or other non-environmental interests in filing CEQA lawsuits.³⁹ CEQA requires
11 no evidence that the party seeking the lawsuit is actually motivated by protecting the environment:
12 the California Supreme Court concluded a national industry trade association organized to protect
13 the economic interests of its members was allowed to file a CEQA lawsuit against cities adopting
14 restrictions on plastic bags. Labor unions also use CEQA litigation tactics for economic gain:
15 former Governor Jerry Brown explained that labor unions use CEQA litigation (and litigation
16 threats) to “leverage” wage agreements on behalf of their members against housing and other
17 project applicants⁴⁰ are routine CEQA tactics deployed “in the name of the environment” against
18 housing. Individual neighbors or anonymous neighborhood groups, as well as contingency fee
19 lawyers representing unincorporated new associations with no known members or history of
20 community involvement, are also frequent CEQA litigants. Actual environmental groups with a

21 _____
22 ³⁹ Hernandez – Hastings, *supra* note 31, at 22, 24, 41.

23 ⁴⁰ Dillon, *Labor Unions, Environmentalists Are Biggest Opponents of Gov. Brown’s Affordable*
24 *Housing Plan*, L.A. Times (May 24, 2016), [https://www.latimes.com/politics/la-pol-sac-labor-](https://www.latimes.com/politics/la-pol-sac-labor-enviro-housing-20160524-snap-story.html)
25 [enviro-housing-20160524-snap-story.html](https://www.latimes.com/politics/la-pol-sac-labor-enviro-housing-20160524-snap-story.html); Britschgi, *How California Environmental Law Makes It*
26 *Easy for Labor Unions to Shake Down Developers*, Reason (Aug. 21, 2019),
27 [https://reason.com/2019/08/21/how-california-environmental-law-makes-it-easy-for-labor-unions-](https://reason.com/2019/08/21/how-california-environmental-law-makes-it-easy-for-labor-unions-to-shake-down-developers/)
28 [to-shake-down-developers/](https://reason.com/2019/08/21/how-california-environmental-law-makes-it-easy-for-labor-unions-to-shake-down-developers/); Hernandez – Hastings, *supra* note 31, at 58-67. Efforts to end economic
abuse of CEQA have to date been futile legislatively and judicially, although two recent federal
lawsuits alleging unlawful racketeering practices by labor unions using CEQA remain pending.
True and correct copies of these RICO lawsuits are included as Exhibits B and C.

1 past history of environmental advocacy file fewer than 15 percent of CEQA lawsuits.⁴¹

2 39. Although courts are generally deferential to agencies in administrative
3 litigation challenges nationally (and uphold the legality of agency decisions in nearly 80 percent of
4 such cases),⁴² CEQA litigation outcomes follow a remarkably different path: several studies
5 analyzing CEQA reported appellate court decisions have confirmed that agencies lose in nearly 50
6 percent of these CEQA lawsuits.⁴³ Additionally, the most common judicial remedy in CEQA
7 lawsuits is a writ requiring rescission of the challenged agency project approval pending completion
8 of some further prescribed CEQA process, even though the most common legal deficiency in a
9 CEQA lawsuit involves a judicial determination that an agency did not sufficiently consider a detail
10 about a particular environmental impact issue like explanations about why a particular issue was
11 analyzed qualitatively rather than quantitatively.⁴⁴ Although what is required may appear to a court
12 to be a “minor” correction, the rescission of the approval requires a project (which was already
13 unpopular enough to be sued by someone) to re-run the political gauntlet of re-study and re-
14 approval, often over a period of years.

15 40. There is no enforceable deadline for completing the CEQA process, so
16 politically unpopular housing can simply be delayed indefinitely at the staff level with ever-more
17 costly studies. In San Francisco, for example, scholars at University of California, Berkeley (“U.C.
18 Berkeley”) surveyed city staff and developers and found that the “only one factor on which all
19 interviewees and focus group participants agreed [was that] the most significant and pointless factor
20 driving up construction costs was the length of time it takes for a project to get through the city
21
22

23 ⁴¹ Hernandez, Friedman, and DeHerrera, *In the Name of the Environment: Litigation Abuse Under*
24 *CEQA* (Aug. 2015), at 24,
https://issuu.com/hollandknight/docs/ceqa_litigation_abuseissuu?e=16627326/14197714.

25 ⁴² Hernandez – Hastings, *supra* note 31, at 42.

26 ⁴³ *Id.*

27 ⁴⁴ *Id.* at 41-42.

1 permitting and development processes.”⁴⁵ If, during this extended period of technical studies,
2 multiple public notice and comment/hearing procedures, and political controversy, local political
3 leadership shifts and, for example, is persuaded to oppose new housing, then the challenged project
4 can simply be rejected outright, or “approved” at smaller densities or with more costly CEQA
5 “mitigation measures” that render the housing project economically infeasible – and thus the
6 housing is never built. Housing applicants who lack the financial resources to run this indefinitely
7 lengthy application gauntlet, during which time they are expected to fund all CEQA studies,
8 consultant, attorney and other agency staff costs that can add anywhere from hundreds of thousands
9 to millions of dollars to the housing application process, and several more years for CEQA
10 litigation, also drop out – and so even otherwise lawfully zoned housing that is approved by local
11 government does not get built, or gets built only at substantially higher costs which exclude middle
12 income households. CEQA’s indefinite and thus uncertain processing times, unknown CEQA
13 mitigation costs and other regulatory exactions, alongside uncertain CEQA litigation risks, costs
14 and durations, raises housing costs and decreases housing affordability and homeownership
15 opportunities to the vast majority of Californians earning at and near the median income (the
16 majority of whom are minorities). As explained by the non-partisan LAO in its report *California’s*

17 *High Housing Costs: Causes and Consequences:*

18 **Environmental Reviews Can Be Used To Stop or Limit Housing Development.**

19 The California Environmental Quality Act (CEQA) requires local governments to
20 conduct a detailed review of the potential environmental effects of new housing
21 construction (and most other types of development) prior to approving it. The
22 information in these reports sometimes results in the city or county denying
23 proposals to develop housing or approving fewer housing units than the developer
24 proposed. In addition, CEQA’s complicated procedural requirements give
25 development opponents significant opportunities to continue challenging housing
26 projects after local governments approve them.⁴⁶

23 ⁴⁵ Reid and Raetz, Perspectives: Practitioners Weigh in on Drivers of Rising Housing Construction
24 Costs in San Francisco, U.C. Berkeley Turner Center (Jan. 2018), at 2-3,
25 [https://turnercenter.berkeley.edu/uploads/San_Francisco_Construction_Cost_Brief_-
_Turner_Center_January_2018.pdf](https://turnercenter.berkeley.edu/uploads/San_Francisco_Construction_Cost_Brief_-_Turner_Center_January_2018.pdf).

26 ⁴⁶ California’s High Housing Costs, *supra* note 10, at 15 (emphasis in original); *see also, e.g.*, Kim,
27 *The Rising Price of Downtown Living*, Los Angeles Downtown News (Apr. 20, 2015),
28 http://www.ladowntownnews.com/news/the-rising-price-of-downtown-living/article_916184de-

1 41. Judicial rescission of the housing approval may also result in cascading
2 consequences to third parties. One CEQA lawsuit filed against an approved apartment project on a
3 transit corridor in Los Angeles resulted in a judicial rescission that took effect during the Great
4 Recession: the original applicant was economically unable to proceed and lost the project to a new
5 developer. The new developer completed the second round of CEQA documentation, obtained a
6 new approval, and constructed the apartment tower, but impassioned housing opponents objected to
7 the city’s interpretation of a CEQA “mitigation measure” that required “preservation” of a non-
8 historic stucco building façade to allow removal and reconstruction of the façade on the newly-
9 constructed apartment building. Housing opponents did not seek or obtain any injunction, and the
10 apartment building was completed and occupied. The superior court judge later agreed with
11 plaintiffs that the mitigation measure should have been interpreted as requiring the non-historic
12 stucco façade to be “preserved in place” and somehow attached to the new high-rise apartment
13 building, and therefore that the city had violated CEQA in allowing removal and reconstruction of
14 the façade. The judge ordered the city to rescind approvals of the completed, occupied apartment
15 building pending further CEQA processing. Apartment tenants were escorted out, multiple third
16 party lawsuits erupted as insurance and financing conditions, covenants and obligations could not
17 be met for an unpermitted apartment tower, and during the apex of a housing crisis almost three
18 hundred apartments remained vacant for nearly five years before finally opening its doors back to
19 tenants in 2019.⁴⁷

20 42. Even after a second round of CEQA compliance and project approvals,
21 further CEQA lawsuits can be filed. Two major housing projects in the SCAG region – one an infill

23 e54c-11e4-be4e-a766501f40.html; Gamboa, Hernandez, & Shellenberger, *Newsom Must*
24 *Prioritize Affordable Middle-Class Housing*, San Francisco Chronicle (Jan. 7, 2019),
[https://www.sfchronicle.com/opinion/openforum/article/Newsom-must-prioritize-affordable-
25 middle-class-13515693.php](https://www.sfchronicle.com/opinion/openforum/article/Newsom-must-prioritize-affordable-middle-class-13515693.php).

26 ⁴⁷ California News Wire Services, *Vacant Sunset Gordon Tower Approved for Apartments*, Patch
Hollywood, [https://patch.com/california/hollywood/vacant-sunset-gordon-tower-approved-
27 apartments](https://patch.com/california/hollywood/vacant-sunset-gordon-tower-approved-apartments); see also Hernandez – Hastings, *supra* note 31, at 42-43.

1 redevelopment site, and the other on the edge of an existing community – had the dubious
2 distinction of being sued under CEQA more than 20 times over more than 20 years, resulting in
3 prolonged delays, increased costs (which are passed along to future residents in the form of higher
4 housing prices), and unavailable housing.

5 43. Given near 50/50 litigation loss rates, and the likelihood that a judicial loss
6 for even a minor study deficiency of even a completed and occupied housing project will result in
7 rescission of project approvals,⁴⁸ even those who traditionally defend the CEQA status quo agree
8 that the mere existence of a pending CEQA lawsuit instantaneously stops housing construction by
9 ending the housing applicant’s access to project financing (e.g., construction bank loans or
10 government grants) because of the litigation outcome uncertainty that will cloud the project pending
11 resolution of the multi-year superior and appellate court CEQA litigation process.⁴⁹

12 44. Nor is CEQA’s anti-housing consequence limited to litigation: as recently
13 acknowledged by legal and planning scholars from UC Davis, UC Berkeley and UCLA, a local
14 agency’s “discretionary” review and approval process for housing, pursuant to which cities and
15 counties can require modifications to the size, configuration, and required conditions of approval
16 for new housing, triggers CEQA, which “allows local governments to delay projects indefinitely
17 and impose costly, unexpected conditions.”⁵⁰

18 45. The practical consequence of the existence of a CEQA lawsuit halting a
19

20 ⁴⁸ See Hernandez – Hastings, *supra* note 31, at 42 (“When a judge decides that an agency should
21 have conducted its CEQA preapproval review process differently, even if the error is confined to
22 whether the traffic flow at a single intersection was appropriately counted, the most common CEQA
23 judicial remedy is to “vacate” the project approval until more environmental analyses is
24 completed”) citing McAfree, *Calif. Appeals Court Affirms SF Win in Waterfront Project Row*, Law
25 360 (Aug. 27, 2013), [https://www.law360.com/appellate/articles/468162/calif-appeals-court-](https://www.law360.com/appellate/articles/468162/calif-appeals-court-affirms-sf-win-in-waterfront-project-row)
26 [affirms-sf-win-in-waterfront-project-row](https://www.law360.com/appellate/articles/468162/calif-appeals-court-affirms-sf-win-in-waterfront-project-row).

27 ⁴⁹ Shute, Jr., Reprise of Fireside Chat, Yosemite Environmental Law Conference, 25 *Envtl Law*
28 News 3 (2016).

⁵⁰ Elmendorf et al., Issue Brief: Making It Work: Legal Foundations for Administrative Reform of
California’s Housing Framework, U.C. Davis California Environmental Law and Policy Center
(Dec. 2019), [https://law.ucdavis.edu/centers/environmental/files/Elmendorf-et-al.-ISSUE-BRIEF-](https://law.ucdavis.edu/centers/environmental/files/Elmendorf-et-al.-ISSUE-BRIEF-Administering-Californias-Housing-Framework-1.pdf)
[Administering-Californias-Housing-Framework-1.pdf](https://law.ucdavis.edu/centers/environmental/files/Elmendorf-et-al.-ISSUE-BRIEF-Administering-Californias-Housing-Framework-1.pdf).

1 project is well-recognized in California, as the Legislature has created “fast track” CEQA litigation
2 durations of 270-days in total for resolving both superior and appellate court CEQA challenges –
3 but has dispensed these fast-track Legislative solutions only to politically favored projects such as
4 professional sports stadiums and the Legislature’s own renovation of its own office building.⁵¹

5 46. The act of filing a CEQA lawsuit – regardless of the legal merits, regardless
6 of the potential for irreparable or significant harm to the environment or public safety, and with zero
7 judicial oversight or review – immediately stops completion of an approved housing project
8 pending resolution of a four to five year judicial proceedings. Some projects are held up far longer:
9 one replacement single family home on an existing single family lot, which received unanimous
10 neighbor, Planning Commission, and City Council approvals and complied with all applicable laws
11 and regulations including local General Plan and zoning requirements, was held up for 11 years
12 including Supreme Court review, and was ultimately abandoned by the homeowner who moved his
13 family to a different city.⁵²

14 47. If even a single minor deficiency is found in a city’s CEQA analysis or
15 mitigation of more than one hundred ambiguously and inconsistently defined “environmental
16 impacts,” the anti-housing plaintiff is eligible to collect attorneys’ fees and the equivalent of a
17 bonus from the agency approving the housing, which typically requires the housing applicant to pay
18 all agency costs as well as indemnify the agency against the risk of being required to pay attorneys’
19 fees. A housing applicant must pay for the CEQA review process, must pay the legal fees for itself
20

21 ⁵¹ Hernandez – Hastings, *supra* note 31, at 30-31; *compare* Stats. 2018, ch. 959 (A.B. 734)
22 (approving CEQA fast-tracking for Oakland Athletics baseball stadium); Stats. 2018, ch. 961 (A.B.
23 987) (approving CEQA fast-tracking for Los Angeles Clippers basketball stadium); Stats. 2018, ch.
24 40 (A.B. 1826) (approving CEQA fast-tracking for State Capitol Building Annex) *with* Sen. Bill 25
25 (2019-2020) (proposal for CEQA fast-tracking for housing projects using union labor in “Economic
Opportunity Zones” passed the Senate only to be held in the Assembly Natural Resources
Committee); Sen. Bill 621 (2019-2020) (proposal for CEQA fast-tracking for affordable housing
projects passed the Senate only to be held in the Assembly Natural Resources Committee).

26 ⁵² *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086; *Berkeley Hillside*
Preservation v. City of Berkeley (2015) 241 Cal.App.4th 943, rehearing denied (Oct 15, 2015),
27 review denied (Feb 03, 2016).

1 and the approving city, and must pay attorneys’ fees and a bonus to an anti-housing CEQA litigant.
2 If the applicant still wants to seek project approvals, the applicant then pays for a second round of
3 CEQA compliance costs, and if challenged again must pay for a second round of its own, the city’s,
4 and potentially another round of attorneys’ fees. In contrast, an unsuccessful anti-housing litigant is
5 never obligated to pay the attorney fees, delay costs, or other damages incurred by the city that
6 approved the housing, the housing applicant, or the future residents of the housing.

7 48. All of those costs – compliance processing costs including the cost of
8 studying and “mitigating” or avoiding “environmental impacts” not otherwise regulated by federal,
9 state and local environmental, land use, public health, and labor laws, and then CEQA litigation
10 fees, delays and damages – are aggregated into the cost of the housing project, and must be paid for
11 by future residents in the form of higher housing costs.

12 49. When housing costs become too high above what market conditions predict
13 that future residents can afford to pay, the housing doesn’t get built at all. When housing costs
14 become too high for lower and middle income residents, the housing is occupied by higher income
15 workers, high net worth part-time owners, or real estate investors.

16 50. Filing CEQA lawsuits against housing for non-environmental reasons has
17 become so widespread that it is routinely recognized by elected leaders such as Governors Brown
18 and Newsom, and has its own infamous name: “greenmail.”

19 51. Anti-housing CEQA greenmail lawsuits are unconstitutional, unlawful, and
20 inherently racist given California’s demographics. Greenmail CEQA lawsuits place California as
21 the ongoing leader in our nation’s shameful history of de jure housing discrimination: using tools
22 created by the government to achieve racially discriminatory “redlining” outcomes to avoid having
23 “those people” – and the housing “they” can afford to rent or buy – in desirable locations and
24 neighborhoods.

25 52. Petitioners, The Two Hundred, are “those people” – a coalition of veteran
26 civil rights and community leaders and advocates who have for decades battled housing

1 discrimination caused or exacerbated by government agencies. Civil rights litigation to protect
2 California’s hard working minority families has re-emerged as a necessary legal response to
3 decades of policy and political decisions that have resulted in the housing crisis, which have in turn
4 reversed decades of progress by minority families in attaining homeownership. California leaders’
5 callous disregard for homeownership and the rights of minority families to buy a home has been
6 repeatedly demonstrated: two successive governors, and the Legislature’s leaders over three
7 separate two-year sessions, fought a bitter and ultimately unsuccessful battle – inclusive of two
8 unsuccessful appeals to the California Supreme Court – against civil rights advocates seeking to
9 require the State to comply with its own settlement agreement establishing a \$390 million
10 assistance fund for homeowners victimized by the unlawful predatory lending and foreclosure
11 practices during the Great Recession.⁵³ Just a few weeks ago, Governor Newsom finally agreed to
12 comply with California’s legal obligation to assist victimized homeowners, who unlawfully lost
13 their home – and their home equity, and opportunity to create family wealth for college tuition and
14 other family needs – nearly a decade ago.

15 53. Civil rights progress in the United States (“U.S.”) has always relied on the
16 courts to enforce the law, and the victory lap taken by members of The Two Hundred and other
17 civil rights leaders following enactment of comprehensive civil rights laws and policies in the 1970s
18 was premature. In the intervening years, residential segregation by race in America and California
19 is worse than it was in 1970 – a phenomenon civil rights scholars are calling the “resegregation” of
20 America. Housing policy – what’s built where, how much it costs, and what are the barriers to
21 homeownership – is fundamental to desegregation, but California’s infamous and byzantine suite of
22 laws and government practices have created the “existential” crisis of 3.5 million too few homes,
23 new home prices that are nearly three times the national average, and litigation delays extending to
24

25 ⁵³ Bollag, *California Misspent \$330 Million that Should Have Helped Homeowners, Court Holds*,
26 *The Sacramento Bee* (July 18, 2019), <https://www.sacbee.com/news/politics-government/capitol-alert/article232847737.html>.

1 20 years and beyond to the completion of approved new housing.⁵⁴ As poverty scholar Richard
2 Rothstein noted in a *Los Angeles Times* Op-Ed, “Our entrenched residential segregation exacerbates
3 serious political, social and economic problems... To achieve [integration], politically and legally,
4 we first have to acknowledge that our government, to a substantial degree, created our racial
5 inequality. Letting bygones be bygones is not a valid, just or defensible policy” (emphasis added).⁵⁵

6 54. The Two Hundred supports California’s environmental and climate
7 leadership goals. Members of The Two Hundred also want to breathe clean air, drink clean water,
8 protect natural resources, and address global climate change. The Two Hundred does not believe
9 that expanding CEQA regulations to increase CEQA compliance costs and litigation obstacles for
10 housing projects, or to exacerbate already deeply discriminatory obstacles to attainable
11 homeownership for California’s minority families, interferes with any of these environmental or
12 climate goals. The Two Hundred also supports rental housing and government-financed affordable
13 housing (which is overwhelmingly rental housing), but rental housing does not create the multi-
14 generational wealth and social equity benefits of home ownership. For over 100 years, beginning
15 with the Great Depression and the rise of global communism, both the U.S. and California have
16 supported homeownership as a cornerstone of upward mobility – an integral component of the
17 American (and California) Dream.

18 55. CEQA is California’s most venerated environmental statute, and – when not
19 abused – CEQA continues to be important to protecting the environment. However, both CEQA
20 and other important state environmental goals are undermined when our homeless population and
21 poverty rates are the worst in the nation, and when 40 percent of Californians – disproportionately
22 minorities – are at risk of losing their housing because we do not have enough housing, the housing
23 we do have costs too much, and even starter homes are unaffordable to hard-working minority

24 _____
25 ⁵⁴ See, e.g., Samara, *supra* note 38, at 6-12.

26 ⁵⁵ Rothstein, *Op-Ed: Why Los Angeles Is Still a Segregated City After All These Years*, *Los Angeles*
27 *Times* (Aug. 20, 2017), <https://www.latimes.com/opinion/op-ed/la-oe-rothstein-segregated-housing-20170820-story.html>.

1 families earning median or even above-median (e.g., union) wages.

2 56. The Two Hundred does not agree that costly environmental and climate
3 policies targeting housing that incentivize our adult children and grandchildren to leave California
4 to live in higher greenhouse gas emitting states like Texas and Nevada where they can afford to buy
5 a home is a lawful or effective climate policy, or that CEQA’s implementing regulations should be
6 expanded to exacerbate historic and existing residential housing discrimination by increasing the
7 cost of new housing most needed by our minority residents. The Two Hundred opposes the
8 economic equivalent of a “CEQA tax” to make new residents pay steep, unauthorized, and unlawful
9 new “mitigation” costs for the same ability to drive to and from work or school as existing
10 residents, or by making it even easier to win CEQA lawsuits aimed at delaying and derailing new
11 housing based on ambiguous, infeasible, contradictory, un-enacted, ineffective, and fundamentally
12 discriminatory and unlawful climate policies.

13 **B. Five Regulations, Portions of One Regulatory Appendix, and Two Unlawful**
14 **“Underground Regulations,” All Finalized Concurrently in December of 2018**
15 **to Implement CEQA, Are Unconstitutional and Unlawful, and Exacerbate the**
16 **Housing Crisis, and Housing-Induced Poverty and Homelessness Crises**

17 57. In section 21083(a) of the Public Resources Code, the Legislature directed
18 that Respondent OPR shall prepare and develop regulations for the implementation of CEQA “by
19 public agencies.”⁵⁶ The Legislature further directed that these regulations “shall specifically include
20 criteria for public agencies to follow in determining whether or not a proposed project may have a
21 ‘significant effect on the environment.’” Pub. Res. Code § 21083(b). CEQA regulations are
22 required to be “certified and adopted” by the Respondent NRA in compliance with the California
23 Administrative Procedures Act (“APA”). Pub. Res. Code §21083(e); Gov. Code Chapter 3.5
24 commencing with section 11340 of Part 1 of Division 3 of Title 2. Government Code sections

24 ⁵⁶ As recognized in numerous court decisions, and summarized by OPR itself: “The CEQA
25 Guidelines are administrative regulations governing implementation of the California
26 Environmental Quality Act.” *See*, OPR, “What are the CEQA Guidelines,” Current CEQA
27 Guidelines (2018), <http://opr.ca.gov/ceqa/updates/guidelines/>. To avoid confusion between
28 promulgated regulatory “guidelines” and unpromulgated agency guidance documents, the CEQA
Guidelines are referred to herein as Regulations.

1 11349 and 11349.1 prescribe mandatory criteria for state regulations, which Respondent OAL must
2 enforce in its role of reviewing the lawfulness of agency-adopted regulations prior to publication in
3 the California Code of Regulations. Among the mandatory criteria that CEQA regulations must
4 meet to become lawful regulations are:

- 5 a. “Necessity,” pursuant to which “the rulemaking proceeding demonstrates by
6 substantial evidence the need for a regulation to effectuate the purpose of the statute,
7 court decision, or other provision of law that the regulation implements, interprets, or
8 makes specific.” Gov. Code § 11349(a);
- 9 b. “Authority” means the provision of law which permits the agency to adopt, amend,
10 or repeal a regulation. Gov. Code § 11349(b);
- 11 c. “Clarity” means written or displayed so that the meaning of the regulations will be
12 easily understood by those persons affected by them. Gov. Code § 11349(c); and
- 13 d. “Consistency” means being in harmony with, and not in conflict with or
14 contradictory to, existing statutes, court decisions, or other provisions of law. Gov.
15 Code § 11349(d).

16 58. Given California’s “existential” housing and homelessness crisis, its deep
17 and increasing racial achievement and equity gaps, the global climate change benefits of keeping
18 our families in California instead of migrating to states like Texas where per capita GHG emissions
19 are nearly three times higher than California, The Two Hundred reasonably expected Respondents
20 to amend regulations implementing CEQA to end or at least substantially curtail litigation abuse of
21 CEQA against new housing. Unlike existing housing, new housing must comply with California’s
22 many stringent environmental and climate laws and regulations, such as energy and water
23 conservation standards, and a myriad of other “CalGreen Building Code” standards to improve
24 conservation features and reduce energy consumption in new homes, as well as dozens of other
25 laws and regulations to protect endangered species, air quality, water quality, water supplies,
26 historic and archeological resources, public health and safety, and the California coast and other

1 special places.⁵⁷ The Two Hundred also reasonably expected Respondents to resolve legal
2 ambiguities and comply with the Legislature’s express direction that regulations implementing
3 CEQA must provide clear criteria for determining when an environmental impact of a project is
4 “significant” and thus warrants imposition of all feasible “mitigation measures” to avoid or lessen
5 the severity of such an impact. Pub. Res. Code § 21083(b).

6 59. Respondents failed to meet The Two Hundred’s reasonable expectations, and
7 in fact failed to even acknowledge or respond to the scores of pages of detailed comments
8 submitted by The Two Hundred on Respondent OPR’s proposed amendments to CEQA regulations,
9 or the hundreds of pages of other comments. Instead, in the closing days of the Brown
10 administration on December 28, 2018, the NRA, OPR, and the Office of Administrative Law
11 (“OAL”), each completed actions that resulted in expansions and amendments to regulations
12 implementing CEQA⁵⁸ that exacerbate CEQA’s racially disparate impacts and harms to minority
13 communities, further weaponize CEQA to block housing needed by “those people,” and further
14 worsen California’s housing, homeless and poverty crises.

15 60. The Two Hundred hereby challenge five of Respondents’ 30 revisions to
16 Title 14, Chapter 3 of the California Code of Regulations, Guidelines for the Implementation of the
17 California Environmental Quality Act (“CEQA Guidelines”);⁵⁹ specifically, revisions to CEQA
18 Guidelines sections 15064, 15064.3, 15064.4, 15064.7, and 15126.4.⁶⁰ In addition, The Two
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20 ⁵⁷ 2019 California Green Building Standards Code, California Code of Regulations, Title 24, Part
21 11, available at: <https://codes.iccsafe.org/content/CAGBSC2019/cover> (last visited Nov. 11, 2019).

22 ⁵⁸ These regulations are referred to in CEQA as “Guidelines” but have the same legal status as
23 regulations and are required by CEQA to be adopted in compliance with the California
24 Administrative Procedure Act, Gov. Code §§ 11340 *et seq.*

25 ⁵⁹ As recognized in numerous court decisions, and summarized by OPR itself: “The CEQA
26 Guidelines are administrative regulations governing implementation of the California
27 Environmental Quality Act.” *See*, OPR, “What are the CEQA Guidelines,” Current CEQA
28 Guidelines (2018), <http://opr.ca.gov/ceqa/updates/guidelines/>.

⁶⁰ The five challenged sections of the CEQA Guidelines are sometimes individually referred to
herein as “Section 15064”, “Section 15064.3”, “Section 15064.4”, “Section 15064.7”, and “Section
15126.4”.

1 Hundred hereby challenge five of Respondents’ revisions to Appendix G of the CEQA Guidelines
2 (“Appendix G”); specifically, revisions to Appendix G sections I(c), VIII(a), VIII(b), XII(c), and
3 XVII(b) (collectively, the “Appendix G Revisions”). In addition, The Two Hundred hereby
4 challenge two unpromulgated regulatory documents issued by Respondent OPR, which are titled,
5 respectively, *Technical Advisory on Evaluating Transportation Impacts In CEQA*⁶¹ (the
6 “Underground VMT Regulation”) and *Discussion Draft: CEQA and Climate Change Advisory*⁶²
7 (the “Underground GHG Regulation”), and which constitute unlawful “underground regulations”
8 that were required, in pertinent part, to have been adopted as regulations. The challenged revisions
9 to Section 15064, Section 15064.3, Section 15064.4, Section 15064.7, and Section 15126.4, along
10 with the Appendix G Revisions and the Underground VMT and GHG Regulations, are collectively
11 referred to herein as the “Redlining Revisions.”

12 61. Unlawful Omission of Specific Criteria for Evaluating the Significance of an
13 Environmental Impact. The five challenged regulations, along with corresponding provisions in
14 Appendix G, violate section 20183(b) of CEQA in unlawfully identifying, failing to identify, or
15 providing ambiguous or inconsistent direction regarding the extent to which, a physical impact to
16 the environment caused by a project is a “significant impact to the environment” under CEQA. As
17 will be described in greater detail below, these challenged regulations violate CEQA in failing to
18 provide the required mandatory regulatory content that “specifically include criteria” for
19 determining the significance of impacts, and further violate APA requirements of necessity,
20 authority, clarity and/or consistency, as set forth in Gov. Code sections 11349 and 11349.1. The
21 challenged Significance Criteria regulations include:

22 62. Subsection (b)(2) of Section 15064, which requires lead agencies that use a
23 significance threshold to “briefly explain how compliance with the threshold means that the

24 _____
25 ⁶¹ OPR, *Technical Advisory on Evaluating Transportation Impacts in CEQA* (Dec. 2018),
http://www.opr.ca.gov/docs/20190122-743_Technical_Advisory.pdf.

26 ⁶² OPR, *Discussion Draft: CEQA and Climate Change Advisory* (Dec. 2018),
http://opr.ca.gov/docs/20181228-Discussion_Draft_Climate_Change_Adivsory.pdf.

1 project’s impacts are less than significant” as well as cautioning lead agencies that “[c]ompliance
2 with the threshold does not relieve the lead agency of the obligation to consider substantial evidence
3 indicating that the project’s environmental effects may still be significant.”

4 63. Section 15064.3, which expands CEQA to make driving a car one mile –
5 even an electric car – a new VMT impact, providing that a project such as housing that fails to
6 cause an actual reduction VMT in the project area presumptively causes a significant VMT impact,
7 and declining to prescribe a significance threshold for transportation improvement projects such as
8 voter-, city-, transportation agency-, and air quality agency-approved congestion relief projects on
9 existing highways and roadways.

10 64. Section 15064.4, which prescribes contradictory and ambiguous significance
11 criteria for GHG emissions relevant to global climate change.

12 65. Subsection (b) of Section 15064.7, which endorses the use of ad hoc “case-
13 by-case” significance criteria for different projects, and then requires that each agency using
14 compliance with environmental laws or regulations as a significance threshold explain how the laws
15 or regulations reduce project and cumulative impacts to a less than significant level, and recognizes
16 only laws and regulations adopted for “environmental protection” but not protection of “public
17 health and safety” notwithstanding the fact that CEQA encompasses physical impacts that could
18 harm either the environment or public health and safety.

19 66. Section 15126.4, which imposes unlawful new constraints on judicially-
20 upheld CEQA mitigation measures that avoid or reduce significant impacts by establishing a clear
21 performance standard that must be achieved to avoid a significant adverse impact, while allowing
22 for deployment of a flexible menu of feasible mitigation actions to attain that performance standard
23 – such as complying with storm water quality regulatory standards prohibiting harmful construction
24 runoff by installing a combination of erosion control and other common methods that, like detailed
25 engineering drawings, have not and need not be precisely designed during the CEQA process.
26 Section 15126.4 increases CEQA compliance costs for housing projects, in violation of the

1 mandatory APA criteria of necessity and authority.

2 67. The Appendix G Revisions, which include recommended “thresholds”
3 (which serve the same functional role as significance criteria) for evaluating the significance of
4 project impacts in the topical areas of Aesthetics, Transportation and Greenhouse Gas.

5 68. The Underground VMT Regulation issued by Respondent OPR concurrently
6 with the above-referenced Redlining Revisions, which sets forth unlawful unpromulgated
7 “underground” regulations for assessing the significance of VMT impacts.

8 69. The Underground GHG Regulation issued by Respondent OPR concurrently
9 with the above-referenced challenged Redlining Revisions, which sets forth unlawful
10 unpromulgated “underground” regulations for assessing the significance of GHG impacts.

11 70. The challenged Redlining Revisions impose greater costs on housing and
12 create more barriers and legal ambiguity about CEQA compliance obligations for new housing
13 projects that have further strengthened the use of CEQA litigation as an anti-housing redlining tool.

14 71. Purportedly racially neutral government conduct becomes unlawful when it
15 has a disparate impact on housing for minority communities.⁶³ A cluster of government activities
16 that caused California to have an unprecedented housing shortage has already caused disparate
17 impacts on minority communities, and Respondents’ expansion of CEQA to increase housing costs
18 and CEQA litigation obstacles unlawfully exacerbates the harms caused by the housing crisis on
19 California’s minority communities.

20 72. To highlight just one example of Respondents’ unlawful discrimination in
21 promulgating the Redlining Revisions, expanding CEQA to reduce VMT by occupants of new
22 housing violates the Federal and California constitutions. The practical necessity of having access
23 to a car has been recognized as so fundamental that both the U.S. and California Supreme Courts
24 have held that constitutional due process protections apply to any government attempt to summarily

25 _____
26 ⁶³ *Texas Dept. of Housing and Comm. Affairs v. Inclusive Communities Project, Inc.* (2015) 576
27 U.S. ___, 135 S.Ct. 2507, 2524–25.

1 deprive someone of a drivers' license or automobile.⁶⁴ The right to travel is also fundamental to the
2 constitutional protection of liberty, and government actions to impose discriminatory restrictions on
3 travel are unconstitutional. As the United States Supreme Court has affirmed:

4 [T]he right to remove from one place to another according to
5 inclination...is an attribute of personal liberty, and the right, ordinarily of
6 free transit from or through any territory of any State is a right secured by
7 the Fourteenth Amendment and by other provisions of the Constitution.⁶⁵

8 [Freedom of movement] may be as close to the heart of the individual as
9 the choice of what he eats, or wears, or reads. Freedom of movement is
10 basic in our scheme of values.⁶⁶

11 [A]ll citizens [shall] be free to travel throughout the length and breadth of
12 our land uninhibited by statutes, rules or regulations which unreasonably
13 burden or restrict this movement.⁶⁷

14 73. California courts have likewise affirmed that the right to travel is protected
15 under both the federal and state constitutions:

16 [T]he right to intrastate travel (which includes the intra-municipal travel)
17 is a basic human right protected by the United States and California
18 Constitutions as a whole. Such a right is implicit in the concept of a
19 democratic society and is one of the attributes of personal liberty under
20 common law.⁶⁸

21 The right of intrastate travel has been recognized as a basic human right
22 protected by Article I, Sections 7 and 24 of the California Constitution.⁶⁹

23 74. Imposing discriminatory new restraints on travel through CEQA imposes
24 unreasonable new cost burdens and litigation obstacles only on the new housing needed to meet the
25 state's 3.5 million housing shortfall, and on majority-minority residents already harmed by the
26 shortfall who are most in need of prompt completion of new housing supplies. Decades of peer
27 reviewed studies by poverty and equity scholars continue to confirm that car ownership and access
28

22 ⁶⁴ *Berlinghieri v. Dep't of Motor Vehicles* (1983) 33 Cal.3d 392, 398-99; *Bell v. Burson* (1971) 402
23 U.S. 535, 539.

24 ⁶⁵ *Williams v. Fears* (1900) 179 U.S. 270, 274.

25 ⁶⁶ *Kent v. Dulles* (1958) 357 U.S. 116, 126.

26 ⁶⁷ *Shapiro v. Thompson* (1969) 394 U.S. 618, 629.

27 ⁶⁸ *In re White* (1979) 97 Cal.App.3d 141, 148.

28 ⁶⁹ *Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1100.

1 is critical to getting and keeping a job, getting and keeping kids in school, and achieving better
2 personal and family health, welfare, and other benefits. As most recently confirmed in a 2019 report
3 by researchers at the University of California in Los Angeles, Rutgers University, and Arizona State
4 University entitled “The Poverty of the Carless,” these studies consistently demonstrate that
5 automobile use is essential for lower-income workers and households to achieve upward mobility
6 and escape poverty and near-poverty conditions – and that public transit, which is costly to build,
7 time-consuming to utilize, and generally inaccessible to most lower income workers, cannot
8 realistically meet the needs of disadvantaged populations for the foreseeable future.⁷⁰

9 75. Bus ridership on Metro, the nation’s largest transportation agency, has
10 dropped by more than 25 percent since 2009.⁷¹ New rail lines have not met ridership projections
11 either, and since securing the necessary approvals, funding and actually constructing passenger
12 commuter service on even existing rail lines requires about 20 years – and usually gets challenged
13 in more than one CEQA lawsuit – there is no foreseeable public transit solution to meet the needs of
14 current drivers in the SCAG region. In short, adding more high density housing to very densely
15 populated communities in the SCAG region has not produced, nor is it reasonably foreseeable that
16 it will produce, substantial reductions in per capita VMT for newly constructed housing units.

17 76. The transportation crisis most severely affects the same minority
18 communities harmed by California’s housing crisis. As researchers from the University of
19 California, Los Angeles confirmed in 2018, lower and middle income workers – including
20 disproportionately Latino and African American workers – have significantly reduced transit use

21
22
23 ⁷⁰ King et al., *The Poverty of the Carless: Toward Universal Auto Access*, *Journal of Planning*
24 *Education and Research* (Feb. 2019),
[https://www.researchgate.net/profile/Michael_Manville/publication/330813946_The_Poverty_of_th](https://www.researchgate.net/profile/Michael_Manville/publication/330813946_The_Poverty_of_the_Carless_Toward_Universal_Auto_Access/links/5c58fe8792851c22a3aa4ea4/The-Poverty-of-the-Carless-Toward-Universal-Auto-Access.pdf?origin=publication_detail)
25 [e_Carless_Toward_Universal_Auto_Access/links/5c58fe8792851c22a3aa4ea4/The-Poverty-of-the-](https://www.researchgate.net/profile/Michael_Manville/publication/330813946_The_Poverty_of_the_Carless_Toward_Universal_Auto_Access/links/5c58fe8792851c22a3aa4ea4/The-Poverty-of-the-Carless-Toward-Universal-Auto-Access.pdf?origin=publication_detail)
26 [Carless-Toward-Universal-Auto-Access.pdf?origin=publication_detail](https://www.researchgate.net/profile/Michael_Manville/publication/330813946_The_Poverty_of_the_Carless_Toward_Universal_Auto_Access/links/5c58fe8792851c22a3aa4ea4/The-Poverty-of-the-Carless-Toward-Universal-Auto-Access.pdf?origin=publication_detail).

27 ⁷¹ Nelson, *L.A. Is Hemorrhaging Bus Riders — Worsening Traffic and Hurting Climate Goals*, *Los*
28 *Angeles Times* (June 27, 2019), [https://www.latimes.com/local/lanow/la-me-ln-bus-ridership-](https://www.latimes.com/local/lanow/la-me-ln-bus-ridership-falling-los-angeles-la-metro-20190627-story.html)
[falling-los-angeles-la-metro-20190627-story.html](https://www.latimes.com/local/lanow/la-me-ln-bus-ridership-falling-los-angeles-la-metro-20190627-story.html).

1 over the past decade and now rely to a much greater extent on personal automobiles.⁷² In the SCAG
2 region, transit takes approximately twice as long as point-to-point automobile commutes even when
3 transit is available for the routes and at the times required. The highest VMT households are those
4 forced, by the housing crisis, to live ever-longer distances from homes they can afford to buy or
5 rent. Four of the nation’s 10 metropolitan areas with the largest percentage of “supercommuters”,
6 where people drive three hours or more to and from work each day, are in California and include
7 Riverside-San Bernardino in the SCAG region as well as the Central Valley communities of
8 Stockton, Merced and Modesto east of the Bay Area.⁷³

9 77. For decades, VMT has been used in CEQA to measure actual environmental
10 impacts – like air pollution from cars, and safe and effective transportation on roads. Elevating
11 VMT to the status of itself being an environmental impact in order to achieve the state’s GHG
12 reduction goals (and achieve co-benefits like reducing vehicular air pollutants) obfuscates the
13 purported actual environmental impacts. The Legislature authorized OPR to consider a CEQA
14 transportation impact other than congestion-related vehicular delay, such as VMT, in the minute
15 portions of California that are within one-half mile of a ferry terminal, a commuter rail station, or a
16 high–frequency commuter bus stop. The Legislature also made clear that vehicular air emissions
17 and safety impacts affected by traffic congestion would remain environmental impacts that must be
18 considered under CEQA, including in the vast majority of the state not located within one-half mile
19 of higher quality transit. OPR could have identified other transportation metrics that would have
20 achieved the Legislature’s goals with much less adverse housing effects and that avoid disparate

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22 ⁷² Manville et al., *Falling Transit Ridership, California and Southern California, SCAG* (Jan. 2018),
at 26, https://www.scag.ca.gov/Documents/ITS_SCAG_Transit_Ridership.pdf.

23 ⁷³ The percentage of supercommuters is 6.7 percent in Riverside-San Bernardino, ninth highest in
24 the nation, 8 percent in Stockton, second highest in the nation, 7.9 percent in Modesto and 6.4
25 percent in Merced, tenth highest in the nation. Among 381 communities in the nation, the average
26 number of supercommuters is 2.8 percent based on 2015 Census data. *See* McPhate, *California
Today: The Rise of the Super Commuter*, *New York Times* (Aug. 21, 2017),
<https://www.nytimes.com/2017/08/21/us/california-today-super-commutes-stockon.html>; Cox, 90
and Over Commute Shares by Metropolitan Area, <http://demographia.com/db-90+commute.pdf>
(last visited Nov. 7, 2019).

1 racial impacts, such as impacts based on the time efficiency of various transportation modes since
2 shorter drive times mean lower emissions (and healthier drivers who can spend more time at home
3 with the kids), occupancy per automobile trip to encourage carpooling and ridesharing, trips
4 avoided by working at home, or economic equity metrics like prioritizing home-to-work trip
5 assistance for people forced by the housing crisis to live greater distances from employment.
6 Instead, the Respondents opted to implement a VMT-based impact threshold for the entire state
7 without demonstrating in any manner that reducing VMT alone, including from zero emission
8 vehicles, can meaningfully reduce GHGs and the risks of climate change.

9 78. Available evidence indicates that forcing all new state housing into expensive
10 TPA locations, and causing severe and disproportionate impacts to California minority
11 communities, will have, at most, insignificant potential GHG emission benefits. None of the
12 Respondents and state agencies, including CARB, which oversees California’s climate change
13 policies, have ever specifically quantified the net GHG emission and associated global temperature
14 reductions that VMT cutbacks would achieve. The most comprehensive analysis currently
15 published of building 1.92 million new units solely in urban infill locations estimated that this
16 construction, which the study conceded would require the demolition of tens to hundreds of
17 thousands of existing, less expensive housing and displace existing residents, could cut state
18 emissions by about 1.79 million tons.⁷⁴ This reduction amounts to about 0.4 percent of the state’s
19 current GHG emissions and, if realized, would account for approximately 1 percent of the overall
20 reduction required to meet legislatively-enacted goals for 2030.

21 79. As discussed in more detail below, these estimates are consistent with
22 possible GHG emission reductions that could occur in the SCAG region, which has half of the
23 state’s population, from building new housing subject to the Redlining Revisions over the next
24

25 ⁷⁴ Decker et al., Right Type Right Place: Assessing the Environmental and Economic Impacts of
26 Infill Residential Development through 2030, U.C. Berkeley Terner Center for Housing Innovation
27 and Center for Law, Energy and the Environment (Mar. 2017), at 5,
28 http://ternercenter.berkeley.edu/uploads/right_type_right_place.pdf.

1 decade. According to the California Department of Housing and Community Development
2 (“HCD”), which oversees planning and enforcement of California state housing laws, by 2029 the
3 SCAG region will need to construct 1,344,740 new homes.⁷⁵ One potential but by no means clear
4 interpretation of the unlawful Underground VMT Regulation is that all homes located outside of a
5 TPA must have per-capita VMT rates that are 15 percent below the regional average to avoid a
6 significant impact under CEQA. Assuming that all of the new homes identified by the HCD are
7 built in the SCAG region outside of TPAs, and that current levels of per-capita VMT and GHG
8 emissions per mile remain at current levels, forcing each new unit to achieve a 15 percent reduction
9 in per capita VMT could reduce GHG emissions by 1.9 million tons, very close to the levels
10 estimated by U.C. Berkeley researchers for roughly comparable infill development.⁷⁶ If the
11 percentage of conventional internal combustion vehicles in the SCAG region remain unchanged by
12 the end of the decade, however, and GHG emission per mile are reduced at the same rate that has
13 occurred in the U.S. since 2005, total emissions would be reduced by 8.8 million tons without any
14 decrease in VMT, or by more than four times the hypothetical reduction that might occur from
15 VMT cutbacks related to the Redlining Revisions.

16 80. The trivial and practically unmeasurable GHG reductions that might occur
17

18 ⁷⁵ Letter from HCD to Kome Ajise, Executive Director of SCAG, Re: Regional Housing Need
19 Determination SCAG: June 30, 2021 – October 15, 2029, dated Aug. 22, 2019,
20 https://www.scag.ca.gov/Documents/6thCycleRHNA_SCAGDetermination_08222019.pdf. In
21 September 2019, SCAG submitted a formal objection to the HCD determination and contended that
22 the correct housing needs would be in the range of 823,000-920,000. *See* Letter from Kome Ajise,
23 Executive Director of SCAG to Doug McCauley, Acting Director of HCD, dated Sept. 18, 2019,
24 [https://www.scag.ca.gov/programs/Documents/RHNA/SCAG-Objection-Letter-RHNA-Regional-](https://www.scag.ca.gov/programs/Documents/RHNA/SCAG-Objection-Letter-RHNA-Regional-Determination.pdf)
25 [Determination.pdf](https://www.scag.ca.gov/programs/Documents/RHNA/SCAG-Objection-Letter-RHNA-Regional-Determination.pdf). A lower level of housing growth would result in lower potential GHG
26 reductions from burdening new housing with new VMT mitigation requirements under the
27 Redlining Revisions.

28 ⁷⁶ Calculated from SCAG, Transportation Safety Regional Existing Conditions (2017),
http://www.scag.ca.gov/programs/Documents/SafetyFactSheet_scagIMP.pdf; SCAG, Profile of the
City of Los Angeles (2019), at 4, <https://www.scag.ca.gov/Documents/LosAngeles.pdf>; U.S. EPA,
Office of Transportation and Air Quality, 2018 Automotive Trends Report, Section 3, Table T.3.1,
<https://www.epa.gov/sites/production/files/2019-03/420r19002-report-tables.xlsx> (last visited Oct.
2019) (2017 estimate of 357 grams of CO₂ per mile); *see also* Table 9 and related General
Allegations below.

1 from massively disrupting California housing markets in a racially disparate manner under the
2 Redlining Revisions are not required to meet any legislatively-mandated climate change goal for the
3 state. The 2017 Scoping Plan adopted by CARB for reducing GHG from all sectors of the
4 California economy has identified ample GHG reduction measures to achieve Senate Bill No. 32’s
5 (“SB 32”) legislated mandate of reducing GHG 40 percent below 1990 levels by 2030.⁷⁷ The
6 Scoping Plan does not quantify, nor does it or the public rulemaking record for the Redlining
7 Revisions provide any evidence that, any VMT reductions are required to meet the legislated SB 32
8 target for 2030. Instead both CARB and Respondents justify the imposition of unprecedented VMT
9 restrictions, including the Redlining Revisions, with reference to potential future targets, such as an
10 80 percent reduction from 1990 levels by 2050. No reduction goal beyond 2030 has ever been
11 adopted by the Legislature and an 80 percent statewide emissions reduction from 1990 levels by
12 2050 has been repeatedly considered and rejected by the Legislature, most recently during the
13 approval of SB 32.

14 81. Another important contextual fact is racial equity. If there is a feasible means
15 of achieving a racially neutral objective without causing or exacerbating disparate impacts to racial
16 minorities, then civil rights law requires agencies to avoid policies that cause disparate impacts. As
17 discussed above, for example, simply ensuring that conventional internal combustion vehicles
18 continue to reduce GHG emissions at the same rate of improvement that occurred since 2005 would
19 reduce GHG emissions by more than four times the amount that could result from implementing the
20 Redlining Revisions in the SCAG region (even with highly favorable, unlikely assumptions) or
21 from building 1.92 million new homes solely in urban infill locations. Even more compelling,
22 household emissions data provided by CARB in an online “Calculator for Households and
23 Individuals,” which is explicitly cited in the Underground GHG Regulation, shows that higher
24 wealth households generate far more GHG emissions than even average, let alone lower income

25
26 ⁷⁷ CARB, California’s 2017 Climate Change Scoping Plan (Dec. 2017),
https://ww3.arb.ca.gov/cc/scopingplan/scoping_plan_2017.pdf

1 households. Approximately 4,280,000, or 33 percent of all California households earn \$100,000 or
2 more per year. Rather than increasing housing costs and regressively harming lower income,
3 disproportionately minority households, the CARB calculator demonstrates that implementing far
4 more progressive policies to reduce emissions by the wealthiest California households would cut
5 state GHG emissions by much larger amounts. Merely reducing wealthier household emissions to
6 average state household levels from clothing would cause emissions to fall by 2.7 million tons per
7 year, by 3.9 million tons from furniture, and by over 10 million tons from motor fuel consumption,
8 levels far greater than any estimated reduction ever attributed to housing densification around urban
9 transit and limiting VMT for new homes.⁷⁸

10 82. Instead of requiring GHG reductions from existing, wealthier and
11 disproportionately white homeowners in California, the Respondents unlawfully elected to use
12 CEQA, which only applies to new housing, to impose regressive and discriminatory GHG reduction
13 obligations on the far greater number of minorities who are not currently homeowners, as well as
14 middle and lower income households, and the homeless, who need new housing that will be
15 adversely affected by the Redlining Revisions.

16 83. The Redlining Revisions also must be viewed in a global context, because
17 GHG emissions that cause climate change are a global problem. Reducing in-state emissions would
18 have no effect if global emissions did not also fall. At present, the California economy produces
19 less than 1 percent of global anthropogenic GHG emissions. Former Governor Brown
20 acknowledged that state GHG reductions will be “futile” unless others are inspired to follow
21
22

23 ⁷⁸ Estimates from CARB, Calculator for Households & Individuals,
24 <https://coolcalifornia.arb.ca.gov/calculator-households-individuals> (last visited Nov. 10, 2019) and
25 U.S. Census Bureau, 2013-2017 American Community Survey (ACS) 5-Year Estimates, Median
26 Income in the Past 12 Months (in Inflation-Adjusted Dollars), Table Series S1903,
<https://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t> (search for “S1903”
in topic or table name search field and “California” in state, county or place search field)(last visited
Nov. 10, 2019); *see also* Table 12 and accompanying General allegations below.

1 California's lead.⁷⁹ With record high income inequality, and a housing and homelessness crisis that
2 routinely makes national news above and beyond the daily suffering it causes to California residents
3 (and disproportionately to California's minority residents, especially women, children and seniors),
4 there is no known state or country currently seeking to adopt and then weaponize environmental
5 laws like the Redlining Revisions and thus subject needed housing developments within their
6 jurisdictions to potentially years of processing delay, cost increases, and the risk of lawsuits filed
7 for tactical, non-environmental purposes, including thinly disguised efforts to limit opportunities for
8 minority populations in existing, wealthier, non- minority communities. There is substantial
9 evidence, however, that California's regressive housing and VMT policies are driving a large
10 number of former state residents to other, higher GHG emission locations. The Redlining Revisions
11 unlawfully fail to take account of potentially adverse effects, including the likelihood that by
12 encouraging massive out-of-state population relocation, regressively raising housing costs and
13 limiting VMT will increase, not decrease, net GHG emissions.

14 84. Reducing VMT is also not the necessary or exclusive method for reducing
15 GHG from vehicular use. For decades, California and the U.S. have achieved astonishing net total
16 emission reductions from cars and light trucks even though VMT increased significantly over the
17 same period. President Obama's U.S. EPA reported that traditional air emissions from cars
18 decreased 98 percent from pre-Clean Air Act car fleets. Although GHG emissions have only
19 recently become a regulatory focus, there has been a 20 percent decrease in California's fleet-wide
20 GHG emissions in just the past decade. VMT, as promulgated by Respondents, is simply one
21 transportation mode choice among several (e.g., walking, biking, bus or rail transit), but it is by far
22 the dominant transportation mode for California's workforce, especially for the disparately large
23 number of minority workers earning lower and middle income wages. Parents with childcare and/or
24 senior care responsibilities, shift workers who commute at off-peak hours, and workers who must

25 _____
26 ⁷⁹ Marinucci, *Top Democrats Plan: Divest in Coal to Fight Global Warming*, S.F. Gate (Dec. 16,
27 2014), [http://www.sfgate.com/news/article/Top-state-Democrat-pushes-coal-divestment-](http://www.sfgate.com/news/article/Top-state-Democrat-pushes-coal-divestment-to5959147.php)
28 [to5959147.php](http://www.sfgate.com/news/article/Top-state-Democrat-pushes-coal-divestment-to5959147.php).

1 be physically present at their jobsite, such as construction workers, must and do drive. In contrast,
2 the VMT from existing homeowners – who are far more likely to be older, wealthier, and white – is
3 unaffected by expanding CEQA to include VMT, because CEQA applies only to discretionary
4 agency approvals of new housing that existing homeowners don’t need – and in fact desire to limit
5 so that property values remain high in their communities.

6 85. In considering whether VMT is an unlawful and racially discriminatory
7 CEQA regulatory overreach by Respondents, imagine that Respondents decided to adopt a less
8 camouflaged population reduction regime aimed at expelling median income minority families from
9 California, and expressly acknowledged that the policy of the Redlining Revisions was to impose
10 new VMT mitigation costs on housing in non-coastal California’s remaining affordable
11 homeownership locations with majority-minority populations like San Bernardino County. Imagine
12 that Respondents had actually acknowledged that defining VMT as an “impact” would add either
13 \$45,100 or \$403,800 (who knows?) of new CEQA mitigation costs to \$350,000 homes.⁸⁰

14 86. Imagine that Respondents had actually admitted their intent to more than
15 double housing costs – and ignite a new firestorm of legal uncertainty and CEQA lawsuit risks and
16 obstacles – within 30 days of the Governor’s declaration of the state’s “existential” housing crisis
17 and emergency. Imagine that Respondents openly admitted that its Redlining Revisions were
18 intended to use CEQA as a bureaucratic workaround to effectively ban (by making it financially
19 infeasible for prospective homeowners to purchase) housing which the state’s climate agency,
20 CARB, had expressly agreed – in the precise process and on the precise schedule expressly
21 prescribed by the Legislature – was appropriate to build while achieving California’s GHG
22 reduction targets for land uses in the SCAG region.⁸¹ Imagine further that Respondents actually

23
24 ⁸⁰ See *infra*, paragraphs 313-315.

25 ⁸¹ State of California Air Resources Board, Executive Order G-16-066 (June 28, 2016),
26 https://ww3.arb.ca.gov/cc/sb375/scag_executive_order_g_16_066.pdf (“NOW, THEREFORE, BE
27 IT RESOLVED that under California Government Code section 65080, subsection (b)(2)(J)(ii), the
28 Executive Officer hereby accepts SCAG’s determination that the SCS [Sustainable Communities
Strategy, which identifies locations appropriate for housing and other land uses, and corresponding

1 acknowledged that increasing the cost of a \$350,000 home with a VMT mitigation cost that more
2 than doubled the home cost to \$753,800 priced out every single overwhelmingly minority home
3 buyer who could afford the \$350,000 home.

4 87. Stripped of regulatory acronyms like VMT, imagine that Respondents
5 actually announced their policy decision that with extremely rare exceptions, today’s non-
6 homeowners and those without inherited family wealth would need to either leave California or
7 accept that they would be lifetime renters, and, as renters, would need to accept the reality of having
8 household wealth that is 44 times lower than homeowner households.⁸² Then imagine that
9 Respondents actually acknowledged that CARB measures as a GHG “reduction” the loss of
10 population to other states, since CARB counts GHG from only a very limited slice of in-state
11 activities like fuel and electricity consumption, so fewer Californians means less in-state GHG from
12 fuel and electricity consumption – even though the direct consequence of anti-housing policies
13 force hard working minority families to states where they can still buy a home (primarily Texas,
14 Arizona and Nevada) where their per capita GHG emissions more than double.

15 88. Imagine that Respondents actually “showed their math” and disclosed that
16 CEQA’s contribution to global climate leadership was to effectively expel hard working families
17 and increase global GHG. In fact no imagination is required: the Redlining Revisions were intended
18 to, and do, attempt to increase homeownership costs to unattainable levels in minority-dominated
19 inland counties closest to coastal job centers. The fact that Respondents failed to disclose any of

21 transportation system features] adopted by SCAG’s Regional Council on April 7, 2016, would, if
22 implemented, achieve the 2020 and 2035 GHG emission reduction targets established by ARB”).

23 ⁸² The U.S. Census Bureau reported in 2019 that the median net worth of homeowners is 80 times
24 higher than renters. U.S. Census Bureau, Gaps in the Wealth of Americans by Household Type
25 (Aug. 27, 2019), [https://www.census.gov/library/stories/2019/08/gaps-in-wealth-americans-by-household-](https://www.census.gov/library/stories/2019/08/gaps-in-wealth-americans-by-household-type.html?utm_campaign=20190827msacos1ccstors&utm_medium=email&utm_source=govdelivery%20https://www.census.gov/library/stories/2019/08/gaps-in-wealth-americans-by-household-type.html?utm_campaign=20190827msacos1ccstors&utm_medium=email&utm_source=govdelivery)
26 [type.html?utm_campaign=20190827msacos1ccstors&utm_medium=email&utm_source=govdelivery](https://www.census.gov/library/stories/2019/08/gaps-in-wealth-americans-by-household-type.html?utm_campaign=20190827msacos1ccstors&utm_medium=email&utm_source=govdelivery)
27 ry.

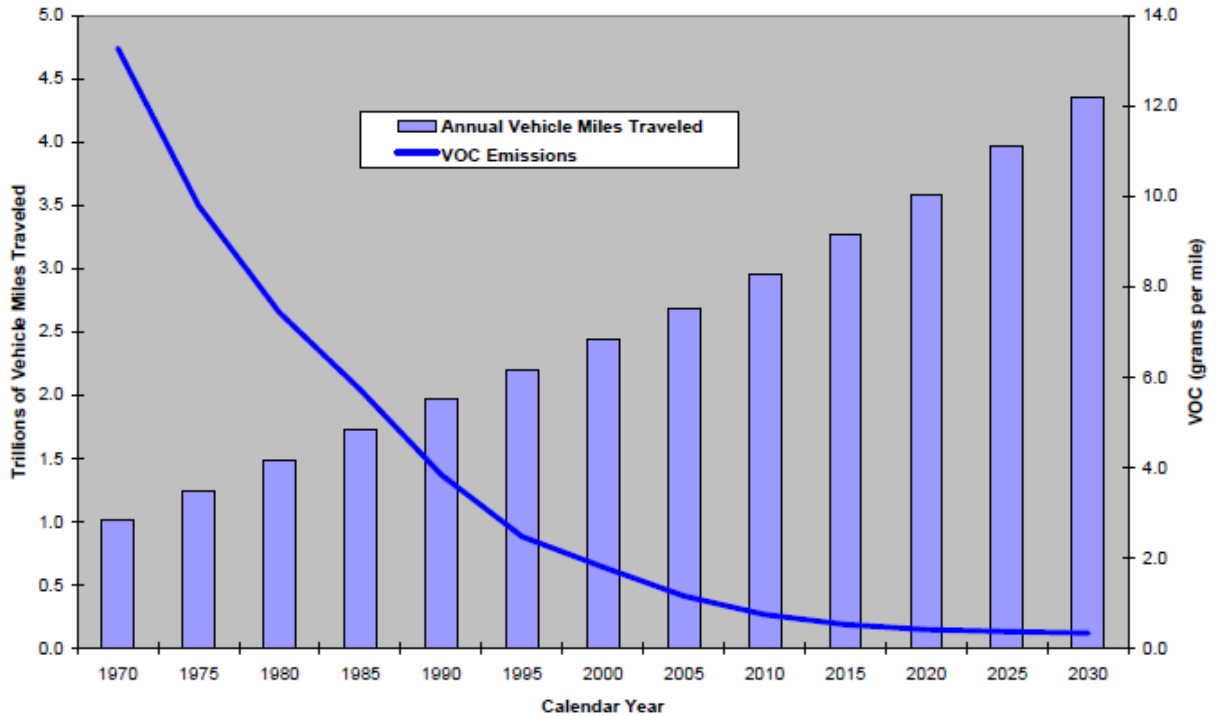
1 these facts and consequences, or their anti-housing and population reduction policy objectives, and
2 instead hid behind “environmental” rhetoric and acronyms, is another chapter in the shameful
3 racially discriminatory redlining history of California.

4 89. Respondents’ weaponization of CEQA against lawful housing and the state’s
5 own population is a particularly shameful example of shielding racism behind “environmental”
6 rhetoric when we know full well how to reduce (and nearly eliminate) harmful air emissions from
7 cars. When the federal Clean Air Act was adopted in 1972 and the SCAG region was choking with
8 pollution, complex and transparent air quality regulations were proposed at the federal, state and
9 regional air quality protection agencies. These regulations were then compared, analyzed, and
10 adopted – and among other remarkable outcomes resulted in a fleet of cars with tailpipe emissions
11 of smog-forming pollutants that as of 2016 were 99 percent cleaner than the nation’s 1969 car fleet:
12 vehicular emissions plummeted even as the nation’s VMT increased dramatically as would be
13 expected for a mobility metric resulting from population and economic activity, as shown by U.S.
14 EPA in Figure I.B.⁸³

25 ⁸³ US EPA, Clean Air Act Overview, Progress Cleaning the Air and Improving People’s Health -
26 New Cars, Trucks, and Nonroad Engines Use State-of-the-Art Emission Control Technologies,
<https://www.epa.gov/clean-air-act-overview/progress-cleaning-air-and-improving-peoples-health>
(accessed Nov. 16, 2019).

Figure I.B

Vehicle Emissions vs. Miles Traveled



90. Emissions from cars and pickup trucks were reduced by implementing regulations requiring technology improvements, such as more efficient engine and pollutant removal systems, reformulations of gasoline, such as removal of lead, and incentives for retiring older dirtier cars and increasing utilization of cleaner new cars, including electric cars. What was not proposed, let alone authorized by any elected body or adopted by any regulatory agency, was a regulatory scheme that penalized occupants of new homes – in the form of increasing home costs – for the fact that they, like their neighbors, needed to drive. What was not authorized by any elected body or adopted by any regulatory agency was a regulatory scheme that attempted to prevent construction of homes entirely unless even residents who drove electric cars could be shown to not drive at all, or some substantial but uncertain amount less than their neighbors, or pay unrelated people in distant locations to not drive. Through an *ad hoc* implementation scheme that could differ

1 for each project and each jurisdiction in the state, governed by ambiguous and contradictory CEQA
2 regulations, the Redlining Revisions define a basic human trait in California – mobility – as a *per se*
3 new environmental “impact.”

4 91. If allowed to stand, there is literally no aspect of fundamental human
5 behavior that is not cognizable (and litigable) under CEQA – or susceptible to the racist bias that
6 allowed Respondents to make homeownership unattainable to Californians in the name of climate
7 change. For example, a family’s decision to have an elderly relative or child live in their home
8 could easily be characterized as a new “environmental” impact. Families could be required to
9 “mitigate” for the basic “physical impacts” of caring for an elderly relative (more doctor trips),
10 raising a child (more school trips), and more energy consumption for simple chores that increase
11 based on household size such as cooking, cleaning, lighting, washing, and drying.

12 92. CEQA “impacts” and “mitigation” burdens would be calibrated based on the
13 “substantial evidence” of readily available data showing that minorities are likely to have more kids
14 (non-Hispanic whites now account for a minority of births in the U.S.),⁸⁴ and minorities are more
15 likely to have households that include grandparents or other relatives.⁸⁵ “Racial profiling” by
16 burdening identical new three bedroom homes with different “impact” and “mitigation”
17 requirements depending on the race of the future occupant is not (yet) used in CEQA, but – as is the
18 case with VMT – could rationally be related to real environmental impacts like air pollution, so why
19 shouldn’t minority family households pay more for their house as CEQA mitigation? The answer:

20 _____
21 ⁸⁴ Passel et al, Explaining Why Minority Births Now Outnumber Whites, Pew Research Center
(May 17, 2012), <https://www.pewsocialtrends.org/2012/05/17/explaining-why-minority-births-now-outnumber-white-births/>.

22 ⁸⁵ Numerous studies have confirmed that African American, Latino and Asian households are all far
23 more likely than white households to live in extended family households. *See, e.g.*, Kamo, Racial
24 and Ethnic Differences in Extended Family Households, *Sociological Perspectives* Vol. 42, No. 2
25 (Summer 2000), at 211-229 (concluding in pertinent part that “[e]ven after racial/ethnic differences
26 in demographic and economic variables are accounted for, preferences for downward extension
[e.g., adult children of parents in household] among African Americans, upward extension among
Asians [e.g., grandparents of parents in household], and horizontal extension among Hispanics [e.g.,
siblings or cousins of parents in household], suggesting an independent effect of racial/ethnic
culture regarding household extension”).

1 imposing higher costs on housing that creates or exacerbate disparate harms to racial minorities –
2 which is precisely what the Redlining Revisions do – is unconstitutional, and unlawful.

3 93. Likewise, imposing via CEQA a legal regime to reduce or prohibit – as a
4 condition to buying or renting a new home – the transportation mobility of future occupants (who
5 are far more likely to be the minority community members most harmed by the housing crisis) is
6 racially discriminatory given California’s overwhelmingly automobile-dependent transportation
7 system. Imposing through CEQA racially discriminatory anti-mobility VMT “mitigation” costs is
8 itself a racially discriminatory unconstitutional and unlawful anti-housing redlining regulation,
9 particularly for new housing in locations in which CARB has already agreed housing can be built in
10 compliance with the region’s assigned GHG reduction goals.

11 94. Access to California’s most fundamental means of transportation and
12 mobility, featuring the cleanest car fleet in the nation, is so important that families struggling with
13 poverty convert even small income increases into automobile purchases.⁸⁶ Making driving a car a
14 CEQA “impact” for all housing not located in the infinitesimally small (less than three percent of
15 the SCAG region) areas of California not located within one-half mile of four commuter buses
16 operating at 15 minute intervals in the morning/evening commutes (and on weekends) is nothing
17 less than an assault on all victims of California’s housing crisis – the majority of whom are
18 minorities. As confirmed by numerous experts, including HCD, the “[h]ousing cost burden is
19 experienced disproportionately by people of color.”⁸⁷

20 95. Further, there is no evidence that GHG reductions from VMT are necessary
21 or even quantified as being necessary to achieve California’s legislated 2030 GHG reduction target,
22 and the Legislature expressly declined to adopt a more aggressive 2050 GHG reduction target in SB
23

24 _____
25 ⁸⁶ Manville, *supra* note 72, at 65.

26 ⁸⁷ HCD, California's Housing Future: Challenges and Opportunities, Final Statewide Housing
27 Assessment 2025 (Feb. 2018), at 38-40, https://www.hcd.ca.gov/policy-research/plans-reports/docs/SHA_Final_Combined.pdf (hereinafter “California’s Housing Future”).

1 32.⁸⁸ As CARB calculates it, California is the fifth largest economy in the world but emits less than
2 one percent of global GHG – Respondents’ have fallen far short of demonstrating why, given the
3 racially discriminatory harms the Redlining Revisions cause, depriving minority Californians of
4 homeownership is required as part of California’s commitment to “lead the world” on climate
5 change. The constitutional, equitable, policy and economic consequences of such a radical redlining
6 expansion of the 1970 “environmental” CEQA law, would be enormous, and certainly not left to the
7 discretion of any government agency in the absence of any express or lawful Legislative
8 authorization.

9 96. Given these racially disparate impacts, it is not surprising that the Legislature
10 has repeatedly declined over nearly 15 years to mandate any reduction in VMT – in CEQA, in
11 climate laws, or in any other environmental law.⁸⁹ Instead, California is on track with the same
12 successful vehicular emission reduction strategy it has deployed for nearly 50 years – with
13 methodical, feasible, and duly enacted laws to reduce vehicular GHG emissions through cleaner
14 cars and cleaner fuels – not by further distorting CEQA to increase housing costs and anti-housing
15 CEQA lawsuits to get to a future with fewer people living in fewer homes with fewer jobs and
16 fewer children.

17 97. The Redlining Revisions unlawfully hijack CEQA from an environmental
18 protection statute to a tool for increasing housing costs, and continuing to reduce housing supply, by
19 placing major new cost and litigation obstacles on all housing except the most costly high-rise
20 housing in TPAs that are the most likely to continue to cause displacement and destruction of
21 historic minority communities. The challenged regulations exacerbate the housing, homelessness,

22 _____
23 ⁸⁸ Compare Sen. Bill 32 (2015-2016 Reg. Sess.) as introduced on Dec. 1, 2014 *with* Stats. 2016, ch.
24 249 (S.B. 32).

25 ⁸⁹ Compare Sen. Bill 150 (2017-2018 Reg. Sess.) as introduced on Jan. 18, 2017 *with* Stats. 2017,
26 ch. 646 (S.B. 150) (initially requiring regional transportation plans to meet VMT reductions but
27 modified before passage); compare Sen. Bill 375 (2007-2008 Reg. Sess.) as amended on Apr. 17,
28 2017 *with* Stats. 2008, ch. 728 (S.B. 375) (early version stating bill would require regional
transportation plan to include preferred growth scenario designed to achieve reductions in VMT but
modified before passage).

1 and poverty crisis – and have an unlawful and disparate impact on California’s minority
2 communities – by unlawfully increasing housing costs, making it even easier to derail or delay
3 housing in CEQA lawsuits by failing to provide the requisite level of specificity and clarity
4 regarding CEQA compliance obligations, and by exacerbating the legal uncertainties in CEQA and
5 thereby expand the risk that CEQA lawsuits will be filed and won by anti-housing plaintiffs.

6 98. Respondents OPR and NRA were expressly advised by multiple commenters
7 that these proposed regulations would cause disparate harm to racial minorities, and worsen
8 California’s housing and poverty crisis. OPR and NRA either ignored or summarily dismissed these
9 comments, and accordingly engaged in intentionally discriminatory and unlawful conduct.
10 Respondent OAL, which is charged with reviewing regulations for compliance with the APA,
11 expedited and rubber-stamped the challenged regulations notwithstanding direct knowledge of their
12 racially discriminatory and unlawful content and consequences, and their noncompliance with APA
13 rulemaking requirements.

14 99. The Redlining Revisions also violate state housing laws, which apportion
15 responsibility for accommodating new housing at prescribed income levels to cities and counties
16 throughout California, without regard to the existence of effective transit services or TPAs in each
17 city or county. State housing laws further recognize and allow for a broad range of housing types,
18 cognizant of both differences in affordability and differences in community and resident
19 preferences. The Redlining Revisions place new cost burdens and litigation obstacles on housing
20 that has lawfully been planned for by both cities and counties, and recognized as being acceptable
21 for meeting regional GHG reduction goals from the land use sector by CARB following a
22 comprehensive CEQA compliance process completed under Senate Bill 375 (2008) (“SB 375”).

23 100. The Redlining Revisions unlawfully create barriers to interstate commerce
24 and personal mobility. As one prominent former cabinet member and current member of the
25
26
27

1 California Transportation Commission has explained, “housing is where jobs go home to sleep.”⁹⁰
2 Federal and state commerce and transportation laws, as well as air pollution protection laws, have
3 long required regions to plan and build transportation systems that actually work for existing and
4 planned population and economic growth. Respondents have no constitutional, statutory, or
5 regulatory authority to interfere with or otherwise limit population growth, transportation mobility,
6 or interstate commerce.

7 101. Petitioners are suffering significant and ongoing harm as a result of
8 Respondents’ intentional civil rights and other violations in promulgating the anti-housing and anti-
9 homeownership Redlining Revisions, which increase housing costs through direct new mitigation
10 costs for VMT and GHG impacts, add additional CEQA compliance burdens (and thus result in
11 increased housing application costs and processing delays) for cities and counties that approve new
12 housing who must now justify the appropriateness of each significance threshold for each project.

13 102. As a direct result of the Redlining Revisions, housing that is critically needed
14 by minority communities is at greater risk of being targeted by CEQA lawsuits, and at greater risk
15 of losing such lawsuits as a result of Respondents’ (a) arbitrary, capricious, discriminatory, and
16 unlawful characterization of VMT as an adverse impact to the physical environment; (b) failure to
17 promulgate express significance criteria required by section 210893(b) of the Public Resources
18 Code, (c) uncertain and contradictory significance standards for VMT, (d) uncertain and unreliable
19 assessment methodologies for VMT, (e) infeasible and uncertain mitigation requirements and
20 mitigation measures for VMT, (f) uncertain significance standards for GHG, (g) infeasible and
21 uncertain mitigation requirements and mitigation measures for GHG, (h) arbitrary and
22 discriminatory aesthetic significance criteria for cities with fewer than 50,000 residents, (i) express
23 endorsement of arbitrary and capricious significance standards to be differentially invented and
24 applied to each new project by any representative of a lead agency without any public process and

25 _____
26 ⁹⁰ Dunn, *Brian Calle & Lucy Dunn: Wish List for Jerry Brown’s Last Term*, The Orange County
27 Register (Nov. 9, 2014), <https://www.ocregister.com/2014/11/09/brian-calle-lucy-dunn-wish-list-for-jerry-browns-last-term/>.

1 without the knowledge or endorsement of elected or appointed representatives of that lead agency,
2 (h) express imposition of a new obligation that each lead agency explain and thereby justify the use
3 of each significance criteria for each new project, and (i) unauthorized and costly new limitation on
4 performance standard mitigation measures.

5 103. Mandamus relief is appropriate to require immediate rescission of the
6 challenged Redlining Revisions, and compel Respondents to return to this court in 90 days with
7 lawful alternative amendments to the CEQA Guidelines, which alternative amendments shall (a)
8 eliminate traffic delay as a CEQA impact in TPAs (or transit-served and transit planned equivalents
9 thereto as designated by a city or county) as directed by the Legislature in section 21099 of the
10 Public Resources Code; (b) incorporate judicial decisions inclusive of decisions endorsing the
11 CEQA compliance pathways for GHG as identified by the California Supreme Court, upholding the
12 authority of a city through its General Plan to eliminate traffic delay as a CEQA impact, and
13 determinations that design review and approval of housing projects is not independently a
14 discretionary project under CEQA; (c) avoid expanding CEQA to increase housing, transportation,
15 or infrastructure costs for projects that are consistent with housing, transportation or infrastructure
16 plans that have been approved following CEQA review by local, regional, and/or state agencies;
17 and (d) take all such measures as are necessary or appropriate to eliminate ambiguous CEQA
18 Guidelines, and CEQA Guidelines that conflict with, impede implementation of, or fail to
19 acknowledge the mitigation value in complying with, laws, regulations, guidance and judicial
20 decisions relating to housing, transportation, the environment and climate, and health and safety.

21 104. Injunctive relief is also sought, and appropriate, to preclude implementation
22 of, and CEQA lawsuit claims based on, the Redlining Revisions for housing projects and housing
23 project applications (and the transportation and infrastructure improvements for such housing)
24 pending compliance with the writ. This injunctive relief would not preclude any lead agency from
25 determining that traffic delay, as measured by Level of Service (“LOS”), is not itself an
26 environmental impact under CEQA but instead could, in some circumstances, impede emergency

1 vehicle access or emergency evacuation routes and thus potentially create a public safety impact
2 under CEQA, and would lengthen trip durations and accordingly result in greater emissions of air
3 pollutants which is an impact under CEQA.

4 **II. JURISDICTION AND VENUE**

5 105. This Court has jurisdiction over this proceeding pursuant to California Code
6 of Civil Procedure (“CCP”) section 1085. Respondents are subject to personal jurisdiction because
7 the challenged CEQA regulations would, if allowed to remain in effect, pertain to
8 Petitioners/Plaintiffs, in addition to local agencies and project proponents located within the County
9 of San Bernardino. Respondents may be properly served here, and jurisdiction and venue are proper
10 here under CCP section 401, because the regulations challenged herein have an effect in, and apply
11 in, the County of San Bernardino, California.

12 **III. PARTIES**

13 106. Petitioners/Plaintiffs THE TWO HUNDRED are a California-based
14 unincorporated association of civil rights leaders, community leaders, opinion makers and
15 advocates working in California (including in San Bernardino County) and elsewhere on behalf of
16 low income minorities who are, and have been, affected by California’s housing crisis and
17 increasing wealth gap.⁹¹

18 107. The Two Hundred is committed to increasing the supply of housing, to
19 reducing the cost of housing to levels that are affordable to California’s hard working families, and
20 to restoring and enhancing home ownership by minorities so that minority communities can also
21 benefit from the family stability, enhanced educational attainment over multiple generations, and
22 improved family and individual health outcomes, that white homeowners have long taken for
23 granted. The Two Hundred includes civil rights advocates who each have four or more decades of
24 experience in protecting the civil rights of our communities against unlawful discrimination by
25 government agencies as well as businesses.

26 _____
27 ⁹¹ See <https://www.thetwohundred.org/>.

1 financeable, insurable, and equitable rules for the cleanup and redevelopment of the polluted
2 properties that blighted these communities.

3 113. The Two Hundred submitted comment letters to Respondents objecting to the
4 discriminatory anti-housing content of the Redlining Revisions. The Two Hundred included with its
5 comments to Respondent OPR its first civil rights lawsuit, filed against CARB in 2018, which
6 remains pending and challenges four anti-housing discriminatory measures included in CARB’s
7 2017 “Scoping Plan” for reducing GHG emissions, including but not limited to VMT reduction
8 mandates and “net zero” GHG CEQA thresholds.⁹² CARB Scoping Plans have been determined to
9 not be regulations. *Newhall*, 62 Cal.4th at 222-23. Noteworthy for evidentiary purposes such as the
10 intentional racial discrimination alleged in this complaint, CARB, represented by Attorney General
11 Becerra, unsuccessfully demurred to The Two Hundred’s constitutional due process claim by
12 arguing that there is no constitutionally protected right to housing free of discrimination.⁹³

13 114. The Two Hundred’s members include, but are not limited to, members of and
14 advocates for minority communities in California, including the following:

15 115. Joe Coto. Joe Coto is Chair of The Two Hundred. Mr. Coto is an American
16 educator, city council member, and Democratic Party politician. From 2004 to 2010, he was a
17 member of the California State Assembly, representing the 23rd Assembly District. He served as
18 Chair of the Assembly’s Insurance committee, and held positions on the Elections and
19 Redistricting, Governmental Organization, and Revenue and Taxation committees. He also served
20 on the Special committee on Urban Education. Coto served as Chair of the 26 member Latino
21 Legislative Caucus for a 2-year term, and as Vice Chair for a two-year term.

22 116. John Gamboa. John Gamboa is Vice-Chair of The Two Hundred. Mr.

23 _____
24 ⁹² Verified Petition for Writ of Mandate; Complaint for Declaratory and Injunctive Relief, *The Two
25 Hundred et al. v. California Air Resources Board et al.*, No. 18CECG01494 (Fresno Cty. Super. Ct.
26 Apr. 27, 2018).

27 ⁹³ Order After Hearing on Respondents/Defendants’ Demurrer to Complaint/Petition at 12, *The Two
28 Hundred et al. v. California Air Resources Board et al.*, No. 18CECG01494 (Fresno Cty. Super. Ct.
Oct. 26, 2018).

1 Gamboa is the former Executive Director of the Greenlining Institute and has experience in
2 academia, the private sector and the non-profit sector. Prior to the Greenlining Institute, he was
3 Executive Director of Latino Issues Forum, Communications Manager at U.C. Berkeley, Executive
4 Director of Project Participar, a citizenship program, and Marketing and Advertising Manager at
5 Pacific Bell. At the Greenlining Institute, Mr. Gamboa focuses on public policy issues that promote
6 economic development in urban and low-income areas, and in developing future leaders within the
7 country's minority youth. He has been active in combating redlining and in providing a voice for
8 the poor and underserved in insurance, philanthropy, banking, housing, energy, higher education
9 and telecommunications. He has served on numerous boards and commissions.

10 117. Robert J. Apodaca. Robert Apodaca is the Vice President and Policy Director
11 of The Two Hundred. He is a Founder of ZeZeN Advisors, Inc., a boutique financial services firm
12 that connects institutional capital with developers and real estate owners. He has a 45-year career in
13 private and public sectors. He was Chairman and Trustee of the Alameda County Retirement Board
14 (pension fund) and then joined Kennedy Associates, an institutional investor for pension funds as
15 Senior Vice President and Partner. He represented Kennedy Companies on Barings Private Equity's
16 "Mexico Fund" Board of Directors. He later joined McLarand Vasquez Emsiek & Partners, a
17 leading international architectural and planning firm, as Senior Vice President of Business
18 Development. He currently serves on numerous board of directors including Jobs and Housing
19 Coalition, Greenlining Institute, California Community Builders and California Infill Federation.

20 118. Herman Gallegos. Herman Gallegos is a Leadership Council Member of The
21 Two Hundred. He has provided active leadership in a wide variety of community, corporate and
22 philanthropic affairs spanning local, national and international interests. As a pioneer civil rights
23 activist in the early 1950's, Gallegos was a leader in the formation of the Community Service
24 Organization, a civil rights-advocacy group organized to promote the empowerment and well-being
25 of Latinos in California. In 1965, while serving as a Consultant to the Ford Foundation's National
26 Affairs Program, Gallegos, with Dr. Julian Samora and Dr. Ernesto Galarza, made an assessment

1 with recommendations on how the foundation might initiate support to address the critical needs of
2 the rapidly growing Latino population in the U.S. As a result, he was asked to organize a new
3 conduit for such funds – the Southwest Council of La Raza, now the National Council of La Raza.
4 Gallegos went on to become the council’s founding Executive Director. Gallegos also served as
5 CEO of several business firms, including the U.S. Human Resources Corporation and Gallegos
6 Institutional Investors Corporation. He became one of the first Latinos elected to the boards of
7 publicly traded corporations and the boards of preeminent private and publicly supported
8 philanthropic organizations, such as the Rockefeller Foundation, The San Francisco Foundation,
9 The Poverello Fund and the California Endowment.

10 119. Hyepin Im. Hyepin Im is a Leadership Council Member of The Two
11 Hundred. She currently serves as the Founder and President of Korean Churches for Community
12 Development (“KCCD”) whose mission is to help churches build capacity to do economic
13 development work. Under Ms. Im’s leadership, KCCD has implemented a historic homeownership
14 fair in the Korean community, a Home Buyer Center Initiative with Freddie Mac, a national
15 database and research study on Korean American churches, and ongoing training programs.
16 Previously, Ms. Im was a venture capitalist for Renaissance Capital Partners, Sponsorship and
17 Community Gifts Manager for California Science Center, a Vice President with GTA Consulting
18 Company, and a Consultant and Auditor with Ernst & Young LLP. Ms. Im serves on the Steering
19 Committee of Churches United for Economic Development, as Chair for the Asian Faith
20 Commission for Assemblymember Herb Wesson, and has served as the President of the Korean
21 American Coalition, is a member of the Pacific Council, was selected to be a German Marshall
22 Fund American Memorial Marshall Fellow, and most recently, was selected to take part in the
23 Harvard Divinity School Summer Leadership Institute.

24 120. Don Perata. Don Perata is a Leadership Council Member of The Two
25 Hundred. Mr. Perata began his career in public service as a schoolteacher. He went on to serve on
26 the Alameda County Board of Supervisors (1986-1994) and the California State Assembly (1996-

1 1998). In 1998, he was elected to the California State Senate and served as president pro tem of the
2 Senate from 2004 to 2008. As president pro tem, Mr. Perata oversaw the passage of Assembly Bill
3 32,⁹⁴ which established California’s statewide greenhouse gas reduction target as well as authorized
4 cap-and-trade regulations to reduce greenhouse gases from the extraction, processing, and business
5 and consumer use of fossil fuels. Mr. Perata has guided major legislation in health care, in-home
6 services, water development and conservation and cancer, biomedical and renewable energy. Mr.
7 Perata has broad experience in water, infrastructure, energy, and environmental policies, both as an
8 elected official and a consultant. He is versed in the State Water Project, Bay Delta restoration,
9 renewable energy, imported water and water transfers, recycling, conservation, groundwater
10 regulation, local initiative, storage and desalination.

11 121. Steven Figueroa. Steven Figueroa is a Leadership Council Member of The
12 Two Hundred. He was born in East L. A., with a long history in California. Working on his first
13 political campaign at age nine he learned that if you want change you have to be involved. As an
14 adult he was involved in the labor movement through the California School Employees Association
15 and later as a union shop steward at the United States Postal Service. A father of three, Steven has
16 been advocating for children with disabilities for 30 years, beginning in 1985, for his own son, who
17 is autistic. He took the Hesperia School District to court for violating his disabled son’s rights and
18 prevailed. He advocates for disabled children throughout the U.S., focusing on California.
19 Currently, he serves as president of the Inland Empire Latino Coalition and sits on the advisory
20 boards of California Hispanic Chambers of Commerce, the National Latina Business Women
21 Association Inland Empire, the Disability Rights and Legal Center Inland Empire, and as Executive
22 Director for Latin PBS. He previously served as the Vice President of the Mexican American
23 Political Association Voter Registration & Education Corp.

24 122. Sunne Wright McPeak. Sunne McPeak is a Leadership Council Member of
25 The Two Hundred. She is the President and CEO of the California Emerging Technology Fund, a

26 _____
⁹⁴ Stats. 2006, ch. 488 (A.B. 32) (hereinafter “AB 32”).

1 statewide non-profit whose mission is to close the Digital Divide by accelerating the deployment
2 and adoption of broadband. She previously served for three years on the Governor’s cabinet as the
3 Secretary of the California Business, Transportation and Housing Agency, where she oversaw the
4 state’s largest agency and was responsible for more than 42,000 employees and a budget in excess
5 of \$11 billion. Ms. McPeak’s duties as Secretary included management of the state’s housing
6 agencies, and during her tenure she co-chaired with the Natural Resources Agency the most recent
7 comprehensive regulatory updates to the CEQA Guidelines. Ms. McPeak served as a Democratic
8 Party member during a Republican Governor’s administration. Prior to service on the Governor’s
9 cabinet, she served for seven years as President and CEO of the Bay Area Council, as the President
10 and CEO of the Bay Area Economic Forum, and for fifteen years as a member of the Contra Costa
11 County Board of Supervisors. She has led numerous statewide initiatives on a variety of issues
12 ranging from water, to housing, to child care, and served as President of the California State
13 Association of Counties in 1984. She was named by the San Francisco League of Women Voters as
14 “A Woman Who Could Be President.” She also served on the Boards of Directors of First
15 Nationwide Bank and Simpson Manufacturing Company.

16 123. George Dean. George Dean is a Leadership Council Member of The Two
17 Hundred. Mr. Dean has been President and Chief Executive Officer of the Greater Phoenix Urban
18 League since 1992. Mr. Dean, a former CEO of the Sacramento, California and Omaha, Nebraska
19 affiliates boasts more than 25 years as an Urban League staff member. His leadership focuses on
20 advocacy on issues affecting the African-American and minority community, education, training,
21 job placement and economic development. Mr. Dean annually raises more than three million dollars
22 from major corporations, local municipalities and state agencies for the advancement of minority
23 enterprises, individuals, families and non-profits. Mr. Dean is nationally recognized in the field of
24 minority issues and advancement, and affordable housing.

25 124. Joey Quinto. Joey Quinto is a Leadership Council Member of The Two
26 Hundred. Mr. Quinto’s has made many contributions to the advancement of the Asian and Pacific

1 Islander (“API”) community. He began his professional career as a mortgage banker. As a
2 publisher, his weekly newspaper advances the interests of the API community and addresses local,
3 consumer and business news, and community events. He is a member of several organizations
4 including the Los Angeles Minority Business Opportunity Committee and The Greenlining
5 Coalition. Mr. Quinto is the recipient of the Award for Excellence in Journalism during the Fourth
6 Annual Asian Pacific Islander Heritage Awards in celebration of the Asian Pacific Islander
7 American Heritage Month. He was also listed among the Star Suppliers of the Year of the Southern
8 California Regional Purchasing Council, received the Minority Media Award from the U.S. Small
9 Business Administration, and earned a leadership award from the Filipino American Chamber of
10 Commerce based in Los Angeles.

11 125. Bruce Quan, Jr. Bruce Quan is a Leadership Council Member of The Two
12 Hundred. Mr. Quan is a fifth generation Californian whose great grandfather, Lew Hing founded
13 the Pacific Coast Canning Company in West Oakland in 1905, then one of the largest employers in
14 Oakland. Bruce attended Oakland schools, U.C. Berkeley, and Boalt Hall School of Law. At U.C.
15 Berkeley, he was a community activist for social justice, participated in the Free Speech Movement
16 and the Vietnam Day Committee and was elected student body president. In 1973, he was chosen as
17 one of three students to clerk for the Senate Watergate Committee and later returned to Washington
18 to draft the “Cover-up” and “Break-in” sections of the committee’s final report. He worked in the
19 Alameda’s City Attorney office, his own law practice advising Oakland’s Mayor Lionel Wilson on
20 economic development issues in Chinatown and serving Mayor Art Agnos as General Counsel for
21 the San Francisco-Shanghai Sister City Committee and the San Francisco-Taipei Sister City
22 Committee. In 2000, he moved to Beijing, continued his law practice, worked as a professor with
23 Peking Law School, and became senior of counsel with Allbright Law Offices. Now in Oakland, he
24 has reengaged in issues affecting the Chinese community and on issues of social justice, public
25 safety and economic development in Oakland.

1 of Possibility, which faults environmental advocates who argue that climate change can only be
2 addressed by limiting human progress and prosperity, and who fail to recognize the potential to
3 overcome environmental challenges through economic development and technological innovations.
4 Mr. Shellenberger is the founder and president of Environmental Progress, an independent research
5 and policy center located in Berkeley, California.

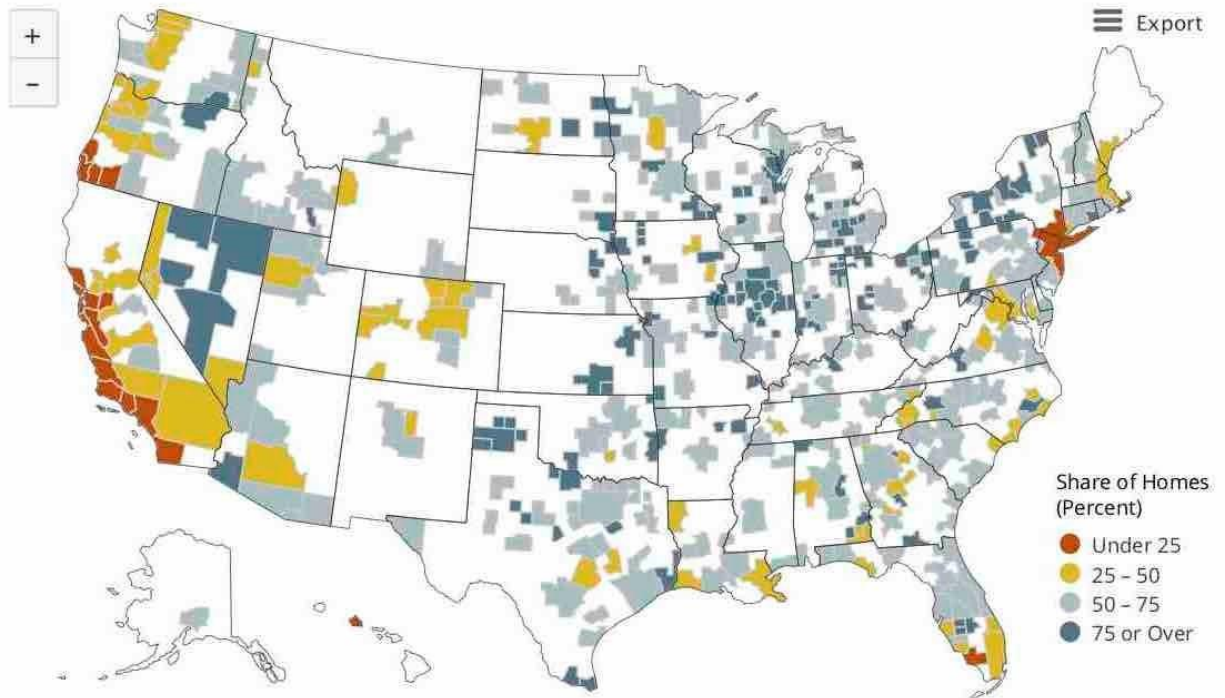
6 129. Pete Carrillo. Pete Carrillo is a Leadership Council member of The Two
7 Hundred. Mr. Carrillo is the founding President/CEO of the Mexican Heritage Corporation of San
8 Jose, and former Executive Policy Advisor for San Jose City Councilmember Blanca Alvarado. Mr.
9 Carrillo currently serves as the Principal and Co-Founder of Silicon Valley Advisor, LLC.

10 130. Jason Cordova. Jason Cordova is an individual and aspiring homeowner
11 residing in San Bernardino County who is harmed by the increased housing costs and CEQA
12 litigation obstacles created by the Redlining Revisions. Mr. Cordova recently served as the Program
13 Director for the Southern California College Access Network, which is tasked with increasing the
14 college completion rates and career readiness of students in greater Los Angeles County.

15 131. Lynn Brown-Summers. Lynn Brown-Summers is a retired union organizer,
16 lifetime resident of San Bernardino County, and mother of eight adult children. Because of high
17 housing costs, two of her adult children have already moved to another state with less costly
18 housing, and two others are planning to do so. Only one of her eight children has been able to afford
19 to become a homeowner. Ms. Summers will suffer from grief and other harms as her children and
20 grandchildren move to other states so they can afford housing. Before retiring, Ms. Summers also
21 often drove 150 miles per day to different work places as part of her union organizing duties. Ms.
22 Summers worked directly on successfully lobbying against legislative proposals to mandate
23 reductions in VMT, given the direct harm she and others in her community would suffer from being
24 unable to get to work, being charged VMT fees, and/or suffering from even higher housing costs, if
25 a VMT reduction mandate was to be imposed by the Legislature. The VMT reduction legislation
26 opposed by Ms. Summers was never adopted.

1 extending in an unbroken line from the Mexican border to well north of the San Francisco Bay
2 Area, only 25 percent of all housing is affordable for a median-income household. Less than half of
3 median-income Californians can afford a home in much of the rest of the state.

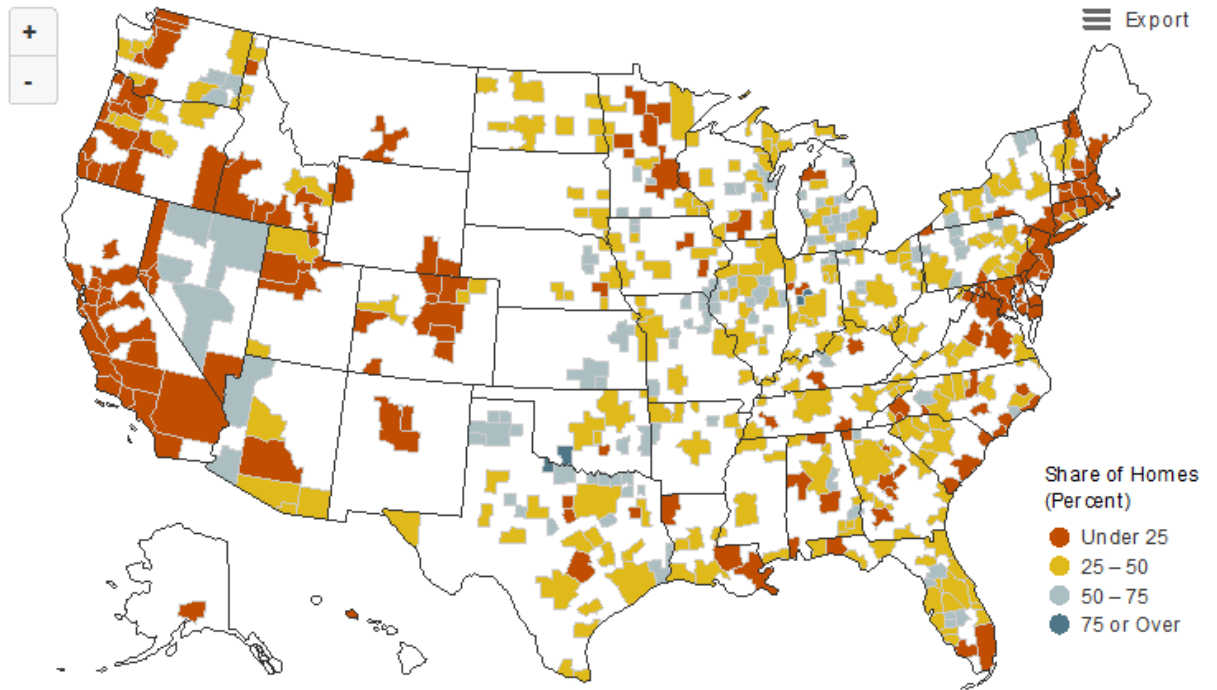
4 **Figure 1: Percent For-Sale Housing with**
5 **Monthly Payments Affordable to Median Income Households⁹⁶**



18 138. As shown in Figure 2, the Harvard researchers also found that 25 percent or
19 less of all rental housing in all of the counties analyzed in California is unaffordable to a median
20 income renter. California’s rental housing market failure is also off the charts: no other large state
21 has zero counties in which a median-income renter could afford fewer than 50 percent of rental
22 units.

25 ⁹⁶ Harvard University, Joint Center for Housing Studies, Share of Homes Affordable to Potential
26 Buyers Vary Widely, [https://www.jchs.harvard.edu/share-homes-affordable-potential-buyers-](https://www.jchs.harvard.edu/share-homes-affordable-potential-buyers-varies-widely)
27 varies-widely (choose “median-income household”)(last visited Oct. 2019).

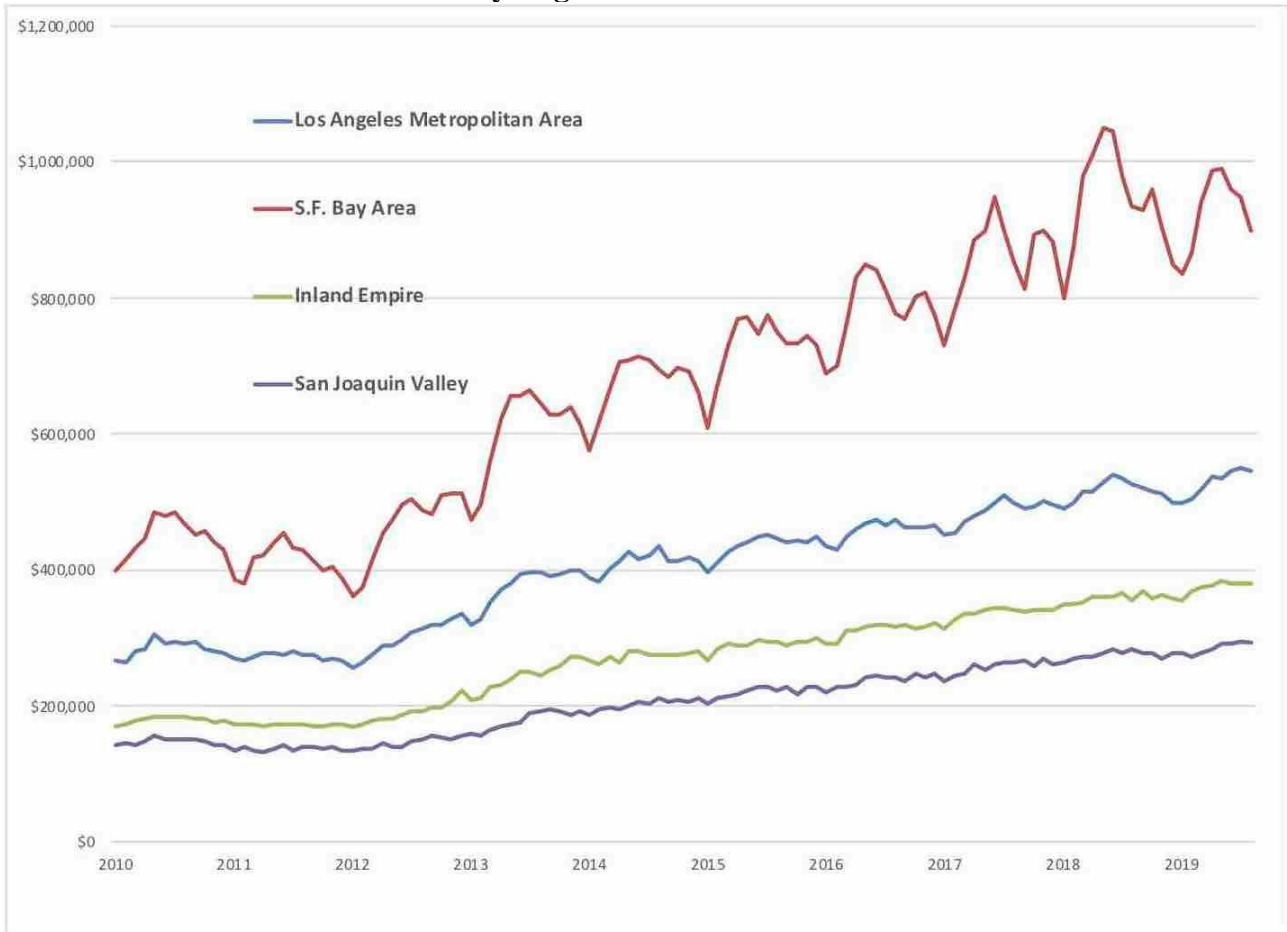
1 **Figure 2: Percent Rental Housing with Monthly Payments Affordable**
2 **to a Median Income Household**
3 **Renter⁹⁷**



139. California’s housing supply and affordability crisis has intensified since the end of the Great Recession. Detached existing housing sale prices since 2010 rose from less than \$200,000 to between \$300,000 and \$400,000 in the interior locations of the state, from \$400,000 to nearly \$600,000 in the Los Angeles Metro area, and from \$400,000 to about \$1 million in the Bay Area (see Figure 3). Housing prices increased rapidly throughout the state, but have reached historically high levels in coastal California.

⁹⁷ *Id.* (choose “median-income renter”).

Figure 3: Existing Detached Housing Prices, 2010-2019 (second quarter)
By Region in California⁹⁸



140. California’s housing crisis is occurring just as the state is undergoing unprecedented demographic changes. From 2010 to 2017, the state’s white⁹⁹ population fell by over 300,000, while the Latino population rose by nearly 1.4 million (by far the largest population

⁹⁸ Data from California Association of Realtors, Historical Housing Data, Median Prices of Existing Single Family Homes, <https://car.sharefile.com/share/view/s0c02663a5c54e23a> (last visited Oct. 2019). Data is seasonally adjusted and annualized; the “LA Metro” includes Los Angeles County, Orange County, Riverside County, San Bernardino County, and Ventura County; the “Inland Empire” includes Riverside County and San Bernardino County; the “S.F. Bay Area” includes Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma counties; and “San Joaquin Valley” is the average of the prices reported to Kern, Kings, San Joaquin, Merced and Fresno Counties.

⁹⁹ In accordance with the data classifications used in the U.S. Census Bureau American Community Survey, “white” means “white alone, not Hispanic or Latino” and “Latino” means “Hispanic or Latino” in this complaint.

1 increase of any group). For the first time in decades, the state’s Latino residents accounted for 39
 2 percent of the total state population, a greater share than the white population which declined to just
 3 over one-third of all state residents. The number of African American, Asian and other non-white
 4 groups also increased.

5 **Table 1: California’s Demographic Change, 2010-2017¹⁰⁰**

	2017 California Population	Net Population change, 2010-2017	Percent of total California Population
State	39,536,653	2,187,290	100%
Latino	15,477,306	1,387,895	39%
White	14,616,636	-332,178	37%
Asian	5,765,305	864,342	15%
African American	2,271,917	25,564	6%
Other groups	1,405,489	241,667	4%

13 141. Unlike the conditions facing the new, aspiring, and minority California
 14 population, residents in prior years, particularly white households, were able to rent reasonably
 15 priced apartments, save enough money to buy affordable starter homes, and eventually locate in the
 16 state’s most temperate, jobs-rich coastal communities. As the older generations transitioned from
 17 renters to homeowners, they significantly enhanced their financial assets and wealth. The State
 18 LAO recently estimated that the median net worth of California renters was a minuscule \$5,400 in
 19 2013 compared with a median net worth of \$195,400 for a homeowner in the state.¹⁰¹

20 142. Now, due to high housing costs, California’s emerging Latino, African
 21 American, Asian and other growing populations are increasingly denied the economic opportunities
 22 that homeownership afforded the state’s earlier, majority-white generations. While California’s

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 24 ¹⁰⁰ U.S. Census Bureau, 2010 and 2017 American Community Survey (ACS) 1-Year Estimates, Sex
 25 by Age, Table B01001, and Total Population, Table B01003, ,
 26 <https://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t> (search “B01001”
 27 and “B01003” in topic or table name search field and “California” in state, county or place search
 28 field)(last visited Nov. 2019).

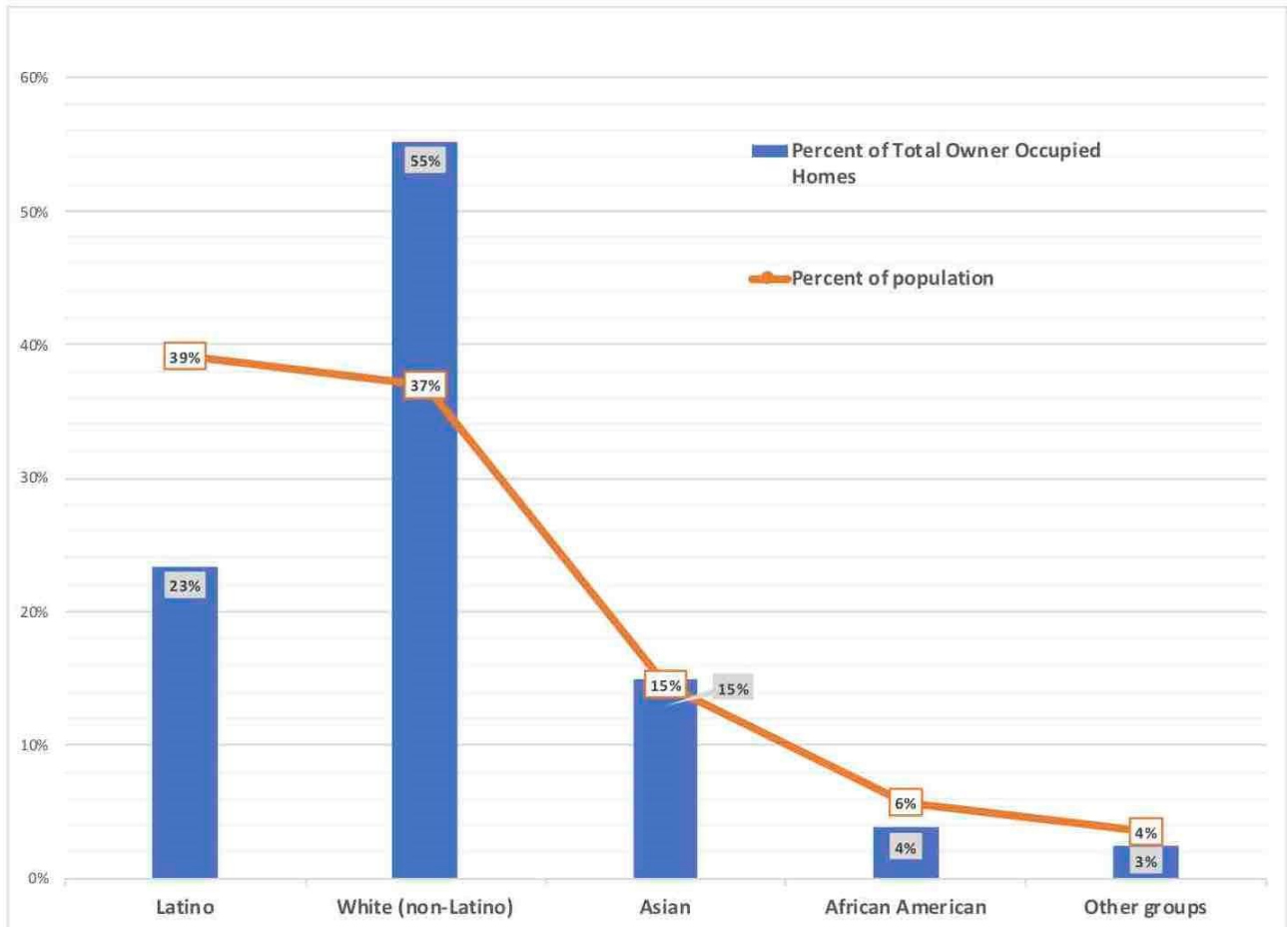
¹⁰¹ California’s High Housing Costs, *supra* note 10, at 28.

1 overall homeownership rate is among the lowest in the nation as fewer people can afford to buy
2 housing, it is shockingly low for the state’s growing Latino, African American, and other new
3 residents, even including relatively more affluent Asian households. In 2017, about 55 percent of all
4 Californians lived in owner-occupied housing, including 64 percent of all white residents. Just 44
5 percent of all Latinos and 34 percent of all African Americans lived in owner occupied housing, far
6 less than the statewide average, and far below the white resident homeownership rate.¹⁰²

7 143. California’s aspiring Latino, African-American and other growing
8 populations also own a disproportionately low share of all owner-occupied housing. As shown in
9 Figure 4, although Latinos comprise nearly 40 percent of the entire state, and accounted for 63
10 percent of California’s total population growth from 2010 to 2017, they own barely 20 percent of all
11 owner-occupied housing. Latinos and African-Americans collectively comprise 45 percent of the
12 California population, but own just 27 percent of the state’s owner occupied housing. In contrast,
13 the state’s declining white population, which has fallen to just over one-third of all residents, owns
14 a remarkable 55 percent of California’s entire stock of owner-occupied housing.

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25 ¹⁰² U.S. Census Bureau, 2017 American Community Survey (ACS) 1-Year Estimates, Occupied
26 Housing Units, Table B25003,
27 <https://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t> (search “B25003” in
28 topic or table name search field and “California” in state, county or place search field)(last visited
Nov. 12, 2019) .

Figure 4: Share of Total State Population and Owner Occupied Housing by Group, 2017¹⁰³

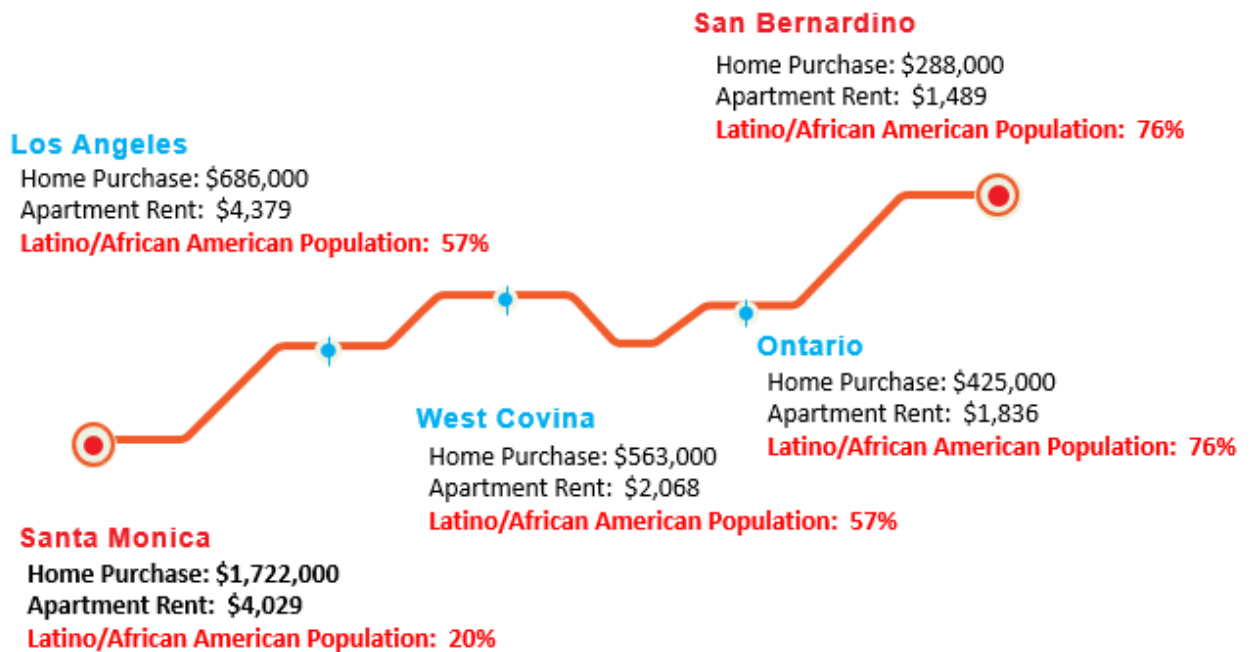


144. California’s demographics are dramatically changing, but the state’s housing crisis increasingly denies new, aspiring, majority-minority residents the housing opportunities that drove upward mobility and multi-generational wealth for earlier majority-white generations. Today, aspiring Californians are literally forced to live in the geographic margins of the state’s employment centers, drive for hours to reach work, and spend a disproportionately large amount of the limited incomes they are able to earn on housing.

¹⁰³ Derived from U.S. Census Bureau, 2017 American Community Survey (ACS) 1-Year Estimates, Sex by Age, Table B01001, Totally Population, Table B01003 and Occupied Housing Units, Table B25003, <https://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t> (search “B01001”, “B01003”, and “B25003” in topic or table name search field and “California” in state, county or place search field)(last visited Nov. 12, 2019).

1 145. Figure 5 shows how housing costs exclude minority groups from California's
 2 coastal employment centers, such as Santa Monica, and push the state's aspiring, hardworking
 3 minority families eastward to less expensive locations in the Inland Empire such as San Bernardino.
 4 The average home price in Santa Monica has risen to over \$1.7 million, and an average two-
 5 bedroom family apartment rents for over \$4,000 per month. These housing costs are unaffordable to
 6 most of the state's growing and younger Latino and African American population, and these groups
 7 account for only 20 percent of Santa Monica's population.

8 **Figure 5: The Social and Economic Geography of California's Housing Crisis**¹⁰⁴



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21 146. In San Bernardino, 77 miles east of Santa Monica, the average home price
 22 has risen to about \$296,000, six times lower than Santa Monica. Average two-bedroom apartment

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24 ¹⁰⁴ Zillow, Median home purchase price data for each city, <https://www.zillow.com/san-bernardino-ca/home-values/> and <https://www.zillow.com/santa-monica-ca/home-values/> (last visited Nov. 2019); Rent Jungle, Median rent price data for each city, <https://www.rentjungle.com/average-rent-in-san-bernardino-rent-trends/> and <https://www.rentjungle.com/average-rent-in-santa-monica-rent-trends/> (last visited Nov. 2019). Figure 5 was also included as Figure 1.1 in the Introduction, and is reprinted here for ease of reference.

1 rents are about \$1,376 per month, 2.7 times lower than Santa Monica. Average housing prices fall
2 by \$19,000, and average rents fall by \$33 per month, for each mile that residents relocate eastward
3 from high income Coastal Job Centers like Santa Monica to San Bernardino. Severe housing
4 shortfalls and correspondingly high housing costs are excluding the state’s growing and younger
5 Latino and African American populations away from coastal communities, and forcing California’s
6 minorities to move eastward to either find a home at a price they can qualify to buy or a monthly
7 rent they can afford. Latino and African American residents account for 76 percent of the San
8 Bernardino population, nearly four times their share of the total population in Santa Monica.

9 147. The disparate impacts on aspiring minority populations detailed in Figure 5
10 are duplicated throughout California. The San Francisco Bay Area has generated a
11 disproportionately large share of the state’s new jobs since the Great Recession, and average and
12 median incomes in that region are far higher than elsewhere in California (and higher than in all but
13 the most exclusive U.S. and global communities). Access to the Bay Area employment center
14 provides enormous opportunities for upward mobility. Yet, only 29 percent of Bay Area residents in
15 the five counties surrounding San Francisco Bay are Latino or African American, and these groups
16 are increasingly being forced out of the region by the staggeringly expensive cost of living. The
17 forced relocation of younger, aspiring minority groups from the Bay Area has become so
18 pronounced that this process of “resegregation” has been documented in a detailed 2018 study by
19 U.C. Berkeley and by researchers and journalists in the region.¹⁰⁵

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21 ¹⁰⁵ Verma, *supra* note 21; *see also* PhysOrg, Rising Housing Costs Are Re-Segregating the Bay
22 Area, Study Shows (Sept. 20, 2018), [https://phys.org/news/2018-09-housing-re-segregating-bay-](https://phys.org/news/2018-09-housing-re-segregating-bay-area.html)
23 [area.html](https://phys.org/news/2018-09-housing-re-segregating-bay-area.html) (“Increases in housing prices have intensified racial disparities in access to neighborhoods
24 with better environmental quality, educational resources and economic opportunities, increasingly
25 placing these neighborhoods out of reach for low-income people of color in San Francisco,
26 Alameda and Contra Costa counties. ‘Our research provides quantitative evidence of what activists
27 have been saying for years: The housing crisis is contributing to the re-segregation of the Bay
28 Area,’ says Miriam Zuk, director of the Urban Displacement Project. For example, the reports
found that low-income black households became increasingly likely to live in high-poverty,
segregated neighborhoods between 2000 and 2015. In 2015, 65 percent of San Francisco’s low-
income black households lived in high-poverty, segregated neighborhoods—a substantially higher
rate than low-income groups of other races.’ ... ‘As these reports highlight, the housing crisis

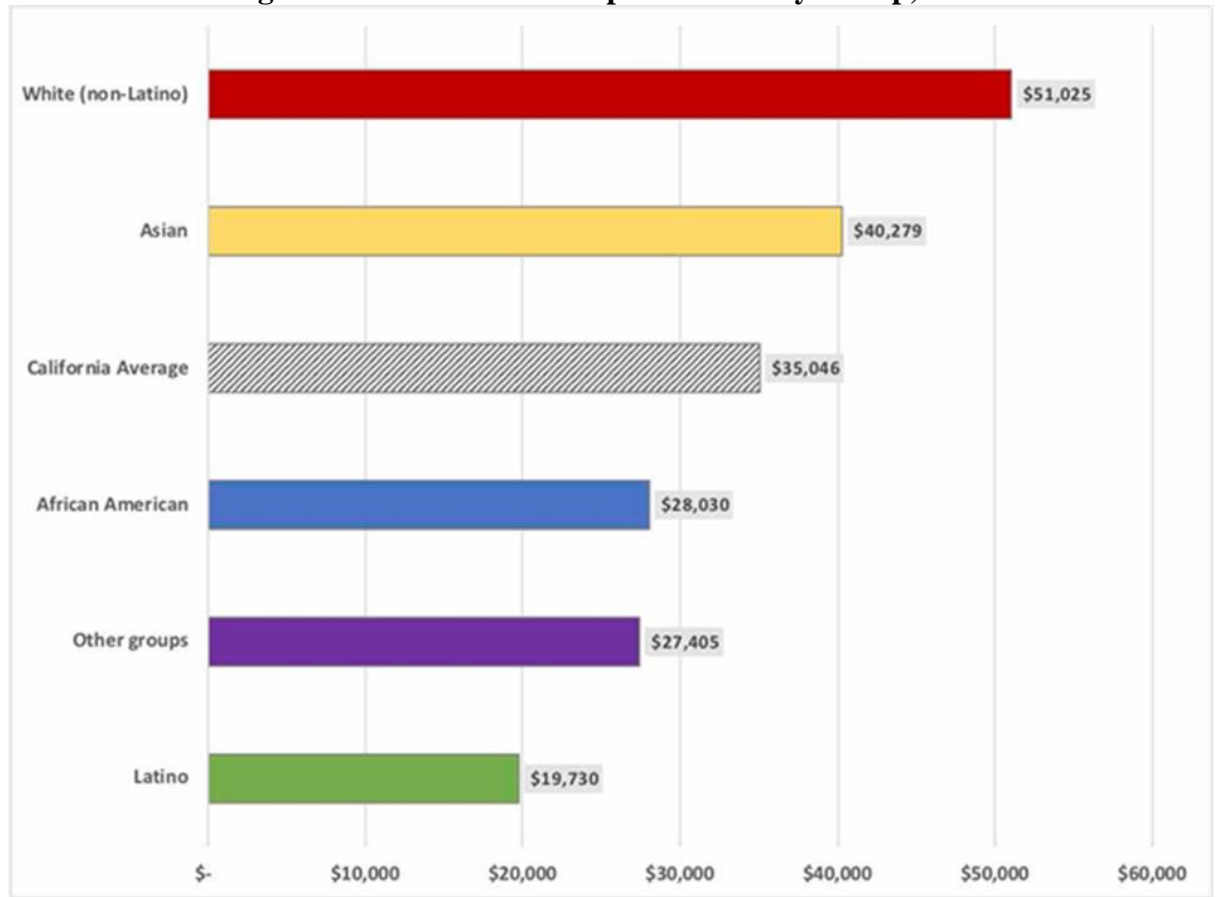
1 148. The adverse effects of high housing costs and the increasing exclusion of the
2 state’s younger, aspiring and growing minority groups from opportunity-rich coastal locations have
3 been further amplified by California’s massive income inequality. The Economic Policy Institute, a
4 progressive pro-labor research institution, found that between 2009 and 2015, the average real
5 income for the top 1 percent of the California population grew by 53.5 percent, the highest rate in
6 the U.S., and 60 percent faster than the U.S. average of 33.9 percent. The top 1 percent of all
7 Californians also captured an astonishing 53.1 percent of the total average real income growth in
8 the state during that period, more than in New York and much higher than the national average.¹⁰⁶

9 149. Like the concentration of homeownership among the state’s declining
10 number of white residents, the benefits of California’s economic growth have largely bypassed the
11 state’s aspiring minority population. As shown in Figure 6, while per capita incomes for white and
12 Asian residents have risen to well above the state average, per capita incomes for Latino, African-
13 American and other groups are much lower. In 2017, white resident per capita incomes were over
14 \$51,000 compared with a statewide average of \$35,000. Latino per capita income was the lowest of
15 all groups in the state at \$19,730, barely half of the statewide average and close to three times less
16 than white residents.

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21 continues to hit low-income residents of color particularly hard, forcing residents out of their homes
22 and contributing to the resegregation of the Bay Area,’ said Fred Blackwell, CEO of the San
23 Francisco Foundation. ‘We cannot make meaningful progress toward inclusive prosperity in the
24 region without addressing the housing crisis.’ ... Between 2000 and 2015, as housing prices rose,
25 the City of Richmond, the Bayview in San Francisco and flatlands areas of Oakland and Berkeley
lost thousands of low-income black households. Meanwhile, increases in low-income black
households during the same period were concentrated in cities and neighborhoods with lower
housing prices—such as Antioch and Pittsburg in eastern Contra Costa County....”).

26 ¹⁰⁶ Sommeiller and Price, *The New Gilded Age: Income Inequality in the U.S. By State, Metropolitan Area, And County* at 4 (July 19 2018), <https://www.epi.org/files/pdf/147963.pdf>.

Figure 6: California Per Capita Income by Group, 2017¹⁰⁷

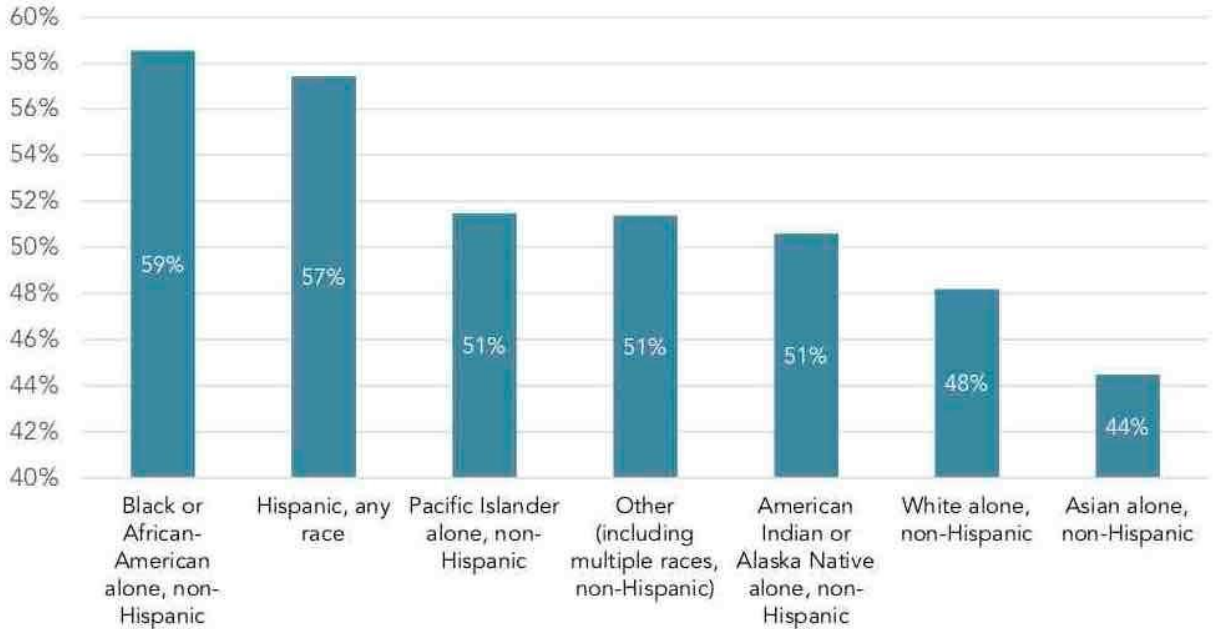


150. The housing crisis has disproportionately burdened workers, families, children, students and seniors in California’s minority communities. In 2018, the HCD concluded that the lack of housing supply and rising costs are compounding growing inequality and limiting advancement opportunities for younger Californians. Notwithstanding the relocation of the minority population to less expensive inland parts of the state, the HCD found that the percentage of renters paying more than 30 percent of their income toward rent is greater for households that identify as Black or African-American, Latino or Hispanic, American Indian or Alaska Native, or Pacific

¹⁰⁷ U.S. Census Bureau, 2017 American Community Survey 1-Year Estimates, Per Capita Income in the Past 12 Months (in 2017 Inflation-Adjusted Dollars), Table B19301, <https://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t> (search “B19301” in topic or table name search field)(last visited Nov. 2019).

1 Islander, compared to renter households that identify as white (see Figure 7). The HCD concluded
 2 that in California the “[h]ousing cost burden is experienced disproportionately by people of
 3 color.”¹⁰⁸

4 **Figure 7: Percentage of California Renters Paying 30 Percent or More of Income on
 5 Rent by Ethnicity and Race**¹⁰⁹



16 151. Rent burden statistics for Santa Monica compared with San Bernardino are
 17 consistent with the disproportionate impact documented by HCD. On average, Santa Monica renters
 18 allocate just 27.7 percent of their incomes for housing, or about \$4,000 of a monthly income of
 19 \$14,400. In San Bernardino, renters on average must pay 35.9 of their incomes on housing, or about
 20 \$1,489 of a monthly income of just \$4,147. After paying for housing, the average Santa Monica
 21 renter has over \$10,000 per month of income to spend on necessities such as energy, education,
 22 food, childcare and health – with ample additional discretionary income left to pay for options such
 23 as restaurants, entertainment and travel. The average San Bernardino renter has just over \$2,600 per
 24 month of income after paying for housing, which is not enough to pay for necessary expenses. Only

25 ¹⁰⁸ California’s Housing Future, *supra* note 87, at 28.

26 ¹⁰⁹ *Id.*

1 20 percent of the vastly more privileged Santa Monica population is Latino or African American
2 compared with 76 percent in San Bernardino.

3 152. The housing crisis is excluding the state’s growing, aspiring minority
4 communities from high opportunity communities that have life-long positive impacts on health,
5 well-being and upward mobility. According to HCD, California’s coastal communities are where
6 the state’s best job opportunities, services, high-performing schools, and transit are located. The
7 long-term earning potential of each Californian living in higher-income, high-opportunity
8 neighborhoods increases substantially for each year of residence in such neighborhoods.¹¹⁰

9 153. Living in high-opportunity California coastal areas, however, is a nearly
10 unattainable objective even for comparatively well-compensated, aspiring minority workers. In
11 2019, John Husing, an economic expert for numerous agencies including the Southern California
12 Association of Governments, completed an exhaustive analysis of housing affordability for
13 construction workers in the state’s two largest regions, the six-county SCAG area and the San
14 Francisco Bay Area.¹¹¹ The study evaluated the incomes of both union and non-union construction
15 workers across 50 different construction job categories in relation to both the median, and smaller
16 starter home (25 percent below median), housing prices of 2018 for each county in the region.

17 154. Approximately 71 percent of all construction workers in Southern California
18 are Latinos. Experienced union construction workers earn approximately \$90,000 per year in
19 California, compared with the state’s \$71,805 median household income.¹¹² Despite earning nearly
20 \$20,000 more than the state’s median income, the research showed that none of these union
21 construction workers could afford to purchase a median priced home in any Southern California
22 county touching the ocean.¹¹³

23 _____
24 ¹¹⁰ See *id.* at 26-33.

25 ¹¹¹ Husing, *supra* note 14, at 5-9.

26 ¹¹² *Id.* at 19-23; Department of Numbers, California Household Income,
27 <https://www.deptofnumbers.com/income/california/> (last visited Nov. 7, 2019).

28 ¹¹³ Husing, *supra* note 14, at 14-15.

1 155. Similarly, in the Bay Area, the research showed that although union
2 construction wages are higher, no union construction worker could afford a median or a below-
3 median cost starter home in San Francisco, San Mateo, Marin and Santa Clara counties; in contrast,
4 about 96.3 percent of Bay Area construction workers could afford to buy a below-median cost
5 starter home in the Central Valley.¹¹⁴ In contemporary California, even union construction workers
6 who do not already own homes (most of whom are minorities), are welcome to build homes and
7 other buildings in the thriving jobs centers in coastal communities, but California’s discriminatory
8 housing policies have assured that none are able to live where they work.

9 156. When even \$90,000 households – the households of our (mostly union
10 member) teachers, nurses, first responders, municipal employees, and scores of other workers –
11 cannot afford to buy a median priced home in regional Coastal Job Centers comprising hundreds of
12 square miles, the housing and homeownership prospects for median and lower income Californians
13 are even more dismal – as is the predictable, and growing, homeless crisis.

14 157. California’s high housing costs and geographic resegregation are profoundly
15 harming the state’s growing minority population. In 2019, the Public Policy Institute of California
16 and the Stanford Center on Poverty and Inequality concluded that almost four in ten (36.4 percent)
17 Californians live at or below the poverty line and are unable to pay for routine monthly expenses,
18 even after taking into account public subsidies to help these families pay for food, housing and
19 medical care. The study found that the most severely affected Californians were disproportionately
20 racial minorities, children, and seniors.¹¹⁵

21 158. Other recent studies show that more than half of Latinos in California
22 struggle to pay for basic expenses like food, housing, and electricity– a larger percentage of
23 struggling Latinos than existed in 2014 as these communities continued to be victimized by the

24 _____
25 ¹¹⁴ *Id.*

26 ¹¹⁵ *See* Bohn et al., Just the Facts, Poverty in California, Public Policy Institute of California and
27 Stanford Center and Poverty and Inequality (July 2019), <https://www.ppic.org/publication/poverty-in-california/>.

1 housing shortage and resulting ever-higher housing prices. The median annual wage for the ten
2 most commonly held jobs for Latinos – farming, construction, food preparation, transportation,
3 sales, production, management, office and administrative work, personal care and grounds
4 maintenance, was \$37,000, compared to \$72,000 for the ten most commonly held jobs for white and
5 Asian workers. Latinos working in management make \$70,255 on average compared to \$123,051
6 for white managers. The California Latino Economic Institute found that educational attainment and
7 home ownership for Latinos were both below the rates for the general population in the state.
8 Latinos are overrepresented in low-income groups, underrepresented in high-income groups, and 60
9 percent live in inadequate housing.¹¹⁶

10 159. California’s housing costs are a major reason why the state has the highest
11 poverty rate. Notwithstanding the enormous wealth that has accrued to a relative few residents in
12 the Bay Area and coastal Southern California, especially by workers in the so-called “keyboard”
13 economy focused on internet services and content, millions of Californians remain impoverished.¹¹⁷

14 160. California has the nation’s highest homelessness rate, and highest number of
15 homeless people, who live on streets and in parks, in shelters, or in their vehicles. Despite billions
16 of dollars allocated to address this human tragedy, the state’s homelessness rate is increasing, not
17 declining.¹¹⁸ Minority groups account for a disproportionately high number of the homeless
18 population. In 2018 and 2019, point-in-time surveys reported that 67 percent of the homeless
19 population in Los Angeles County, the largest in California and in the U.S., identified as African-
20 American or Latino.¹¹⁹

21 _____
22 ¹¹⁶ See Hellerstein, *More Than Half of Latinos in California Struggle to Stay Afloat, Report Finds*,
23 CalMatters (Oct. 10, 2019), [https://calmatters.org/california-divide/2019/10/more-than-half-of-](https://calmatters.org/california-divide/2019/10/more-than-half-of-latinos-in-california-struggle-to-stay-afloat-report-finds/)
24 [latinos-in-california-struggle-to-stay-afloat-report-finds/](https://calmatters.org/california-divide/2019/10/more-than-half-of-latinos-in-california-struggle-to-stay-afloat-report-finds/).

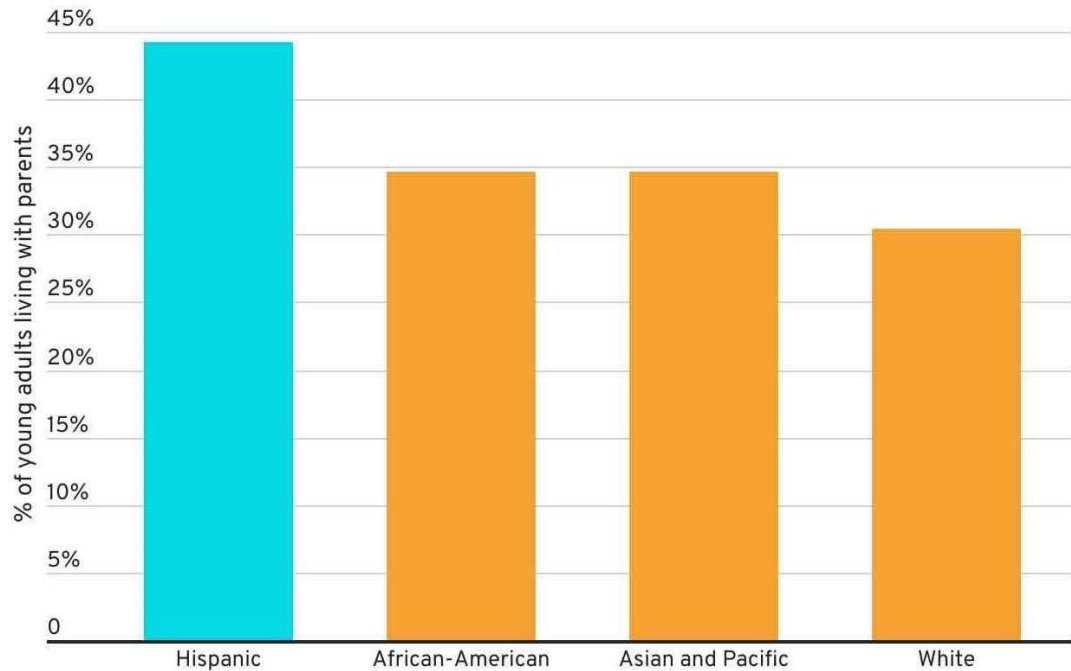
25 ¹¹⁷ See Downs, *Census Bureau: California Has Highest Poverty Rate in U.S.*, UPI (Sept. 13, 2018),
26 [https://www.upi.com/Top_News/US/2018/09/13/Census-Bureau-California-has-highest-poverty-](https://www.upi.com/Top_News/US/2018/09/13/Census-Bureau-California-has-highest-poverty-rate-in-US/1611536887413/)
27 [rate-in-US/1611536887413/](https://www.upi.com/Top_News/US/2018/09/13/Census-Bureau-California-has-highest-poverty-rate-in-US/1611536887413/).

28 ¹¹⁸ Stepman, *supra* note 13.

¹¹⁹ Los Angeles Almanac, *Homelessness in Los Angeles County 2019*,
<http://www.laalmanac.com/social/so14.php> (last visited Oct. 2019).

1 161. California’s housing crisis forces younger minorities to disproportionately
2 live with their parents. As shown in Figure 8, the percentage of people 18 to 34 who live at home is
3 significantly higher for Latinos, African-Americans and Asian/Pacific Islanders than whites.

4 **Figure 8: Percentage of Californians Aged 18-34 Living With Parents**¹²⁰



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16 162. State and local governments have proposed or passed several purportedly
17 pro-housing measures annually beginning in 2017, and Governor Newsom has set a target of
18 completing 3.5 million new housing units by 2025 in California.¹²¹ The most recent data published
19 by the California Department of Finance, however, shows that single family home permits fell by
20 12 percent and multi-family residential permits fell by 20.1 percent through July 2019 as compared
21 to the 2018 rates. The annualized rate of residential permits in 2019 is only about 106,000 units.
22 Assuming all permitted units were actually built, California would need 33 years to increase its

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24 ¹²⁰ Levin, *Nearly 40 Percent of Young Adult Californians Live With Their Parents*, CalMatters
25 (Aug. 25, 2019), <https://calmatters.org/housing/2019/08/young-adults-californians-living-with-parents-millennials-ddata/>.

26 ¹²¹ Newsom, *The California Dream Starts at Home*, Medium (Oct. 20, 2017),
27 <https://medium.com/@GavinNewsom/the-california-dream-starts-at-home-9dbb38c51cae>.

1 housing stock by 3.5 million units, 27 years later than the Governor’s target.¹²²

2 163. Even when state voters expressly agree to be taxed to provide housing for the
3 neediest residents, actual construction of new units has been delayed by years – and the price of
4 units has risen to astronomical and unsustainable heights. In 2016, Los Angeles County approved
5 Proposition HHH, a new \$1.2 billion tax to provide 10,000 homeless housing units. In October
6 2019, an independent audit of program expenditures showed that the cost of each unit would be
7 \$600,000 – higher than the sale price of a market-rate condominium in the County. Far less than the
8 promised 10,000 units could be built with the new funding. The audit also found that due to
9 regulatory barriers, a limited pool of developers, labor costs, a cumbersome multi-year permitting
10 processes, and anti-housing lawsuits filed by neighbors under CEQA and other laws, not a single
11 housing unit had been built in the three years since voters approved Proposition HHH funds.¹²³

12 164. The best available data provides substantial evidence that California’s
13 growing and aspiring minority communities have been severely and disproportionately harmed by
14 the state’s housing shortage and exorbitant housing costs. This harm is inflicted on current residents
15 as well as their children and grandchildren, all of whom suffer from the exclusion from the
16 homeownership opportunities that so greatly enriched earlier generations. These adverse impacts
17 are particularly severe for Latino residents, the state’s largest and growing ethnic group, and other
18 Californians of color. While younger white residents are also harmed, minority residents are
19 disproportionately harmed. And, notwithstanding a myriad of plans, proposals and promises,
20 California’s housing crisis continues to grow more severe with no apparent solution in sight.

23 ¹²² California Department of Finance, Construction Permits, Monthly Data, from 2000: Seasonally
24 Adjusted, Residential (units and valuation),
http://www.dof.ca.gov/Forecasting/Economics/Indicators/Construction_Permits/ (last visited Nov.
25 2019).

26 ¹²³ Smith, *\$600,000 for Homeless Housing? Audit Suggests Spending Money on Shelters Instead*,
27 Los Angeles Times, (Oct. 7, 2019), <https://www.latimes.com/california/story/2019-10-07/homeless-housing-bond-measure-audit-shelters-galperin>.

1 **B. The State’s Housing Crisis Has Led to a Mobility Crisis that Disproportionately**
2 **Harms Aspiring Minorities for Whom Vehicle Use Is a Fundamental Civil**
3 **Right and a Basic Necessity**

4 165. California’s housing crisis and the inability of aspiring minority groups to
5 live near coastal employment centers has triggered a mobility crisis. Contrary to policies of the state
6 and environmental advocacy groups that seek to discourage or eliminate automobile use,
7 California’s growing workforce has been, and continues to be, significantly dependent on a personal
8 vehicle to get to work and other necessary destinations. However, the state’s housing crisis and
9 Respondents’ ideological aversion to maintaining and improving an aging roadway system forces
10 minority workers to travel longer distances to earn a living. California policies also divert billions
11 of dollars of public funding to purported transit improvement projects, such as rail lines and electric
12 car subsidies, that cannot meet the needs of its aspiring minority communities and further enrich the
13 state’s already wealthier (and whiter) residents in coastal employment centers.

14 166. Due to the residential exclusion of aspiring minority workers from coastal
15 employment centers, work commutes of those workers have become increasingly lengthy.¹²⁴

16 167. California leads the nation in the growth of so-called “supercommuters,”
17 people who are forced to travel at least 90 minutes each way, or more than three hours total every
18 day for work. Riverside-San Bernardino, Modesto and Stockton – all locations where lower housing
19 prices attract minority workers who must commute for miles to coastal employment centers – have
20 the largest percentage of supercommuters in the nation. According to U.S. Census Bureau data,
21 these three locations, as well as Vallejo and Merced, account for five of the nine metropolitan areas

22 ¹²⁴ The percentage of workers commuting at least an hour each way to work is 16.9 percent in
23 Riverside-San Bernardino, fifth highest in the nation, 1.4 percent in Stockton, second highest in the
24 nation, 12.9 percent in Modesto, twelfth highest in the nation, 16.7 percent in Vallejo, sixth highest
25 in the nation, 17 percent in San Francisco-Oakland, fourth highest in the nation, and 12.5 percent in
26 Los Angeles, fourteenth highest in the nation. Several of these areas, such as Los Angeles and San
27 Francisco-Oakland extend over large geographies and longer commutes are located at the fringes,
28 such as Palmdale and Lancaster in LA, and eastern Contra Costa County in SF. Among 132
communities in the nation, the average number of commuters traveling at least one hour each way
to work is 9 percent based on 2015 Census data. *See* Wendell Cox, 60 and Over Commute Shares
by Metropolitan Area, <http://demographia.com/db-60+bymode.pdf> (last visited Oct. 2019).

1 with the highest percentage of supercommuters in the U.S.¹²⁵

2 168. As shown in Table 2, the number of workers aged 16 or older who commuted
3 to work rose by 2.13 million between 2010 and 2017. Commuters traveling 45 minutes or more to
4 work, or at least 1.5 hours per day, accounted for more than half of this increase. Commutes of
5 longer than 30 minutes each way, or more than one hour per day, accounted for 82 percent of the
6 net number of new commutes between 2010 and 2017. Although the total number of commuters
7 rose by 14 percent, shorter trips of less than 20 minutes to work actually decreased by over 120,000.
8 Californians are commuting in greater numbers and for longer periods than ever before.

9 **Table 2: Total Number of California Commuters by Trip Length, 2010-2017¹²⁶**

	2017	2010	Net Change
Total Commute Trips	17,227,742	15,097,170	2,130,572
Less than 20 minutes	3,659,052	3,779,798	-120,746
20-30 minutes	3,480,112	3,106,667	373,445
30-45 minutes	3,838,879	3,199,688	639,191
More than 45 minutes	3,764,335	2,660,961	1,103,374

169. Despite billions of dollars spent on public transit, the highest gasoline costs
17 in the nation, and a decaying roadway infrastructure built decades ago for a far smaller population,
18 California workers are becoming more, not less, reliant on driving to work, especially in single
19

20 ¹²⁵ The percentage of supercommuters is 6.7 percent in Riverside-San Bernardino, ninth in the
21 nation, 8 percent in Stockton, second in the nation, 7.9 percent in Modesto, third in the nation, 6.4
22 percent in Vallejo, twelfth in the nation, and 6.4 percent in Merced, tenth in the nation. Among 381
23 communities in the nation, the average number of supercommuters is 2.8 percent based on 2015
24 Census data. See McPhate, *California Today: The Rise of the Super Commuter*, New York Times
(Aug. 21, 2017), <https://www.nytimes.com/2017/08/21/us/california-today-super-commutes-stockon.html>; Cox, 90 and Over Commute Shares by Metropolitan Area, <http://demographia.com/db-90+commute.pdf> (last visited Oct. 2019).

25 ¹²⁶ U.S. Census Bureau, 2010 and 2017 American Community Survey (ACS) 1-Year Estimates,
26 Means of Transportation to Work by Travel Time to Work, Table B08134,
<https://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t> (search “B08134” in
27 topic or table name search field and “California” in state, county or place search field)(last visited
28 Nov. 12, 2019).

1 occupancy vehicles. As shown in Table 3, the total California workforce over age 16, including
 2 workers at home, rose by approximately 2.4 million from 2010 to 2017. Workers commuting alone
 3 in cars, trucks or vans accounted for 1.89 million new commutes, or nearly 80 percent of this
 4 increase. Only 4 percent of the state’s new commuters chose to use public transit for commuting,
 5 which is nearly three times less than the 268,000 new workers who worked at home. Excluding
 6 people working at home, the percentage of California work commutes by driving alone rose from
 7 77.2 percent to 78.6 percent from 2010 to 2017. The percentage of commuters using public transit
 8 fell from 5.4 percent to 5.3 percent. Vehicular use, including carpools, accounted for close to 90
 9 percent of all work commutes in the state. California workers are almost completely reliant on
 10 automobiles to access employment, and the number of vehicular work commutes and VMT has
 11 steadily increased over time.

12 **Table 3: Total Number of California Workers by Commute Type, 2010-2017¹²⁷**

	2017	2010	Net Change
Total Workers over age 16	18,320,629	15,921,475	2,399,154
Car, truck, or van - drove alone	13,541,563	11,650,145	1,891,418
Car, truck, or van - carpooled	1,837,270	1,831,538	5,732
Public transportation (excluding taxicab)	919,579	820,349	99,230
Walked	473,375	429,786	43,589
Taxicab, motorcycle, bicycle, or other means	455,955	365,352	90,603
Worked at home	1,092,887	824,305	268,582

20 170. Decades of urban development and transportation studies have confirmed
 21 that using a car is an absolute necessity for aspiring middle- and low-income households
 22 determined to find and keep jobs, keep their kids in school, access healthy food, and obtain quality
 23 medical care. Due to the much longer time required to complete public transit commutes,

24
 25 ¹²⁷ U.S. Census Bureau, 2010 and 2017 American Community Survey 1-Year Estimate, Means of
 26 Transportation to Work by Age, Table B08101,
 27 <https://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t> (search “B08101” in
 28 topic or table name search field)(last visited Nov. 2019).

1 automobile access has been repeatedly identified as a key factor in improving the employment
2 opportunities for minority populations¹²⁸ and represents the only option that reduces transportation
3 hardships and increases employment access for low income mothers receiving public assistance.¹²⁹
4 Despite Respondents’ fervently-held beliefs, researchers have consistently concluded that, due to
5 long trip times and the inability to access workplaces, transit “is not a reasonable substitute for the
6 private vehicle” and “private vehicle access is the key to improved mobility for the poor as well as
7 the non-poor.”¹³⁰

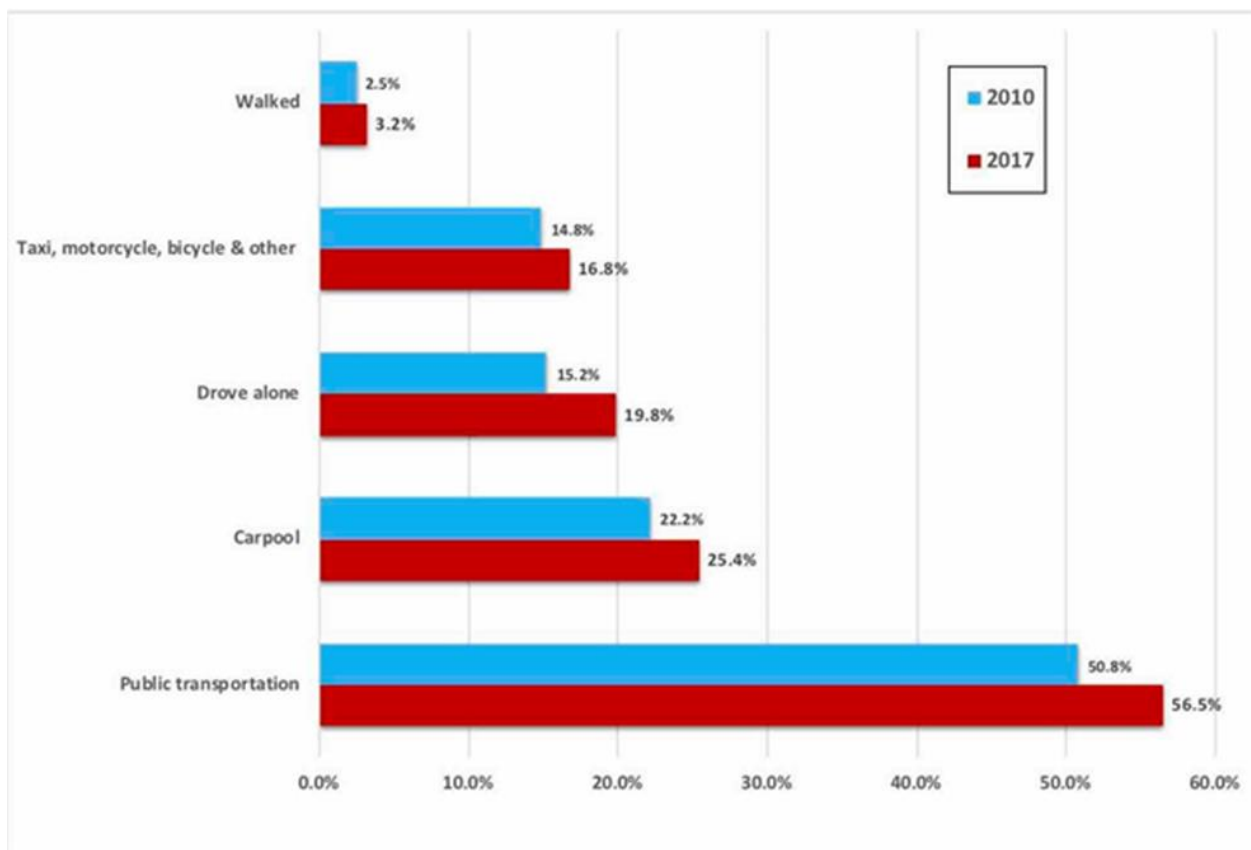
8 171. As shown in Figure 9, consistent with transportation research, from 2010 to
9 2017, notwithstanding billions of dollars in public transit investment, public transit commuters took
10 even longer to get to work. The percentage of all public transit commute trips in California that
11 were 45 minutes or longer increased from 50.8 percent to 56.5 percent, which is worse than any
12 other commuting option in the state. In contrast, only 19.8 percent of state commuters driving alone
13 in 2017 traveled 45 minutes to commute, a smaller increase from the 15.2 percent in 2010.
14 Consistent with published research, automobile use provides a clear and unambiguous advantage
15 for accessing employment compared with public transit in California. If all of the 13,541,563
16 California workers who commuted by driving alone in 2017 instead used public transit facilities, the
17 number of workers suffering daily commutes of over 1.5 hours in length would increase from
18 3,764,335 (21.9 percent of all commuters) to approximately 8,727,555 (50.6 of all commuters).

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21 ¹²⁸ Gautier and Zenou, Car Ownership and the Labor Market of Ethnic Minorities, *Journal of Urban*
22 *Economics* (Nov. 2010), at 17-19, <http://ftp.iza.org/dp3814.pdf>.

23 ¹²⁹ Sandoval et al., *The Transition from Welfare-to-Work: How Cars and Human Capital Facilitate*
24 *Employment for Welfare Recipients*, 31 *Applied Geography* 352, 361 (2011) <https://www.pacific-gateway.org/the%20transition%20from%20welfare-to-work%20how%20cars%20and%20human%20capital%20facilitate%20employment%20for%20welfare%20recipients.pdf>.

25 ¹³⁰ Giuliano, *The Role of Public Transit in the Mobility of Low Income Households: Final Report*,
26 *School of Policy, Planning, and Development University of Southern California* (May 2001), at ii,
27 <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.410.1185&rep=rep1&type=pdf>.

1 **Figure 9: Percentage of Commuting Trips 45 Minutes or Longer, 2010 and 2017**¹³¹



16 172. Multiple studies on how to improve upward mobility for working class and
17 welfare recipients show that access to and use of a private car is the single most substantial
18 contributor to finding and retaining employment. Automobile access strongly and positively
19 correlates with the success of aspiring workers, especially working parents, to find and retain jobs,
20 improve their educational attainment, and increase incomes in both urban and suburban
21 neighborhoods. Car ownership has been identified as the primary driver for finding and retaining
22 work and for upward mobility for former welfare recipients.¹³²

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24 ¹³¹ U.S. Census Bureau, 2010 and 2017 American Community Survey 1-Year Estimates, Means of
25 Transportation to Work by Travel Time to Work, Table B08134,
<https://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t> (search “B08134” in
26 topic or table name search field)(last visited Nov. 2019).

27 ¹³² Gurley et al., *The Effects of Car Access on Employment Outcomes for Welfare Recipients*, 58
28 *Journal of Urban Economics* 250, 268-69 (2005), <http://web.utk.edu/~dbruce/jue05.pdf>.

1 173. More recent transportation studies have focused on the increasingly sharp
2 conflict between the purported climate and land conservation objectives of government agency
3 planners versus the real-world needs of aspiring minority homeowners and other middle- and lower-
4 income workers. In 2014, the Urban Institute published an influential study showing that public
5 transit could not provide sufficient, timely access to employment, and relying on transit to the
6 exclusion of automobiles was incompatible with the mobility needs of the poor in American
7 communities.¹³³ According to the study’s lead author, “Even as highly educated millennials and
8 baby boomers fantasize about car-free cities, car access is still indispensable for many families
9 seeking safety and economic security”¹³⁴ Subsequent research has found that “[t]ransportation
10 policy for low-income households, therefore, needs to overcome the ‘cars versus transit’ mentality
11 that dominates discourse and move toward complementary and integrated solutions that take a
12 pragmatic approach to cars while reducing the costs of cars on low-income people, the
13 environment, and society.”¹³⁵

14 174. A 2015 study by the Brookings Institution, a prestigious research center with
15 a multi-decade commitment to civil rights and poverty research, showed that between 2000 and
16 2012, the number of jobs within the typical commute distance for residents in major metropolitan
17 areas fell by 7 percent. Proximity to employment dropped to the greatest extent for minority

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19 ¹³³ Pendall et al., *Driving to Opportunity: Understanding the Links among Transportation Access, Residential Outcomes, and Economic Opportunity for Housing Voucher Recipients*, Urban Institute (Mar. 2014), at i-iii, <https://www.urban.org/sites/default/files/publication/22461/413078-Driving-to-Opportunity-Understanding-the-Links-among-Transportation-Access-Residential-Outcomes-and-Economic-Opportunity-for-Housing-Voucher-Recipients.PDF>.

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21
22 ¹³⁴ Pendall, *How Access to Cars Could Help the Poor*, CityLab (Apr. 1, 2014), <https://www.citylab.com/transportation/2014/04/why-poor-still-need-cars/8769/>.

23 ¹³⁵ Pendall et al., *What If Cities Combined Car-Based Solutions with Transit to Improve Access to Opportunity?*, Urban Institute at 2 (June 2016), <https://www.urban.org/sites/default/files/publication/81571/2000818-What-if-Cities-Combined-Car-Based-Solutions-with-Transit-to-Improve-Access-to-Opportunity.pdf>; *see also* Smart and Klein, *A Longitudinal Analysis of Cars, Transit, and Employment Outcomes*, Mineta Transportation Institute Publications (Sept. 2015), at 1-2. https://scholarworks.sjsu.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1198&context=mti_publications.

1 communities, including Latinos (-17 percent) and African-American workers (-14 percent)
2 compared with white (-6 percent) residents. Employment proximity for poorer workers (-17
3 percent) also fell much faster than for wealthier (-6 percent) residents.¹³⁶ The Brookings data show
4 that minority workers throughout the country, including California, are increasingly dependent on
5 automobiles to efficiently and reliably get to work.

6 175. In 2018, SCAG sponsored a study by several prominent poverty and
7 transportation experts to identify the reasons why, despite billions of investment in expanded transit
8 facilities, transit ridership in the SCAG region and throughout California steadily fell from 2007
9 levels. The study considered multiple explanations, including for example California's 2015
10 decision to allow unauthorized immigrants to obtain worker driver's licenses. None of these factors,
11 except the clear need and preference for car ownership by aspiring minority communities, was
12 found to explain declining public transit use. Given the diverse and changing locations of working
13 and middle class jobs in the contemporary economy, and the absence of housing that is affordable
14 to middle and lower income workers near coastal employment centers, the study found that "poorer
15 people tend to convert even small increases in income into vehicle purchases – a testament to how
16 valuable vehicle access can be."¹³⁷ The study found that working and middle class employee car use
17 in lieu of public transit makes "life easier along multiple dimensions, dramatically increasing access
18 to jobs, educational institutions and other opportunities."¹³⁸

19 176. As shown in Table 4, Latinos accounted for more than 1.33 million new
20 workers in California from 2010 to 2017, far more than any other group. Approximately 1.26
21 million, or 94 percent, of these new Latino workers commuted by driving alone. Driving alone also
22 accounted for the type of commute utilized by 82 percent of the state's new African American

24 ¹³⁶ Kneebone and Holmes, *The Growing Distance Between People and Jobs in Metropolitan*
25 *America*, Brookings Metropolitan Policy Program at 1 (Mar. 2015), [https://www.brookings.edu/wp-](https://www.brookings.edu/wp-content/uploads/2016/07/Srvy_JobsProximity.pdf)
26 [content/uploads/2016/07/Srvy_JobsProximity.pdf](https://www.brookings.edu/wp-content/uploads/2016/07/Srvy_JobsProximity.pdf).

26 ¹³⁷ Manville, *supra* note 72, at 65.

27 ¹³⁸ *Id.* at 15.

workers, 63 percent of all new Asian workers, and 72 percent of the total new commutes by other groups in the state. White workers in California increased by only 3 percent from 2010 to 2017, a much lower growth rate than for any other group, and represent the only major ethnic community for which driving alone was not the predominant form of all new commutes.

Table 4: Percentage of California Commuters by Type, 2010-2017¹³⁹

	Number of New Workers	New Workers Driving Alone	Percent driving alone
Latino	1,339,771	1,258,853	94%
African American	133,257	109,652	82%
Other Groups	152,757	110,394	72%
Asian	559,135	350,627	63%
White	214,234	61,892	29%

177. The fact that anti-automotive climate change policies have regressive social and economic impacts has become increasingly well documented. Researchers have found that forcing “zero-car” mandates would be “unreasonable” and would be regressive because public transit is only feasible for most workers in a handful of larger urban areas where housing and other costs are the highest in the country.¹⁴⁰ Less affluent workers also cannot afford to replace conventional cars with electric vehicles, which reduce vehicular tailpipe emissions but still result in more vehicular miles being driven and thus directly conflict with anti-VMT policies. The “anti-car lobby,” transit researchers have found, “don’t deal with the equity problem” of anti-car climate policies that disproportionately affect communities of color, low- to moderate-income communities,

¹³⁹ U.S. Census Bureau, 2010 and 2017 American Community Survey (ACS) 1-Year Estimates, Means of Transportation to Work, Table B08105, <https://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t> (search “B08105” in topic or table name search field and “California” in state, county or place search field)(last visited Nov. 2019).

¹⁴⁰ Vock, *More Poorer Residents Are Driving Cars, Presenting New Issues for Transit Agencies*, Governing (Apr. 9 2018), <https://www.governing.com/topics/transportation-infrastructure/gov-car-ownership-poverty.html>.

1 and women, especially with children.¹⁴¹

2 178. In February 2019, yet another major study was completed which again
3 concluded that anti-car policies such as California’s VMT reduction mandates and related climate
4 policies directly conflict with the car use that is essential for the upward mobility of poorer workers.
5 Auto access, the study found, remains the “starkest transportation disparity” in most of the U.S.¹⁴²
6 People without automobiles cannot access employment, complete errands, or generally live their
7 lives in the same manner as the vast majority of their fellow residents. Yet, based on the
8 externalities associated with driving, including climate change, Respondents’ increasingly attempt
9 to reduce auto use. Aspiring poor communities are particularly harmed by these policies because
10 they cannot afford to purchase electric vehicles or pay the fuel taxes imposed by anti-car advocates.
11 Unlike other necessities, such as food, electricity or heating, the study found that American
12 communities do not provide the needy with basic car access, but heavily subsidize auto use for
13 affluent residents who can afford to overcome the cost of achieving the ability to drive. “As a
14 result,” the researchers concluded, “we have a small group of people who need vehicles and lack
15 them and a large group who have vehicles and use them needlessly. A just and sustainable society
16 would help the first group drive more while encouraging the latter group to drive less. Our status
17 quo instead suppresses driving only by denying it to some of the people who need it most, even as it
18 tacitly encourages low-value trips by the affluent.”¹⁴³

19 179. Based on these findings, prominent climate change and planning publications
20 have been forced to concede that poor workers who cannot afford a vehicle are “eco-friendly, by
21 force.” Climate change policies that make automobile access more difficult are inherently
22 regressive. As stated in CityLab, a widely read pro-climate and urban planning policy newsletter,
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24 _____
25 ¹⁴¹ Marshall, *The Green New Deal's Trains and EVs Won't Work for Everyone*, Wired (Feb. 8,
2019), <https://www.wired.com/story/green-new-deal-electric-cars/>.

26 ¹⁴² King, *supra*, note 70.

27 ¹⁴³ *Id.* at 14.

1 “We don’t want to try to balance our carbon emissions and budgets on the backs of the poor.”¹⁴⁴

2 180. As demonstrated by transportation and social equity research, California’s
3 aspiring minority communities have significantly increased their use of automobiles to access more
4 employment opportunities and travel to work once they are employed. The flexibility and rapidity
5 of commuting by automobile is essential for working and middle class employees who, unlike
6 “keyboard” economy employees who can work remotely, must be physically present at job
7 locations to be paid, work at multiple or changing job locations, commute at non-peak hours when
8 transit services are at their lowest, and work in widely dispersed locations.

9 181. Farming, construction, transportation, sales, personal care, and grounds
10 maintenance workers, which represent six of the top ten employment sectors for Latinos in
11 California, cannot use fixed route transit to access employment in a timely manner. As shown in
12 Table 5, the percentage of workers driving alone rose in these and related sectors, and fell primarily
13 in the white collar, “keyboard” and more affluent professions that employ higher percentages of
14 white workers.

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26 ¹⁴⁴ Bliss, *As the Planet Warms, Who Should Get to Drive?*, CityLab (Feb. 8, 2019),
27 <https://www.citylab.com/transportation/2019/02/car-ownership-climate-change-driving-poverty-economic/582091/>.

Table 5: Percentage of Commuters Driving Alone by Sector, 2010-2017¹⁴⁵

	2017	2010	Percent change
Agriculture, forestry, fishing and hunting, and mining	66.10%	57.70%	14.38%
Construction	75.90%	72.30%	4.98%
Arts, entertainment, and recreation, and accommodation and food services	71.30%	68.00%	4.71%
Other services (except public administration)	72.20%	70.30%	2.70%
Manufacturing	78.10%	76.50%	2.09%
Wholesale trade	77.50%	76.50%	1.31%
Educational services, and health care and social assistance	76.40%	75.90%	0.79%
Transportation and warehousing, and utilities	81.00%	80.50%	0.62%
Retail trade	75.40%	75.50%	-0.13%
Public administration	76.80%	77.10%	-0.39%
Professional, scientific, management, admin and waste management services	66.90%	67.20%	-0.45%
Finance and insurance, and real estate and rental and leasing	72.10%	74.40%	-2.96%
Information	70.00%	75.40%	-7.16%

182. As shown in Table 6, the percentage of California workers using public transit fell in most sectors that disproportionately employ aspiring minority lower and middle class workers. Public transit use rates rose in mainly higher paying occupations with disproportionately lower minority workers, such as the information sector, the core of the “keyboard” economy, and in the financial, business, professional and scientific service sectors.

¹⁴⁵ U.S. Census Bureau, 2010 and 2017 American Community Survey 1-Year Estimates, Means of Transportation to Work by Industry, Table B08126, <https://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t> (search “B08126” in topic or table name search field)(last visited Nov. 12, 2019).

Table 6: Percentage of Commuters Using Public Transit by Sector, 2010-2017¹⁴⁶

	2017	2010	Percent change
Information	7.90%	5.10%	54.90%
Public administration	6.20%	5.50%	12.73%
Professional, scientific, management, admin and waste management services	7.50%	6.60%	12.12%
Finance and insurance, and real estate and rental and leasing	5.70%	5.10%	9.80%
Educational services, and health care and social assistance	4.00%	4.10%	-2.44%
Transportation and warehousing, and utilities	3.40%	3.50%	-2.86%
Retail trade	5.20%	5.40%	-5.56%
Wholesale trade	2.80%	3.00%	-6.67%
Manufacturing	3.80%	4.30%	-9.30%
Construction	2.60%	3.00%	-13.33%
Arts, entertainment, and recreation, and accommodation and food services	7.00%	8.70%	-20.69%
Other services (except public administration)	4.80%	6.90%	-30.43%
Agriculture, forestry, fishing and hunting, and mining	1.10%	1.90%	-47.37%

183. Lower paid workers are increasingly utilizing automobiles, drive alone, and are decreasing use of public transit and carpooling. As shown in Table 7, between 2010 and 2017, workers earning less than \$75,000 rose by 948,000. Workers earning less than \$75,000 who commuted by driving alone rose by 895,000, which represents 94 percent of the total increase in the state. Due to significant declines in transit ridership and carpooling, the number of workers earning less than \$75,000 who commuted by transit, carpooling, or worked at home, rose by only 1,500, or 0.2 percent, of the total increase.

¹⁴⁶ *Id.*

Table 7: Commuters Transportation Mode Choice by Income, 2010-2017¹⁴⁷

	Less than \$75,000	\$75,000 or more
Net Increase in Commuters(2010-2017)	948,581	1,449,406
Drive Alone	895,278	995,631
Carpool	-89,375	94,915
Public Transit	-25,940	125,180
Walked	7,632	35,956
Taxicab, motorcycle, bicycle, or other means:	44,105	46,420
Worked at home	116,881	151,304
<i>Public transit, carpool or worked at home</i>	<i>1,566</i>	<i>371,399</i>

184. Mobility, and the right to drive, have been recognized as protected civil rights by state and federal courts. The practical necessity of having access to and use of a car has been recognized as so fundamental that both the United States and California Supreme Courts have held that constitutional due process protections apply to any government attempt to summarily deprive someone of a drivers’ license or automobile.¹⁴⁸ The right to travel has also been found to be fundamental to the constitutional protection of liberty, and government actions to impose discriminatory restrictions on travel have been struck down as unconstitutional.¹⁴⁹

¹⁴⁷ U.S. Census Bureau, 2010 and 2017 American Community Survey 1-Year Estimates, Means of Transportation to Work by Industry, Table B08126, <https://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t> (search “B08126” in topic or table name search field)(last visited Nov. 12, 2019) .

¹⁴⁸ *Berlinghieri v. Dep’t of Motor Vehicles* (1983) 33 Cal.3d 392, 398-99; *Bell v. Burson* (1971) 402 U.S. 535, 539.

¹⁴⁹ *See, e.g., Williams v. Fears* (1900) 179 U.S. 270, 274 (“[T]he right to remove from one place to another according to inclination . . . is an attribute of personal liberty, and the right, ordinarily of free transit from or through any territory of any State is a right secured by the Fourteenth Amendment and by other provisions of the Constitution”); *Kent v. Dulles* (1958) 357 U.S. 116, 126 (“[Freedom of movement] may be as close to the heart of the individual as the choice of what he eats, or wears, or reads. Freedom of movement is basic in our scheme of values”); *Shapiro v. Thompson* (1969) 394 U.S. 618, 629 (“[A]ll citizens [shall] be free to travel throughout the length and breadth of our land uninhibited by statutes, rules or regulations which unreasonably burden or restrict this movement”); *In re White* (1979) 97 Cal.App.3d 141, 148 (“[T]he right to intrastate travel (which includes the intra-municipal travel) is a basic human right protected by the United States and California Constitutions as a whole. Such a right is implicit in the concept of a democratic society and is one of the attributes of personal liberty under common law”); and *Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1100.

1 185. Automobile mobility is particularly essential for California’s growing
 2 minority community members who have been excluded from coastal employment centers due to
 3 housing costs, are not and will not for a decade or more be served with cost-effective and time-
 4 effective fixed route public transit options, and cannot afford the hours they would lose from their
 5 lives and families from using public transit even when potentially available. Consequently, the
 6 economic well-being and upward mobility for these groups depends on using vehicles, not reducing
 7 VMT as a condition of building new housing, as Respondents now demand.

8 186. As shown in Table 8, since 2010 the state’s Latino, African-American and
 9 Asian workers have significantly increased the proportion of commute trips they make by driving
 10 alone. The growth in the percentage and number of work commutes by driving alone, and the
 11 reduction in commuting by public transit, was especially large for Latinos and vividly demonstrates
 12 the exclusion of what is now the state’s largest minority group from housing and homeownership in
 13 coastal employment centers, and the failure of investments in traditional fixed route public transit
 14 systems to meet the transportation needs of minority workers who have or aspire to become
 15 homeowners in more affordable inland California communities such as San Bernardino.

16 **Table 8: Percentage of Workers by Commute Type and Ethnic Group, 2010-2017**¹⁵⁰

	2017	2010	Percentage point change
Drove Alone			
Latino	74.20%	69.40%	4.80%
Black	73.80%	72.50%	1.30%
Asian	73.80%	72.50%	1.30%
White	75.00%	76.50%	-1.50%
Other Groups	72.28%	72.29%	-0.01%
Carpool			

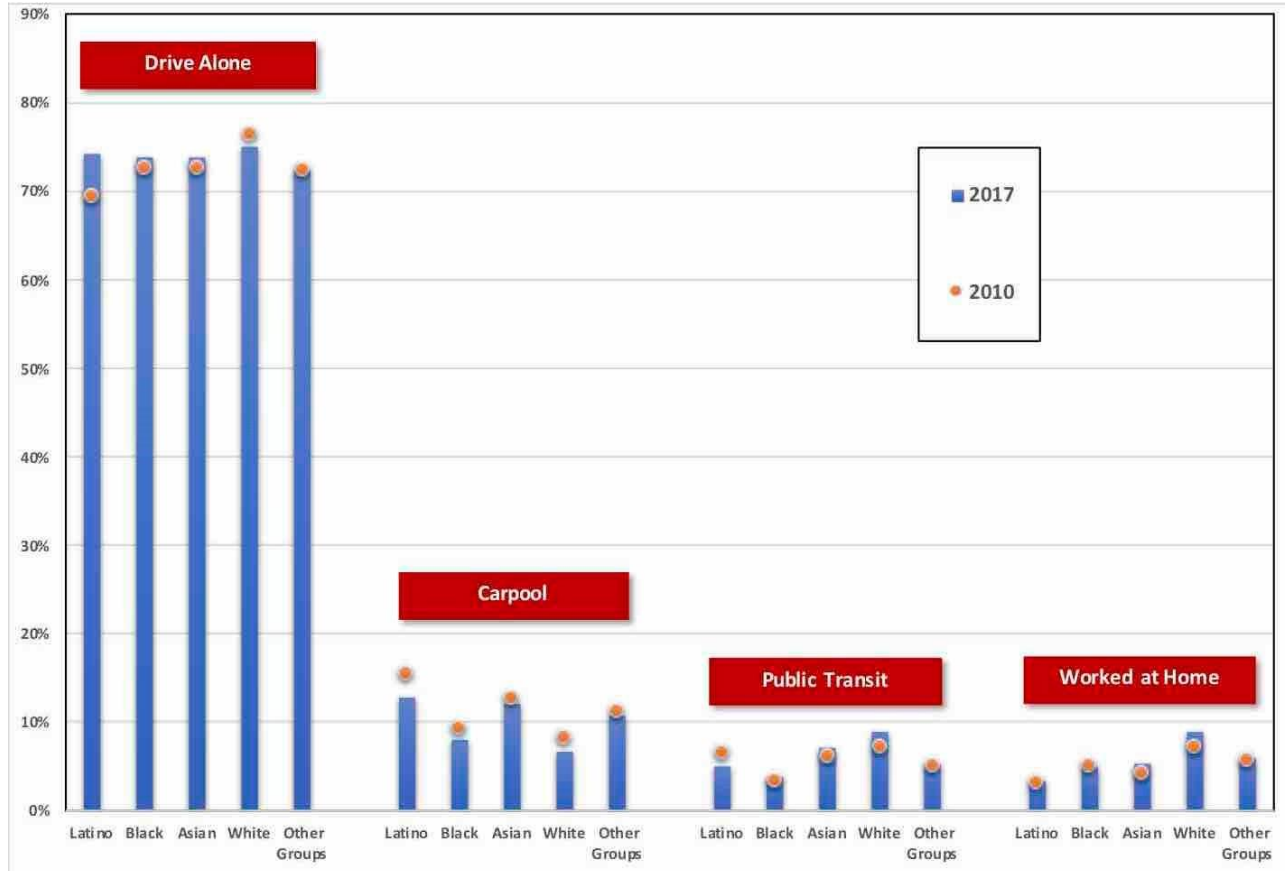
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 24 ¹⁵⁰ U.S. Census Bureau, 2010 and 2017 American Community Survey (ACS) 1-Year Estimates, Means of Transportation to Work by Age, Table B08101, <https://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t> (search “B08101” in topic or table name search field and “California” in state, county or place search field)(last visited Nov. 12, 2019) .

Latino	12.80%	15.50%	-2.70%
Black	8.00%	9.30%	-1.30%
Asian	12.10%	12.80%	-0.70%
White	6.70%	8.20%	-1.50%
Other Groups	10.70%	11.30%	-0.60%
Public Transit			
Latino	5.00%	6.50%	-1.50%
Black	3.80%	3.30%	0.50%
Asian	7.10%	6.10%	1.00%
White	8.90%	7.10%	1.80%
Other Groups	5.20%	5.10%	0.10%
Worked at Home			
Latino	3.30%	3.10%	0.20%
Black	4.90%	5.00%	-0.10%
Asian	5.30%	4.30%	1.00%
White	8.90%	7.10%	1.80%
Other Groups	5.90%	5.70%	0.20%

187. Finally, Figure 10 shows that driving alone remains far more important to all Californians, but particularly for aspiring minority working and middle class workers, than any other commute type, including working at home. Between 2010 and 2017, the percentage of workers commuting by driving alone rose to a particularly large extent for Latinos and converged towards 75 percent of all workers for all groups in the state. Carpooling, the next largest commuting type for California workers, fell for all groups during this period. Public transit use fell substantially for Latinos, and fewer than 9 percent of all Latino and African American workers used transit or were able to work at home. Car commuting fell slightly and the rate of public transit use and working at home rose significantly for only white workers in California, the most affluent, slowest growing ethnic workforce and the only numerically declining ethnic group in the state. Yet despite their disproportionate wealth and homeownership, and their access to more transit services in high

1 cost urban areas as well as the luxury of having jobs which provide greater flexibility to work at
 2 home, 75 percent of all white workers still commuted by driving alone in 2017, which is the highest
 3 single-occupancy commute rate of any group.

4 **Figure 10: Percentage of Commuting Trips 45 Minutes or Longer, 2010 and 2017¹⁵¹**



19 188. The state’s housing crisis has led to an increasingly severe mobility crisis for
 20 aspiring minority, working and middle class families who must travel long distances to access
 21 employment. Consistent with years of research, California commuting data demonstrates that
 22 automobile use is an indispensable, fundamental requirement for improving the quality life for state
 23 residents. But not only are minority, working and middle class workers driving farther and longer in
 24 contemporary California, they now face intentional expansions of CEQA by Respondents NRA and
 25

26 ¹⁵¹ *Id.*

1 OPR to further increase housing costs with regressive new obligations to reduce VMT, along with
2 other programs and policies making their commutes more difficult, expensive and time consuming.
3 The state’s housing and mobility failings are deepening California’s existing civil rights crisis.

4 **C. California’s Housing, Mobility and Civil Rights Crises Were Caused by Overt**
5 **Racism, Including Racially Exclusionary Land Use Laws and Regulations, the**
6 **Racist Underpinnings of the Environmental Movement, and Decades of Public**
7 **Policies that Disparately Impact People of Color and the Poor**

8 189. The current plight of aspiring minority communities in California is the
9 product of many decades of institutional racism and the rise of public policies, often stylized as
10 environmental protection measures, which were intentionally racist or disproportionately harmed
11 people of color.

12 190. As recounted in a detailed interactive presentation by public television station
13 KQED, over 80 years ago the federal government under progressive icon President Franklin Delano
14 Roosevelt launched a massive effort to rescue indebted homeowners from foreclosure by
15 refinancing mortgages at the height of the Great Depression. To encourage lending, the federal
16 Home Owners' Loan Corporation created community maps of the country, including in California,
17 which ranked neighborhoods according to perceived loan default risks. The worst locations were
18 shown in red, and were shunned by the bailout effort. The communities subject to this so-called
19 “redlining” were overwhelmingly populated by minority communities. This “redlining” racial
20 discrimination buried in administrative agency practices cemented decades of poverty and
21 displacement from what are now among the nation’s most prosperous employment centers in
22 coastal California, and helped create the racial disparities that persist in California’s contemporary
23 current housing and mobility crises.¹⁵²

24 191. The state’s legacy of racism was also fostered by racially restrictive land use
25 covenants that excluded non-white households, particularly during 1920 to 1948, from huge swaths

26 ¹⁵² See Green, *How Government Redlining Maps Pushed Segregation in California Cities*, KQED
27 (Apr. 27, 2016), <https://www.kqed.org/lowdown/18486/redlining>.

1 of the residential neighborhoods that are now near Coastal Job Centers. Together with federal
2 redlining, the state then experienced what California’s HCD characterizes as “a new era of racially
3 segregated zoning,” which disproportionately concentrated people of color in lower-opportunity,
4 poorer, and segregated neighborhoods. According to HCD, the patterns of segregation and disparate
5 impacts that occurred in prior decades explains much of the current land use patterns – areas of
6 relative wealth and areas of poverty – in California. While the poor population in the state’s 10
7 largest metro areas grew by an overall average of 28 percent since 2000, most of this increase was
8 concentrated in existing high-poverty census tracts in metro areas, which grew by 53 percent.
9 Consequently, the 2018 state housing assessment published by HCD concluded that the “burden of
10 being both poor and living in an area of concentrated poverty” is “disproportionately shouldered by
11 racial minorities.”¹⁵³ Two-thirds of all impoverished African-American and Hispanic households
12 live in the high-poverty, low-opportunity neighborhoods that have been created by years of racially
13 exclusive housing and land use policies.¹⁵⁴

14 192. Discriminatory agency housing practices continued into this century (and this
15 decade) with predatory and discriminatory lending practices which charged minority homeowners
16 much higher fees and mortgage interests, induced minority homeowners to enter into high interest
17 second mortgages that could not be repaid, and culminated with illegal foreclosure practices that
18 disproportionately victimized minority homeowners and resulted in the greatest drop in minority
19 homeownership in the history of the country during and immediately after the Great Recession of
20 2008. As reported by Stanford University scholars:

21 The Great Recession’s economic impact on minorities and immigrants has been especially
22 devastating. Between 2005 and 2009, Hispanic households lost 66 percent of their wealth
and black households lost 53 percent, while white households lost only 16 percent.¹⁵⁵

23
24 ¹⁵³ California's Housing Future, *supra* note 87, at 41.

25 ¹⁵⁴ *Id.* at 38-40.

26 ¹⁵⁵ Sanchez et al, The Great Recession: Implications for Minority and Immigrant Communities,
<https://web.stanford.edu/group/recessiontrends-dev/cgi-bin/web/resources/research-project/great-recession-implications-minority-and-immigrant-communities> (last visited Nov. 2019).

1 Reductions in homeownership rates following the housing crash have been more extreme
2 for minority groups. While all racial and ethnic groups have experienced a decline in
homeownership in recent years, the fall has been sharpest for Blacks and Latinos.¹⁵⁶

3 193. California helped lead the nation in suing financial institutions that engaged
4 in predatory lending and unlawful foreclosure practices, and in 2012 secured an \$18 billion
5 settlement – from which it expressly agreed to set aside \$330 million to assist the primarily
6 minority homeowner victims of financial misconduct. California’s leaders then spent 7 years in
7 court (including two unsuccessful appeals to the state Supreme Court) refusing to spend the \$330
8 million on housing victims before finally agreeing to comply with its own settlement agreement and
9 assist homeowners in July of 2019.¹⁵⁷ Minority family victims who waited for year, in vain, for
10 California to use the \$330 million to assist them lost not just their homes, not just the family wealth
11 they would have created by making seven to ten years of mortgage payments instead of paying rent,
12 but also the opportunity to tap into that accumulated wealth to assist their children with college or
13 avoid homelessness or bankruptcy based on injuries, illness, or old age. California’s leaders, up to
14 and through 2019, continued to engage in racially discriminatory anti-homeowner practices in direct
15 violation of trial and appellate court decisions enforcing the \$330 settlement agreement.¹⁵⁸

16 194. The growth and persistence of racially disparate communities was further
17 enhanced by school bureaucrats of the 1940’s who defended a “separate but equal” public school
18 system,¹⁵⁹ highway bureaucrats in the 1950’s who targeted minority neighborhoods for demolition

19
20
21 ¹⁵⁶ Ellen and Dastrup, *Housing and the Great Recession*, The Russell Sage Foundation and The
22 Stanford Center on Poverty and Inequality (Oct. 2012), at 4,
[https://web.stanford.edu/group/recessiontrends-dev/cgi-
bin/web/sites/all/themes/barron/pdf/Housing_fact_sheet.pdf](https://web.stanford.edu/group/recessiontrends-dev/cgi-bin/web/sites/all/themes/barron/pdf/Housing_fact_sheet.pdf).

23 ¹⁵⁷ Bollag, *California Misspent \$330 Million That Should Have Helped Homeowners, Court Holds*,
24 The Sacramento Bee, (July 18, 2019), [https://www.sacbee.com/news/politics-government/capitol-
alert/article232847737.html](https://www.sacbee.com/news/politics-government/capitol-alert/article232847737.html).

25 ¹⁵⁸ *Id.*

26 ¹⁵⁹ *See, e.g.*, “Separate is Not Equal: Brown v. Board of Education”, *The Defenders of Segregation*,
27 Smithsonian National Museum of American History,
<https://americanhistory.si.edu/brown/history/5-decision/defenders.html> (last visited Nov. 11, 2019).

1 for freeway construction primarily benefitting other wealthier, communities,¹⁶⁰ and by urban
2 planning bureaucrats in the 1960's who displaced and destroyed communities of color in pursuit of
3 "urban renewal" projects.¹⁶¹ As described by University of California Los Angeles ("UCLA")
4 scholar Jacqueline Leavitt when recounting a Boyle Heights project to demolish 557 apartment
5 units and build only 401 replacement units, urban renewal was actually "Negro and Hispanic
6 Removal" which created "overcrowding and homelessness," and relied in part on "[t]urning urban
7 planners and service providers into collaborators" to displace residents and "wipe out" jobs in
8 existing small businesses in the community.¹⁶²

9 195. Racial discrimination in housing is just one of several ongoing forms of
10 racial discrimination in California that are targeted by several pending civil rights lawsuits. For
11 example, after a multi-day civil rights trial in which the judge concluded that dismal and
12 discriminatory teacher staffing practices in schools with large minority populations "shocked the
13 conscience," and subsequent appellate court proceedings, a settlement agreement mandated that
14 proven and effective methods for teaching reading be implemented in these underperforming
15 minority-majority schools.¹⁶³ In another pending civil rights lawsuit, ten students from three
16 different California public schools and advocacy organizations have sued the State over its
17 violations of the state Equal Protection Clause by failing to provide for basic literacy for
18 socioeconomically disadvantaged, African American, and Hispanic students.¹⁶⁴ Another pending
19

20 ¹⁶⁰ See, e.g., Princeton scholar Kevin Kruse's explanation of urban freeway siting policies designed
21 to demolish minority neighborhoods, and create physical barriers between white and minority
22 neighborhoods. Kruse, *What Does a Traffic Jam in Atlanta Have to Do With Segregation? Quite a*
Lot, New York Times (Aug. 14, 2019),
<https://www.nytimes.com/interactive/2019/08/14/magazine/traffic-atlanta-segregation.html>.

23 ¹⁶¹ See Rothstein, *Color of Law: A Forgotten History of How Our Government Segregated America*
(2017).

24 ¹⁶² Leavitt, *Urban Renewal Is Minority Renewal*, Los Angeles Times (Oct. 11, 1996),
<https://www.latimes.com/archives/la-xpm-1996-10-11-me-52672-story.html>.

25 ¹⁶³ Tentative Decision at 8, *Vergara v. California*, No. BC484642 (Los Angeles Cty. Super. Ct.
26 June 10, 2014).

27 ¹⁶⁴ Complaint at 1, *Ella T. v. California*, No. BC685730 (Los Angeles Cty. Super. Ct. Dec. 5, 2017).

1 civil rights lawsuit challenges California’s longstanding, systematic, and knowingly discriminatory
2 underfunding of medical care for the state’s most vulnerable and poorest people (again majority
3 minority), which the California Attorney General has spent two years shamefully, but as yet
4 unsuccessfully, attempting to dismiss rather than helping improve the poor’s access to adequate
5 healthcare.¹⁶⁵

6 196. In recent years, racially discriminatory environmental policies have
7 proliferated in the form of environmental laws and regulations, particularly CEQA, which are
8 designed to protect the status quo (itself formed by intentionally discriminatory housing and land
9 use practices) from an ever-evolving concept of what constitutes the “adverse environmental
10 impacts” of proposed neighborhood changes. Strengthening and exacerbating racially exclusionary
11 housing patterns to continue to exclude minority residents and less costly housing product types
12 such as apartments “in the name of the environment” is consistent with the increasingly well-
13 documented lack of diversity and biases in mainstream and highly influential environmental
14 organizations, regulatory agencies and grant making institutions.¹⁶⁶

15 197. In 2015, for example, the highly progressive New Yorker published a lengthy
16 review of the environmental movement’s racist roots, concluding that “many environmentalist
17 priorities and patterns of thought came from an argument among white people, some of them bigots
18 and racial engineers, about the character and future of a country that they were sure was theirs and
19 expected to keep.” It is unsurprising that, when polled by the Sierra Club, only 15 percent of the
20 group’s overwhelmingly white membership believed the group should “concern itself with the

21 _____
22 ¹⁶⁵ See SEIU-UHW Press Release, Judge Gives Green Light to Civil Rights Lawsuit Affecting 1 in
23 3 Californians (June 25, 2019), [https://www.seiu-uhw.org/press/judge-gives-green-light-to-civil-
rights-lawsuit-affecting-1-in-3-californians/](https://www.seiu-uhw.org/press/judge-gives-green-light-to-civil-rights-lawsuit-affecting-1-in-3-californians/).

24 ¹⁶⁶ See, e.g., Swaminathan, *The Unsustainable Whiteness of Green*, Moyers & Company (June 30,
25 2017), <https://billmoyers.com/story/unsustainable-whiteness-green/>; Mock, *The Green Movement Is
Talking About Racism? It’s About Time*, Outside Magazine (Feb. 27, 2017),
26 [https://www.outsideonline.com/2142326/environmentalism-must-confront-its-social-justice-sins](https://www.outsideonline.com/2142326/environmentalism-must-confront-its-social-justice-sins;);
Taylor, *The State of Diversity in Environmental Organizations: Mainstream NGOs, Foundations &
Government Agencies* (July 2014), [http://vaipl.org/wp-
content/uploads/2014/10/ExecutiveSummary-Diverse-Green.pdf](http://vaipl.org/wp-content/uploads/2014/10/ExecutiveSummary-Diverse-Green.pdf).

1 conservation problems of such special groups as the urban poor and ethnic minorities” while 40
2 percent opposed such a policy.¹⁶⁷

3 198. The racial animus of the environmental movement remains a well-
4 documented and continuing problem. The immediate past President of the Sierra Club Board of
5 Directors, African-American Aaron Mair, recently stated that “white privilege and racism within
6 the broader environmental movement is existent and pervasive.”¹⁶⁸ In 2018, the nation’s leading
7 periodical for the philanthropic community found that, despite decades of concern, boards of
8 directors and leaders of major environmental organizations were becoming less rather than more
9 racially diverse.¹⁶⁹

10 199. Racially discriminatory conduct is not limited to areas with predominantly
11 conservative politics but is endemic in many of California’s most progressive centers of
12 environmental advocacy. There are 41 percent more Democrats than Republicans in Marin County,
13 and its congressional representative is a former attorney for the National Resources Defense
14 Council. Few, if any, communities in the U.S. are more sympathetic to the environmental
15 movement. Yet, Marin County was subject to a federally-enforced Fair Housing Act compliance
16 agreement prompted by its systematic housing discrimination practices as documented by the U.S.
17 Housing and Urban Development Department (“HUD”) in 2009.¹⁷⁰ In 2017, the Advancement

18 _____
19 ¹⁶⁷ Purdy, *Environmentalism’s Racist History*, *The New Yorker* (Aug. 13, 2015),
<https://www.newyorker.com/news/news-desk/environmentalisms-racist-history>.

20 ¹⁶⁸ Swaminathan, *supra* note 166.

21 ¹⁶⁹ Wyllie, *Environmental Groups Get Poor Marks for Diversity Efforts*, *The Chronicle of*
Philanthropy (Jan. 10, 2019), [https://www.philanthropy.com/article/Incredibly-Bad-Actors-](https://www.philanthropy.com/article/Incredibly-Bad-Actors-/245445)
22 [/245445](https://www.philanthropy.com/article/Incredibly-Bad-Actors-/245445).

23 ¹⁷⁰ HUD: Office of Fair Housing and Equal Opportunity, *Final Investigative Report, Section 109,*
Title VI and Section 504 Compliance Review, County of Marin, California CDBG Program (July
24 2009), at 24-29, 80-81, [http://marinhousingsolutions.org/images/pdf/Final-Investigative-Report-](http://marinhousingsolutions.org/images/pdf/Final-Investigative-Report-HUD-2009.pdf)
25 [HUD-2009.pdf](http://marinhousingsolutions.org/images/pdf/Final-Investigative-Report-HUD-2009.pdf); *see also*, “Agreement for Voluntary Compliance with Section 109 of the Housing
26 and Community Development Act of 1974, As Amended, and Title VI of the Civil Rights Act of
27 1964, As Amended, and Section 504 of the Rehabilitation Act of 1973, As Amended, Between the
28 U.S. Department of Housing and Urban Development Office of Fair Housing and Equal
Opportunity and the County of Marin (December 21, 2010),
<https://www.hud.gov/sites/documents/MARINCOUNTYCAVCA.PDF>.

1 Project California named Marin as the “most racially unequal county in California.”¹⁷¹ In 2019, a
2 state court found that Marin County education officials “knowingly and intentionally maintained
3 and exacerbated” racial segregation, established an intentionally segregated school, and pursued a
4 deliberate scheme to keep low-income children of color out of a white-populated enclave.¹⁷²

5 200. The Bay Area has managed to preserve over 40 percent of its lands as open
6 space (primarily used to graze cattle)¹⁷³ while Marin County has outlawed new housing on a
7 whopping 84% of its land.¹⁷⁴ Decades of the region’s “smart growth” policies supporting high
8 density housing, most of which is too expensive and controversial to ever get built, has resulted in a
9 “megaregion” spanning 21 counties as Bay Area workers move to ever-more distant locations in the
10 Central Valley and even Sierra Foothills to find housing they can afford.¹⁷⁵

11 201. The Redlining Revisions further weaponize CEQA to impose racially
12 exclusionary housing policy statewide. Latino and African American residents have increasingly
13 fled the five core counties that touch the Bay, residential racial segregation continues to worsen, the
14 Latino population has dropped to nearly half of the state’s average, and the Bay Area is more
15 racially segregated now than it was in 1970.¹⁷⁶

16 ¹⁷¹ Halsted, *Report: Marin Tops State in Racial Inequity*, Marin Independent Journal (Nov. 20,
17 2017), <https://www.marinij.com/2017/11/20/report-marin-tops-state-in-racial-inequity/> referencing
18 Advancement Project California, *Race Counts: Advancing Opportunity for All Californians* (Winter
19 2017), at 25, [https://www.racecounts.org/wp-content/uploads/2017/11/Race-Counts-Launch-](https://www.racecounts.org/wp-content/uploads/2017/11/Race-Counts-Launch-Report-digital.pdf)
20 [Report-digital.pdf](https://www.racecounts.org/wp-content/uploads/2017/11/Race-Counts-Launch-Report-digital.pdf).

21 ¹⁷² Goldstein and Hartocollis, ‘*Separate Programs for Separate Communities*’: *California School*
22 *District Agrees to Desegregate*, New York Times (Aug. 9, 2019),
23 <https://www.nytimes.com/2019/08/09/us/sausalito-school-segregation.html>.

24 ¹⁷³ American Farmland Trust, Greenbelt Alliance & Sustainable Agriculture Education, *Sustaining*
25 *Our Agricultural Bounty* (Mar. 2011), at 7, [https://www.sagecenter.org/wp-](https://www.sagecenter.org/wp-content/uploads/2015/11/Sustaining-Our-Agricultural-Bounty-An-Assessment-of-Agriculture-in-the-San-Francisco-Bay-Area.pdf)
26 [content/uploads/2015/11/Sustaining-Our-Agricultural-Bounty-An-Assessment-of-Agriculture-in-](https://www.sagecenter.org/wp-content/uploads/2015/11/Sustaining-Our-Agricultural-Bounty-An-Assessment-of-Agriculture-in-the-San-Francisco-Bay-Area.pdf)
27 [the-San-Francisco-Bay-Area.pdf](https://www.sagecenter.org/wp-content/uploads/2015/11/Sustaining-Our-Agricultural-Bounty-An-Assessment-of-Agriculture-in-the-San-Francisco-Bay-Area.pdf).

28 ¹⁷⁴ Marin Convention & Visitors Bureau, *The Bay and Protected Open Space*,
<https://www.visitmarin.org/things-to-do/outdoor-activities/the-bay-and-protected-open-space/> (last
visited Nov. 11, 2019).

¹⁷⁵ Kukura, *Is the Bay Area Becoming a 21-County ‘Megaregion’?*, SFist (Feb. 19, 2019),
<https://sfist.com/2019/02/19/is-the-bay-area-becoming-a-21-county-megaregion/>.

¹⁷⁶ Haas Institute For a Fair and Inclusive Society, *Measuring Segregation*,
<https://belonging.berkeley.edu/bay-segregation-map> (last visited Nov. 11, 2019).

1 202. Communities of color, whose members include several of the
2 Petitioners/Plaintiffs in this lawsuit, have been forced to advocate against racially discriminatory
3 actions undertaken by advocates and regulatory agencies in the name of the environment.
4 Environmental regulators and major advocacy groups unsuccessfully attempted to block the
5 construction of the University of California Merced campus, the only portion of the university
6 system located in the Central Valley and the campus with by far the highest percentage of Latino
7 students. Beset by racists attitudes, including comments by the mainstream environmental
8 community asking why people of color, would “want a university if your children are not even
9 going to attend,” a group of largely Latino activists were finally able to obtain the necessary state
10 and federal permits –ironically, with far more support from Republicans than Democrats – to build
11 the campus.¹⁷⁷

12 203. California environmental regulators and advocacy groups also had to be
13 compelled to finally establish clear cleanup standards to allow for the remediation and
14 redevelopment of blighted, contaminated property, or “brownfields” in minority neighborhoods–
15 since the absence of clear remediation standards meant that only the most well-funded
16 redevelopment projects (overwhelmingly located in higher wealth communities) could afford to
17 spend years running environmental regulatory agency gauntlets to negotiate, on a project-by-project
18 basis, remediation standards acceptable to such agencies.¹⁷⁸

19 204. The willingness of high-ranking state officials to facilitate racial
20 discrimination in support of environmental policies continues to this day. A pending lawsuit

21 _____
22 ¹⁷⁷ UC Merced’s Latino undergraduates comprise 55.5 percent of the student population, compared
23 to the 24 percent rate of Latino undergraduate enrollment for the UC system as a whole. University
24 of California, System Enrollment (2018), [https://www.universityofcalifornia.edu/infocenter/fall-
enrollment-glance](https://www.universityofcalifornia.edu/infocenter/fall-enrollment-glance) (last visited Nov. 12, 2019); UC Merced, Fast Facts 2018-2019,
25 <https://www.ucmerced.edu/fast-facts> (last visited Nov. 11, 2019); *see also* Gamboa, *Brownfields,*
UC Merced, and Fighting for Environmental Equity, Greenlining Institute (Mar. 14, 2018),
<http://greenlining.org/blog/2018/brownfields-uc-merced-fighting-environmental-equity/>.

26 ¹⁷⁸ Gamboa, *Brownfields, UC Merced, and Fighting for Environmental Equity*, Greenlining Institute
27 (Mar. 14, 2018), [http://greenlining.org/blog/2018/brownfields-uc-merced-fighting-environmental-
equity/](http://greenlining.org/blog/2018/brownfields-uc-merced-fighting-environmental-equity/).

1 challenging California’s newly adopted discriminatory and ineffective anti-housing climate change
2 policies was recently opposed by the California Attorney General’s office with the astonishing
3 claim that nothing in the California constitution prohibits CARB from adopting racially
4 discriminatory housing climate measures. Unsurprisingly, the court rejected the argument that
5 climate change environmental imperatives provides a safe harbor for the government to act in a
6 racially discriminatory manner.¹⁷⁹

7 205. In 2017, Richard Rothstein, a Distinguished Fellow at the Economic Policy
8 Institute, and an emeritus Senior Fellow of the Thurgood Marshall Institute and the Haas Institute at
9 U.C. Berkeley, published a comprehensive account of the “forgotten” history of how explicit
10 government policy, not just unscrupulous real estate agents or mortgage lenders, led to housing
11 segregation in the U.S.¹⁸⁰ As Rothstein later noted, “Our entrenched residential segregation
12 exacerbates serious political, social and economic problems. . . . To achieve [integration], politically
13 and legally, we first have to acknowledge that our government, to a substantial degree, created our
14 racial inequality. Letting bygones be bygones is not a valid, just or defensible policy.”¹⁸¹ The
15 Respondents’ blatantly discriminatory Redlining Revisions represent just such an instance of
16 invalid, unjust and indefensible government policy in the name of the environment.

17 206. When CEQA was enacted in 1970, old growth redwood forests were being
18 razed, new freeways were demolishing homes and businesses, and new factories were being built
19 on the ocean to expedite disposal of polluted wastewaters. Modern environmental laws such as the
20 Endangered Species Act, the Clean Air Act, the Clean Water Act, the Coastal Act, and scores of
21 other environmental and public health laws and regulations, had not yet been enacted. CEQA was
22 never authorized or intended to be used to protect or promote racially segregated housing, or create

23 ¹⁷⁹ Order After Hearing on Respondents/Defendants’ Demurrer to Complaint/Petition, *supra* note
24 94, at 11-14.

25 ¹⁸⁰ See Rothstein, *supra* note 161.

26 ¹⁸¹ Rothstein, *Op-Ed: Why Los Angeles Is Still a Segregated City After All These Years*, Los
27 Angeles Times (Aug. 20, 2017), <https://www.latimes.com/opinion/op-ed/la-oe-rothstein-segregated-housing-20170820-story.html>.

1 racially disparate barriers and costs to using personal vehicles to get to work, earn an income, and
2 complete other essential chores.

3 207. Under CEQA, the environmental “impacts” of adding more housing (and
4 more people) are measured against the “existing setting.” CEQA then requires that “significant
5 adverse” impacts must, to the extent feasible, be “mitigated” to a “less than significant” impact.
6 This fundamental feature of CEQA, however, is being perverted by the Redlining Revisions, which
7 exacerbate a decidedly non-“environmental” feature of the “existing setting”, i.e., racially
8 exclusionary housing patterns – both those that existed during the era of racially exclusionary land
9 use covenants and lending practices, and those that were created at the end of the last century
10 through “redevelopment” agency practices that razed historically minority neighborhoods. As
11 summarized by one commenter:

12 California’s redevelopment agencies got their start in 1945, when the state
13 legislature authorized their creation to combat urban decay. At the time, politicians
14 nationwide touted urban-renewal projects as a way to jump-start development in
15 impoverished inner cities. Today, many urbanists recall these projects as a national
16 travesty, a failed experiment in top-heavy government and liberal social engineering
17 that obliterated neighborhoods, eroded property rights, gave developers downtown
18 land on the cheap, uprooted city dwellers, and exacerbated urban problems.¹⁸²

19 208. As with racist covenants, once the historically minority neighborhoods were
20 razed by the brute politics and power of redevelopment, CEQA then protected the new *status quo*
21 post-redevelopment “setting” by empowering private lawsuits to challenge the addition of housing
22 needed by the next generation on the basis that it causes significant adverse impacts to the
23 environment. In 1970 and continuing to the present day, racist housing practices were also deeply
24 embedded in the racially exclusionary zoning decisions of cities and counties, which outlawed
25 apartments and other less costly housing types such as duplexes.¹⁸³

26 209. The United States Supreme Court upheld exclusionary residential zoning for

27
28 ¹⁸² Greenhut, *California’s Secret Government*, City Journal (Spring 2011), <https://www.city-journal.org/html/california%E2%80%99s-secret-government-13378.html>.

¹⁸³ See, e.g., Rothstein, *supra* note 161; see also Gibbons, *City of Segregation: 100 Years of Struggle for Housing in Los Angeles* (2018).

1 decades, even after enactment of the landmark civil rights protection laws in the 1960's. In *James v.*
2 *Valtierra* (1971) 402 U.S. 137, for example, the Court upheld Article 34 of the California State
3 Constitution (which prohibits construction or acquisition by the state of a low income housing
4 project absent a majority vote of local citizens) because it was based on income rather than race,
5 notwithstanding its racist intent and consequences. Article 34 remains in full force in the California
6 Constitution as it exists today.

7 210. In *Village of Belle Terre v. Boraas* (1974) 416 U.S. 1, the Court upheld an
8 ordinance in a 220-home village on Long Island that prohibited more than two unrelated persons
9 from occupying a single family home, thereby preventing lower income renters from pooling
10 resources to live even in an existing structure. Endorsing the validity of "environmental" claims
11 made in anti-housing CEQA lawsuits, the Court concluded that the village had within its "police
12 powers" the authority to adopt zoning laws that "promote values" like "family life, clean air, and
13 peaceful seclusion" and accordingly limit the "number of people and cars in the area."

14 211. In *Arlington Heights v. Metropolitan Housing Corporation* (1977) 429 U.S.
15 252 the Court upheld the refusal of a village to rezone a single-family area to allow construction of
16 a planned racially-integrated low income housing apartment project. The record was replete with
17 commenters who either supported or opposed, based on race, construction of a racially integrated
18 housing project. The district court concluded that the village's zoning decision was not motivated
19 by racial discrimination but by a desire to "protect property values and maintain the Village's
20 zoning plan." The appellate court reversed, concluding that the "ultimate effect" of the rezoning
21 was racially discriminatory in that it would disproportionately affect African Americans. Although
22 the Supreme Court admitted that the zoning decision would have a racially disparate impact, it
23 concluded that racially discriminatory housing zoning decisions were lawful absent evidence of the
24 city's racially discriminatory intent. *Arlington Heights* authorized nearly 40 more years of
25 exclusionary land use zoning practices that created the "setting" of California communities today,
26 where CEQA empowers individuals to file "environmental" lawsuits to delay, increase costs, or

1 block the addition of new housing and people.

2 212. It was not until 2015 that the United States Supreme Court finally agreed,
3 nearly 30 years after 1988 amendments to the Fair Housing Act and other developments, that
4 government conduct which results in racially discriminatory effects, even without evidence of racist
5 intent, is unlawful. In *Texas Department of Housing and Community Affairs v. The Inclusive*
6 *Communities Project* (2015) 576 U.S. ___, 135 S.Ct. 2507, the Court decided against a state agency
7 that allocated most low-income housing tax credits to affordable housing projects located “in
8 predominantly black inner-city areas and too few in predominantly white suburban neighborhoods.”
9 One year later, in *Avenue 6E Investments, LLC v. City of Yuma Arizona* (9th Cir. 2016) 217
10 F.Supp.3d 1040, the Ninth Circuit finally applied that precedent to invalidate an exclusionary
11 zoning decision – again aimed at blocking an apartment - that had a disparate impact on future
12 Latino minority residents who would likely occupy apartments proposed to be constructed in a
13 majority white, single family home neighborhood.

14 213. This civil rights lawsuit against Respondents’ Redlining Revisions to CEQA
15 asks this Court to look behind the false flag “environmental” standards that anti-housing proponents
16 hide behind, and apply the same civil rights scrutiny to CEQA and the Redlining Revisions as our
17 state and federal courts have finally applied – after more than a century of *de jure* anti-minority
18 housing discrimination – to other discriminatory state housing regulations.

19 214. Specifically, Respondents’ Redlining Revisions, if not enjoined, will
20 establish an unlawful and unconstitutional new *de jure* redlining framework that significantly and
21 unnecessarily exacerbates the racially exclusionary housing patterns that have existed since before
22 1970. The Redlining Revisions will allow private lawsuits to delay, make more costly, and/or block
23 the addition of new housing (and new people) in existing neighborhoods – neighborhoods that were
24 created with racist covenants and exclusionary zoning to promote and protect the racial housing
25
26
27

1 segregation which remains pervasive and in fact has grown worse in Coastal Job Centers today.¹⁸⁴

2 **D. The Redlining Revisions Are Illegally Intended to Constrain Housing and**
3 **Mobility in California Without Legislative Authorization or Substantial**
4 **Evidence that Significant GHG Reductions Will Be Achieved, and They Cause**
5 **Disparate Impacts to the State’s Aspiring Minority Population that Can Be**
6 **Avoided by Other Feasible and More Practical GHG Reduction Measures**

7 215. CEQA requires that, prior to approving a project that requires a discretionary
8 permit or approval, local, regional and state decision makers – i.e., CEQA “lead agencies” - must
9 consider the project’s potential for causing adverse impacts to the existing physical environment,
10 disclose impacts that would be “significant” under applicable CEQA significance thresholds, and
11 avoid or reduce all significant impacts to less than significant levels by identifying and requiring the
12 implementation of all feasible mitigation measures.

13 216. A project with significant impacts that cannot be feasibly reduced below
14 applicable significance thresholds can still be approved under CEQA provided the lead agency
15 demonstrates the infeasibility of additional mitigation measures or project alternatives, and
16 identifies “overriding considerations” justifying project approval notwithstanding significant and
17 unavoidable impacts.

18 217. Since the late 1980’s, CEQA has been implemented less to protect major
19 environmental resources and more often as an inexpensive but highly effective legal weapon for
20 delaying and blocking development, particularly housing in urban infill locations such as TPAs –
21 i.e., developed urbanized areas within one-half mile of major public transit services such as
22 commuter rail stations and high frequency commuter bus stops. For example, a recent study
23 informed by data from the SCAG confirmed that approximately 14,000 housing units were
24 challenged in the five counties comprising the SCAG region in CEQA lawsuits filed during 2013-
25 2015. Of the challenged housing units, 98 percent were in existing “infill” communities and 70
26 percent were located in TPAs. CEQA lawsuits are also a potent redlining tool: 78 percent of the

25 ¹⁸⁴ Samara, *supra* note 38, at 3; *see also* Bader, *Op-Ed: L.A. Is Resegregating – and Whites Are a*
26 *Major Reason Why*, Los Angeles Times (Apr. 1, 2016), <https://www.latimes.com/opinion/op-ed/la-oe-bader-resegregation-los-angeles-20160401-story.html?dssReturn=true>.

1 CEQA lawsuits filed in the SCAG region targeted housing projects in the region’s whiter, wealthier
2 and healthier communities.¹⁸⁵

3 218. Public Resources Code section 21087 requires that the CEQA Guidelines be
4 reviewed at least every two years to identify revisions or amendments required to ensure that the
5 CEQA review of potential project impacts is consistent with and reflects new legislation and
6 judicial decisions interpreting CEQA. The Respondents failed to comprehensively update the
7 CEQA Guidelines for 15 years prior to December 2018.

8 219. The 2018 CEQA Guidelines amendments were largely spurred by recent
9 legislation that required updates to streamline the CEQA process to reduce compliance costs and
10 litigation risks for housing development in TPAs. Among other requirements, the Legislature
11 directed the Respondents to eliminate traffic congestion as a CEQA impact threshold applicable to
12 TPAs because potential CEQA congestion impacts had become one of the primary means for
13 constraining housing and other development in high-transit frequency TPA neighborhoods. The
14 Legislature allowed for, but did not mandate, the use of VMT metrics in lieu of congestion metrics
15 as a CEQA impact significance threshold in TPAs. The Legislature also allowed, but did not
16 mandate, changes to transportation metrics outside TPAs, since minimizing excess traffic
17 congestion and allowing for efficient vehicular movement continues to be required by many
18 existing federal, state and local laws, regulations and policies to facilitate goods movement and
19 interstate commerce, minimize commute times and excess emissions from gridlocked conditions,
20 and avoid adverse safety and health impacts from inadequate highways and roadways.

21 220. Nearly one year after the Redlining Revisions were finalized, recent survey
22 data confirm that more than half of the 77 cities surveyed intend to use both VMT and traditional
23 traffic congestion compliance metrics like Level of Service (“LOS) under CEQA,¹⁸⁶

24 _____
25 ¹⁸⁵ Hernandez – Hastings, *supra* note 31, at 30-34.

26 ¹⁸⁶ McCahill, LOS to Play More Limited Role in California Planning, According to Survey, State
27 Smart Transportation Initiative (Dec. 2, 2018), <https://www.ssti.us/2019/12/los-to-play-more-limited-role-in-california-planning-according-to-survey/>.

1 notwithstanding Respondents’ false claims in rulemaking responses to comments raised by
2 Petitioners and others that only VMT would be assessed under the Redlining Revisions.

3 221. The Legislature’s focus on revising the CEQA Guidelines to streamline TPA
4 development was motivated by its desire to further state climate change policies by increasing the
5 amount of infill development near higher-quality transit centers. The Legislature has never adopted
6 any laws, including any climate change laws, which preclude or are intended to eliminate housing
7 development outside of TPAs. The Legislature has never adopted any climate change or other laws
8 that preclude or are intended to reduce or eliminate housing development that provides the state’s
9 aspiring minority and working and middle class residents with the same homeownership
10 opportunities that so richly benefitted prior generations in California.

11 222. The Legislature has also considered, but has declined to adopt, any climate
12 change or other laws that preclude or that are intended to forcibly reduce automobile use, which
13 remains the primary form of mobility utilized by all of the state’s population, and is increasingly a
14 critical necessity for the state’s aspiring minority and working and middle class communities.

15 223. To the contrary, the Legislature has enacted multiple transportation
16 improvement, congestion reduction, and general planning laws that explicitly require the
17 implementation of roadway and other mobility enhancements in California. As recently as the
18 November 2018 election, state voters approved and the Legislature adopted, conforming measures
19 to generate new taxes and fund roadway improvements specifically intended to improve automotive
20 mobility by, among other measures, adding roadway capacity to reduce congestion.

21 224. The Legislature’s overarching mandate for reducing GHG emissions is to
22 reduce the state’s GHG emissions total 40 percent below 1990 levels by 2030. Health & Safety
23 Code § 38566. This overarching target is to be achieved by GHG reductions from numerous
24 economic sectors and activities, as generally set forth in more than a dozen other GHG reduction
25 laws governing specific sectors or activities, as well as a regulatory “Scoping Plan” required to be
26 adopted, periodically updated, and implemented by CARB and other agencies. More electricity is to

1 be generated by “renewable” resources and less by fossil fuels. New housing must meet stringent
2 energy and water conservation requirements to reduce GHG emissions from the generation and use
3 of electricity and natural gas in homes. New vehicles must meet stringent fuel efficiency standards
4 and a combination of mandates and incentives have been established to convert more of the vehicle
5 fleet into electric and other lower-GHG technologies.

6 225. The Legislature also enacted SB 375, which requires the completion of
7 regional plans called “Sustainable Communities Strategies” (“SCS”) to achieve GHG reductions
8 from future land uses, such as housing, transportation, and other development activities. Gov. Code
9 § 65080(b)(2)(B) requires that an SCS must, in part:

10 [I]dentify areas within the region sufficient to house all of the population of the
11 region, including all economic segments of the population, over the course of the
12 planning period of the regional transportation plan taking into account net migration
into the region, population growth, household formation and employment growth;

13 [I]dentify areas within the region sufficient to house an eight-year projection of the
14 regional housing need for the region [as identified by the Regional Housing Needs
Assessment (“RHNA”) process required by other state laws]; and

15 [I]dentify a transportation network to service the transportation needs of the region.”

16 226. SB 375 serves as the Legislature’s sole specific statutory requirement for
17 achieving GHG reductions from the siting of future land uses such as housing.

18 227. SB 375 also expressly acknowledges and amends the statutory requirements
19 for the RHNA process, which requires in pertinent part that regional and local jurisdictions adopt
20 “Housing Elements” in General Plans that designate locations for future housing development for
21 an eight-year planning period. Among other mandates, RHNA laws require that such Housing
22 Elements must identify locations to accommodate housing that takes into account “all economic
23 segments of the community.” Gov. Code § 65583.

24 228. On October 15, 2019, HCD made its final RHNA determination for the
25 SCAG region for the forthcoming planning period beginning in January 2021. HCD determined that
26 the SCAG region must accommodate a “minimum” of 1,341,827 new housing units, taking into

1 account the existing housing shortfall and projected future needs. HCD determined that 41.6 percent
2 of the new housing units (558,603 units) must be affordable for lower income households.¹⁸⁷

3 229. Traditional financing for low income housing has relied on public (and to a
4 much lesser extent private) funding. The largest jurisdiction in the SCAG region, the City of Los
5 Angeles, has determined that if it accommodates even 35 percent of the required regional share of
6 low income housing units (254,000 units), assuming an average per unit construction cost of
7 \$500,000 per unit and assuming the city continues to cap its own financial contribution to each unit
8 at \$120,000, it will cost the city \$30.5 billion per year (with the remaining \$120 billion per year to
9 come from other federal, state and private sources). The city currently allocates only \$30 million, or
10 about one percent, of what would be needed under its proposed RHNA allocation, to affordable
11 housing.¹⁸⁸ The annual budget for the entire City of Los Angeles is just under \$10 billion.

12 230. It is patently infeasible to require the City of Los Angeles, or any of the other
13 193 cities and 5 counties in the SCAG region, to spend three times more than their total annual
14 budget solely to subsidize less than 25 percent of each of the hundreds of thousands of low income
15 unit mandated by RHNA.

16 231. This broken math formula for subsidizing low income housing prompted the
17 non-partisan LAO, as well as the current and former Governor, to conclude that the state cannot
18 spend its way out of the housing crisis. Producing housing for median income earners is equally
19 challenging given the total disconnect between what median- and above-median households can
20 afford to pay (typically 30 percent of earnings) and what housing actually costs. As described
21 above, since even a union worker household earning \$90,000 per year cannot afford to buy a

22 _____
23 ¹⁸⁷ Letter from HCD to Kome Ajise, Executive Director of SCAG, Re: Regional Housing Need
24 Determination SCAG: June 30, 2021 – October 15, 2029, dated Aug. 22, 2019,
https://www.scag.ca.gov/Documents/6thCycleRHNA_SCAGDetermination_08222019.pdf.

25 ¹⁸⁸ City of Los Angeles, Inter-Departmental Correspondence from Rushmore Cervantes, General
26 Manager, Housing and Community Investment Department, Vincent Bertoni, AICP, Director of
27 Planning, and Sharon Tso, Chief Legislative Analyst to Honorable Members of the Planning and
28 Land Use Management Committee, dated Oct. 24, 2019,
http://clkrep.lacity.org/onlinedocs/2019/19-0773_misc_10-25-2019.pdf.

1 median priced home in any SCAG county touching the ocean, there is no evidence whatsoever that
2 one million new homes can be built in Los Angeles and Orange County at costs that are affordable
3 to median and above-median income households like construction union households.¹⁸⁹

4 232. Updates to the CEQA Guidelines are required by law to be consistent with
5 state legislation and judicial decisions, including but not limited to civil rights and housing laws.
6 Instead, the Redlining Revisions illegally attempt to implement extraordinarily costly, restrictive
7 and unprecedented housing, mobility and GHG measures in a regulatory fiat that state legislators
8 have never authorized, and have in many instances considered but repeatedly declined to adopt.

9 233. Specifically, the Redlining Revisions add “mitigation” costs to housing to
10 reduce GHG emissions and impose unprecedented new costs for VMT on new housing occupants
11 (but not on their neighbors living in existing housing), and impose regulatory inconsistencies and
12 ambiguities that create and exacerbate CEQA litigation uncertainties which have been and will
13 continue to be used to oppose new housing. In the regulatory equivalent of shouting fire in a
14 crowded theater, the Redlining Revisions weaponize CEQA in an attempt to confine new housing to
15 the most costly form of housing we can build: (a) high density steel-framed structures with the
16 highest construction costs, (b) on high value/high cost land that already has homes and businesses
17 that would need to be demolished and in some cases relocated, (c) in communities with older
18 undersized sewage, water supply, and other infrastructure and public services that was never
19 designed to handle high density housing, and (d) within one-half mile of an existing bus stop or
20 metro station in a region where public transit is not a viable option, especially for minorities.

21 234. The Redlining Revisions will wipe out home ownership and even attainable
22 rentals for those – predominantly minority, but also young families starting out, as well as displaced
23 senior renters – not privileged enough to own their own home. Specifically, the unlawful Redlining

24 ¹⁸⁹ Dillon, *Coastal Cities Give In To Growth. Southern California Favors Less Housing in Inland*
25 *Empire*, Los Angeles Times (Nov. 7, 2019), [https://www.latimes.com/california/story/2019-11-](https://www.latimes.com/california/story/2019-11-07/housing-building-density-zoning-coastal-inland-empire-southern-california-scag)
26 [07/housing-building-density-zoning-coastal-inland-empire-southern-california-scag](https://www.latimes.com/california/story/2019-11-07/housing-building-density-zoning-coastal-inland-empire-southern-california-scag) (SCAG elects
27 to require 1 million of 1.34 million new homes required by RHNA allocation to be accommodated
28 in Los Angeles and Orange counties).

1 Revisions include or result in:

2 235. The requirement that VMT - irrespective of vehicle emissions, including zero
3 emissions - be treated as a presumptively significant CEQA impact requiring all feasible mitigation
4 except within the small fraction (three percent) of the SCAG region located within one-half mile of
5 a metro station or frequent bus stops, as provided in Section 15064.3 and in the illegal Underground
6 VMT Regulation;

7 236. The requirement that roadway improvements in the state that reduce
8 congestion and increase capacity be treated by CEQA lead agencies as presumptively significant
9 CEQA impacts requiring all feasible mitigation (irrespective of any such improvement's ability to
10 improve transportation safety, reduce air pollution, and enhance mobility, and irrespective of the
11 improvement's ability to reduce adverse health, family welfare, and economic impacts), thereby
12 intentionally promoting and worsening traffic gridlock, as provided in Section 15064.3 and in the
13 illegal Underground VMT Regulation;

14 237. The incorporation of per-capita VMT reduction levels that have been
15 identified by state regulators as a potential component for achieving unlegislated and unadopted
16 state GHG reduction requirements, including a "80 percent GHG reduction below 1990 levels"
17 target for 2050 which the Legislature has specifically declined to enact, as CEQA significance
18 thresholds;

19 238. The Respondents' willful and illegal failure to provide clear VMT impact
20 thresholds in the CEQA Guidelines, instead providing deliberately vague, indeterminate and
21 contradictory language in the relevant portions of Section 15064.3 and in the illegal Underground
22 VMT Regulation;

23 239. The Respondents' willful and illegal failure to conform the CEQA
24 Guidelines with GHG impact analysis approaches specifically approved by the California courts,
25 including considering compliance with the state's cap-and-trade program as sufficient mitigation for
26 a project's potential construction and operational period fossil fuel use impacts, and acknowledging

1 that because the vast majority of the global GHG emissions sources that affect the global climate
2 are outside of any lead agency’s jurisdiction and control, a project’s cumulative contribution to
3 global GHG impacts cannot be determined to be less than significant in the relevant portions of
4 Section 15064.4 and the illegal Underground GHG Regulation;¹⁹⁰

5 240. The Respondents’ willful and illegal failure to provide clear GHG impact
6 thresholds, instead providing deliberately vague, indeterminate and contradictory language in
7 Section 15064.4 and the illegal Underground GHG Regulation, such as (i) the absurd and
8 deliberately unworkable notion that each lead agency, no matter how small and lacking in technical
9 resources, should identify and provide substantial evidence in support of its own GHG impact
10 threshold that could vary on a “case by case” basis and (ii) failing to provide the legally required
11 specificity to lead agencies for what constitutes a significant adverse impact to the environment, and
12 instead unlawfully imposing this obligation on lead agencies under Section 15064, which newly
13 requires lead agencies to explain the adequacy of each threshold used for each project; and

14 241. The Respondents’ willful and illegal imposition of ad-hoc revisions to CEQA
15 Guidelines Appendix G that lack any rational basis and have a clear discriminatory disparate
16 impact, such as permitting smaller, generally wealthier and less diverse communities to review and
17 potentially block housing and other project by applying far more stringent aesthetic impact
18 thresholds than are applicable in larger, poorer and more diverse communities, and declining to
19 integrate legally mandated water quality, air quality, health and safety protections, and other
20 environmental and public health compliance mandates into Appendix G.

21 242. The Respondents’ willful and illegal expansion of the Redlining Revisions
22 beyond the scope and effect of applicable legislation and judicial decisions is based on an
23 intentional reliance on false and misleading information concerning the level of VMT in the U.S.
24 and California, and the effectiveness of the VMT reduction measures cited by the Respondents.

25 _____
26 ¹⁹⁰ See, e.g., *Assoc. of Irrigated Residents v. Kern County Board of Supervisors* (2017) 17
27 Cal.App.5th 708.

1 Other critically important information, including the amount of GHG emissions that the
2 Respondents estimate will be reduced by constraining state housing and mobility in violation of
3 civil rights and housing laws, as well as impacts to housing and mobility costs, has been
4 deliberately and illegally ignored by Respondents.

5 243. There is no substantial evidence that the Redlining Revisions are required to
6 achieve any of California’s legislated climate change requirements. There is substantial evidence
7 that the enhanced legal and CEQA compliance risks created by the Redlining Revisions will
8 increase the already outsized role CEQA compliance and litigation costs play in preventing the
9 construction of sufficient housing in the form and at prices that meet the needs of the state’s
10 aspiring minority, working, and middle class populations.

11 244. There is no substantial evidence that the Respondents’ new housing and
12 mobility constraints will meaningfully reduce global GHG emissions, even if implemented as the
13 Respondents’ desire, and considerable evidence that they will instead continue to shift low-emission
14 California households and economic activity to higher per capita GHG emission locations including
15 the top three destinations for departing Californians (Texas, Nevada and Arizona).

16 245. The housing and mobility constraints that will be generated by the Redlining
17 Revisions will unambiguously and disproportionately burden and cause disparate impacts to the
18 state’s aspiring minority population, which is younger, growing much more rapidly, and has far
19 more significant need for new housing and automotive mobility than the state’s older, declining,
20 and largely white population.

21 246. Constructing new, dense urban housing, as contemplated by the Redlining
22 Revisions, will displace existing largely minority populations and replace them with extremely
23 high-cost multifamily units that most minority, working and middle class Californians will be
24 unable to purchase or rent. Lower cost and more suitable housing, such as small “starter homes”
25 like duplexes and small single family homes for households with children, will require more costly
26 CEQA mitigation and be easier to sue and block in a CEQA lawsuit.

1 247. The supply of such housing will continue to fall, and prices will increase.
2 Minority, working and middle class Californians will be forced to live even farther from Coastal
3 Job Centers, and become more reliant on automotive transportation, but roadway congestion and
4 mobility costs will greatly increase. There are several alternative measures for achieving
5 comparable or greater GHG emission reductions than could be generated by the Redlining
6 Revisions without disproportionately burdening and causing disparate impacts to the state’s aspiring
7 minority population.

8 **(1) The Redlining Revisions were Illegally Adopted on the Basis of False,
9 Misleading and Deliberately Withheld Information.**

10 248. The Redlining Revisions embody the ideological opposition of state
11 environmental regulators and their close environmental advocacy group allies to traditional
12 homeownership opportunities, which they deride as sprawl (notwithstanding the fact that only about
13 five percent of California is in an urbanized area, as shown in Table 10), and to individual mobility
14 and automobile use, which they deem an unnecessary luxury that should be abandoned for public
15 transit.

16 249. The Redlining Revisions are intended to restrict future housing to the tiny
17 sliver of California that can meet the TPA criteria while forcing state residents out of their cars, and
18 onto buses or commuter rail. In this view, homeownership must be sacrificed for a lifetime of
19 renting small apartments in dense, multifamily housing.

20 250. The California legislature never authorized the Respondents to use the CEQA
21 Guidelines for this purpose. Nor have the state’s residents endorsed this agenda. As a recent
22 summary of the state’s VMT and dense housing policies concluded, “dense residential uses,
23 including affordable housing, in compact mixed-use centers associated with access to public
24 transportation remains a future still under consideration by Californians,” that has thus far resisted
25 efforts by state environmental regulators and environmental advocacy groups to “change the minds
26

1 and preferences of Californians about where they want to live and how they want to travel.”¹⁹¹

2 251. Although cloaked in the language of GHG reduction measures, the Redlining
3 Revisions are not necessary to meet any legislatively approved California climate change
4 requirements. Both the VMT and Underground GHG Regulations discuss potential VMT reductions
5 in the range of 14 percent, 15 percent and 16.8 percent solely in the context of meeting a
6 hypothetical and unlegislated objective for 2050.

7 252. The Underground VMT Regulation in fact concedes that California’s
8 legislated GHG reduction goals can be achieved without VMT reductions, but speculates that
9 “without early VMT mitigation, the state may follow a path that meets GHG targets in the early
10 years, but finds itself poorly positioned to meet more stringent targets later” (emphasis added).¹⁹²

11 253. The state may also follow a path in which legislatively mandated targets are
12 met without destroying housing and mobility for the state’s aspiring minority communities and
13 meeting any subsequent requirements elected legislators may choose to enact into law with new and
14 more effective technologies than currently exist. Respondents’ belief that they must use the CEQA
15 Guidelines to proactively impose their restrictive dense housing and transit mobility agenda to meet
16 potential future objectives that they think “may” be constrained by behavior they find distasteful,
17 such as home ownership and driving, is nowhere supported by California law.

18 254. It is clear that the Redlining Revisions are intended to constrain housing and
19 mobility irrespective of whether GHG emissions – the focus of applicable legislation – are reduced.
20 Section 15064.3 requires that any form of VMT, including from zero-emission electric cars
21 powered by zero-emission solar energy, be treated as a presumptive significant project impact that
22 must be mitigated to the full extent feasible under CEQA. The only exceptions to this presumption
23 are for land development within “one-half mile of either an existing major transit stop or a stop

24 _____
25 ¹⁹¹ Glancy, Vehicle Miles Traveled and Sustainable Communities, 46 McGeorge L. Rev. 23, 65
(2014), https://www.mcgeorge.edu/Documents/Publications/4_Glancy46_1.pdf.

26 ¹⁹² OPR, Technical Advisory on Evaluating Transportation Impacts In CEQA (Dec. 2018), at 2,
27 http://www.opr.ca.gov/docs/20190122-743_Technical_Advisory.pdf.

1 along an existing high quality transit corridor” (e.g., a TPA) or that “decrease vehicle miles traveled
2 in the project area compared to existing conditions.”

3 255. Hundreds of thousands of housing units and commercial development can be
4 crammed into a TPA but are nevertheless treated as having no VMT impacts whatsoever under the
5 Redlining Revisions. Meanwhile, even a single housing unit located just outside a one-half mile
6 TPA boundary – unless it somehow reduces VMT in an unspecified “project area” – must be
7 identified as a significant CEQA impact and mitigated by all feasible measures. Further,
8 notwithstanding the purported climate change/GHG reduction imperative of requiring VMT
9 reductions through CEQA, in opposing a San Diego General Plan that allowed GHG emissions
10 caused by VMT to be mitigated by verifiable GHG reductions, the California Attorney General’s
11 office has explicitly opined that VMT impacts cannot be sufficiently mitigated with GHG
12 reductions.

13 256. Thus, rather than focus on GHG emission reductions, the Redlining
14 Revisions mandate VMT cutbacks even if the challenged VMT have no effect on GHG emissions.
15 Respondents’ non-GHG rationale for requiring VMT reductions are either unlawful, or absurd. For
16 example, Respondents’ laud the “wellness” benefits of “active transportation” modes such as biking
17 or walking instead of driving, but CEQA does not authorize Respondents to promote “wellness.”
18 Respondents also attempt to coyly bypass the legal scope of CEQA altogether in referring to VMT
19 as a “transportation” impact independent of any impact to the physical environment – which is the
20 sole purview of CEQA. In the final stage of rulemaking, Respondents grasped at straws – or
21 raindrops – by claiming that VMT also impacted stormwater quality from tire use on roadways,
22 ignoring entirely the effectiveness of stormwater quality controls required by other environmental
23 laws for state highways¹⁹³ as well as local roadways.¹⁹⁴

24 ¹⁹³ Caltrans, Stormwater Management Program, [https://dot.ca.gov/programs/environmental-](https://dot.ca.gov/programs/environmental-analysis/stormwater-management-program)
25 [analysis/stormwater-management-program](https://dot.ca.gov/programs/environmental-analysis/stormwater-management-program) (last visited Nov. 7, 2019).

26 ¹⁹⁴ California State Water Resources Control Board, Municipal Stormwater Program,
27 https://www.waterboards.ca.gov/water_issues/programs/stormwater/municipal.html (last visited
28 Nov. 7, 2019).

1 257. Notwithstanding years of legislation and the passage of new roadway
2 improvement taxes by the state’s electorate as recently as November 2018, the Redlining Revisions
3 require that lead agencies consider any future roadway capacity enhancement including “adding
4 roadway capacity in congested areas, or adding roadway capacity to areas where congestion is
5 expected in the future” as a significant impact that requires the implementation of all feasible
6 mitigation. In contrast, “[r]educing roadway capacity (for example, by removing or repurposing
7 motor vehicle travel lanes) will generally reduce VMT and therefore is presumed to cause a less-
8 than-significant impact on transportation.”

9 258. While the Legislature authorized CEQA Guidelines amendments to
10 streamline TPA development by eliminating congestion as a potential CEQA impact issue in these
11 areas, the Redlining Revisions flatly state that “automobile congestion or delay does not constitute a
12 significant environmental impact” anywhere in California. The Redlining Revisions even prohibit
13 considering public safety needs as a basis for increasing road capacity.¹⁹⁵

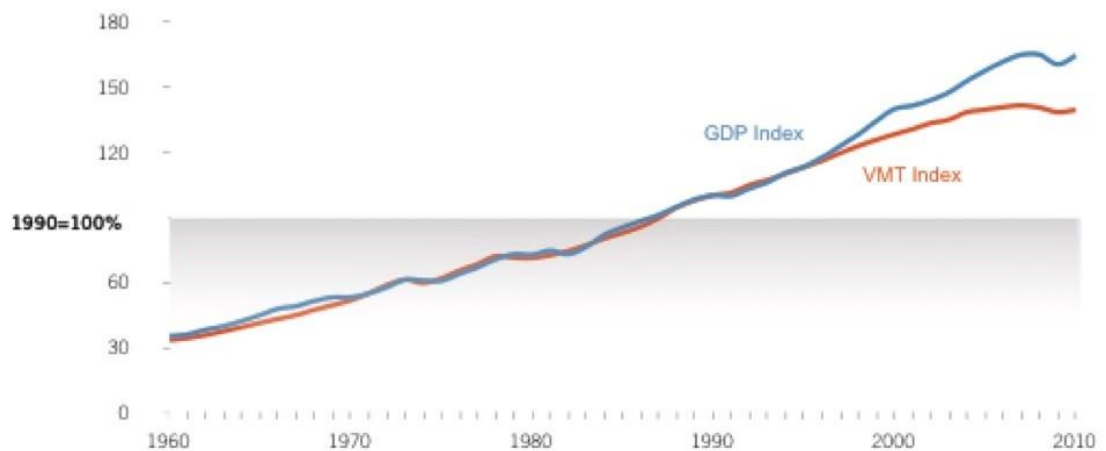
14 259. Contrary to legislative intent, the Respondents crafted the Redlining
15 Revisions to make the state’s roadways and driving, the overwhelmingly dominant form of mobility
16 for all Californians, more congested, subject to greater delay, less safety, and more dysfunction.
17 This unlawful objective will cause disparate harm to minority workers already forced to drive
18 longer distances by high housing prices and the housing supply shortfall, and specifically will cause
19 adverse health impacts to drivers forced to endure longer commutes, adverse family welfare
20 impacts to drivers who are absent or exhausted when kids need homework assistance or emotional
21 support, and adverse economic impacts to construction workers and others who charge by the hour
22 and can safely work fewer hours because of three plus hour “supercommutes.”

23 260. The Underground VMT Regulation suggests that actively constraining
24 roadway improvements and the freedom to drive for a population that uses single occupancy

25 _____
26 ¹⁹⁵ OPR, Technical Advisory on Evaluating Transportation Impacts In CEQA (Dec. 2018), at 23-24,
27 http://www.opr.ca.gov/docs/20190122-743_Technical_Advisory.pdf.

1 vehicles for 80 percent of all commutes to work represents a reasonable strategy because “data from
2 the past two decades shows that economic growth is possible without a concomitant increase in
3 VMT.” In support of this claim, the Underground VMT Regulation relies on an index (with 1990
4 equal to 100) of U.S. gross domestic product (“GDP”) plotted against national VMT changes from
5 1960 to 2010. As shown in Figure 11, particularly during the time of the Great Recession, the VMT
6 growth index is lower than the nation’s GDP index— which Respondents cite in support of their
7 claim that VMT can drop even as the GDP index increases. As explained below, the Respondents’
8 purported rationale is intentionally false and misleading, and evidence of Respondents’ intent to
9 discriminate against California’s minority workers and families.

10 **Figure 11: Chart of National VMT and GDP Index**
11 **in 2018 Underground VMT Regulation**¹⁹⁶



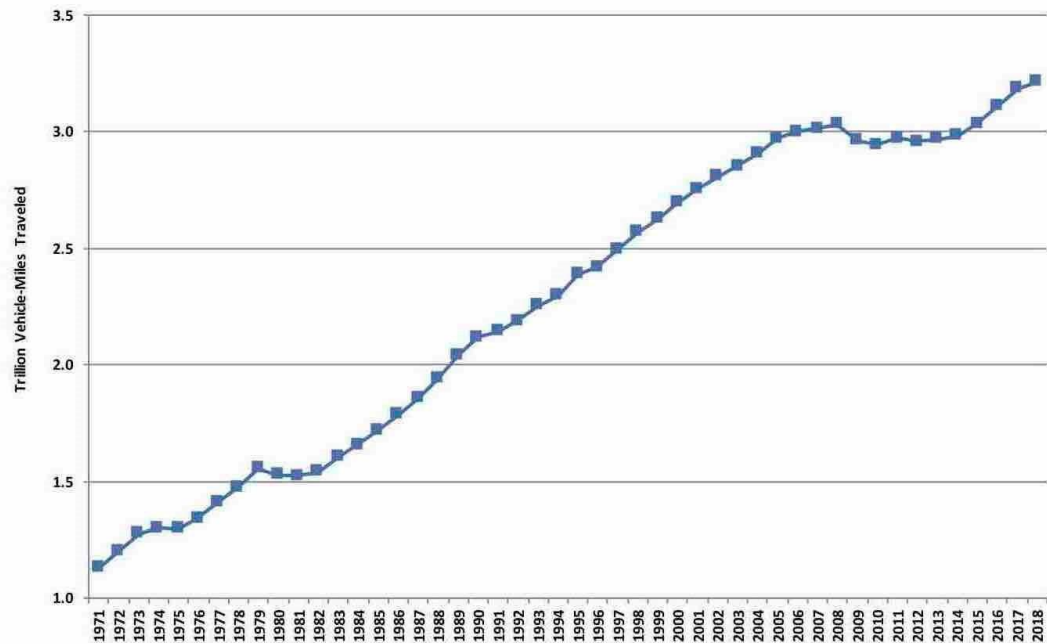
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20 261. The figure used in the Underground VMT Regulation was copied from a
21 2011 study by an environmental advocacy group, the Center for Clean Air Policy, widely
22 recognized for its self-described “smart growth” advocacy, most notably advocacy for dense urban
23 housing and public transit instead of automobile use.¹⁹⁷ The study was nearly a decade old at the

24
25 ¹⁹⁶ *Id.* at 3-4.

26 ¹⁹⁷ Kooshian and Winkelman, *Growing Wealthier: Smart Growth, Climate Change and Prosperity*,
27 Center for Clear Air Policy (Jan. 2011), http://ccap.org/assets/Growing-Wealthier-Steve-Winkelman-Chuck-Kooshian_CCAP-January-2011.pdf.

1 time the Redlining Revisions were finalized in 2018, and shows “facts” only as of 2010. The actual
2 fact, which was brought to the Respondents’ attention by numerous commenters, was that VMT
3 growth increased after 2010 - the years omitted from the analysis. As shown in Figure 12, from
4 2013 to 2018 U.S. VMT rose at approximately the same rate as before the recession. In 2016 and
5 2017, national VMT rose more rapidly than GDP. Although the Underground VMT Regulation was
6 published in December 2018, and national VMT data was readily available from multiple sources,
7 the Respondents did not update or acknowledge the dramatic increases in VMT that occurred after
8 2010— an intentional, and intentionally misleading, omission.

9 **Figure 12: US Total VMT, 1971-2018**¹⁹⁸



21 262. Respondents also ignored readily available data showing that, since 2011, as
22 the state recovered from the recession, VMT also steadily increased within California. As noted by
23 an influential climate change advocacy group, in 2011, California VMT was nearly five percent
24 higher than in 2000, and rose to 11.2 percent above 2000 levels by 2017. From 2008 to 2017, state

25
26 ¹⁹⁸ U.S. Department of Energy, Alternative Fuels Data Center, Annual Vehicle Miles Traveled in
the United States, <https://afdc.energy.gov/data/10315> (last visited Oct. 2019).

1 VMT increased by over five percent.¹⁹⁹

2 263. The Redlining Revisions were based on false and misleading conclusions
3 using data that was years out of date at the time they were adopted. Contrary to the Respondents'
4 assertions, and consistent with the historical record, VMT and GDP both increased in California
5 and in the nation as a whole following the disruptions caused by the Great Recession.

6 264. The Respondents further provided additional false and misleading
7 information suggesting that VMT reductions could be feasibly achieved by individual housing
8 projects, referring to a 2010 California Air Pollution Control Officers Association ("CAPCOA")
9 publication concerning the quantification of potential GHG reduction mitigation measures under
10 CEQA (the "CAPCOA Manual").²⁰⁰

11 265. The CAPCOA Manual was not prepared to support, and expressly states that
12 it should not be used for, any regulatory purpose. The CAPCOA Manual also provides little to no
13 support for the proposition that state regulators have identified effective and feasible VMT
14 reduction measures of any kind. One potential measure, adding bike lanes, was estimated to reduce
15 vehicular GHG emissions and VMT by a nearly unmeasurable 0.05 to 0.14 percent. The CAPCOA
16 Manual also suggested that major, unfunded, and as yet unapproved regionalized transit system
17 improvements might result in more substantial VMT reductions.²⁰¹

18 266. In a 2018 report to the Legislature, the LAO reviewed empirical studies of
19 VMT reduction measures as part of an assessment of California's climate policies. The studies
20 reviewed by the LAO indicated that commonly proposed VMT reduction measures had, at best,

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22 ¹⁹⁹ Next 10, California's Green Innovation Index 2019 (Oct. 2019), Figure 29 at 31,
[https://www.next10.org/sites/default/files/2019-10/2019-california-green-innovation-index-
final.pdf](https://www.next10.org/sites/default/files/2019-10/2019-california-green-innovation-index-final.pdf).

23 ²⁰⁰ NRA, Final Statement of Reasons for Regulatory Action, Amendments to the State CEQA
24 Guidelines, OAL Notice File No. Z-2018-0116-12, at 79-80 (Nov. 2018),
http://resources.ca.gov/ceqa/docs/2018_CEQA_Final_Statement_of%20Reasons_111218.pdf;
25 CAPCOA, Quantifying Greenhouse Gas Mitigation Measures (Aug. 2010),
[http://www.capcoa.org/wp-content/uploads/2010/11/CAPCOA-Quantification-Report-9-14-
Final.pdf](http://www.capcoa.org/wp-content/uploads/2010/11/CAPCOA-Quantification-Report-9-14-Final.pdf).

26 ²⁰¹ CAPCOA, *supra*, note 200.

1 variable and in some cases “nonexistent” effects on VMT. Increasing residential density,
2 employment density, and land use mix by one percent was found to decrease VMT “up to 0.2
3 percent,” a comparatively minor reduction. No evidence was found that increased transit service or
4 bicycling infrastructure lowered VMT.²⁰²

5 267. The LAO report also observed that there was no available information about
6 the effectiveness of transportation improvements funded by CARB through the cap-and trade
7 program (pursuant to which consumers pay higher fuel costs to fund GHG reduction efforts) at
8 either reducing VMT or providing meaningful transportation improvements. The Co-Chair and
9 some members of the Joint Legislative Audit Committee (“Committee”) responded by calling for a
10 non-partisan audit by the State Auditor of CARB’s cap-and-trade transportation expenditures which
11 was fiercely opposed by CARB and others.²⁰³ CARB did agree to provide further information to the
12 Committee, but CARB’s response failed to quantify either the GHG reductions or transportation
13 improvements of its cap-and-trade expenditures and thus was not responsive to the LAO’s
14 findings.²⁰⁴

15 268. Further, the Redlining Revisions do not reflect the fact that, contrary to the
16 Respondents’ aversion to previous development “sprawl,” California’s historic land use patterns
17 have in reality produced the most densely populated state in the country. As noted in a 2011 by the
18 nonpartisan Public Policy Institute of California, “Despite popular conceptions that California –
19 particularly Southern California – is the epitome of sprawl development, residential density in
20 California is well above the national average. ... Population density in California in 2000 was 49
21 percent higher than the national average” and increased from 1990 to 2000 while national

22 ²⁰² Taylor, *supra* note 35, at 38.

23 ²⁰³ InsideEPA.com, *In Rare Move, Lawmakers Reject Audit Of CARB Transportation GHG*
24 *Policies*, (Mar. 7, 2019), <https://insideepa.com/daily-news/rare-move-lawmakers-reject-audit-carb-transportation-ghg-policies>.

25 ²⁰⁴ Letter from Richard Corey, Executive Director, CARB to The Honorable Rudy Salas, Chair of
26 Joint Legislative Audit Committee, California State Assembly, dated April 23, 2019,
https://legaudit.assembly.ca.gov/sites/legaudit.assembly.ca.gov/files/CARB%20Response%20Letter_1.pdf.

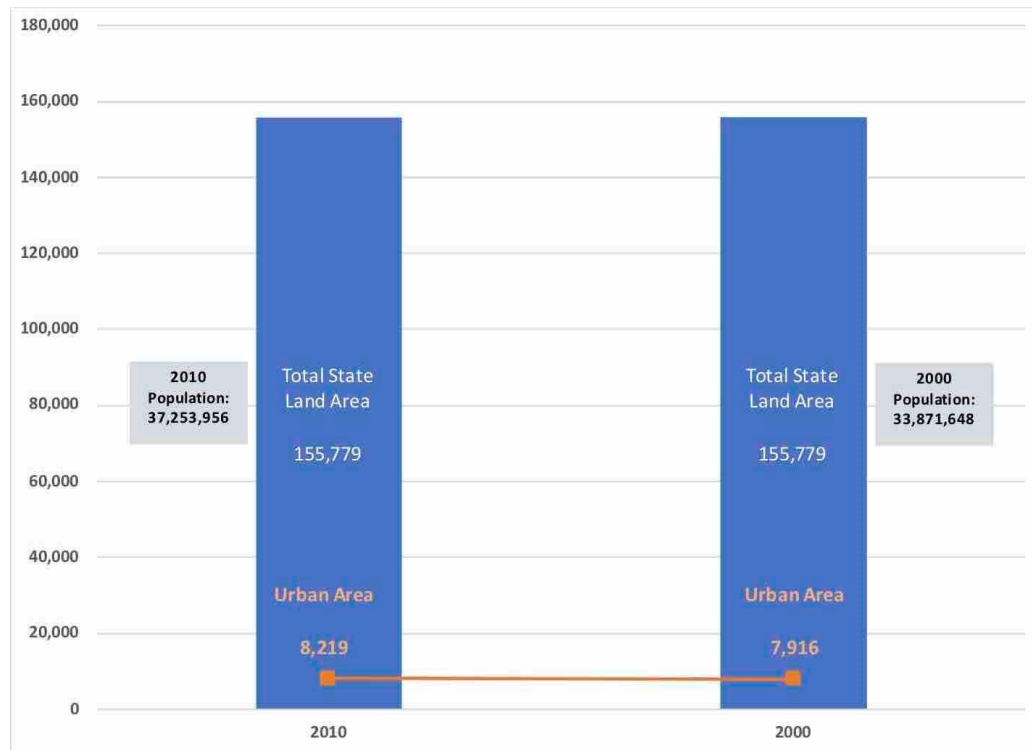
1 residential density did not change.²⁰⁵

2 269. From 2000 to 2010, the year of the last full national census, California's
3 population increased by 3.4 million. All of this net growth occurred in urban areas as defined by the
4 U.S. Census Bureau while the population in the state's rural lands remained virtually unchanged
5 (approximately 1.88 million, or 5 percent of the total 2010 population). In 2010, the state's average
6 urban area density was 4,304 residents per square mile, the highest in the nation, denser than New
7 York (4,161 people per square mile) and nearly double the U.S. average urban area density of 2,343
8 people per square mile.²⁰⁶ As shown in Figure 13, the state's total urban area increased by about
9 303 square miles from 2000 to 2010, approximately 0.195 percent of the state's total land area, and
10 an average density of 11,155 new residents per square mile of new urban land created from 2000 to
11 2010.

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22 ²⁰⁵ Kolko, Making the Most of Transit Density, Employment Growth, and Ridership around New
23 Stations, Public Policy Institute of California (Feb. 2011), at 10,
https://www.ppic.org/content/pubs/report/R_211JKR.pdf.

24 ²⁰⁶ U.S. Census Bureau, Population, Housing Units, Area, and Density: 2010 – United States –
25 States and Puerto Rico and Population, Housing Units, Area, and Density: 2000 – United States –
26 States and Puerto Rico, Table GCT-PH1,
<https://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t> (search “GCTPH1”
27 in topic or table name search field and select 2010 and 2000 tables)(last visited Nov. 11, 2019);
28 Cox, Built-Up Urban Areas in the United States & DC Totals: 2010, Demographia,
<http://demographia.com/db-stateuza2010.pdf> (last visited Nov. 11, 2019).

1 **Figure 13: California Land Area (excluded water area), and Urban Area (square miles)**
2 **and total population, 2000 to 2010²⁰⁷**



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15 270. The Redlining Revisions misleadingly suggest that the prior pattern of
16 California development is sprawling, when in fact the state’s urban areas have the highest average
17 population density in the country. From 2000 to 2010, the most recent decennial census data
18 available for California, the state population rose by 10 percent, but the total state urban area only
19 increased by 3.8 percent due to the far greater average density of new development. Approximately
20 five percent of the state was urbanized in 2000, and as shown in Figure 13 almost exactly the same
21 percentage of state land was urbanized in 2010 notwithstanding a full decade of growth and a
22 population increase of 3.4 million new residents.

23 271. The fact that California urban areas have very high population densities has
24 been widely acknowledged by state transportation and housing planners. Figure 14 is a list of
25 California urban areas prepared by the Gateway Cities Council of Governments (“COG”) in

26 ²⁰⁷ *Id.* All land areas are net of water area and total state land area is as reported in the 2010 Census.

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Southern California based on the 2010 decennial Census. Figure 14 shows that the density of California’s major urban areas, including in southern California and San Francisco, is significantly higher than the statewide average for all urban areas. High density is not confined to California’s largest cities: in fact, numerous smaller cities in the Gateway Cities COG have far higher densities than the statewide urban area average of 4,304 people per square mile and the national average of 2,343 people per square mile.

Figure 14: California Urban Population Density in 2010²⁰⁸

Gateway Cities Ranked by Population Density		
City Name	Population Density per Square Mile ²	Footnotes:
		(1) Cities include for comparison purposes (Population from 2010 Census)
		(2) Values obtained from EnergyAtlas (Population from 2010 Census) - EnergyAtlas provides disaggregated energy data developed by the UCLA California Center for Sustainable Communities (CCSC) and funded by the SoCalREN and the County of Los Angeles' Office of Sustainability.
New York ¹	27,016	
Maywood	23,257	
Huntington Park	19,820	
Cudahy	19,371	
San Francisco ¹	17,116	
Bell Gardens	17,066	
Hawaiian Gardens	15,556	
Lynwood	14,599	
Bell	13,414	
South Gate	12,839	
Bellflower	12,393	
Paramount	11,223	
Norwalk	10,896	
Artesia	10,190	
Compton	9,604	
Long Beach	8,995	
Downey	8,894	
Lakewood	8,325	
Los Angeles ¹	8,008	
Montebello	7,454	
Los Angeles County	7,372	
Pico Rivera	7,211	
La Mirada	6,183	
Whittier	5,866	
Cerritos	5,540	
Signal Hill	5,039	
Santa Fe Springs	2,268	
Commerce	2,008	
Avalon	1,237	
Industry	1,178	
Vernon	22	

272. The 2010 decennial U.S. Census tabulated the population densities of U.S. communities with total populations greater than 50,000. The data show that California communities

²⁰⁸ Gateway Cities Council of Governments Offices, “Gateway Cities Ranked by Population Density,” *Meeting of the Gateway Cities Planning Directors* (Mar. 13, 2019), at 62, http://www.gatewaycog.org/media/userfiles/subsite_9/files/rl/Planning/Agenda%2C%20March%2013%2C%202019%20Planning%20Directors%20Committee.pdf.

1 such as Huntington Park, San Francisco, East Los Angeles CDP, Lynwood, Hawthorne city, Daly
2 City and South Gate are more densely populated than Boston; Bellflower, Inglewood, Santa Ana,
3 and El Monte are more densely populated than Chicago or Philadelphia; Los Angeles, Long Beach,
4 Santa Monica, San Mateo and Berkeley are more densely populated than Baltimore, Seattle or
5 Minneapolis; and the densities of Pasadena, San Jose, Orange, Anaheim, Burbank, Oakland,
6 Alameda, Tustin and Santa Clara are higher than Cleveland, St. Louis or Detroit. Most remarkably,
7 70 California communities with 50,000 or more residents, including all of the communities listed
8 above and Fresno, Stockton and Santa Barbara, are more densely populated than Portland, a city
9 considered the epitome of “smart growth” and enlightened land planning.²⁰⁹

10 273. The Respondents have illegally concealed and refused to disclose critical
11 information throughout the multi-year public review process for the 2018 CEQA Guidelines
12 amendments, and up to the present day. Remarkably, despite years of requests by multiple parties,
13 including the Petitioners, the Respondents have refused to provide their estimates of the amount of
14 GHG emission reductions that will be achieved by the VMT reductions expected to be achieved
15 from the absence of new CEQA VMT mitigation costs on small rental units in high density
16 apartment buildings in existing urbanized TPAs.

17 274. The Respondents have also refused to disclose any information concerning
18 the impacts these measures will have on the cost and availability of new housing and on statewide
19 mobility costs, or the disparate impacts and harms that these housing and mobility costs will have
20 on California’s minority families.

21 275. The legislative authorization for amending the CEQA Guidelines to address
22 VMT and GHG emissions is focused on reducing net global emissions so that by the end of the
23 century the potential global average temperature increase caused by anthropogenic GHG emissions

24 ²⁰⁹ U.S. Census Bureau, Population, Housing Units, Area, and Density: 2010 - United States --
25 Places and (in selected states) County Subdivisions with 50,000 or More Population; and for Puerto
26 Rico, Table GCT-PH1,
<https://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t> (search “GCTPH1”
in topic or table name search field and select 2010 table)(last visited Nov. 2019).

1 will be minimized. The Respondents continue to willfully conceal basic information about costs, or
2 effectiveness, or equity, or civil rights - and have provided no evidence that the racially disparate
3 impacts to housing and mobility caused by the Redlining Revisions will meaningfully affect global
4 GHG emissions, or have any impact on potential end of the century global average temperature
5 increases caused by anthropogenic GHG emissions.

6 276. Respondents' omission is particularly heinous given the myriad other
7 strategies for reducing far more harmful forms of GHG, at far lower costs to California taxpayers let
8 alone housing crisis victims struggled to buy or rent a home. For example, replacing cook stoves in
9 Africa and Asia that burn dung or wood and create "black carbon" – a particularly potent form of
10 GHG that is also produced from forests fires – with cleaner cooking fuels was accepted as an
11 appropriate GHG reduction CEQA compliance pathway by CARB and the Attorney General for
12 one large master planned community.

13 277. This cook stove conversion has also been subsequently lauded by Ken Alex,
14 the Director of Respondent OPR at the time the Redlining Revisions were adopted, as an extremely
15 low cost, highly effective GHG reduction strategy. As recently noted by Mr. Alex, now at UC
16 Berkeley:

17 Black carbon is 500 to 1500 times as potent a global warmer as CO₂.
18 [B]y far the largest source of black carbon emissions – 58% - is from open
19 flame heating and cooking by an estimated 3 billion people worldwide,
20 primarily in developing jurisdictions.

21 [R]educing the black carbon emissions from open flame cooking and heating is
22 likely the cheapest and potentially quickest path to significant GHG reduction,
23 with the additional benefit that, because black carbon's short life in the
24 atmosphere, the reduction will immediately reduce climate forcing (and, of
25 course, health impacts of indoor burning).

26 The impact would be dramatic, and would give us a bit more time to make
27 progress with other GHG emissions.²¹⁰

28 278. Throughout his tenure at OPR, however, including in finalizing the Redlining

²¹⁰ Alex, *Black Carbon, 3 Billion Strong*, Legal Planet, (Sept. 16, 2019), <https://legal-planet.org/2019/09/16/black-carbon-3-billion-strong/>.

1 Revisions, Mr. Alex remained adamant that VMT reductions – regardless of whether or to what
2 extent such reductions actually reduced GHG on any meaningful global scale or were required to
3 comply with any adopted California GHG reduction mandate – would be required by regulatory fiat
4 through the CEQA Guidelines, regardless of whether or to what extent VMT reductions resulted in
5 GHG reductions.

6 279. The Respondents have further illegally refused to acknowledge or disclose
7 material information and conclusions provided by representatives of Portland State University
8 (“PSU”), hired by Respondent OPR in or before 2018 to conduct workshops for state agencies and
9 metropolitan transportations organizations. Portland’s reputed success in promoting “smart growth”
10 strategies to increase housing and transit utilization, notwithstanding the fact that Portland is
11 actually less dense than many California cities as noted above, was emphasized by Respondents in
12 retaining the PSU representatives to help provide substantial evidence of the feasibility and
13 effectiveness of VMT reduction measures for use in California.

14 280. During public workshops, the PSU experts refused to specifically endorse the
15 effectiveness of any of the potential VMT reduction measures that could be implemented by a
16 particular housing project as set forth in the CAPCOA Manual, such as providing secure bike
17 parking with nearby showers for bike riders or separately pricing automobile parking for rental
18 households. One of the PSU representatives apparently conceded that no form of housing on a
19 project level could significantly reduce VMT by incorporating any such measures because VMT is
20 generated by regional transportation infrastructure and the regional employment and housing base.
21 There was no published final report or work product produced by PSU representatives.

22 281. The reported reluctance of the PSU representatives to opine on the
23 effectiveness of any of the VMT reduction measures proposed by the Respondents or suggested in
24 the Redlining Revisions is unsurprising given that substantial evidence exists that such measures
25 have not in fact significantly reduced automotive use even in Portland. In 2014, the academic
26 director of the Center for Real Estate at PSU published a report criticizing the Portland area’s 2035

1 growth plan for assuming “large swings in transportation mode share” towards public transit would
2 occur in the region that had “no basis in fact” notwithstanding widely-publicized smart growth
3 policies and billions of dollars of urban transit investments.

4 282. From 1990 to 2009, census data show that “the mode choice of commuters in
5 the Portland metropolitan area has been remarkably stable” with “roughly 80 percent” of Portland
6 metro area workers continuing to commute by single occupancy or multiple occupancy
7 automobiles, and about six percent by public transit.²¹¹ U.S. Census data for 2017 confirms that
8 automobile use continues to be the dominant commuting mode in the Portland metropolitan area,
9 with 79.3 percent of all commuters using single or multiple occupancy vehicles, and 6.3 percent
10 using public transit.²¹²

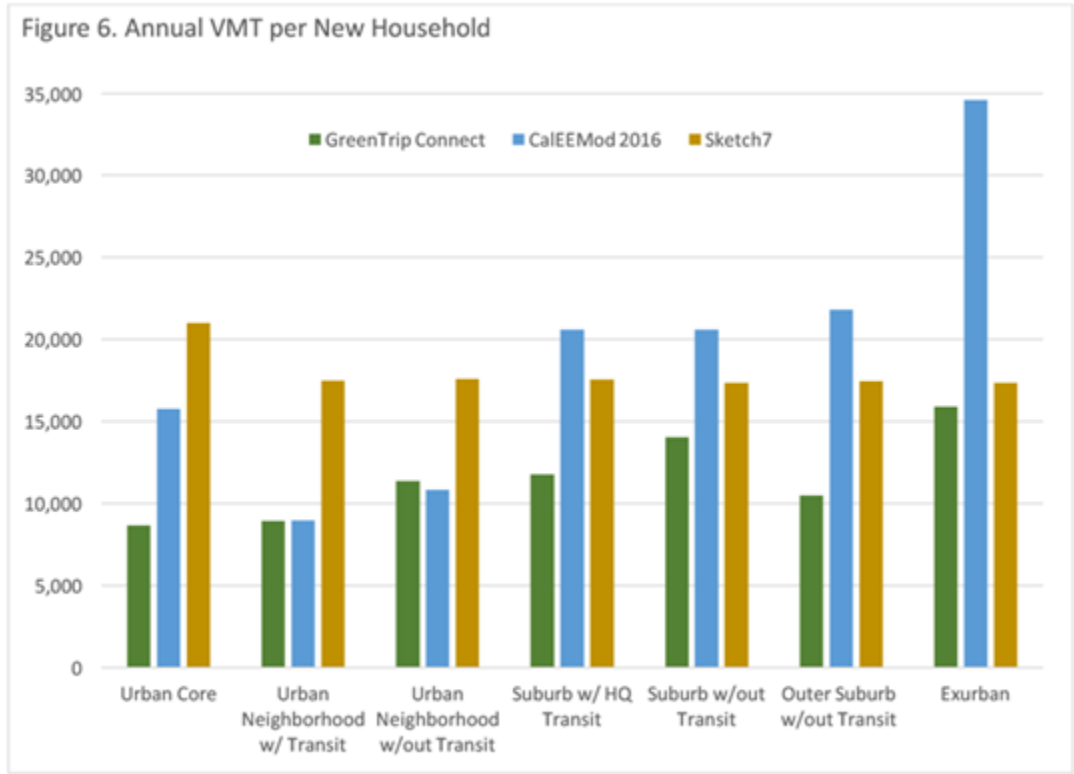
11 283. Similar results were reported by UC Davis Transportation Institute
12 researchers, who concluded both that there were no reliable or consistent methodologies for
13 measuring VMT, and that “the differences in output between [VMT model] methods is notable”, as
14 shown in the replicated Figure 6 from their report, below.²¹³

19 _____
20 ²¹¹ Mildner, Density at any Cost, Center for Real Estate Quarterly Report, vol. 8, no. 4. (Fall 2014),
21 at 14, <https://www.pdx.edu/realestate/sites/www.pdx.edu.realestate/files/01%20UGR%20-%20Mildner.pdf>.

22 ²¹² U.S. Census Bureau, 2017 American Community Survey (ACS) 1-Year Estimates, Means of
23 Transportation to Work by Selected Characteristics for the Portland-Vancouver-Hillsboro, OR-WA
24 Metro Area, Table S0802,
<https://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t> (search “GCTPH1”
in topic or table name search field and search “Portland-Vancouver-Hillsboro, OR-WA Metro
Area” in state, county or place search field and select 2017 table)(last visited Nov. 12, 2019).

25 ²¹³ Lee et al., Evaluation of Sketch-Level VMT Quantification Tools: A Strategic Growth Council
26 Grant Programs Evaluation Support Project, UC Davis Institute of Transportation Studies and
27 National Center for Sustainable Transportation (Aug. 2017), Figure 6 at 29,
<https://escholarship.org/content/qt08k3q8m5/qt08k3q8m5.pdf>.

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284. Most importantly, as noted by UC Davis:

The available VMT estimation methods have not been validated as to their accuracy, owing to a lack of data against which to validate them. Actual changes in VMT resulting from land use projects are best measured through before-and-after surveys of residents, employees, and/or customers, but such surveys are rarely done. Without such data, we cannot say which of these quantification methods is most accurate. **The lack of validation and uncertainties around accuracy may pose challenges for CEQA practitioners when analyzing VMT impacts and their significance.**

Even without validation, however, the existing VMT quantification tools are still useful. The internal consistency of each tool allows for insightful comparison between scenarios that differ with respect to project characteristics and/or location, **even if their ability to accurately forecast VMT or GHG emissions for a given land use project in a given situation is uncertain.** (Emphasis added.)²¹⁴

285. The UC Davis study was funded by the Strategic Growth Council, which was also led by Mr. Alex when he led OPR. Notwithstanding the “lack of validation and uncertainties around accuracy” and “uncertain” ability of VMT models to “accurately forecast” either VMT or

²¹⁴ *Id.* at 39.

1 GHGs, Respondents concluded with certainty in the required economic assessment of the Redlining
2 Revisions that the revisions would actually reduce CEQA compliance costs based on a single
3 consultant’s estimate that an [unreliable] VMT model would cost less to prepare than a traditional
4 traffic model that assessed congestion and not just miles traveled.

5 286. Respondents further failed to acknowledge any potential increased CEQA
6 VMT mitigation cost, let alone enhanced litigation risk from the “lack of validation” and
7 “uncertain” VMT assessment tools, to the housing projects that are actually subject to and required
8 to comply with CEQA. Respondents wanted to use CEQA to promote high density housing and
9 make driving more costly, without regard to compliance with housing, transportation, and civil
10 rights laws – or California rulemaking requirements.

11 287. The UC Davis researchers’ predictions about the challenges created by the
12 Redlining Revisions were accurate. There is in fact widespread confusion, even by expert CEQA
13 consultants and attorneys, as to how to address VMT and GHGs under the Redlining Revisions. As
14 explained in a comment letter to Respondent OPR by the state’s Transportation Corridor Agencies,
15 “[t]he ambiguous language of proposed section 15064.3 will only confound further the material
16 confusion and complexity of state law requirements applicable to [GHG] The Amendments
17 should not be adding to the complexity and confusion surrounding the ever-evolving standards
18 regarding GHG emissions. . . .”²¹⁵ Respondent OPR declined to make any changes based on these
19 and similar comments, and widespread confusion as to both GHGs and VMT remains persistent.²¹⁶

20 _____
21 ²¹⁵ NRA, Final Statement of Reasons for Regulatory Action Amendments to the State CEQA
Guidelines, OAL Notice File No. Z-2019-0116-12, Exhibit A, at 188.

22 ²¹⁶ *Id.* at 189. *See also* email correspondence among traffic experts, planners, environmental
23 consultants, lawyers, and representatives from state and local agencies, to plan educational
24 presentations for CEQA practitioners. As noted by one commenter: “The [Association of
25 Environmental Planners] Climate Change Committee has been endeavoring through numerous
26 white papers and conference presentations for about 10 years to promote best practices in this
27 [GHG/Climate Change and CEQA] arena. Despite that, the practice remains unsettled on this
matter, in particular because of aggressive plaintiffs using GHG as their latest legal cudgel, courts
that are sometimes on point and sometimes clueless on the technical matters, and the unprecedented
nature[] of the climate change challenge.” Email from Rich Walter to Art Coon et al, Re:
Recommendations: Topics for AEP Advanced CEQA Workshop (Sept. 27, 2019). A true and
correct copy of this email correspondence is included as Exhibit D. *See also* Owen, Private

1 288. Local jurisdictions, for example, have responded to the Underground VMT
2 Regulation’s invitation to devise their own VMT significance thresholds with a wide variety of
3 approaches, ranging from the recommended 15 percent, but only based on unique characteristics
4 and assumptions that vary even within cities, to those who have declared any VMT reduction by a
5 particular project to be infeasible, to those who have picked some other number – four percent, 10
6 percent - for a VMT reduction significance threshold without any explanation as to how any
7 particular threshold actually reduces GHG, or by how much, or otherwise avoids or lessens any
8 other physical impact to the environment.

9 289. Consultants and lawyers, paid by the hour to mull through options and
10 litigate such issues for a decade or more, benefit from this uncertainty and confusion. People who
11 need housing (disproportionately minorities), and agencies and other stakeholders attempting to
12 comply with housing, public health, transportation, and other legal mandates are harmed by the
13 CEQA miasma, instead of required regulatory clarity, created by the Redlining Revisions.

14 290. The use of false, misleading, concealed, and completely unreliable VMT and
15 GHG information undermines any rational basis for the unlawful Redlining Revisions, and provides
16 no excuse for violations of civil rights, housing, public health, and transportation laws.

17 **(2) There Is No Substantial Evidence that the Redlining Revisions, and**
18 **Increasing Housing and Mobility Burdens for the State’s Aspiring**
19 **Minority, Working and Middle Class Populations, Will Actually Reduce**
20 **Global Greenhouse Gas Emissions.**

21 291. As former Governor Brown, a committed climate activist, has repeatedly

22 Facilitators of Public Regulation, A Study of the Environmental Consulting Industry, Regulation
23 and Governance (2019), at 13 (“the story of CEQA and climate change illustrates how for-profit
24 consultants can help build a regulatory system that seeks to advance environmental protection”).
25 Note that the referenced CEQA climate change “regulatory system” referenced by Hastings Law
26 Professor Owen was and continues to be invented, adjusted, and implemented on an ad hoc, project-
27 by-project, consultant-by-consultant basis in the context of CEQA review of housing and other
28 projects, and in the complete absence of public review and comment, approval by elected
representatives, compliance with the APA, or any other procedural or substantive requirements for
agency adoption of plans, policies, or ordinances governing the review and approval of housing
applications.

1 conceded, since California generates a relatively minute amount of global GHG emissions it cannot
2 by itself significantly affect future climate conditions caused by anthropogenic emissions– and
3 unless other states and countries follow our lead, California’s GHG reduction efforts will be
4 “futile”.²¹⁷ There are no known states or countries that are tempted to “follow our lead” by
5 weaponizing CEQA – a litigation tool that can anonymously be invoked at almost no cost by any
6 party seeking any outcome to stop any project from changing the state’s foundationally racist
7 residential segregation pattern “in the name of the environment” – to end homeownership, worsen
8 commutes, and further exacerbate the income inequality, poverty, and homelessness that
9 California’s leaders have disproportionately inflicted on the state’s minority residents.

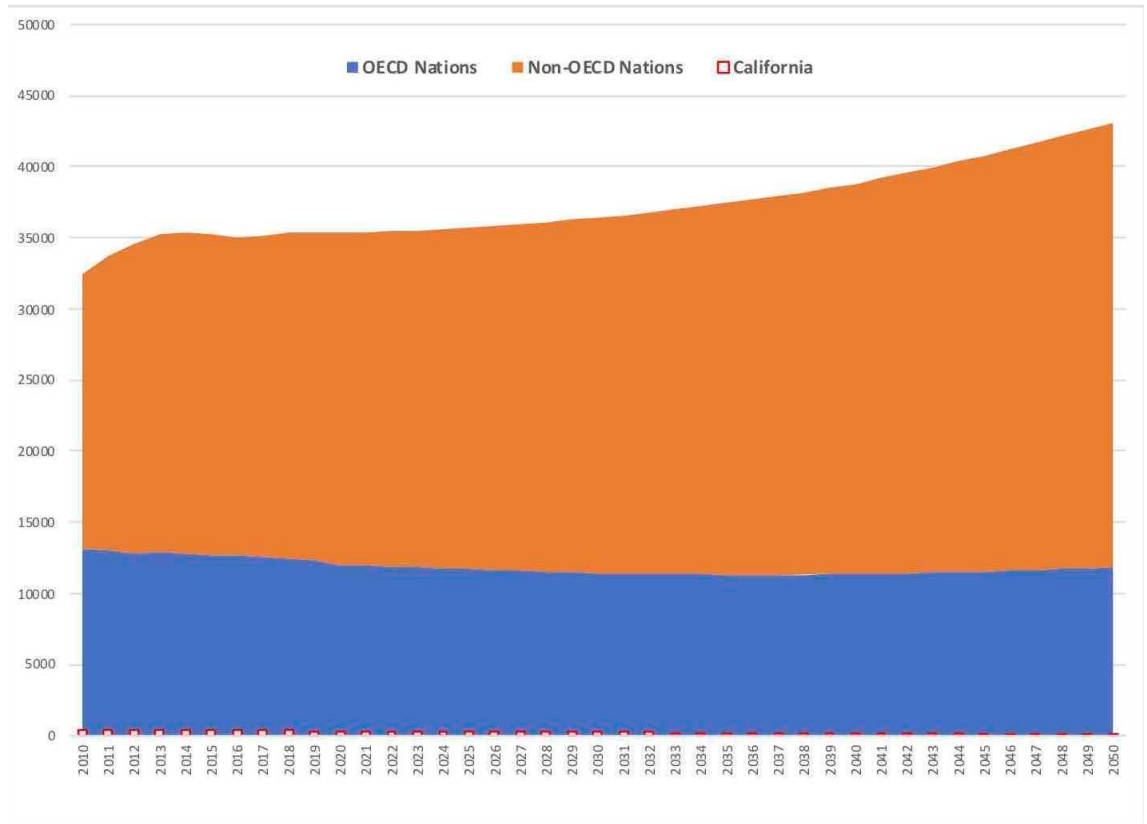
10 292. In September 2019, the U.S. Energy Information Agency (“EIA”) published
11 a projection of global CO₂ emissions from 2010 to 2050. As shown in Figure 15, GHG emissions
12 generated by nations in the Organization of Economic Cooperation and Development (“OECD”),
13 which include 36 of the world’s most developed countries such as the U.S., France, the United
14 Kingdom, and Germany, are projected to fall at an average of 0.2 percent per year. Emissions from
15 non-OECD countries, including China, India, Russia, and almost all Southeast Asia, Middle East
16 and African nations, are projected to increase by one percent per year.

17 293. Global emissions in 2050 will increase from 32.4 billion metric tons in 2010
18 to 43 billion tons in 2050, with all of the net increase projected to occur in non-OECD, developing
19 countries. California accounted for about one percent or 363 tons of global CO₂ emissions in 2010,
20 and would reduce global emissions by about 290 million tons, or by 0.67 percent of the projected
21 levels by reducing statewide CO₂ output even by the 80 percent mandate rejected by the Legislature

22
23 ²¹⁷ See, e.g., Marinucci, *Top Democrat’s Plan: Divest in Coal to Fight Global Warming*, San
24 Francisco Gate (Dec. 16, 2014), <http://www.sfgate.com/news/article/Top-state-Democrat-pushes-coal-divestment-to-5959147.php>; Carroll, *California and Mexico Sign Pact to Fight Climate Change*, Reuters (July 28, 2014), <https://www.reuters.com/article/us-climatechange-california-mexico/california-and-mexico-sign-pact-to-fight-climate-change-idUSKBN0FX1XO20140728>;
25 Lazo, *Jerry Brown Allies With China to Fight Climate Change*, Wall Street Journal (Sept. 23,
26 2019), <https://www.wsj.com/articles/jerry-brown-allies-with-china-to-fight-climate-change-11569273903>.

1 as compared with global GHG emissions in 2050. (California's GHG emissions are the almost
2 invisible line of bubbles scraping along the bottom of Figure 15.)

3 **Figure 15: U.S. EIA Global CO₂ Emissions Reference Case, 2010 to 2050, OECD Nations,
4 Non-OECD Nations and California²¹⁸**



18 294. Given the global context of GHG emissions, California, like all progressive
19 regions of the world that are committed to reducing future climate change risks, is focused on
20 measures that: (a) have the greatest likelihood of actually reducing GHG emissions by a significant
21 amount; and (b) do not simply shift in-state GHG emissions to other locations where offsetting or
22 even greater emissions occur (e.g., by inducing Californians to move to higher per capita GHG
23 states like Texas where housing and homeownership remain far more affordable). The housing and
24

25 ²¹⁸ U.S. EIA, Table 1. State energy-related carbon dioxide emissions by year, unadjusted (2005-
26 2016) (Feb. 27, 2019), <https://www.eia.gov/environment/emissions/state/analysis/pdf/table1.pdf>;
27 U.S. EIA, International Energy Outlook 2019 with projections to 2050 (Sept. 2019), at 151,
28 <https://www.eia.gov/outlooks/ieo/pdf/ieo2019.pdf>.

1 mobility outcomes that Respondents are attempting to achieve through the illegal Redlining
2 Revisions fail to satisfy these criteria.

3 295. There is substantial evidence that the additional CEQA ambiguities and
4 litigation uncertainties and obstacles introduced by the Redlining Revisions significantly decrease
5 the likelihood that California will build even a significant portion of the 3.5 new million housing
6 promised by the state’s Governor by 2025.

7 296. In 1987, a landmark CEQA lawsuit resulted in an appellate court decision
8 that a city’s ability to impose even the most common sense, site-specific conditions on approval of a
9 project that otherwise complied with all applicable federal, state and local laws – including local
10 General Plan, zoning, building, and other local codes – was required to undergo the CEQA
11 compliance process. *Friends of Westwood, Inc. v City of Los Angeles* (1987) 191 Cal.App. 3d 259.
12 If a city or county can require less than maximum height, or decide whether a driveway should be
13 moved three feet to the left or right, then CEQA applies. Since then, approval and production of
14 housing can be delayed, made more costly, or derailed entirely by determined opponents (or those
15 seeking to use CEQA lawsuits for other objectives).

16 297. In an infamous example, a replacement home on an existing lot which
17 received unanimous support from neighbors, the Planning Commission, and City Council – in
18 Berkeley! – was tied up in court for 11 years, and ultimately abandoned without being constructed,
19 in litigation over whether the home qualified for a fast-track categorical exemption compliance
20 pathway under CEQA (it was exempt).²¹⁹

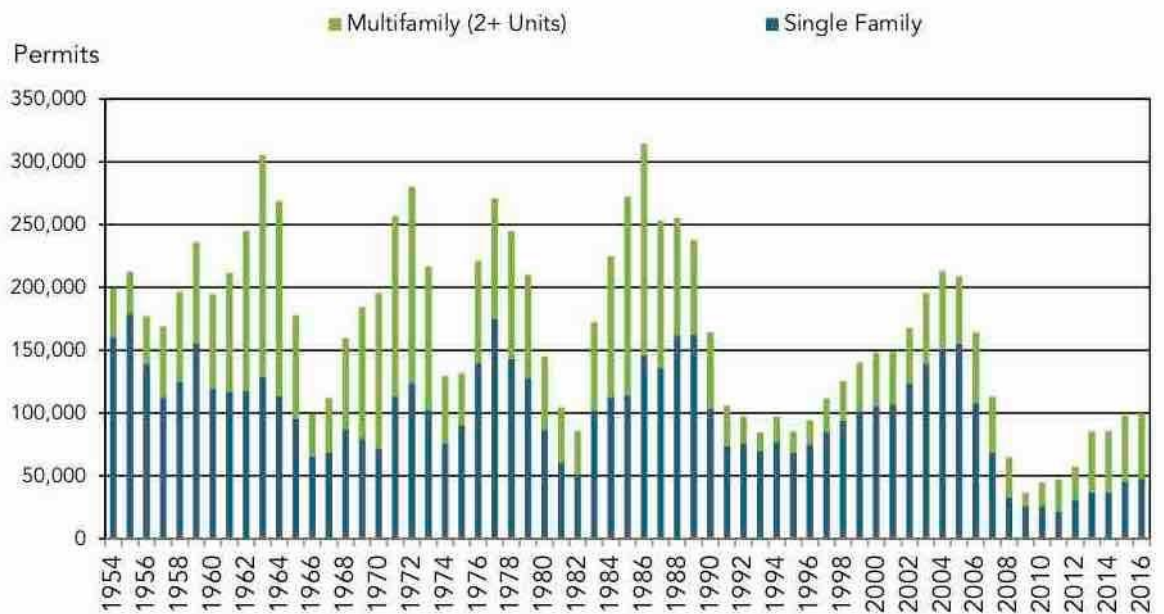
21 298. The proportion of CEQA lawsuits filed against housing projects in California
22 has relentlessly increased over the past decade, and in 2018 39 percent of CEQA lawsuits (and 60%
23 of all CEQA lawsuits challenging construction projects) challenged new housing.²²⁰

24 ²¹⁹ See *Berkeley Hillside Preservation*, 60 Cal.4th 1086; *Berkeley Hillside Preservation*, 241
25 Cal.App.4th 943.

26 ²²⁰ Hernandez, *California Getting In Its Own Way: In 2018, Housing Targeted in 60% of Anti-
27 Development CEQA Lawsuits*, Chapman University (Dec. 2019),
https://www.chapman.edu/communication/_files/ca-getting-in-its-own-way.pdf.

299. As shown in Figure 16, the annual number of new California housing permits issued statewide fell dramatically, and has remained much lower after 1987, than in previous periods. The annualized rate of residential building permits through July of 2017, 2018 and 2019 ranged from 127 in 2018 to 106 in 2019, rates that are consistent with the lowest annual levels excepting economic recessions, and 3 times less than peak permit issuance rates prior to 1987.²²¹

Figure 16: California Annual Housing Permits 1954-2016²²²
Annual Permitting of Housing Units 1954-2016



300. While CEQA did not cause all of the decline in California housing development, the costs and legal risks introduced by new project-level review requirements in 1987 unquestionably played a large role. Governor Newsom, former Governor Brown, former state senate pro tem and current Sacramento mayor Daryl Steinberg, and San Jose mayor Sam Liccardo

²²¹ California Department of Finance, California Construction Authorized by Building Permits, Seasonally Adjusted at Annual Rate, Residential Units and Value, Nonresidential Value, to July 2019, http://www.dof.ca.gov/Forecasting/Economics/Indicators/Construction_Permits/documents/Construction%20Residential%20Nonresidential%20SAAR.xlsx (last visited Nov. 12, 2019).

²²² California's Housing Future, *supra* note 87, at 6.

1 have each publicly acknowledged the adverse effect of CEQA on state housing development.
2 Mayor Liccardo has said that CEQA is “killing” efforts to address the housing crisis.²²³

3 301. Meanwhile, it is common practice for the Legislature to exempt or minimize
4 the CEQA process for high-profile, politically significant projects, including the state capitol office
5 remodeling project, the Sacramento Kings arena, hotel and high-rise apartment complexes, and the
6 new Apple headquarters in Cupertino.²²⁴ Very limited CEQA statutory exemptions have also been
7 approved for housing – such as Senate Bill No. 1197 (2019), which exempts from CEQA homeless
8 shelters, and affordable housing built with funding from local Measure HHH, but applies solely
9 within the City of Los Angeles. The Legislature has declined to approve any broader CEQA
10 streamlining for housing that complies with all local General Plan and zoning laws, and with
11 Sustainable Communities Strategies, notwithstanding the fact that the adoption of General Plans,
12 zoning, and Sustainable Communities Strategies, each had to complete its own CEQA compliance
13 process.

14 302. The Redlining Revisions create deliberately new, legally untested and
15 facially ambiguous CEQA analysis requirements for highly controversial impacts, including from
16 automobile use and VMT, and GHG emissions. Section 15064.3 and the illegal Underground VMT
17 Regulation can be read to require that lead agencies must presume that a project outside of a TPA
18 has a significant VMT impact unless (a) it reduces VMT in the project area; (b) it has VMT 15
19 percent below the regional average; (c) it has VMT ranging from 14 to 16.8 percent below the
20 regional average; or (d) it has VMT below a locally-adopted VMT threshold of significance
21 supported by substantial evidence in the record and lawful for use in the context of that particular

22 _____
23 ²²³ Remarks of Mayor Sam Liccardo on “Gimme Shelter”, podcast of CALMatters,
24 <https://podcasts.apple.com/gb/podcast/mayors-only-panel-liam-libby-schaaf-sam-liccardo-darrell/id1280087136?i=1000438261365> (last visited Nov. 12, 2019).

25 ²²⁴ *See, e.g.*, SB 743 (Steinberg),
26 https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB743 (exempting
27 Sacramento Kings arena from CEQA); AB 900 (Buchanan),
28 https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120AB900 (certifying
Apple Campus as Environmental Leadership Development Project).

1 project. A lead agency must not only determine which of these potential thresholds applies to a
2 project, it must then consider and require the implementation of all feasible mitigation if the project
3 does not meet the selected threshold.

4 303. As discussed, above, however, there are no accepted methods for predictably
5 reducing VMT. Consequently, the selection of a VMT impact threshold, the amount of mitigation
6 required to achieve a less than significant impact, and the feasibility and effectiveness of potential
7 VMT mitigation, all provide project opponents with significant new opportunities to contest and
8 delay potential permitting during the CEQA analysis process, and to litigate and further impede
9 development should the project be approved. The adequacy of VMT (with or without corresponding
10 GHG) mitigation is also ripe for litigation challenges, as is the decision to approve any housing
11 project outside a TPA (where “presumptions” attempt to provide a safe harbor). “All feasible”
12 mitigation must be required, and there is no predictable upper boundary on how much more new
13 housing can be forced to pay in additional mitigation costs.

14 304. Section 15064.4 and the illegal Underground GHG Regulation present even
15 more challenges for CEQA lead agencies. Instead of providing clear thresholds for evaluating GHG
16 impacts, the Redlining Revisions require that local city and county planning departments, city
17 councils and boards of supervisors somehow invent, with substantial evidence, impact thresholds,
18 evaluate, and then somehow identify and implement all feasible mitigation for project impacts that
19 exceed the locally-developed threshold. In addition, Section 15064.4 and the illegal Underground
20 GHG Regulation contemplate that local city and county planning departments, city councils and
21 boards of supervisors will develop thresholds and identify and implement feasible mitigation for
22 impacts which are a global problem that no nation, or even the United Nations, has as yet been able
23 to fully characterize and solve – on a “case by case” basis. GHG impact thresholds and mitigation
24 under CEQA are already significant litigation targets and the Redlining Revisions greatly expand
25 opportunities to increase the costs and extend the time for completing a project’s CEQA review and
26 post-permitting litigation.

1 just as a newly elected state governor promised that 3.5 million new housing units would be built by
2 2025 to ease an existential housing crisis, significantly increase CEQA risks, costs and delays. The
3 Respondents have provided no evidence whatsoever that dramatically expanding CEQA permitting
4 and litigation risks will allow for the construction of even a fraction of the housing California needs
5 by 2025, if it is ever built at all.

6 310. There is no substantial evidence that California’s housing needs can be met
7 by focusing residential development into the minute portions of the state defined in Section 15064.3
8 as within “one-half mile of either an existing major transit stop or a stop along an existing high
9 quality transit corridor” that would not be required to address VMT impacts during the permit
10 approval and CEQA review process. In the SCAG region, which contains half of the state’s
11 population, approximately three percent of the region meets this criterion.²²⁵

12 311. Clustering future housing in existing urban areas has already increased land
13 prices and requires large, multistory, multifamily structures that are five to seven times more
14 expensive to construct than simple wood-framed one to three story homes in other locations.²²⁶
15 High-rise multifamily residential housing has been documented, even by infill housing advocates,
16 to cost at least 30 percent more per square foot to build than low- and mid-rise multifamily housing
17 units.²²⁷ In the midst of a housing crisis, the Redlining Revisions unlawfully limit new development
18 to the minute slivers of California in which only the most expensive units can be built.

19 312. Recent studies conducted for local governments in the Bay Area and Los
20 Angeles have shown that rents for new multifamily housing in urbanized coastal opportunity areas

21 ²²⁵ SCAG, 2016-2040 Regional Transportation Plan/Sustainable Communities Strategy (Apr. 2016),
22 Table 2.1 at 25, <http://scagrtpscs.net/Documents/2016/final/f2016RTPSCS.pdf>.

23 ²²⁶ See, e.g., California Center for Jobs & The Economy and California Business Roundtable,
24 Regulation and Housing: Effects on Housing Supply, Costs and Poverty (May 2017), at 19,
25 [https://centerforjobs.org/wp-](https://centerforjobs.org/wp-content/uploads/center_for_jobs_regulation_and_housing_study_may_2017.pdf)
26 [content/uploads/center_for_jobs_regulation_and_housing_study_may_2017.pdf](https://centerforjobs.org/wp-content/uploads/center_for_jobs_regulation_and_housing_study_may_2017.pdf) (citing Hernandez,
27 Friedman, and DeHerrera, In the Name of the Environment: Litigation Abuse Under CEQA (Aug.
28 2015), Table B at 68, https://issuu.com/hollandknight/docs/ceqa_litigation_abuseissuu?e=16627326/14197714).

²²⁷ Decker, *supra* note 74, at 48.

1 range from approximately \$2,500 to about \$4,000 per month for 850 to 1,100 square foot
2 apartments in high density buildings like mid- and high-rise apartments.²²⁸ These costly urban infill
3 apartments do not meet the housing needs of California’s younger, minority-majority population
4 due to the fact that (i) a large proportion of the California population do not earn the required
5 \$100,000 to more than \$150,000 annual incomes required to pay these rents, (ii) those needing
6 housing are far more likely to be younger, minority families with lower household and personal
7 incomes than older, primarily white residents, (iii) massive multifamily housing structures with
8 small units and little or outdoor play areas do not meet the needs of many younger families, and (iv)
9 spending \$30,000 to nearly \$60,000 in rent creates zero family wealth as compared to
10 homeownership. Non-profit housing developers building near transit produce smaller, higher
11 density units as part of the Los Angeles effort to house the homeless for \$500,000 or more for each
12 unit.²²⁹ In 2017, the state began withholding housing assistance funds because urban development
13 costs are so high that such funding had virtually no effect on housing supplies.²³⁰

14 313. In locations where costs are much lower, such as San Bernardino, but not
15 within “one-half mile” of a qualifying transit facilities, all new housing proposals approved by local
16 agencies must first make sense of, then consider and feasibly mitigate for, VMT impacts that the
17 Redlining Revisions make “presumptively” significant. One possible approach suggested by the

18
19 ²²⁸ Hausrath Economics Group, Economic Feasibility Study For Oakland Impact Fee Program,
20 Prepared for the City of Oakland (Apr. 8, 2016), at 9,
21 <http://www2.oaklandnet.com/oakca1/groups/ceda/documents/report/oak058107.pdf>; bae urban
22 economics et al., Los Angeles Affordable Housing Linkage Fee Nexus Study Prepared for City of
23 Los Angeles (Sept. 21, 2016),
https://planning.lacity.org/ordinances/docs/AHLF/LA_Linkage_Fee_Final_Report_9-21-16.pdf;
24 bae urban economics, Draft City of Berkeley Affordable Housing Nexus Study (Mar. 25, 2015),
25 <http://www.berkeleyside.com/wp-content/uploads/2015/11/2015-07-14-WS-Item-01-Affordable->
26 [Housing.pdf](http://www.berkeleyside.com/wp-content/uploads/2015/11/2015-07-14-WS-Item-01-Affordable-Housing.pdf).

24 ²²⁹ Letter from Ron Galperin, Los Angeles Controller, to Eric Garcetti, Mayor, Michael Feuer, City
25 Attorney, and Members of the Los Angeles City Council, Re: The High Cost of Homeless Housing:
26 Review of Proposition HHH, dated Oct. 8, 2019, [https://lacontroller.org/wp-](https://lacontroller.org/wp-content/uploads/2019/10/The-High-Cost-of-Homeless-Housing_Review-of-Prop-HHH_10.8.19.pdf)
27 [content/uploads/2019/10/The-High-Cost-of-Homeless-Housing_Review-of-Prop-HHH_10.8.19.pdf](https://lacontroller.org/wp-content/uploads/2019/10/The-High-Cost-of-Homeless-Housing_Review-of-Prop-HHH_10.8.19.pdf)

26 ²³⁰ Cortright, *Why Is 'Affordable' Housing So Expensive to Build?*, CityLab (Oct. 19, 2017),
27 <https://www.citylab.com/equity/2017/10/why-is-affordable-housing-so-expensive-to-build/543399/>.

1 Underground VMT Regulation is to reduce project VMT by 15 percent below the regional average.
2 In 2019, Fehr & Peers, one of the most respected transportation consultants in California and often
3 used by state agencies, provided the County of San Bernardino with a report concluding that “the 15
4 percent threshold would not be feasible throughout most majority [*sic*] of the unincorporated
5 county.” Feasible transportation and land use measures could, at most, reduce household VMT from
6 20.5 miles per capita per day to 19.7 miles per capita per day.²³¹

7 314. Because CEQA lawsuits are so inexpensive to file and effective at delaying
8 or blocking development, and VMT reductions are a major focus of environmental regulators and
9 advocacy groups, it is reasonably likely, if not certain, that any project failing to meet the 15
10 percent criterion in the Underground VMT Regulation will be legally challenged. In an effort to
11 reduce litigation risks, a housing project proponent in San Bernardino County could attempt to
12 reduce household VMT to 17.4 miles per capita per day, 15 percent below the current level of 20.5
13 miles per capita per day and 2.3 miles per capita per day lower than the four percent reduction the
14 County has determined is feasible to achieve. Based on an average of 3.3 people per household in
15 unincorporated San Bernardino County, a project proponent seeking to meet the 15 percent
16 reduction target in the Underground VMT Regulation would need to reduce per unit VMT by 2,770
17 miles per year.

18 315. Although the Redlining Revisions provide no meaningful guidance regarding
19 feasible VMT mitigation that would satisfy CEQA requirements, one potential approach might be
20 to purchase bus passes for existing automotive users and shift 2,770 miles per year per household of
21 vehicular use to transit for the lifetime of the proposed project, typically 30 years. According to the
22 L.A. Metro, which operates the largest bus transit fleet in the SCAG region, an annual Zone 1 bus
23 pass costs \$1,584 per year and an average bus trip is about four miles in length.²³² If the bus pass

24 ²³¹ Pack, Fehr & Peers, Technical Memorandum on SB 743 Implementation Thresholds –
25 Alternative Threshold Guidance (Mar. 26, 2019), at 1, 5, [http://countywideplan.com/wp-](http://countywideplan.com/wp-content/uploads/2019/07/Alternative-Reduction-Target-TDM-Memo-03.26.2019.pdf)
26 [content/uploads/2019/07/Alternative-Reduction-Target-TDM-Memo-03.26.2019.pdf](http://countywideplan.com/wp-content/uploads/2019/07/Alternative-Reduction-Target-TDM-Memo-03.26.2019.pdf).

27 ²³² Los Angeles Metro, Interactive Estimated Ridership Stats, annual data for 2018
28 <http://isotp.metro.net/MetroRidership/Index.aspx> (last visited Oct. 2019); Los Angeles Metro, EZ

1 recipients make an average of two trips, or a total of eight miles, per day per year the project
2 proponent would need to buy about \$1,503 worth of bus passes per year for 30 years, or a total of
3 \$45,100 per unit assuming no inflation or changes in annual pass costs, to reduce VMT by 2,770
4 miles per year. Additional expenses would be required to monitor and verify that this bus pass
5 mitigation actually reduced VMT. If actual VMT reductions could not be verified into some
6 perpetuity or even only the 30 years calculated under this example, if for example VMT reductions
7 did not occur because a bus pass recipient got a new job in a location without bus service, or if
8 regional bus ridership continues to drop and fixed route bus service is replaced by door-to-door
9 services like app-based electric vans with higher VMT than buses, or if the holder of the bus pass
10 would have taken the bus anyway and paid either full or discounted fares available to seniors and
11 students – then the validity of this VMT measure could be subsequently challenged, with unknown
12 cost and legal consequences to the San Bernardino homeowner family.

13 316. It is simply inconceivable, and unlawful, to impose the reverse Robin Hood
14 of robbing housing crisis victims (in the form of imposing gargantuan new housing VMT
15 mitigation costs) to give to the poor (by subsidizing unrelated transit system services with a hoped-
16 for VMT reduction somewhere, by someone). Transit agencies have ample authority to raise funds,
17 and both the Legislature and voters have approved transit funds, but burdening new housing with
18 unknowable VMT CEQA litigation risks and high VMT mitigation costs has zero legislative or
19 regulatory approval, and cannot be wedged into CEQA based on SB 743’s directive that traffic
20 congestion be removed as a CEQA impact in the immediate vicinity of high frequency commuter
21 bus stops.

22 317. In contrast with the Underground VMT Regulation, Section 15064.3 states
23 that projects must be assumed to cause significant VMT impacts under CEQA unless they
24 “decrease vehicle miles traveled in the project area compared to existing conditions.” Because

25
26 Transit Pass, <https://www.metro.net/riding/fares/ez-transit-pass/> (last visited Oct. 2019) (annual cost
based on \$132 per month for 12 months).

1 CEQA lawsuits are so inexpensive to file and effective at delaying or blocking development, and
2 VMT reductions are a major focus of environmental regulators and advocacy groups, it is
3 reasonably likely, if not certain, that lawsuits will assert that Section 15064.3 requires that VMT for
4 each new housing unit must have net zero VMT plus reduce regional VMT. Under this potential
5 interpretation, a new housing unit in San Bernardino County, would be required to reduce VMT by
6 at least 20.6 miles per day, 0.1 mile per day less than the current county average of 20.5 miles per
7 day, to both achieve net zero VMT for the project and additional regional VMT reductions. If this
8 required mitigation was achieved by using bus passes, a project proponent would need to shift over
9 24,800 miles per year from vehicular to transit use. If the bus pass recipients make an average of
10 two trips or a total of eight miles, per day per year the project proponent would need to buy about
11 \$13,460 worth of bus passes per year for 30 years, or a total of \$403,800 per unit assuming no
12 inflation or changes in annual pass costs, to reduce VMT by 24,800 miles per year.

13 318. When added to home purchase prices, monthly rents, or paid in annual taxes,
14 the addition of VMT mitigation costs required to reduce per unit VMT by 15 percent would
15 substantially increase housing and rental costs for the predominantly minority populations in San
16 Bernardino County, and would keep 19,538 families who could otherwise afford to purchase a
17 home from being able to do so.²³³

18 319. The potential VMT mitigation costs required to achieve net zero VMT for the
19 project and additional regional VMT reductions would more than double housing costs for the
20 predominantly minority populations in San Bernardino County, and would price out 109,181

21 _____
22 ²³³ Letter from Devala Janardan, Senior Counsel, National Association of Homebuilders to Jennifer
23 Hernandez, Holland & Knight (Dec. 2, 2019), a true and correct copy of which is included as
24 Exhibit E. Ms. Janardan also calculated the number of households priced out of homeownership if
25 just this one VMT fee is applied statewide, based on statewide median housing prices and mortgage
26 applicant underwriting requirements. Consistent with the conclusion of California’s elected leaders
27 and housing experts that California housing costs far too much, Ms. Janardan calculated that even a
28 small \$1000 increase would price out 9,897 median income earners from purchasing a median
priced home. A \$45,100 VMT mitigation fee to subsidize transit and offset 15% of a new home’s
VMT would price out 400,049 households, and a \$403,800 VMT fee to reduce VMT in the housing
project area by the full amount of the new home’s VMT would price out 2,620,616 California
households.

1 households from being able to buy a home – virtually ending attainable homeownership in San
2 Bernardino County. All housing costs in the region, and in any location in California that requires
3 VMT mitigation, will dramatically rise, and today’s housing crisis victims of aspiring minority
4 buyers and renters are victimized yet again by Respondents’ weaponization of CEQA into
5 California’s anti-minority housing agency redlining.

6 320. The number of new housing units will be reduced because it will be
7 economically infeasible to develop additional housing supplies for an increasingly smaller pool of
8 potential buyers and renters – but proving “economic infeasibility” for any specific housing project
9 is itself a fertile target for anti-housing CEQA lawsuits.²³⁴

10 321. Section 15064.4 and the unlawful Underground GHG Regulation will also
11 require projects to mitigate for potentially significant GHG impacts even though the state’s cap-
12 and-trade program has been judicially determined to mitigate for all fossil fuel GHG impacts in
13 California and new buildings, which must have rooftop solar panels and meet the most stringent
14 energy efficiency standards in the country, are achieving or very close to achieving net zero
15 emissions. The Respondents unlawfully failed to conform the Redlining Revisions to existing law
16 and to provide any clear guidance regarding GHG impact thresholds and acceptable mitigation.
17 Instead, potential GHG impacts for all housing and land use projects, including those within “one-
18 half mile” of qualifying transit facilities that presumptively have no significant VMT impacts under
19 Section 15064.3, are to be analyzed using thresholds that local agencies must develop, potentially
20 on a case by case basis. Merely completing the GHG impact analysis, including providing
21 substantial evidence in support of the adopted threshold, and mitigating a project’s impacts with
22 respect to the thresholds, will add substantial cost and significantly delay housing projects.

23 322. Substantial evidence demonstrates that new housing development in the
24 urban areas favored by the Respondents is extremely expensive and increasingly uneconomic to

25 ²³⁴ *Uphold Our Heritage v. Town of Woodside* (2007) 147 Cal.App.4th 587, 602-03; *Sequoyah Hills*
26 *Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 714-15; *Citizens for Open*
27 *Government v. City of Lodi* (2012) 205 Cal.App.4th 296, 313.

1 build even when fully permitted. GHG mitigation requirements will increase housing costs
2 throughout the state, and VMT mitigation requirements will increase housing costs for all new
3 development not within “one-half mile” of qualifying transit facilities. Consequently, the
4 development of new housing in less expensive areas, like San Bernardino County, will also become
5 less economically feasible. The Redlining Revisions thus reduce incentives for developing housing
6 everywhere in the state. The Respondents have not provided, and continue to refuse to disclose, an
7 explanation for how the Redlining Revisions can be implemented without increasing housing costs,
8 reducing housing supply, and exacerbating California’s existing, existential housing crisis.

9 323. Even at current housing and rent levels, the LAO has reported that trillions of
10 dollars of new public funding would be required to reduce housing burdens for the 40 percent of
11 Californians who already pay more than 30 percent of their incomes for housing to sustainable
12 levels. The LAO also found that the cost of subsidizing housing for only the neediest Californians,
13 the homeless, the ill, and special needs populations, would require massive tax increases.²³⁵ The
14 Respondents did not consider and continue to ignore the tax and equity effects of further increasing
15 housing costs on what is already massively deficient housing assistance funding for less affluent
16 Californians.

17 324. Even if a large number of new housing units can be feasibly built within
18 “one-half mile” of qualifying transit facilities or in other urban infill locations, there is no
19 substantial evidence that increasing the population density of already dense urban environments
20 will result in significant, or even reasonably measurable GHG emission reductions. The
21 Respondents have never provided, and continue to refuse to disclose, the annual amount of state, let
22 alone net global GHG emission reductions, which further densifying already dense urban areas
23 consistent with the Redlining Revisions are intended to achieve.

24 _____
25 ²³⁵ Taylor, Perspectives on Helping Low-Income Californians Afford Housing, LAO (Feb. 9, 2016),
26 at 4, <https://lao.ca.gov/Reports/2016/3345/Low-Income-Housing-020816.pdf> (“Extending housing
27 assistance to low-income Californians who currently do not receive it—either through subsidies for
28 affordable units or housing vouchers—would require an annual funding commitment in the low tens
of billions of dollars”).

1 325. In 2017, U.C. Berkeley published a study advocating that 1.92 million new
2 housing units over a 15 year period be built entirely within urban infill locations. According to the
3 study, 100 percent infill development would reduce state GHG emissions by about 1.79 million tons
4 per year.²³⁶ Thus, the massive restructuring of California’s historical housing development patterns
5 was found to potentially avoid 0.4 percent of the state’s current emissions, and might provide one
6 percent of the reductions required to meet the legislated GHG reduction targets for 2030.

7 326. These results are consistent with the potential GHG reductions that could
8 occur from implementing the 15 percent reduction in per capita VMT threshold suggested in the
9 Underground VMT Regulation. In August 2019, HCD determined that the entire SCAG region,
10 which accounts for half of the state’s population, requires 1,344,740 million new homes to house a
11 total household population of 20,079,000.²³⁷ According to SCAG, per capita VMT is approximately
12 8,700 miles per year and the region has about 3.1 people per household. Table 9 shows how the
13 SCAG regions’ VMT and GHG emissions could change assuming that: (a) all of the new 1,344,740
14 units housing 4,170,000 people (about 21 percent of the HCD’s projected 2029 population in the
15 SCAG region) are built outside of one-half mile from qualifying transit facilities and each must
16 meet 15 per cent per capita VMT reduction threshold; and (b) the most current 2017 rate of
17 emissions per vehicle mile reported by the U.S. EPA does not improve from 2021-2029. Table 9
18 indicates that, with these assumptions, annual VMT in the SCAG region would be about 5.44
19 billion lower, and GHG emissions would be reduced by about 1.9 million metric tons.

20
21 ²³⁶ Decker, *supra* note 74, at 5.

22 ²³⁷ Letter from HCD to Kome Ajise, Executive Director of SCAG, Re: Regional Housing Need
23 Determination SCAG: June 30, 2021 – October 15, 2029, dated Aug. 22, 2019,
24 https://www.scag.ca.gov/Documents/6thCycleRHNA_SCAGDetermination_08222019.pdf. In
25 September 2019, SCAG submitted a formal objection to the HCD determination and contended that
26 the correct housing needs would be in the range of 823,000-920,000. *See* Letter from Kome Ajise,
27 Executive Director of SCAG to Doug McCauley, Acting Director of the HCD, dated Sept. 18,
28 2019, [https://www.scag.ca.gov/programs/Documents/RHNA/SCAG-Objection-Letter-RHNA-
Regional-Determination.pdf](https://www.scag.ca.gov/programs/Documents/RHNA/SCAG-Objection-Letter-RHNA-Regional-Determination.pdf). A lower level of housing growth would result in lower potential GHG
reductions from burdening new housing with new VMT mitigation requirements under the
Redlining Revisions.

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Table 9: Potential CO₂ Emissions Reductions from Reducing Per Capita VMT by 15 Percent in the Entire SCAG Region for 1,344,740 New Housing Units 2021-2029²³⁸

	No VMT Reduction for 2029 Population of 20,079,930	15 percent VMT Reduction for 1,344,740 new Households and 4,170,000 of 2029 Population of 20,079,930	Net Change
VMT (total miles)	174,695,391,000	169,255,245,330	5,440,145,670
GHG Emissions (MT CO ₂)	62,366,255	60,424,123	1,942,132

327. The potential VMT and emissions reductions shown in Table 9 are highly conservative and unrealistically high because many of the new housing units would be within one-half mile of qualifying transit facilities and not require VMT mitigation under Section 15064.3. GHG emissions per mile in the U.S. have also fallen by over 22 percent, and at an average rate of 1.7 percent per year from 2004 to 2017.²³⁹ It is likely that the historical rate of reducing vehicular GHG emissions per mile reduction will be at least as high or exceed previous rates of improvement through new engine technology and, especially in California, the increased deployment of electric, hydrogen fuel cell and other low- to zero-emission vehicles. If vehicular GHG emission per mile fall by 14 percent, consistent with the reduction rate during 2004 to 2017, by 2029, CO₂ emissions for vehicular use would be 8,800,000 metric tons lower than in 2021 with no change in VMT. The

²³⁸ Calculated from SCAG Transportation Safety Regional Existing Conditions (2017), http://www.scag.ca.gov/programs/Documents/SafetyFactSheet_scagIMP.pdf; SCAG, Profile of the City of Los Angeles (2019), at 4, <https://www.scag.ca.gov/Documents/LosAngeles.pdf> and U.S. EPA, Office of Transportation and Air Quality, 2018 Automotive Trends Report, Section 3, Table T.3.1, <https://www.epa.gov/sites/production/files/2019-03/420r19002-report-tables.xlsx> (last visited Oct. 2019) (2017 estimate of 357 grams of CO₂ per mile); *see also* related General Allegations below.

²³⁹ U.S. EPA, Office of Transportation and Air Quality, 2018 Automotive Trends Report, Section 3, Table T.3.1, <https://www.epa.gov/sites/production/files/2019-03/420r19002-report-tables.xlsx> (last visited Nov. 13, 2019).

1 drastic housing and mobility impacts that result from the Redlining Revisions do not generate
2 commensurately large, or even reasonably likely, GHG emission reduction benefits.

3 328. Housing and transportation researchers have shown that residential
4 densification is effective only when employment centers and employment density, not population
5 are located near transit.²⁴⁰ The uniquely high employment density in places like Manhattan, which
6 developed decades ago under economic conditions that have dramatically changed, is why transit
7 use is higher in the borough than in the rest of the U.S.. In California, as in the vast majority of the
8 rest of the nation, employment density has been decentralized. The era of working for a single large
9 company with a massive centralized location ended decades ago, and employment has since
10 fragmented, with most people working in multiple locations, taking on different jobs and working
11 for shorter periods or in multiple “gig” projects that end and renew on a frequent basis. This is
12 particularly true for the state’s aspiring minority, working and middle class population which
13 accounts for the majority of construction, agriculture, personal service and similar low density
14 employment that cannot be reached by using transit.

15 329. The fact that California’s most heavily urbanized areas already have much
16 higher population density than the rest of the country but do not use public transit for most trips,
17 including 94 percent of all work commutes, demonstrates that the Redlining Revisions are unlikely
18 to significantly reduce VMT or GHG emissions. Despite billions of dollars’ worth of transit
19 improvements, including hundreds of miles of new rail and subway lines throughout the state,
20 transit use has been steadily declining²⁴¹ Bus ridership for L.A. Metro, the nation’s largest
21 transportation agency, has fallen by more than 25 percent since 2009.²⁴² As shown in Table 8, the

22
23 ²⁴⁰ See, e.g., Kolko, Making the Most of Transit Density, Employment Growth, and Ridership
24 around New Stations, Public Policy Institute of California (Feb. 2011),
https://www.pplic.org/content/pubs/report/R_211JKR.pdf.

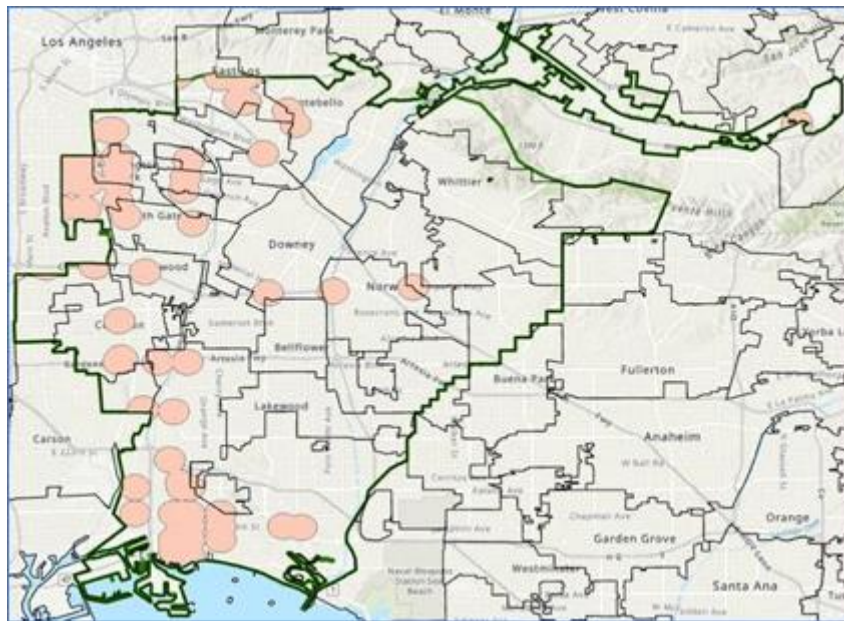
25 ²⁴¹ Manville, *supra* note 72, at 26.

26 ²⁴² Nelson, *L.A. Is Hemorrhaging Bus Riders – Worsening Traffic and Hurting Climate Goals*, Los
27 Angeles Times (June 27, 2019), [https://www.latimes.com/local/lanow/la-me-ln-bus-ridership-
falling-los-angeles-la-metro-20190627-story.html](https://www.latimes.com/local/lanow/la-me-ln-bus-ridership-falling-los-angeles-la-metro-20190627-story.html).

1 state's Latino workforce in particular has dramatically shifted from transit to automobile
2 commuting since 2010.

3 330. As shown in Figure 17, there are multiple locations extending from Long
4 Beach to downtown Los Angeles that are already heavily developed and that have large populations
5 in and near areas within one-half mile of existing transit facilities. These are the locations where the
6 Respondents are attempting to shoehorn all of the state's new housing by means of the unlawful
7 Redlining Revisions.

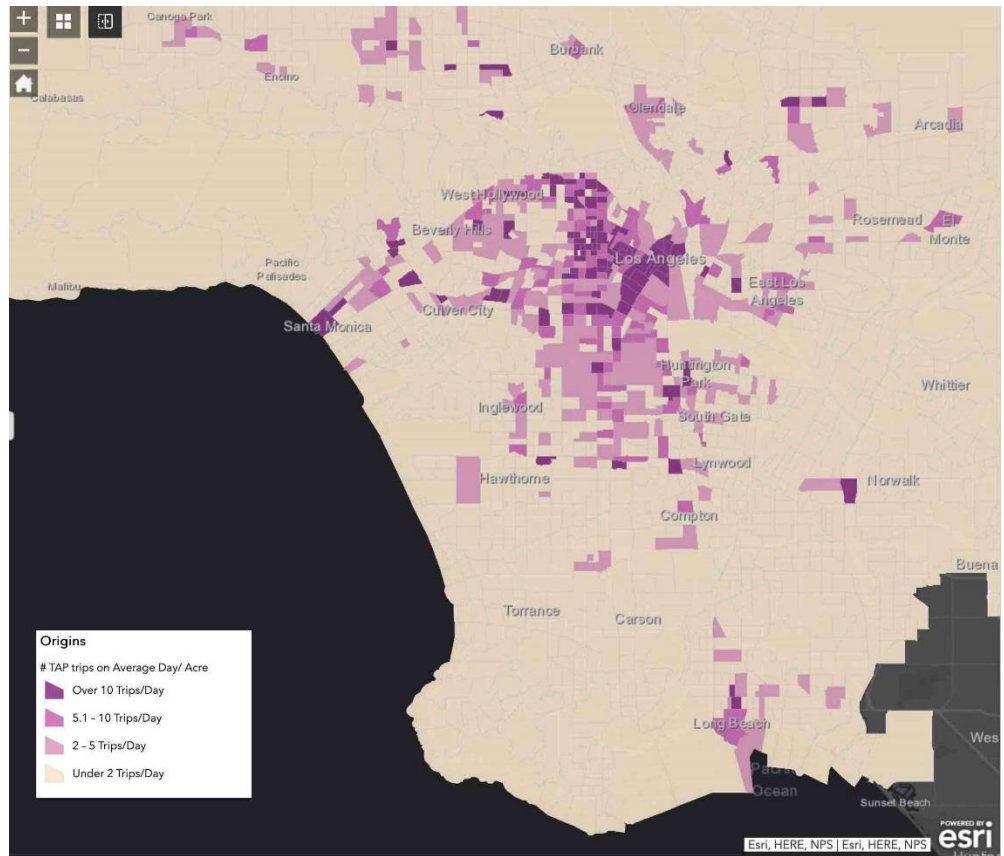
8 **Figure 17: Designated Transit Priority Areas in the Los Angeles Region²⁴³**



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19 331. Yet, as shown in Figure 18, bus ridership is quite low, with the vast majority
20 of the area having fewer than two bus trip origins per acre per day, and only a very small fraction of
21 locations with over 10 trip origins per acre per day.

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26 ²⁴³ Gateway Cities Council of Governments, personal communication, 2019.

1 **Figure 18: Number of Transit Access Pass Bus Trip Origins per Acre per Day**²⁴⁴



17 332. The high cost, small size and lack of open space of the dense multifamily
18 apartments that can be built near transit in the state are likely to attract younger workers, generally
19 without families, who are willing to work for a few years in higher paying “keyboard” economy
20 jobs before relocating to less expensive, more livable areas later in life. As the LAO has noted,
21 many of the future residents in dense urban housing may already have a preference for transit and
22 no net VMT or GHG reductions would occur from locating such residents closer to transit
23 facilities.²⁴⁵ Wealthier residents also tend to use vehicular travel, including Uber and Lyft, to access
24 work and for other purposes even if they live near transit. Studies of residential density and transit

25 ²⁴⁴ Metro, Origin-Destination Patterns, TAP trips on Average Day/Acre, NextGen Data Center,
<https://arellano.maps.arcgis.com/apps/webappviewer/index.html?id=4c7b5778da734b9b867c149eb2492b3> (last visited Nov. 13, 2019).

26 ²⁴⁵ Taylor, *supra* note 35, at 38.

1 have shown that residential densification alone has at most a minimal effect on vehicular use.²⁴⁶
2 This is true even in the portions of New York City, such as Staten Island, that do not have the
3 historically unique employment density of Manhattan and resemble the vast majority of the rest of
4 the nation, including most of California.²⁴⁷

5 333. The fact that even temporary, younger workers in short-term internships
6 cannot use transit to reliably access work was highlighted in 2018 testimony to CARB by a
7 representative from the Sacramento Area Council of Governments (“SACOG”). SACOG’s
8 representative testified that that participants in summer internship jobs for disadvantaged teenagers
9 were chronically unable to arrive at work on time despite efforts to do so using public transit.
10 SACOG surveyed the interns and commented that irregular transit service, slow transit times from
11 distant locations, and the need for multi-transfer transit commutes, prevented on-time arrivals. A
12 vehicle-based microtransit solution was then implemented by the SACOG to solve the transit-
13 related problems experienced by its interns.²⁴⁸

14 334. The Redlining Revisions do not consider the fact that creating expensive,
15 small and undesirable housing that is not affordable for much of the state’s population, including
16 aspiring minority, working and middle class residents, will displace people, jobs, businesses, and
17 the related VMT and GHG emissions, to other, high-emission locations. According to the U.S. EIA,
18 in 2016 California per capita CO₂ emissions were about 9.2 tons per person per year compared with
19 an average of 16 tons per person in the nation as a whole. Per-capita emissions in Texas were 23.4

20 ²⁴⁶ See, e.g., Brownstone et al., A Vehicle Ownership and Utilization Choice Model With
21 Endogenous Residential Density, *The Journal Of Transport And Land Use* (2014),
<https://www.jtlu.org/index.php/jtlu/article/view/468/437>.

22 ²⁴⁷ See, e.g., King, *supra* note 70, at 11-14.

23 ²⁴⁸ Testimony of SACOG Representative James Corless at California Air Resources Board Meeting,
24 Mar. 22, 2018, at 64-65, available at:
25 https://ww3.arb.ca.gov/board/mt/2018/mt032218.pdf?_ga=2.242134466.1960866577.1573599596-803708540.1559343297; see also Sacramento Regional Transit, Microtransit Pilot in Sacramento
26 (May 16, 2018), https://www.sacog.org/sites/main/files/file-attachments/smart_ride_tcc_051618.pdf; SACOG, SACOG Board Kicks Off ‘Next Generation
27 Transit’ Initiative (Oct. 31, 2018), <https://www.sacog.org/post/sacog-board-kicks-next-generation-transit-initiative>.

1 tons per year.²⁴⁹ Each person, vehicle trip, or business activity that leaves California for another
2 U.S. destination is, on average, generating nearly twice the GHG emissions that would have
3 occurred in the state.

4 335. Under California’s flawed GHG accounting approach, people, economic
5 activity and VMT that leaves the state count as GHG reductions and a “win” for economic
6 regulators and advocates. In reality, the relocation of people, economic activity and VMT out of
7 state does not eliminate, and in fact increases, global GHG emissions. One million people leaving
8 California reduces the state’s CO₂ emission by about 9.2 million metric tons per year but, on
9 average, results in 16 million tons of GHG emissions in the rest of the country. While state
10 emissions are reduced, net global GHG emissions, the cause of climate change, increase by 6.8
11 million tons per year. If one million Californians were to move to Texas they would generate about
12 23.4 million tons of CO₂ emissions, a net global GHG emissions increase of 14 million tons over
13 California levels.

14 336. During 2010 to 2018 alone, California’s net domestic migration, excluding
15 international migration, was sharply negative. Over 710,000 more Californians left than moved to
16 the state. Since 2000, California’s net domestic migration loss has exceeded 2 million, a trend
17 researchers have called the “Great California Exodus.”²⁵⁰ Due to this outflow of people and jobs,
18 the state has shifted population, economic activity and VMT to higher emission locations. This has
19 resulted in a net increase in global GHG emissions much larger than the potential reductions that
20 could occur from the higher housing and mobility costs and unprecedented constraints produced by
21 the Redlining Revisions.

22 ²⁴⁹ U.S. EIA, Table 6. Per capita energy-related carbon dioxide emissions by state (2005–2016)
23 (Sept. 2019), <https://www.eia.gov/environment/emissions/state/analysis/excel/table6.xlsx>.

24 ²⁵⁰ U.S. Census Bureau, State Population Totals and Components of Change: 2010-2018,
25 Population Estimates, Population Change, and Components of Change, Cumulative Estimates of the
26 Components of Resident Population Change for the United States, Regions, States, and Puerto
27 Rico: April 1, 2010 to July 1, 2018 (NST-EST2018-04), <https://www.census.gov/data/tables/time-series/demo/popest/2010s-state-total.html> (last visited Nov. 11, 2019); Gray and Scardamalia, The
28 Great California Exodus: A Closer Look, Center For State and Local Leadership at the Manhattan
Institute (Sept. 2012), https://media4.manhattan-institute.org/pdf/cr_71.pdf.

1 337. There is substantial evidence that high housing costs and the nation’s worst
2 mobility conditions are increasing incentives for people and employers to leave the state, even
3 among the highly paid and younger keyboard economy workforce. In October 2019, CNBC
4 reported that 44 percent of the Bay Area’s workforce plans to leave the region within five years,
5 and six percent within 12 months. Nationally, 80 percent of the nation lives in larger urban areas,
6 but only 12 percent want to be located in these areas. About seven of 10 U.S. freelance workers
7 want to relocate from urban areas. While the “technology industry is often perceived as a massive
8 wealth-generating engine, where 20-somethings lounge around, munch avocado toast and cash in
9 stock options,” surveys show that “more people today are discontent living and working in the
10 traditional tech hubs” due to “skyrocketing housing costs, pricey child care, the crowds and
11 relentless traffic.”²⁵¹

12 338. Other 2019 surveys have found that 53 percent of state residents are
13 “considering fleeing” to other locations. 47 percent were planning to move within five years,
14 including 55 percent of millennials and 57 percent of Californians with children under 18. The
15 primary reason for relocating was high housing costs, limited housing availability and a declining
16 quality of life.²⁵²

17 339. All state climate change policies must, by law, consider emissions “leakage”
18 prior to adoption. At the time the Redlining Revisions were being developed and considered by the
19 Respondents, there was substantial evidence that housing and mobility concerns were shifting an
20 enormous amount of the state’s population and other emissions-generating activities to other,
21 higher-emission locations. There is substantial evidence that housing and mobility concerns are
22

23 ²⁵¹ Kasriel, *Biggest US Cities Losing Hundreds of Workers Every Day, and Even More Should Be*
24 *Fleeing*, CNBC (Oct. 16, 2019), <https://www.cnbc.com/2019/10/16/biggest-cities-in-us-are-losing-hundreds-of-workers-every-day.html>.

25 ²⁵² Daniels, *More Californians Are Considering Fleeing the State as They Blame Sky-High Costs,*
26 *Survey Finds*, CNBC (Feb. 13 2019), <https://www.cnbc.com/2019/02/12/growing-number-of-californians-considering-moving-from-state-survey.html>.

1 causing half of the state’s residents to consider leaving California within five years, including the
2 younger, technology-based workforce that is most likely to live in densified, expensive, small rental
3 apartments for at least a short period of time. The Legislature has never authorized Respondents to
4 depopulate the state, create phantom “paper” GHG reductions in California, and increase net global
5 GHG emissions by shifting people and jobs from low-emission California to high-emission Texas
6 and other locations.

7 **(3) The Redlining Revisions Will Dramatically Harm the State’s Aspiring**
8 **Minority, Working and Middle Class Populations by Further Reducing**
9 **the Supply and Cost of Housing, Increasing Mobility Costs, and**
10 **Requiring Longer Commutes and Travel Times.**

11 340. As detailed above, California’s aspiring minority population are currently
12 being disproportionately harmed by the state’s housing and mobility crises. The Redlining
13 Revisions will increase and cause additional racially disparate impacts.

14 341. The Redlining Revisions modify the CEQA Guidelines in a manner that
15 substantially decreases the likelihood that housing can and will be built in the state other than
16 within existing urbanized areas near transit. Even infill housing advocates concede that limiting
17 new housing to existing urban areas of the state will severely impact existing minority populations.
18 U.C. Berkeley’s study of building 1.92 million new homes only in dense infill areas also found that
19 this development would require the “demolition and redevelopment of tens and perhaps hundreds of
20 thousands of units....currently rent[ing] for below the median rents for their neighborhoods.”²⁵³
21 Consequently, the researchers recommended the adoption of major new housing subsidy programs
22 – none of which were or are addressed in the Redlining Revisions – to compensate for the inability
23 of displaced, lower income and disproportionately minority populations to purchase or rent newly
24 constructed homes where they once lived.²⁵⁴

25 342. The state’s misguided effort to address GHG emissions by further urban

26 ²⁵³ Decker, *supra* note 74, at 25.

27 ²⁵⁴ *Id.* at 9-10.

1 population densification has already displaced existing, less affluent minority residents to less
2 expensive peripheral locations in the eastern portions of coastal California counties, or farther to the
3 east in the Central Valley, San Bernardino County, or Riverside County. This process has already
4 transformed about 10 percent of formerly minority and working class neighborhoods in the Bay
5 Area, and measurable displacement is occurring in another 48 percent of all Bay Area
6 neighborhoods. Communities of color and renter neighborhoods, which consist of
7 disproportionately minority residents, have been found to be most acutely at risk of displacement.²⁵⁵

8 343. Other studies show that the “resegregation” of the Bay Area due to high
9 housing costs and the replacement of lower income minority populations by higher income, less
10 diverse residents is driven by income inequality and “a racialized market economy organized
11 around the needs of wealthier residents” that is “turning unprecedented prosperity into an engine for
12 new forms of injustice for people of color, women, and immigrants.”²⁵⁶

13 344. The same process of displacement is occurring and will be further stimulated
14 by the Redlining Revisions in Southern California. A report commissioned by the Los Angeles
15 County Board of Supervisors found that 89 percent of the housing units that are most at risk of
16 steep escalations in rent are in transit-served neighborhoods with a disproportionate population of
17 minority residents.²⁵⁷ The state lacks, and the Redlining Revisions take no account of, the need for
18 trillions of dollars of additional state programs that would be necessary for aspiring minority,
19 working and middle class populations to live in new, densified urban housing.

20 345. For example, the City of Los Angeles recently estimated that if it were to
21 build 35 percent of the low income housing units assigned to it under state RHNA laws, and if the

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23 ²⁵⁵ Verma, *supra* note 21.

24 ²⁵⁶ Bay City News, *Waves of Displacement, Resegregation Affect Bay Area Communities of Color*
(July 10, 2019), <https://sfbay.ca/2019/07/10/waves-of-displacement-resegregation-affect-bay-area-communities-of-color/>.

25 ²⁵⁷ California Housing Partnership, *Los Angeles County Annual Affordable Housing Outcomes*
26 *Report*, (Apr. 30, 2019), at 4, http://chpc.net/wp-content/uploads/2019/06/LA-County-Affordable-Housing-Outcome-Report-V3_with-appendix.pdf.

1 per unit cost was held at \$500,000, and if the city maintained its practice of capping its contribution
2 to \$120,000 per unit, and if other as-yet unidentified or woefully underfunded federal, state and
3 other funding sources were assumed to be available for the remaining \$380,000 per unit, then the
4 city's obligation would be \$30 billion dollars (three times higher than its total annual budget).²⁵⁸
5 There is zero evidence that the city (or anyone else) can and will pay for these housing units (none
6 of which would even be available to median income families, who would continue to be priced out
7 of coastal communities).

8 346. This is why the non-partisan LAO concluded that California's regulatory
9 framework and policies – including CEQA – needed to be reformed to restore the housing market
10 so it actually worked for Californians. The LAO further concluded that these regulatory reforms
11 were critical since available public funding for housing would be fully absorbed to house the most
12 economically distressed special needs populations.²⁵⁹

13 347. The Redlining Revisions will also greatly increase the transformation of
14 California from a state that has historically afforded homeownership opportunities for the majority
15 of its residents to a renter-dominated society. This shift will deprive the state's growing Latino,
16 African American and other minority populations of the economic and social resources that owning
17 a home provided prior generations, especially the state's declining number of white residents. Not
18 only will the substantial majority of new housing contemplated by the Redlining Revisions be rental
19 units, but the older, largely white population that was able to buy a home are not selling those
20 homes when moving to a new property - thereby increasing the supply for younger buyers – but
21 rather are putting them on the rental market as income properties.

22 348. As one U.C. Berkeley researcher observed, "Owning a home is the primary
23 mechanism for building wealth and economic mobility...Without wealth, how do you pay for your
24

25 _____
26 ²⁵⁸ City of Los Angeles, *supra* note 188.

27 ²⁵⁹ California's High Housing Costs, *supra* note 10, at 35.

1 kids’ college education or create a better life for your heirs?”²⁶⁰ High housing costs have already led
2 what researchers have called the “rise of the renter region” in California. Minority and households
3 of color account for a disproportionate share of the California population that has no choice but to
4 rent rather than own a home.²⁶¹ The Redlining Revisions will increase these racially disparate
5 impacts by creating even larger and more severe “renter regions” throughout the state and depriving
6 minority residents of the opportunity to build wealth through homeownership.

7 349. The state’s aspiring minority communities currently account for a
8 disproportionately large share of California households forced to pay 30 percent or more of total
9 household income for housing. The Redlining Revisions will increase the racially disparate impact
10 of the state’s high housing costs by creating incentives through the CEQA process to build
11 apartments in extremely expensive and limited urban areas near transit. Minority, working and
12 middle class households will be unable to afford to rent or buy new housing in these areas. In
13 addition, as minority populations are displaced, demand for housing in peripheral regions, such as
14 San Bernardino or the San Joaquin Valley, will increase. In 2015, the LAO determined that high
15 housing costs in coastal locations increased housing costs in adjacent inland communities due to
16 population displacement.²⁶²

17 350. The CEQA Guidelines amendments adopted in the Redlining Revisions,
18 however will constrain or preclude new housing construction in peripheral regions. Consequently,
19 the number of potential home buyers and renters in areas that are now barely affordable for
20 displaced minority populations will increase, but the housing supply will remain static or grow only
21 incrementally over time. Housing prices will rise in these locations and the number of minority as
22 well as working and middle class households burdened by excessive housing costs will increase.

23 351. The Redlining Revisions will cause racially disparate impacts on commuting

24 ²⁶⁰ Collins, *The New American Dream: Leasing Your House*, Orange County Register (June 29,
25 2018), <https://www.ocregister.com/2018/06/29/the-new-american-dream-leasing-your-house/>.

26 ²⁶¹ Samara, *supra* note 38, at 7.

27 ²⁶² California’s High Housing Costs, *supra* note 10, at 35.

1 and housing costs by further pricing minority communities out of Coastal Job Centers, and forcing
2 the displaced population to pay excessive additional costs for new housing outside of urban transit
3 locations. Displaced minority workers who work in coastal areas, will pay much higher fuel costs
4 than in the rest of the country due to California’s cap-and-trade program. New housing outside of
5 urban transit areas will be required to mitigate for VMT impacts under the Redlining Revisions,
6 including the Underground VMT Regulation. If these impacts are mitigated by buying bus passes
7 for current vehicle users over a 30 year occupancy period of a new home, per unit costs, and the
8 associated selling prices or rents, would increase by ten to hundreds of thousands of dollars.

9 352. Notwithstanding cap-and-trade and VMT mitigation, new housing will also
10 be required to mitigate in some manner for GHG impacts under the Redlining Revisions, including
11 the Underground GHG Regulation. Housing in urban transit centers is already unaffordable for
12 most of the state’s aspiring minority households. New housing subject to CEQA review in
13 peripheral areas that are now barely affordable will be subject to multiple new and duplicative
14 climate-related mitigation and fossil fuel cost increases imposed by fuel suppliers to offset the cost
15 of cap-and-trade compliance.

16 353. The state’s minority workforce increasingly depends on automotive mobility
17 and cannot effectively utilize public transit. For the first time in state history, and in violation of
18 several legislated and funded roadway improvement laws, the Redlining Revisions treat roadway
19 capacity enhancements as a CEQA impact that must be mitigated, rather than as a mitigation
20 requirement for new projects to reduce congestion and travel times for all Californians.

21 354. Minority and households of color are disproportionately displaced from
22 Coastal Job Centers to peripheral locations and already suffer from “excruciatingly long commutes”
23 on increasingly dysfunctional roadways. Long commutes have adverse effects on health and family
24 stability. As the director of Land Use and Housing at Urban Habitat, a Bay Area non-profit recently
25 noted, long commutes are “very challenging. ... Your entire life becomes shaped by your work and
26

1 your commute to work. Your entire life becomes an appendage to your job.”²⁶³ The Redlining
2 Revisions will further increase commute times and erode roadway capacity and cause racially
3 disparate mobility impacts.

4 355. In a landmark study of American housing supply, Harvard University
5 economist Edward Glaeser found that California’s housing market was unaccountably limiting the
6 number of new homes in high opportunity, low GHG emissions communities, and instead
7 displacing people and jobs to lower opportunity, high GHG locations. “If the welfare and output
8 gains from reducing regulation of housing construction are large, then why don’t we see more
9 policy interventions to permit more building in markets such as San Francisco?” Glaeser concluded
10 that part of the problem was that existing homeowners, who are disproportionately white in
11 California “do not want more affordable homes: they want the value of their asset to cost more, not
12 less.” In addition, they “may not like the idea that new housing will bring in more people, including
13 those from different socio-economic groups.”²⁶⁴

14 356. The Redlining Revisions have precisely the same adverse consequences
15 identified in Glaeser’s study. They keep home values high for older white Californians who are
16 declining in number but own most of the state’s housing stock. They make it even harder for
17 aspiring minority, working and middle class residents to live in the highest opportunity, lowest
18 GHG emission communities in the state. The Redlining Revisions unquestionably cause racially
19 disparate housing and mobility impacts.

20 **(4) The Redlining Revisions Illegally Fail to Consider Feasible Alternative**
21 **Measures to Achieve Comparable or Greater Global GHG Reductions**
22 **Without Causing Racially Disparate Impacts.**

23 357. As discussed in the Causes of Action in more detail, for decades courts

24 ²⁶³ Bay City News, *Waves of Displacement, Resegregation Affect Bay Area Communities of Color*
25 (July 10, 2019), <https://sfbay.ca/2019/07/10/waves-of-displacement-resegregation-affect-bay-area-communities-of-color/>.

26 ²⁶⁴ Glaeser and Gyourko., *The Economic Implications Of Housing Supply*, National Bureau Of
27 Economic Research (Sept. 2017), at 20, <https://www.nber.org/papers/w23833.pdf>.

1 declined to apply civil rights laws to housing regulations and land use practices that had a blatantly
2 discriminatory effect if they were not facially racist. In 2015, the U. S. Supreme Court found that
3 housing policies and programs with a clear racially disparate impact violate the civil rights of
4 adversely affected minorities.²⁶⁵ In 2016, the Ninth Circuit, building on the U.S. Supreme Court’s
5 decision, invalidated housing and land use policies that had a disparate impact on Latino
6 residents.²⁶⁶ Housing policies and practices that have a racially disparate impact may not be
7 implemented under state and federal Fair Housing laws if there are feasible, less discriminatory
8 alternatives that meet the legitimate objectives of the proposed agency action. There are far more
9 feasible, non-discriminatory means of reducing GHG emissions than making California housing
10 unaffordable by adding GHG and VMT mitigation costs to reduce emissions – and induce more
11 Californians who cannot afford to live here to move to much higher per capita GHG states like our
12 top out-migration destinations of Texas, Arizona and Nevada.

13 358. The Redlining Revisions were adopted by the Respondents with no
14 meaningful consideration of less discriminatory alternatives. The Respondents deliberately and
15 willfully attempted to avoid any such assessment by failing and continuing to refuse to disclose the
16 amount of GHG emission reductions that the Redlining Revisions could achieve. This refusal is
17 particularly remarkable given the blatantly discriminatory effects of increasing the cost and
18 reducing the supply of housing in a market already in crisis, displacing aspiring minorities to
19 peripheral areas, and forcing displaced minorities to commute longer on increasingly dysfunctional
20 roadways that the Redlining Revisions will deliberately create. These massively discriminatory
21 effects will have almost no measurable GHG reductions in California, and are highly likely to result
22 in out of state population and economic activity displacement, among other unintended
23 consequences, that will result in a net global GHG emission increase, not decrease.

24
25 ²⁶⁵ *Texas Dept. of Housing and Comm. Affairs v. Inclusive Communities Project, Inc.* (2015) 576
U.S. ___, 135 S.Ct. 2507.

26 ²⁶⁶ *Avenue 6E Investments, LLC v. City of Yuma Arizona* (9th Cir. 2016) 818 F.3d 493, 512.

1 359. There are multiple feasible and less discriminatory GHG emission reduction
2 alternatives to the Redlining Revisions. Given the uncertainty that the Redlining Revisions will
3 have any meaningful effect, or a negative effect on global GHG emissions, the most reasonable and
4 practical alternative is to rescind them. None of the legally deficient VMT and GHG amendments to
5 the CEQA Guidelines or any of the unlawful discussion of VMT and GHG thresholds in the
6 Underground VMT Regulation and the Underground GHG Regulation, are required to meet
7 California’s most aggressive legislated climate change policy, which requires state emissions to fall
8 by 40 percent from 1990 levels by 2030. Rather than quixotically attempt to reduce transportation-
9 related GHG emissions by implementing racially discriminatory, massively disruptive housing
10 policies, the state should focus on meeting the legislated 2030 objectives by developing and refining
11 new technologies and programs that will have far more likely and significant GHG reduction
12 benefits on a global scale.

13 360. The Redlining Revisions frequently assert that “early action” to promote
14 densification near transit is necessary to meet potential future state objectives. There are sound
15 reasons, however, for greater caution and careful review of GHG policy results before rushing to
16 implement precipitous, racially discriminatory housing measures.

17 361. Despite its reputation as a climate leader, California has not contributed
18 significantly to GHG reductions in the U.S., let alone on a global scale. From 2005-2016, the EIA
19 estimated that U.S. CO₂ emissions fell by over 800 million metric tons per year. California
20 accounted for just 22 million tons, or 2.8 percent of this reduction. California has the largest
21 population of any state, but GHG emissions were reduced since 2005 by a greater net volume in 14
22 other, smaller states, including Pennsylvania, Alabama, Ohio, Kentucky and Missouri.²⁶⁷ Most of
23 these states have made substantially larger contributions to global GHG emission reductions by
24 implementing practical policies, such as replacing coal fired power plants with natural gas, that

25
26 ²⁶⁷ U.S. EIA, Energy-Related Carbon Dioxide Emissions by State, 2005-2016 (Feb. 2019), Table 1,
at 8-9, <https://www.eia.gov/environment/emissions/state/analysis/pdf/stateanalysis.pdf>.

1 have clear and unambiguous benefits. California has focused on speculative and racially
2 discriminatory efforts like the Redlining Revisions instead of, for example, converting the state’s
3 diesel trucking fleet to natural gas, which would have the dual benefits of reducing GHG emissions
4 while reducing particulate pollution that disproportionately impacts the health of minority
5 communities.

6 362. The state has also not addressed GHG emissions leakage, either from
7 inducing population and economic activity to move to locations with higher emissions, or that is
8 caused by state energy imports which purportedly are derived from “clean” generation but which
9 many experts believe simply allow dirtier power to be “shuffled” and sold to other users.²⁶⁸
10 According to the LAO, and contrary to state law, California environmental policymakers have
11 developed almost no credible information about the magnitude of emissions leakage from the
12 state.²⁶⁹ Stanford University researchers have estimated that leakage and resource shuffling could
13 currently be offsetting a substantial amount of the state’s legislated GHG reduction objectives.²⁷⁰
14 California climate policies must address these fundamental and major issues before undertaking
15 housing and mobility experiments with clear racially discriminatory harms but no clear, or
16 potentially any, global GHG emission benefits.

17 363. The state could also implement automotive GHG emission standards, which
18 currently do not exist but have proven remarkably successful at virtually eliminating other vehicular
19 pollutants without constraining housing or mobility. As shown in Figure 19, total U.S. emissions
20 from highway vehicles were reduced by more than 90 percent for pollutants such as sulfur dioxide

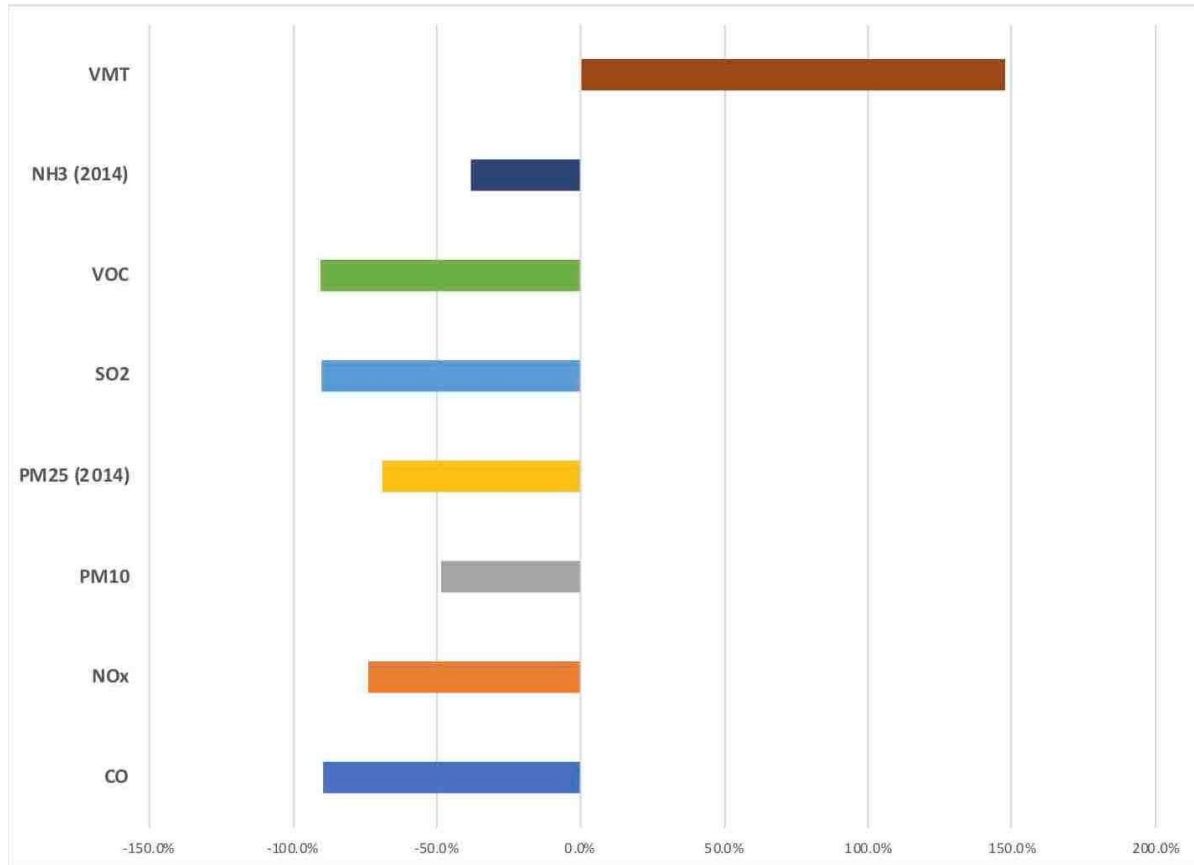
21
22 ²⁶⁸ Green, *Don’t Link Carbon Markets*, Nature (Mar. 21, 2017), <https://www.nature.com/news/don-t-link-carbon-markets-1.21663>.

23 ²⁶⁹ Taylor, *The 2017-18 Budget: Cap-and-Trade*, LAO (Feb. 2017), at 15,
24 <https://lao.ca.gov/reports/2017/3553/cap-and-trade-021317.pdf>.

25 ²⁷⁰ Cullenward and Weiskopf, *Resource Shuffling and the California Carbon Market*,
26 Environmental and Natural Resources Law & Policy Program Working Paper, Stanford Law School
(July 18, 2013), <https://law.stanford.edu/wp-content/uploads/sites/default/files/publication/440262/doc/slspublic/Resource%20Shuffling%20-%20Cullenward%20and%20Weiskopf.pdf>.

1 (“SO₂”), carbon monoxide (“CO”) and volatile organic compounds (“VOC”), and all pollutants
 2 discharged from highway vehicles have dramatically fallen since 1970 despite a massive 50 percent
 3 increase in total U.S. VMT.

4 **Figure 19: Percent Change in Annual Tons of Pollution by Type from Highway Vehicles**
 5 **and Annual VMT, 1970-2018 (2014 where noted).²⁷¹**

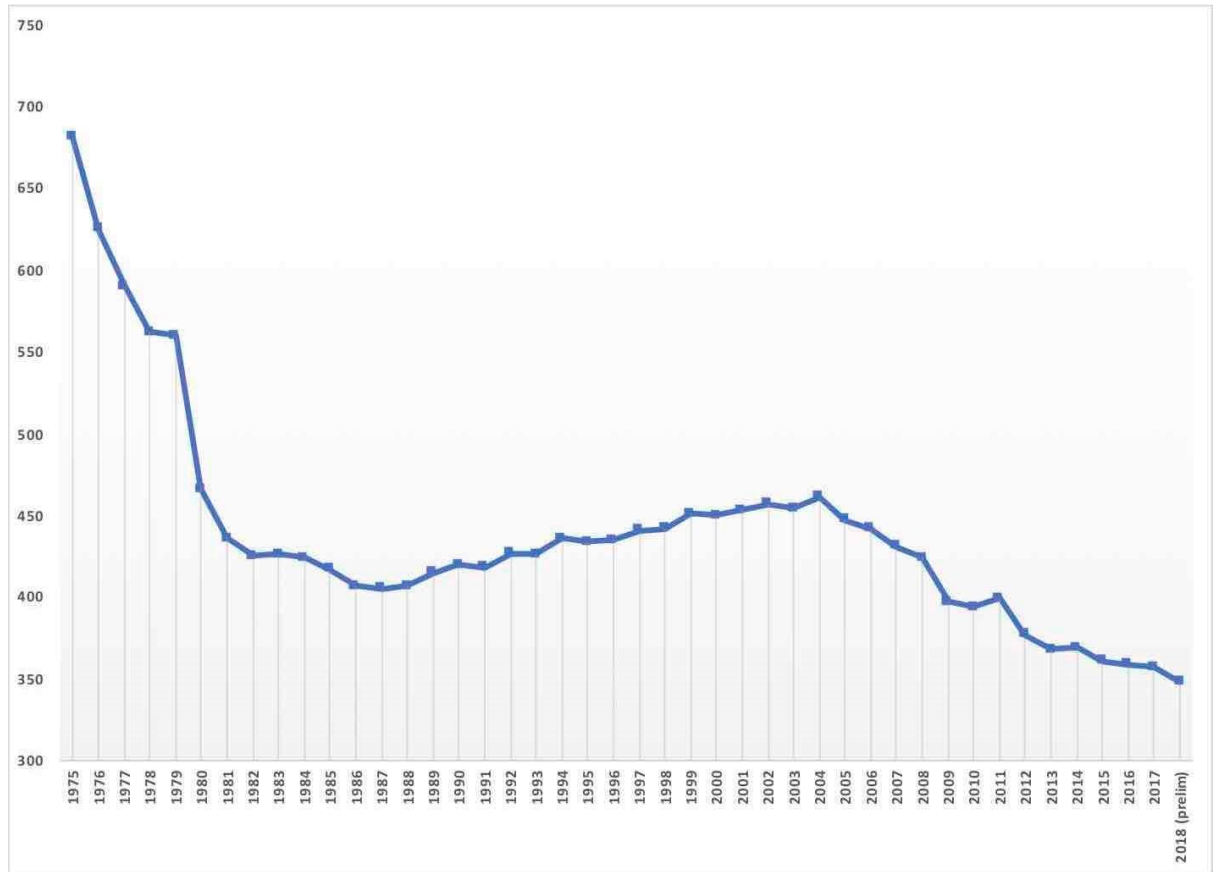


19 364. California has significant and demonstrable expertise in reducing vehicular
 20 emissions, and there is substantial evidence that similar improvements can be made by
 21 strengthening the regulation of GHG emissions as well. As shown in Figure 20, average vehicular
 22 CO₂ emissions fell from 681 grams per mile in 1975 to 461 grams per mile in 2004. From 2004 to
 23

24 ²⁷¹ Calculated from U.S. EPA, Air Pollutant Emissions Trends Data, National Annual Emissions
 25 Trend, Criteria pollutants National Tier 1 for 1970 – 2018, [https://www.epa.gov/air-emissions-](https://www.epa.gov/air-emissions-inventories/air-pollutant-emissions-trends-data)
 26 [inventories/air-pollutant-emissions-trends-data](https://www.epa.gov/air-emissions-inventories/air-pollutant-emissions-trends-data) (from Highway Vehicles)(last visited Nov. 13,
 27 2019) and U.S. Department of Energy, Alternative Fuels Data Center, Annual Vehicle Miles
 28 Traveled in the United States, <https://afdc.energy.gov/data/10315> (last visited Nov. 12, 2019).

1 2017, CO₂ emissions per mile were reduced by 22.6 percent and fell from 461 grams per mile to
2 357 grams per mile, which the U.S. EPA has stated is the “the lowest level ever measured.”²⁷²

3 **Figure 20: Real-World CO₂ Emissions per Mile, 1970-2018 (2018 preliminary)²⁷³**



18 365. The Respondents have never disclosed, and continue to refuse to provide, any
19 substantial evidence that continued reductions in GHG emissions from conventional vehicles, and
20 the deployment of very low- or zero-emission hybrid, electric, hydrogen fuel cell and other
21 vehicular technologies, will allow California to achieve its legislated and even reasonably likely
22 future GHG reduction goals without implementing racially discriminatory housing policies and

23
24 ²⁷² U.S. EPA, Office of Transportation and Air Quality, The 2018 Automotive Trends Report, Greenhouse Gas Emissions, Fuel Economy, and Technology since 1975, Executive Summary, at ES3, <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P100W3WO.pdf>.

25 ²⁷³ U.S. EPA, Office of Transportation and Air Quality, 2018 Automotive Trends Report, Section 3,
26 Table T.3.1, <https://www.epa.gov/sites/production/files/2019-03/420r19002-report-tables.xlsx> (last
27 visited Nov. 13, 2019).

1 mobility constraints.

2 366. The Redlining Revisions fail to consider measures that would achieve
3 comparable or greater net global GHG emission reductions by reducing emissions by the state’s
4 wealthiest households merely to the same level as average state household emissions. The
5 Underground GHG Regulation provides a list of “climate change tools and resources that a lead
6 agency can use to quantify greenhouse gas emissions and determine the significance of project
7 impacts to climate change.” One listed tool and resource is the “Cool California website” which is
8 described as a “State of California supported online resource that hosts links to various tools and
9 case studies.”²⁷⁴ The Cool California website, which is located on the CARB server system,
10 includes an interactive “Calculator for Households & Individuals” that generates estimated annual
11 household GHG emissions by household income level and size.

12 367. Although the calculator allows users to input state and regional locations, it is
13 primarily configured to adjust household emissions at the level of individual zip codes. Table 10
14 lists the nine largest zip codes in California, which contain 286,000 households and have an average
15 median income of \$67,400, almost exactly the same as the statewide median household income of
16 \$64,200.

25 _____
26 ²⁷⁴ OPR, Discussion Draft: CEQA and Climate Change Advisory (Dec. 2018), at 18,
27 http://opr.ca.gov/docs/20181228-Discussion_Draft_Climate_Change_Adivsory.pdf.

Table 10: Number of Households and Median Incomes in 10 Largest California Zip Codes²⁷⁵

Zip Code	Location	Number of Households	Median Income
94109	San Francisco	33,173	\$79,979
90250	Holly Park	32,242	\$49,417
90046	West Hollywood	29,180	\$65,990
94565	Pittsburg	27,966	\$62,255
90044	Los Angeles	27,804	\$32,278
94110	San Francisco	27,784	\$109,747
92683	Westminister	27,700	\$57,546
90650	Norwalk	27,238	\$63,669
95630	Folsom	26,810	\$106,843
90805	Long Beach	26,783	\$47,981

368. Table 11 provides the household emission results for each zip code generated by the CARB calculator for the “average” household and households earning \$100,000 options, both assuming three person households, as provided in the calculator. The results show that, in every zip code, households earning more than \$100,000 per year generate significantly more GHG emissions than average households. The excess emissions from households earning more than \$100,000 ranges from 17 percent to 20 percent higher than the average household in the 10 largest zip codes in California.

²⁷⁵ U.S. Census Bureau, 2013-2017 American Community Survey (ACS) 5-Year Estimates, Median Income in the Past 12 Months (in Inflation-Adjusted Dollars), Table Series S1903, <https://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t> (search for “S1903” in topic or table name search field and “California” in state, county or place search field)(last visited Nov. 10, 2019).

Table 11: Average Household Emissions by Source, 10 Largest California Zip Codes, for Average Earning Households and Households Earning \$100,000²⁷⁶

	94109	90250	90046	94565	90044	94110	92683	90650	95630	90805
Average Income Household, 3 People										
Construction and water	3.12	3.12	3.12	3.12	3.12	3.12	3.12	3.12	3.12	3.12
Clothing	1.94	2.3	1.83	2.78	2.26	2.73	2.87	2.99	3.14	2.49
Natural gas and electricity	3.47	4.5	3.91	5.92	4.91	4.82	5.51	5.01	6.79	4.72
Air Travel	1.96	1.21	1.7	1.74	0.58	2.1	1.79	1.52	2.9	1.03
Furniture	2.12	1.8	1.89	2.38	1.37	2.57	2.43	2.3	3.31	1.77
Car Fuel	5.44	11.28	8.28	16.52	9.15	8.34	15.04	15.55	16.8	11.74
Services	6.83	5.92	6.23	7.44	4.79	7.95	7.57	7.22	9.91	5.84
Total Emissions	36	42	39	53	37	44	51	51	60	43
\$100,000 Income Household, 3 People										
Construction and water	3.73	3.73	3.73	3.73	3.73	3.73	3.73	3.73	3.73	3.73
Clothing	2.35	2.78	2.21	3.36	2.73	3.3	4.55	3.61	3.79	3.01
Natural gas and electricity	3.93	5.13	4.43	6.68	5.59	5.49	6.05	6.46	7.74	5.35
Air Travel	2.99	1.87	2.59	2.68	0.89	3.17	2.72	2.28	4.46	1.61
Furniture	3	2.54	2.67	3.36	1.94	3.62	3.43	3.25	4.67	2.51
Car Fuel	6.61	13.77	10.16	20.08	11.18	10.16	18.35	18.91	20.53	14.33
Services	9.4	8.15	8.56	10.24	6.58	10.94	10.41	9.94	13.63	8.04
Total Emissions	45	51	47	65	45	54	63	63	74	52

369. Table 12 summarizes average emissions by household activity and income group for the 10 largest zip codes in California, the net difference between emissions generated by

²⁷⁶ Based on emissions estimates for each household category generated by CARB, Calculator for Households & Individuals, <https://coolcalifornia.arb.ca.gov/calculator-households-individuals> (last visited Oct. 2019) for (1) “average” households with 3 persons; and (2) households with \$100,000 of income with 3 persons.

1 an average household and households earning \$100,000 per year, and potential state GHG
 2 reductions that would be achieved by reducing excess emissions of higher income households to
 3 average household emissions levels.

4 **Table 12: Average Household Emissions by Source, 10 Largest California Zip Codes, for**
 5 **Average Earning Households and Households Earning \$100,000²⁷⁷**

	Average Income Household, 3 People	\$100,000 Income Household, 3 People	Net Emissions Difference Between Average and \$100,000 Households	Excess State Emissions Generated by 4.28 Million Households Earning \$100,000+
Construction and water	3.12	3.73	0.61	2,610,104
Clothing	2.53	3.17	0.64	2,738,469
Natural gas and electricity	4.96	5.69	0.73	3,123,567
Air Travel	1.65	2.53	0.87	3,722,607
Furniture	2.19	3.1	0.91	3,893,761
Car Fuel	11.81	14.41	2.59	11,082,244
Services	6.97	9.59	2.62	11,210,609
Total Emissions	45.6	55.9	10.3	44,072,243

16 370. Approximately 4,280,000, or 33 percent of all California households earn
 17 \$100,000 or more. Table 12 shows that implementing policies to reduce emissions by the wealthiest
 18 California households, the most progressive approach, would reduce state GHG emissions by
 19 amounts that substantially exceed the 1,790,000 million ton reduction from 100 percent infill
 20 development estimated by U.C. Berkeley researchers and the 1,900,000 million ton potential
 21 reductions from reducing VMT in the SCAG area in accordance with the thresholds in the
 22 Underground VMT Regulation (see Table 9).

23 ²⁷⁷ Based on emissions from CARB, Calculator for Households & Individuals,
 24 <https://coolcalifornia.arb.ca.gov/calculator-households-individuals> (last visited Oct. 2019) and
 25 income estimates from U.S. Census Bureau, 2013-2017 American Community Survey (ACS) 5-
 26 Year Estimates, Income in the Past 12 Months (in Inflation-Adjusted Dollars) and Median Income
 in the Past 12 Months (in Inflation-Adjusted Dollars), Table Series S1901 and S1903 (search for
 “S1902” and “S1903” in topic or table name search field and “California” in state, county or place
 search field)(last visited Nov. 10, 2019).

1 371. Merely taxing or regulating emissions from furniture to achieve average
2 household levels would reduce state GHG emissions by approximately 3,900,000 tons, double the
3 estimated reductions from the Redlining Revisions. Reducing excess clothing emissions to average
4 household levels would achieve a 2,700,000 ton saving per year. Taxing or regulating air travel by
5 the state’s wealthiest households would reduce direct emissions by a similar amount and have
6 additional global GHG emission benefits because high altitude emissions have a greater adverse
7 effect on global climate.²⁷⁸ The CARB calculator further demonstrates that reducing excess car fuel
8 and household energy consumption by the state’s wealthiest households to average household levels
9 would each cut state emissions by over 10,000,000 tons per year, far more than any estimated
10 reduction attributed to housing densification around urban transit, VMT, and deliberately making
11 state roadways more dysfunctional.

12 372. Focusing state household emission reductions on higher income groups
13 would be more effective and also avoid racially disparate impacts. Such a policy could be readily
14 implemented by such means as taxing the consumption of air travel, furniture, clothing and services
15 to reduce demand, and providing tax credits for lower income households. The state could also
16 develop and implement emission reduction requirements for goods such as furniture and clothing
17 that would not only reduce emissions by wealthy residents, but also spur improvements that would
18 diffuse and reduce emissions nationally and internationally. California has already shown that it can
19 spur such technological improvements by contributing to national and international vehicular
20 pollution reduction standards.

21 373. Refocusing climate policies from the ineffective and racially disparate
22 Redlining Revisions to reducing GHG emissions by the wealthiest state residents is not only more
23 equitable and progressive, but it also avoids the discriminatory effects caused using the CEQA
24 Guidelines to reduce VMT and GHG emissions. CEQA only applies to new projects. The Redlining

25 _____
26 ²⁷⁸ Jardine, Calculating the Carbon Dioxide Emissions of Flight, Environmental Change Institute
27 (Feb. 2009), <https://www.eci.ox.ac.uk/research/energy/downloads/jardine09-carboninflights.pdf>.

1 Revisions therefore entirely burden new housing in the state, which is most urgently needed by
2 aspiring minority, working and middle class residents, and have no effect on the wealthier, largely
3 white population living in existing owner occupied housing. There is no rational basis for seeking to
4 achieve statewide GHG emission reductions by solely burdening new housing and ignoring the
5 much greater VMT, household consumption, and GHG emissions generated by state residents
6 living in existing housing.

7 374. State emissions would also be reduced to a much greater extent, and without
8 racially disparate impacts, by policies that cut GHG output from in-state sources that cannot migrate
9 or “leak” to other locations. The non-partisan state Little Hoover Commission has conclusively
10 found that decades of mismanagement in California has caused state forests to become unnaturally
11 over-vegetated and prone to hotter and larger wildfires that generate massive amounts of avoidable
12 GHG emissions per year.²⁷⁹ Properly managing state forests would reduce the magnitude of, and
13 GHG emissions from, in-state wildfires without emissions leakage to other locations.
14 Astonishingly, while the Redlining Revisions would implement racially disparate housing and
15 mobility measures that are highly prone to leakage and have at best speculative net global GHG
16 emission benefits, current California climate policy has no adopted plan or target for reducing
17 emissions from wildfires.

18 375. As shown in Figure 15, GHG emissions from developing nations over the
19 next several decades will account for all of the world’s net emission increases as they increase
20 energy capacity for what are in most cases the world’s poorest populations. No meaningful globally
21 significant GHG reductions can be achieved unless developed nations are able to improve living
22 conditions with fewer GHG emissions in the future. A reasonable, socially just and progressive
23 state climate policy would consider whether spending billions of dollars on housing and mobility
24 programs that have racially disparate impacts and few if any globally-significant climate benefits –

25 ²⁷⁹ Little Hoover Commission, *Fire on the Mountain: Rethinking Forest Management in the Sierra*
26 *Nevada*, Report #242 (Feb. 2018), at 1-2,
<https://lhc.ca.gov/sites/lhc.ca.gov/files/Reports/242/Report242.pdf>. E

1 none of which have been disclosed by the Respondents – would be more effectively spent on
2 assisting cleaner energy and growth in developing nations.

3 376. Just after he spearheaded Respondents’ efforts to adopt the unlawful
4 Redlining Revisions, Mr. Alex left government to head “Project Climate” at UC Berkeley’s Center
5 for Law, Energy, & Environment. In September 2019, he wrote that “reducing the black carbon
6 emissions from open flame cooking [by three billion of the world’s poorest residents] immediately
7 reduce climate forcing.” As a result, he urged that “a multi-billion dollar effort to cut open flame
8 burning in half in five to ten years” be implemented to achieve “dramatic” GHG emissions
9 benefits.²⁸⁰

10 377. It is virtually certain that Respondents could have identified scores of similar
11 measures that would cost-effectively reduce global GHG emissions and improve, rather than
12 degrade, the quality of life for the world’s less affluent populations. Instead, Respondents opted to
13 pursue the enormously expensive and massively disruptive Redlining Revisions and cause racially
14 disparate impacts to housing and mobility. Unlike the open flame cooking programs the former
15 head of OPR now advocates, the Respondents have, to this very day, never disclosed precisely how
16 Redlining Revisions will achieve any net global climate benefits, let alone benefits commensurate
17 with their cost and racially disparate impacts. There is no substantial evidence of any kind that the
18 Redlining Revisions are necessary to achieve any legislatively adopted climate objective, or that
19 they have a reasonable likelihood of success. In contrast, there is overwhelming evidence that
20 alternative measures could and should have been adopted in lieu of the Redlining Revisions that
21 would have significant and predictable global climate benefits without generating racially disparate
22 impacts.

23
24
25
26 ²⁸⁰ Alex, *Black Carbon, 3 Billion Strong*, Legal Planet, (Sept. 16, 2019), <https://legal-planet.org/2019/09/16/black-carbon-3-billion-strong/>.

1 **V. CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 (Denial of Equal Protection, Cal. Const., Art. I, § 7, Art. IV, § 16; U.S. Const., Amd. 14, § 1)

4 378. Petitioners hereby re-allege and incorporate herein by reference the
5 allegations contained in paragraphs 1-377, above.

6 379. Non-discriminatory access to ownership and occupancy of housing is a
7 fundamental interest for purposes of evaluating regulations under the equal protection provisions of
8 the California Constitution. Cal. Const., Art. I, § 7 and Art. IV, § 16.

9 380. Non-discriminatory access to ownership and occupancy of housing is a
10 fundamental interest for purposes of evaluating regulations under the equal protection clause of the
11 United States Constitution. U.S. Const., Amd. 14, § 1.

12 381. Non-discriminatory access to ownership and use of personal vehicles is a
13 fundamental interest for purposes of evaluating regulations under the equal protection provisions of
14 the California Constitution. Cal. Const., Art. I, § 7 and Art. IV, § 16.

15 382. Non-discriminatory access to ownership and use of personal vehicles is a
16 fundamental interest for purposes of evaluating regulations under the equal protection clause of the
17 United States Constitution. U.S. Const., Amd. 14, § 1.

18 383. The Redlining Revisions cause unlawful disproportionate harm to members
19 of minority communities, including Petitioners.

20 384. Public Resources Code section 15064.3 and the corresponding VMT
21 significance criteria included in Appendix G, section XVII(b) cause disproportionate harm to
22 members of minority communities, including Petitioners, by knowingly and intentionally
23 exacerbating harms already caused by the housing shortage and affordability crisis. These
24 provisions expand the scope of CEQA to define personal vehicular travel by future home occupants
25 as an “environmental impact” requiring “mitigation” even though Respondents had actual
26 knowledge, from their own experts and comments, that the only feasible form of “mitigation” that

1 would reduce VMT in compliance with the Section 15064.3 regulatory significance criteria of
2 causing a net reduction in VMT for the project area would be massive cash payments to transit
3 providers (estimated at \$403,800 per housing unit, assuming as discussed in paragraphs 313-315,
4 *infra*) to pay the transit costs for riders of distant transit systems.

5 385. In San Bernardino County, 98 percent of existing residents use personal
6 vehicles, and are not otherwise required by law to make massive cash payments to fund the
7 transportation of unrelated persons to and from unknown locations. Adding new VMT mitigation
8 would more than double the price of a home in San Bernardino, where as noted in Figure 1.A,
9 average home sale prices are only \$288,000. Assuming a family has saved the approximately
10 \$65,000 required to purchase (\$57,600 down payment, and \$7,400 in closing costs), a family
11 earning \$50,000 (less than the average household income of \$53,310 but above the median of
12 \$41,027), today can afford to become a homeowner of a median priced home in San Bernardino
13 with a monthly mortgage of approximately \$1,000.²⁸¹ New homes are more expensive (estimated at
14 \$350,000), requiring about \$70,000 in closing costs and \$1,419 in mortgage payments, yet still
15 affordable for a household earning at least \$60,000 (slightly above the average income).

16 386. When a VMT mitigation fee of \$403,800 is added to the new home price,
17 however, the cost of that new home more than doubles to \$753,800. Given the housing shortage,
18 new homes must be built to meet pent up and future demand. To pay the VMT-burdened home
19 price, a family would need up front savings of \$160,000 for a down payment and closing costs, and
20 would then pay over \$3,000 per month. The buyer of this VMT-burdened home would need to earn
21 \$131,000 per year, which is far out of reach for even above-median union worker households
22 earning \$90,000 per year. This VMT mitigation fee effectively eliminates the feasibility of home
23 purchases by middle income families in one of the region's few counties where current housing

24 _____
25 ²⁸¹ Mortgage and required family income calculations are based on a 20% down payment, 4.5%
26 interest, 30-year fixed rate mortgage per the DollarTimes online mortgage calculator. Closing costs
27 are estimated. *See DollarTimes, Income to Afford a \$240,000 House,*
28 <https://www.dollartimes.com/income-needed-for-house/240000> (last visited Nov. 12, 2019).

1 prices remain affordable and thereby also disproportionately eliminates homeownership
2 opportunities for the 76 percent of the San Bernardino population comprised of Latinos and African
3 Americans.

4 387. This is an intended, not accidental, result: Respondents have repeatedly made
5 clear their policy decision that new housing units should be clustered in high density buildings near
6 transit – the highest cost form and location for housing where even rents cost more than the VMT-
7 burdened monthly mortgage payment of \$3,000 – but where Respondents have decreed that VMT is
8 presumptively less than significant under Section 15064.3 and thus no VMT mitigation is required.
9 Respondents’ technical-sounding, environmentally-cloaked “VMT” mitigation is nothing less than
10 intentionally ending attainable home ownership for the disproportionately minority families harmed
11 by the housing crisis, including middle income union member minority families in San Bernardino.

12 388. The Underground VMT Regulation likewise causes disproportionate harm to
13 members of minority communities, including Petitioners, by knowingly and intentionally
14 exacerbating harms already caused by the housing shortage and affordability crisis. These
15 provisions expand the scope of CEQA to define personal vehicle travel by future home occupants as
16 an “environmental impact” requiring “mitigation” even though Respondents had actual knowledge
17 from their own experts and comments that the only feasible form of “mitigation” that would reduce
18 VMT in compliance with the threshold requiring new projects to have VMT 15 percent lower than
19 existing homes would be massive cash payments (estimated using the same methodology described
20 in the preceding paragraph and in paragraphs 313-315, *infra*, as \$45,100 per new home) to
21 unrelated riders of distant transit systems.

22 389. In San Bernardino County, 98 percent of existing residents use personal
23 vehicles and are not otherwise required by law to make massive cash payments to fund
24 transportation by unrelated persons to and from unknown locations. Adding a \$45,100 VMT
25 mitigation fee to the cost of a new home pushes closing costs to \$80,000, and increases the
26 minimum required household income to just under \$70,000 – about 40 percent more than average

1 household income, and thus likewise imposes a new disparate cost burden and harm on aspiring
2 minority homeowners. Given the inconsistency between the regulatory presumption that VMT is
3 less than significant only if the project results in a net decrease in VMT under Section 15064.3, and
4 the 15 percent VMT reduction threshold included in the Underground VMT regulation, housing
5 projects that rely on the 15 percent VMT reduction criteria are also at greater risk of losing a CEQA
6 lawsuit based on the adequacy of VMT mitigation – particularly since Respondents provide no
7 substantial evidence as to what environmental harms are significant if one more mile is traveled in
8 the neighborhood where a new home is built, or why that harm is less than significant if VMT
9 increases in that same neighborhood in an amount equivalent to 85 percent per capita of “either” the
10 city or the “project area” VMT.

11 390. Respondent OPR’s endorsement in its Underground VMT Regulation of
12 measuring the required increment of VMT reduction for new housing against “either” the city or the
13 “project area” is itself arbitrary and capricious, and provides yet another rationale for rejecting new
14 housing in wealthy no growth cities. For example, a city such as Beverly Hills can select a 15
15 percent VMT threshold below its city average, where most residents – to the extent they need to
16 commute at all during peak hours and are not retired, independently wealthy, or work remotely or
17 during off-peak hours as part of the keyboard or entertainment economy – drive only short distances
18 such as Santa Monica, Downtown Los Angeles, and Burbank. Because there is no possibility that
19 new housing in Beverly Hills (except age-restricted and special needs non-working households) can
20 reduce its VMT 15 percent below the in-city average, Beverly Hills can use CEQA to either deny
21 project approvals based on the significant unavoidable adverse impact caused by excess VMT, or
22 burden new housing units with tens or hundreds of thousands of dollars of VMT mitigation fees.

23 391. While Respondent OPR does not define the “project area” – itself an
24 ambiguity that violates the APA’s clarity requirements – a less anti-housing city such as Los
25 Angeles can select a regional VMT average, and credit new housing in the city with having lower
26 VMT than higher regional averages that take into account commuters from San Bernardino and

1 other inland cities and counties. Respondents’ provide neither rhyme nor reason why “either” city
2 or project area VMT is the appropriate benchmark for a percentage VMT reduction, and provide no
3 limitations whatsoever on the use of the no-growth “city” VMT methodology to deny new housing
4 by declining to adopt a “statement of overriding considerations” under CEQA as required to
5 approve a project with a significant unavoidable new VMT impact, or impose extraordinarily high
6 VMT costs to make such housing unaffordable, infeasible, or both.

7 392. Selecting which VMT percentage is appropriate or defensible – against an
8 unknown and unspecified GHG reduction performance target or otherwise – and then further
9 selecting the city or project area benchmark, and then estimating with unverified models regional,
10 city, and project level VMT, and then inventing, and either imposing or rejecting VMT reduction
11 mitigation measures, must all be determined by the city or county reviewing a new housing project
12 – advised by costly technical experts, and attacked by anti-housing litigants and their experts.
13 Actual housing approvals, and actual construction of approved housing, are stalled, derailed or
14 abandoned while being held hostage to unknown and uncertain VMT CEQA compliance mandates
15 and VMT CEQA lawsuit outcomes where judges are asked to referee politically charged land use
16 disputes in a regulatory miasma of technical methodologies invented by CEQA consultants.

17 393. Further exacerbating this CEQA VMT litigation risk is the need for
18 substantial evidence in support of the accuracy of VMT CEQA compliance, when the best available
19 evidence, such as the UC Davis Transportation Institute study commissioned by state agencies,
20 demonstrates both the inconsistency and unreliability of VMT measurement methodologies, as well
21 as the unavailability of evidence demonstrating that various recommended VMT mitigation
22 measures, such as those in the CAPCOA Manual, will result in actual VMT reductions, as further
23 described in paragraphs 283-284.

24 394. When confronted with these inconsistent, contradictory, and infeasible
25 demands for VMT reductions, San Bernardino County – like other jurisdictions – concluded that it
26 was infeasible to require VMT reductions at all for the unincorporated county area, and adopted a

1 CEQA VMT significance threshold pursuant to which a new housing project would be deemed to
2 create a significant VMT impact unless the project’s VMT is 4% lower than current per capita
3 VMT.²⁸² San Bernardino County concluded that it was infeasible to require projects to achieve
4 VMT reductions outside the context of longstanding vehicle trip reduction measures such as
5 encouraging carpooling and ridesharing, and did not attempt to impose transit subsidy fees such as
6 those advocated by Respondent OPR and various VMT mitigation workshops.

7 395. The Redlining Revisions provide no clarity as to the adequacy of San
8 Bernardino’s approach, just as they provide no objective environmental impact avoidance outcome
9 for either the no VMT increase in the project area, or the 15% below average VMT criteria. In the
10 absence of substantial evidence as to any significant adverse environmental harm caused by simply
11 traveling a mile in a car (including an electric car), the threshold for when a VMT impact is
12 “significant” is unknown, unknowable, and accordingly ripe for costly study and debate, uncertain
13 litigation outcomes, and prolonged exacerbation of the housing crisis and harms to minority
14 housing crisis victims. A lawful regulation does not cloak its purpose or include internal
15 contradictions: Respondents’ VMT regulations do both.

16 _____
17 ²⁸² San Bernardino County, Transportation Impact Study Guidelines (July 9, 2019), at 21,
18 [https://cms.sbcounty.gov/Portals/50/transportation/Traffic-Study-Guidelines.pdf?ver=2019-10-03-
19 155637-153](https://cms.sbcounty.gov/Portals/50/transportation/Traffic-Study-Guidelines.pdf?ver=2019-10-03-155637-153) (“project should be considered to have a significant impact if the project VMT per
20 person/employee is greater than 4% below the existing VMT per person for the unincorporated
21 county”). This threshold was established as part of the General Plan update process, which remains
22 underway. This process includes expert analysis concluding that even with implementation of all
23 feasible VMT reduction measures included in the CAPCOA Manual (CAPCOA, *supra*, note 200)
24 that for San Bernardino County “the **maximum** achievable” reductions for any given project
25 consisted of Transportation Demand Measures such as encouraging carpooling, and the **maximum**
26 feasible VMT reduction from such measures was 4%. San Bernardino County, Transportation
27 Impact Study Guidelines at 21. Respondents’ repeatedly cited the CAPCOA Manual as substantial
28 evidence of the feasibility of requiring projects to mitigate to achieve 15% VMT reduction. Unlike
the GHG/VMT/CEQA war zone in San Diego County, where even “net zero” GHG is insufficient
and VMT/climate mandates require all new housing to be built at higher densities in transit served
neighborhoods, the San Bernardino VMT threshold has not been litigated – but the updated San
Bernardino General Plan has not yet been adopted. San Bernardino County’s General Plan was the
first California local agency action ever sued under CEQA for failing to adequately address GHG,
and the lawsuit was settled before trial. *See, e.g., Walker, Landmark Settlement in Global Warming
Case*, Abbot & Kindermann, Inc. Land Use Law Blog (Aug. 27, 2007),
<https://blog.aklandlaw.com/2007/08/articles/ceqa/landmark-settlement-in-global-warming-case/>.

1 396. In addition to being internally inconsistent and contradictory, Section
2 15064.3, Appendix G section XVII(b), and the Underground VMT Regulation (collectively referred
3 to as the “VMT Redlining Revisions”), are also contrary to judicial precedent confirming that
4 payment by all Californians purchasing transportation fuels subject to CARB’s cap-and-trade
5 program is sufficient mitigation for GHG emissions from transportation fuel use under CEQA.²⁸³

6 397. The VMT Redlining Revisions also fail to comply with the California
7 Supreme Court’s directive that significance criteria for new projects cannot be based on an overall
8 statewide GHG reduction goal for existing and new development absent substantial evidence of the
9 appropriateness of applying the statewide goal to housing of different types and locations.²⁸⁴

10 398. The VMT Redlining Revisions intentionally conceal VMT data and falsely
11 report that VMT can decrease even when population and economic activities such as jobs increase;
12 they also intentionally decline to acknowledge or respond to factual information regarding the
13 disparate increase in VMT by minority families forced to drive longer distances to get to houses
14 they can afford to buy. The VMT Redlining Revisions fail to acknowledge or address CARB’s
15 November 2018 report confirming that VMT had increased steadily since the end of the Great
16 Recession,²⁸⁵ or CARB’s resultant conclusion that VMT must be reduced by up to 16.8 percent
17 instead of 15 percent to address increased VMT,²⁸⁶ and fail to acknowledge the fact that VMT
18 reductions are a proxy for GHG reductions and thus GHG reductions in lieu of VMT reductions as a
19 CEQA mitigation strategy should be allowed.

20 399. Respondents have accordingly knowingly created legal uncertainty verging
21

22 ²⁸³ *Assoc. of Irrigated Residents*, 17 Cal.App.5th at 741-44.

23 ²⁸⁴ *Newhall*, 62 Cal.4th at 225-26.

24 ²⁸⁵ CARB, 2018 Progress Report: California’s Sustainable Communities and Climate Protection Act
(Nov. 2018), at 4, https://ww2.arb.ca.gov/sites/default/files/2018-11/Final2018Report_SB150_112618_02_Report.pdf.

25 ²⁸⁶ CARB, 2017 Scoping Plan-Identified VMT Reductions and Relationship to State Climate Goals
26 (Jan. 2019), Figure 3 at 10, https://ww2.arb.ca.gov/sites/default/files/2019-01/2017_sp_vmt_reductions_jan19.pdf.

1 into chaos, which they acknowledge by taking the unprecedented CEQA regulatory step of delaying
2 implementation of a portion of the challenged VMT regulations by 18 months. These unlawfully
3 incomplete, contradictory, factually false, and knowingly racially discriminatory actions can and
4 already are being exploited by opponents of housing in challenging housing projects in CEQA
5 lawsuits, which then has the immediate effect of delaying completion of housing projects, and
6 thereby causes and exacerbates abuse of CEQA to derail or delay approved housing, which further
7 exacerbates the disparate impacts to minority communities harmed by the housing crisis.

8 400. Respondents offer a suite of other rationales for expanding CEQA to define
9 the act of driving a mile an “environmental impact” that fall well outside the statutory boundaries of
10 CEQA and thus outside Respondents’ regulatory authority (e.g., increasing “wellness” by
11 encouraging people to walk or bike to work); and thereby, intentionally ignore and dismiss
12 overwhelming evidence that almost all (approximately 98 percent) of workers in San Bernardino
13 County must and do drive to work, that the vast majority of such workers are Latinos or members of
14 other minority communities, and that adding massive new transportation mitigation costs under
15 CEQA to new housing causes regressive, racist harms to such workers.

16 401. Respondents further ignore facts, reports and comments regarding other
17 GHG emission reductions that can be achieved without causing unconstitutionally racist harms,
18 such as clearing dead and dying trees that emit methane gas (a more potent GHG than CO₂ emitted
19 by vehicles) as the trees rot, or clearing dead and dying trees before they explode into catastrophic
20 forest fires emitting black carbon (a far more harmful GHG than either methane or CO₂). Enhanced
21 forest management would have the “co-benefit” not of forcing a parent to commute an hour each
22 way on a bike with a child seat instead of driving 10 minutes, but of saving hundreds of lives and
23 billions of dollars of property damage.

24 402. Respondents further ignore facts, reports, and comments including CARB’s
25 own data showing that even a modest curtailment in the GHG content of furniture bought by the
26 state’s highest income households would reduce more GHG than converting a 1970s-era law into a

1 mandate that the housing crisis be solved by overwhelming rental apartments near bus stops in
2 existing communities.

3 403. Respondents further ignore facts, reports and comments that urbanized
4 neighborhoods with the most extensive transit services (e.g., in Los Angeles and Santa Monica) are
5 either Coastal Job Centers and thus destinations for far-flung residents of regional housing, or have
6 resulted in displacement and gentrification of existing and most often minority neighborhoods with
7 the development of the most costly housing typology (high rise) priced at \$1 million or more for
8 purchase or about \$4,000 or more per month for rent – price points that are inherently unaffordable
9 for median or lower income families, who are most likely to be minorities (and younger than
10 existing homeowners). Intentionally modifying CEQA with regulations designed to promote
11 inherently unaffordable housing products and further exacerbate displacement of minority
12 communities likewise causes and exacerbates housing crisis harms to minority communities.

13 404. Respondents’ exhortation in the Underground VMT Regulation that
14 “affordable housing” should be built in lieu of other housing to reduce VMT is an express
15 endorsement of the historically racist strategy of using public subsidies to create rental “projects”
16 for “those people” (aka minority families). As the LAO and other experts have explained, the need
17 for housing is so vast – and encompasses well over 100,000 homeless Californians, as well as
18 individuals needing supportive housing based on disability or other special needs – that it is fully
19 dependent on public subsidies. With even “affordable” rental units now costing in excess of
20 \$500,000 in Coastal Job Centers, both the LAO and former Governor Brown explained that the
21 state wholly lacks the resources to “spend its way” out of the housing crisis. Instead, California
22 must restore market conditions that create sufficient housing supplies and reduce sufficient “soft”
23 costs (costs excluding land, building materials and labor) to allow Californians to again buy a home
24 they can afford. Hard-working families – and in San Bernardino the average working household is
25 Latino, and has two workers per household – want and are entitled to own a home, not wait for a
26 handout lottery ticket win to a rental in an affordable housing “project.” Respondents are not

1 charged with, and lack the statutory authority to impose, a regime that favors “affordable”
2 subsidized rental housing to the detriment of housing in locations and at prices that middle income
3 households can afford to buy.

4 405. The other Redlining Revisions also either impose additional costs on
5 housing, or increase anti-housing CEQA litigation costs, delays and uncertainties, which cause and
6 exacerbate housing crisis harms, including housing-induced poverty and homelessness,
7 disproportionately affecting minority communities.

8 406. Appendix G, section I(c) facilitates racial discrimination by anti-housing
9 CEQA litigants in cities with fewer than 50,000 residents by establishing arbitrary and unknowable
10 significance criteria –such as those based on a change in the view from the sidewalk in front of the
11 litigants’ houses.

12 407. Section 15064.4, Appendix G, sections VIII(a) and (b), and the Underground
13 GHG Regulation (collectively referred to as the “GHG Redlining Revisions”), elevate to CEQA
14 significance criteria status the “State’s long-term climate goals or strategies” notwithstanding the
15 Legislature’s express rejection of numerous “goals or strategies” included in CARB’s 2017 Scoping
16 Plan, including but not limited to reducing VMT as a GHG reduction mandate, mandating an 80
17 percent reduction of GHG by 2050, mandating the use of “net zero GHG” as a CEQA significance
18 threshold, and mandating the urban growth boundaries, land conversion prohibitions, and eco-
19 system service taxes and fees on urban residents included in the Scoping Plan’s “Vibrant
20 Communities” appendix.

21 408. The GHG Redlining Revisions are unlawful in failing to include non-
22 discriminatory court precedent authorizing CEQA compliance pathways that do not impose additive
23 and discriminatory costs and harms on minority residents most in need of new housing, such as the
24 CEQA pathway of compliance with GHG reduction laws and regulations (e.g., requiring energy
25
26
27

1 efficient homes and solar rooftop energy generation),²⁸⁷ as well as payment of GHG reduction fees
2 for gasoline consumption by individuals in compliance with state cap-and-trade regulations.

3 409. The GHG Redlining Revisions are further unlawful in failing to include the
4 CEQA compliance pathway of locating new homes consistent with the GHG reductions set forth in
5 Sustainable Communities Strategies for achieving regional GHG reduction targets as required by
6 SB 375, since SB 375 expressly requires such sustainable communities strategies to plan for and
7 accommodate foreseeable increases in population and economic activity. The Redlining Revisions
8 incentivize and reward population and employment declines in California, notwithstanding the
9 disparate harms to minority communities caused by exacerbating the housing crisis and the adverse
10 global GHG emissions and climate change harms caused when California’s migrants move to their
11 top destination states of Texas, Nevada and Arizona, where housing is far less costly but per capita
12 GHG emissions are far higher.

13 410. Subsection (b)(2) of Section 15064 expands CEQA compliance costs and
14 litigation obstacles for housing, and thereby causes disproportionate harms to Petitioners and
15 minority communities, by requiring all agencies subject to CEQA to justify their use of all
16 significance criteria for all projects – including housing – with “brief explanations” defending the
17 adequacy of each criterion for each project. Section 15064(b)(2)’s new compliance burdens, costs
18 and litigation obstacles encompass 88 new “brief explanation” litigation targets per project,
19 assuming that each such agency, at minimum, includes the recommended 88 CEQA significance
20 criteria set forth in Appendix G.

21 411. Subsection (b) of Section 15064.7 expands CEQA compliance costs and
22 litigation obstacles for housing, and thereby causes disproportionate harms to Petitioners and
23 minority communities, by expressly encouraging all agencies subject to CEQA to adopt “case by
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25 ²⁸⁷ See generally *Newhall*, 62 Cal.4th 204; *Assoc. of Irrigated Residents*, 17 Cal.App.5th 708; see
26 also California Energy Commission, 2019 Building Energy Efficiency Standards for Residential
and Nonresidential Buildings (Dec. 2018) <https://ww2.energy.ca.gov/2018publications/CEC-400-2018-020/CEC-400-2018-020-CMF.pdf>.

1 case” significance thresholds for each project. Such thresholds would be tailored by each agency for
2 each project, and thereby facilitate the further racially disparate abuse of CEQA to suppress new
3 housing for Petitioners and other minority community members. “Case by case” significance
4 criteria create unknown, and invite arbitrary new, analytical and mitigation obligations on housing
5 without public notice, rulemaking, compliance with any due process, equal protection, or regulatory
6 agency standard of authority, necessity or consistency with other applicable laws and regulations,
7 and thereby create new compliance burdens, costs and litigation obstacles on housing.

8 412. Subsection (b) of Section 15064.7 expands CEQA compliance costs and
9 litigation obstacles for housing, and thereby causes disproportionate harms to Petitioners and
10 minority communities, by recognizing only “environmental” standards as appropriate significance
11 thresholds under CEQA, and failing to acknowledge or include compliance with public health and
12 safety standards as appropriate thresholds under CEQA, notwithstanding judicial precedent
13 affirming reliance on public health and safety laws as appropriate thresholds under CEQA,
14 including for example: *Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884,
15 912 (upholding lead agency’s reliance on building code standards to mitigate potential seismic
16 impacts); *Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 912 (upholding lead agency’s
17 reliance on regulatory energy efficiency standards to mitigate potential energy impacts); *Leonoff v.*
18 *Monterey County Bd. of Supervisors* (1990) 222 Cal.App.3d 1337, 1355 (upholding lead agency’s
19 reliance on regulatory hazardous material registration and monitoring standards to mitigate potential
20 impacts associated with underground fuel tank leaks); *Sundstrom v. County of Mendocino* (1988)
21 202 Cal.App.3d 296, 306 (upholding lead agency’s reliance on air district regulatory standards to
22 mitigate potential air quality impacts).

23 413. Section 15126.4 expands CEQA compliance costs, and litigation costs and
24 delays, as well as risks of housing project lawsuit derailments, and thereby causes disproportionate
25 harms to Petitioners and minority communities, by imposing unlawful new limitations on the use of
26 mitigation measures. These new limitations include a mandatory performance standard for reducing

1 or eliminating a significant impact.

2 414. Because CEQA is intended to apply as early as feasible to the project
3 application process in order to make the public review and comment process meaningful, and
4 because CEQA only applies to “discretionary” projects that a public agency has the legal authority
5 to deny or condition, the CEQA analysis is generally completed based on application materials that
6 do not include engineering and design details. Numerous cases have held that mitigation measures
7 to minimize or avoid significant impacts may likewise defer final engineering and design details as
8 long as the mitigation measure specifies the performance standard that must be achieved to avoid or
9 reduce the significant impact, and a list of feasible measures is included that will comply with this
10 performance standard.²⁸⁸

11 415. Contrary to this well-established CEQA case law, Section 15126.4 requires
12 all definitive details to be included in the mitigation measure itself, and allows deferral of such
13 engineering details only if it is “impractical or infeasible” to include those details in the proposed
14 mitigation measure completed in the draft environmental studies circulated for public review and
15 comment. There is zero – zero – statutory or judicial authority for the imposition of this
16 “impracticable or infeasible” restriction on the use of performance standard mitigation measures,
17 but developing site-specific landscaping design and other engineering details this early in the
18 CEQA process will absolutely increase CEQA compliance costs in a way that disproportionately
19 harms Petitioners and other minority community members in need of new, affordable housing.

20 416. Whether or when absorbing such compliance costs is “impracticable or
21 infeasible” for a housing project that may be substantially revised as a result of the public review

22 ²⁸⁸ See, e.g., *Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1275 (The Irvine Co.,
23 Real Party in Interest); *Endangered Habitats League, Inc. v. County of Orange* (2005) 131
24 Cal.App.4th 777, 794 (Rutter Development Co., Inc., Real Party in Interest); *Sacramento Old City*
25 *Assn. v. City Council* (1991) 229 Cal.App.3d 1011, 1028-1029. This very common CEQA
26 “performance standard” form of mitigation measure applies, for example, to protecting stormwater
27 quality from urban pollutants such as fertilizer and grease by specifying a water quality
28 performance standard, and then identifying various types of landscaping and stormwater
management options that will ultimately be included – if and as the project is fully approved – in an
integrated and engineered landscaping design and stormwater management system.

1 and comment process, and then further modified by conditions of approval imposed by the lead
2 agency decision-maker such as city council, creates a ripe new anti-housing litigation target.
3 Housing for the very wealthy will simply prepare sequentially revised landscaping designs and
4 engineering details. Housing for median and lower income Californians, in contrast, just gets
5 burdened with legally unnecessary and environmentally irrelevant cost burdens, since in all cases
6 stormwater must comply with the designated performance standard, and in all cases a combination
7 of landscaping and other stormwater management features can achieve the standard. This arbitrary
8 and capricious expansion of CEQA increases compliance costs and litigation obstacles on housing,
9 and thereby imposes a disparate harm on minorities most in need of housing.

10 417. Race and ethnicity are suspect classes for purposes of evaluating regulations
11 under the equal protection provisions of the California Constitution. Cal. Const., Art. I, § 7 and Art.
12 IV, § 16.

13 418. Race and ethnicity are suspect classes for purposes of evaluating regulations
14 under the equal protection clause of the United States Constitution. U.S. Const., Amd. 14, § 1.

15 419. Respondents' Redlining Revisions violate the equal protection provisions of
16 the California Constitution because they make access to new, affordable housing a function of race
17 and/or cause other racially disparate harms to minority communities urgently in need of housing
18 they can afford to buy or rent, and affect their ability to use cars like their already-housed neighbors
19 to get to work, school, the doctor, and the grocery store.

20 420. Petitioners warned Respondents about the racially discriminatory aspects of
21 the Redlining Revisions prior to promulgation of the Redlining Revisions and issuance of the un-
22 promulgated Underground VMT and GHG Regulations. Despite Petitioners' warning, Respondents
23 disregarded these impacts and finalized the Redlining Revisions without any material changes. On
24 information and belief, Respondents did so with the intent to disproportionately cause harm to racial
25 minorities, including minority communities of which Petitioners are members.

26 421. Respondents knowingly and intentionally discriminated against California

1 minorities needing housing, who are already most harmed by the housing crisis, by falsely asserting
2 in the Underground VMT Regulation that economic growth occurs even when VMT decreases
3 based on three years of data that ended during the heart of the Great Recession in 2010, and
4 ignoring earlier, as well as subsequent, data that demonstrated a sharp and ongoing increase in
5 VMT even when gas prices increase and even when billions of dollars are spent to expand transit
6 service investment.

7 422. Respondents also knowingly and intentionally engaged in unlawful
8 discriminatory conduct by failing to disclose, analyze, or attempt to avoid exacerbating, the racial
9 re-segregation of California caused by the housing shortage and high housing prices, and the
10 gentrification and displacement of minority communities caused by more than a decade of
11 promoting high cost, high density urbanized apartment development near transit in the San
12 Francisco and Los Angeles region.

13 423. Respondents knowing and intentional discrimination also included
14 promulgation of regulatory ambiguities and mandates that cause disparate harms to low and middle
15 income minority workers forced into “supercommutes” caused by displacement from high cost high
16 density urban housing to areas with affordable housing costs and housing supply by repeatedly
17 asserting that individual housing projects could implement inexpensive measures to reduce VMT as
18 part of the design of the project (e.g., providing secure bike parking areas in an apartment);
19 notwithstanding having actual knowledge that such project-level design features are largely
20 ineffective as transportation mode choices are overwhelmingly dependent on existing transportation
21 modes.

22 424. Respondents therefore knowingly promoted VMT “exchange” and VMT
23 mitigation “fee” approaches that would add tens and even hundreds of thousands of dollars to the
24 cost of each housing unit and thereby render such units unaffordable to median and lower income
25 minority families, especially those seeking to buy a home notwithstanding California’s legacy of
26 racist redlining anti-minority homeownership practices.

1 reducing global GHG emissions, on their face or as applied to housing projects in California.

2 431. Respondents' Redlining Revisions, including the Underground VMT and
3 GHG Regulations, ignore far more effective and far less costly non-discriminatory GHG reduction
4 measures such as: ending more potent methane GHG emissions from what the Little Hoover
5 Commission concluded were catastrophically mismanaged forests,²⁸⁹ ending exponentially more
6 potent black carbon GHG emissions from forest fires fueled by dead and dying trees (and thereby
7 also saving hundreds of lives and avoiding hundreds of millions if not billions of dollars of
8 damage), and regulating far less regressive GHG emissions attributable to the state's wealthiest
9 households like excessive furniture purchases.

10 432. Respondents' Redlining Revisions are also counterproductive to global GHG
11 emission reduction efforts because hundreds of thousands of families priced out of California's
12 housing market have, or are planning to, move to states where housing is less costly but per capita
13 GHG emissions are higher, such as Texas, Arizona and Nevada, the top three destinations for
14 departing Californians.

15 433. For these reasons, Respondents' Redlining Revisions have been issued in
16 violation of, and constitute substantive violations of, the Due Process Clauses of the California and
17 United States Constitutions. Cal. Const., Art. 1, § 7; U.S. Const., Amd. 14, § 1).

18 434. Accordingly, Petitioners in this action seek declaratory and injunctive relief
19 from these violations pursuant to Title 42 of the United States Code, section 1983, as well as other
20 relief pursuant to Title 42 of the United States Code, section 1983, and *et seq.*

21 **THIRD CAUSE OF ACTION**

22 **(Violation of the Non-Delegation Doctrine, Cal. Const., Art. III, § 3)**

23 435. Petitioners hereby re-allege and incorporate paragraphs 1-434, above.

24
25 ²⁸⁹ Little Hoover Commission, *Fire on the Mountain: Rethinking Forest Management in the Sierra*
26 Nevada (Feb. 2018), at 1-2, <https://lhc.ca.gov/sites/lhc.ca.gov/files/Reports/242/Report242.pdf> .

1 436. Petitioners have a right and duty to ensure that the line between legislative
2 and administrative agency authorities are not blurred. Under California law, the Legislature cannot
3 improperly delegate the task of deciding “fundamental policy decisions” to administrative agencies.
4 This is especially true when such policy determinations have detrimental and disparate impacts on
5 minorities.

6 437. The California Constitution provides that the “powers of the state
7 government are legislative, executive, and judicial. Persons charged with the exercise of one power
8 may not exercise either of the others except as permitted by [the] Constitution.” Cal. Const., Art.
9 III, § 3. Only after the Legislature has established the law, may it delegate the authority to
10 administer or apply it to administrative agencies. *Wilkinson v. Madera Community Hospital* (1983)
11 144 Cal.App.3d 436, 442.

12 438. California courts have held that an unconstitutional delegation of authority
13 occurs when the Legislature (1) leaves the resolution of fundamental policy issues to others or (2)
14 fails to provide adequate direction for the implementation of that policy. *Kugler v. Yocum* (1968) 69
15 Cal.2d 371, 376-377; *Carson Mobilehome Park Owners’ Assn. v. City of Carson* (1983) 35 Cal.3d
16 184, 190. As Justice Tobriner noted in *Kugler*: The Legislature may, after declaring a policy and
17 fixing a primary standard, confer upon executive or administrative officers the “power to fill up the
18 details” by prescribing administrative rules and regulations to promote the purposes of the
19 legislation and to carry it into effect.²⁹⁰

20 439. The Federal triumvirate system shares these tenets of the nondelegation
21 doctrine. *See, e.g., Panama Refining Co. v. Ryan* (1935) 293 U.S. 388 (finding section 9(c) of the
22 National Industrial Recovery Act of 1933 unconstitutional as it did not state “whether or in what
23 circumstances or under what conditions the President is to prohibit the transportation of the amount
24 of petroleum or petroleum products produced in excess of the state's permission”); *A.L.A. Schechter*

25
26 ²⁹⁰ *Kugler*, 69 Cal.2d at 376-377, quoting *First Industrial Loan Co. v. Daugherty* (1945) 26 Cal.2d
27 545, 549.

1 *Poultry Corporation v. U.S.* (1935) 295 U.S. 495, 541-42 (invalidating Section 3 of the Recovery
2 Act, as it “supplie[d] no standards ...” for the President to evaluate codes of fair competition for
3 slaughterhouses and other industrial activities, “aside from *the statement of the general aims* of
4 rehabilitation, correction, and expansion”) (emphasis added). These and subsequent decisions
5 assumed that the vesting clauses of the U.S. Constitution would be deemed meaningless if Congress
6 could pass legislative obligations off to executive agencies.²⁹¹

7 440. Here, Respondents’ GHG and VMT Redlining Revisions are the culmination
8 of an unconstitutional delegation of legislative authority in violation of Petitioners’ substantive due
9 process rights. The revised Guidelines impose broad, fundamental GHG and GHG-related VMT
10 cost and compliance mandates that add significant new CEQA mitigation costs to already-high
11 housing prices in a broadly-recognized housing crisis that disparately affect California’s minority
12 residents, and in particular imposes such new costs only on those in need of new housing while
13 leaving the white majority that owns most homes in California without such excessive new housing
14 cost burdens and CEQA litigation obstacles.

15 441. Section 21099 of the Public Resources Code provides clear statutory
16 authority directing Respondents to eliminate congestion-related traffic delay in TPAs (which
17 comprise only about three percent of land in the SCAG region,²⁹² a percentage which drops as
18 transit agencies eliminate the four bus per morning and evening commute hour, and weekend
19 service, on the region’s many underutilized bus routes routes) as a CEQA impact, which Petitioners
20 do not challenge. That legislative delegation, however, is not a lawful delegation of authority for
21 Respondents to impose a VMT mitigation scheme statewide outside of TPAs that effectively ends

22 _____
23 ²⁹¹ Lawson, *Delegation and Original Meaning*, 88 Va. L. Rev. 327, 340 (2002); *see also INS v.*
24 *Chadha* (1983) 462 U.S. 919, 959 (“the principle that Congress cannot delegate away its vested
25 powers exists to protect liberty. Our Constitution, by careful design, prescribes a process for making
law, and within that process there are many accountability checkpoints. It would dash the whole
scheme if Congress could give its power away to an entity that is not constrained by those
checkpoints”).

26 ²⁹² SCOG, personal communication, Nov. 9, 2019 (based on most recent approved 2016 Regional
Transportation Plan/Sustainable Communities Plan).

1 homeownership opportunities for middle income minority Californians, and exacerbates the
2 housing and poverty crisis suffered by low income and homeless individuals, by imposing
3 contradictory and infeasible VMT mitigation costs on non-TPA area housing that other state laws,
4 including RHNA laws, require be planned for and made affordable to Californians in all counties
5 and cities in the state.

6 442. Weaponizing CEQA, with its clear history and ongoing practice of being
7 used by housing opponents to block higher density housing in urban areas, with internally
8 inconsistent and contradictory directives in the VMT Redlining Revisions to impose massive
9 changes to statewide housing policies by burdening all housing not located in a TPA with
10 unprecedented, costly new mitigation requirements applicable only to new housing residents who,
11 like their neighbors, drive and already pay gas taxes and cap-and-trade fees (and collectively pay
12 the highest gas prices of any state in the continental U.S.), is also knowingly and intentionally
13 discriminatory conduct aimed at minority Californians most in need of new housing and most
14 harmed by the housing crisis.

15 443. If California's climate leadership commitment requires cramming 1.3 million
16 new homes in the SCAG region, or 3.5 million statewide, into TPAs - less than 3 percent of the 5
17 percent of California that is developed into urbanized areas (i.e., cramming 3.5 million new homes
18 into 0.02 percent of California's existing neighborhoods); that all new housing be so expensive it
19 cannot be afforded by California's middle income and low income families for purchase or event
20 rent; and the massive demolition of "hundreds of thousands of existing single family homes" to
21 make way for these massive new apartment blocks, then this is a fundamental departure from
22 existing housing laws and other existing legal mandates, and it affects fundamental rights of
23 Petitioners. These actions must be enacted (if at all) by the Legislature and not inflicted on the non-
24 TPA areas of the state via the bureaucratic acronyms and crevasses of CEQA's regulations and
25 other underground regulations.

26 444. Similarly, since the VMT Redlining Revisions are built on the Legislature's

1 policy decision to encourage infill housing as one of the many strategies for reducing GHG, then
2 the GHG Redlining Revisions (Pub. Res. Code § 21083.05 and the Underground GHG Regulation)
3 are likewise not a lawful delegation of authority to Respondents. The Legislature directed
4 Respondents to amend the CEQA Guidelines to address GHG emissions under CEQA; however,
5 Respondents have unlawfully failed to update the Guidelines to include directly relevant judicial
6 decisions (e.g., affirming CEQA GHG compliance pathways based on project compliance with
7 GHG reduction laws and regulations including cap-and-trade), and further failed to update the
8 CEQA Guidelines to reject, accept, or otherwise address when (if ever, for what projects where) the
9 “net zero” GHG CEQA project significance threshold approved by CARB in its 2017 Scoping Plan
10 must be used under CEQA.

11 445. Instead, California’s hundreds of cities and counties are expected to invent,
12 adjust, or otherwise create “substantial evidence” in support of whatever CEQA GHG significance
13 threshold is required – which flatly contradicts Respondents’ statutory mandate to provide express
14 significance criteria and express GHG direction specifically, under Sections 15064 and 15064.4
15 respectively.

16 446. Further, since California produces less than one percent of the world’s GHG
17 emissions, and since even former Governor Brown concluded that California’s GHG reductions
18 would be “futile” unless other states and jurisdictions followed the state’s lead, the issue of whether
19 GHG emission reductions should be imposed in the most regressive system possible – i.e., by
20 burdening the disproportionately minority Californians who live at the edge or in poverty, who are
21 most harmed by the housing crisis, and who already pay the highest costs for fundamental needs
22 such as electricity, gas, and housing in the continental U.S. – must be decided by the Legislature
23 and cannot lawfully be delegated to, or assumed to have been conferred upon, Respondents to both
24 decide and implement via CEQA.

25 447. Respondents’ have also knowingly exacerbated this unlawfully delegated
26 authority to a shadow army of “for-profit” CEQA consultants. As described by Hastings Law

1 Professor David Owen: “the story of CEQA and climate change illustrates how for-profit
2 consultants can help build a regulatory system that seeks to advance environmental protection.”²⁹³

3 448. The referenced CEQA climate change “regulatory system” of assessing the
4 global climate change “significance” of building new housing to meet the needs of California’s
5 housing crisis victims, and deciding when and to what extent to burden such housing with
6 extraordinary new CEQA “mitigation” costs and constraints which are not found anywhere in any
7 adopted law, regulation or ordinance, to a “less than significant” level to the greatest extent
8 “feasible,” is the quintessential unlawful delegation of the fundamental policy decision of whether
9 to solve the California housing crisis and the climate crisis by keeping people in California (where
10 per capita GHG emissions are among the lowest in the nation) or whether to increase housing costs
11 and continue to de-populate California to much higher per capita GHG states where housing is still
12 affordable to working families such as Texas, Arizona and Nevada.

13 449. Instead of updating the CEQA Guidelines to address these fundamental
14 regulatory questions – when is the GHG impact of housing and other projects “significant”, what
15 “mitigation” is “feasible”, and how does this GHG issue relate to state housing and land use laws –
16 Respondents mandated the Redlining Revisions in the absence of public review and comment.

17 450. This fundamental policy decision – is it state policy to solve the housing
18 crisis or is it state policy to increase CEQA costs and litigation obstacles to continue to force more
19 out-migration of Californians to higher per capita GHG states – was teed up for Respondents OPR
20 and NRA to decide as part of their statutory obligation to update the CEQA Guidelines to include
21 significance criteria generally (Pub. Res. Code § 21083(b), and more specifically to, in the CEQA
22 Guidelines GHG provisions, “incorporate new information or criteria established by the State Air
23 Resources Board [aka CARB]” (Pub. Res. Code § 21083.05).

24 451. As was brought to Respondents’ attention in comments filed by Petitioners, a
25 year earlier CARB selected a CEQA GHG significance threshold in its 2017 Scoping Plan that

26 ²⁹³ Owen, *supra* note 216, at 13.

1 increased both the cost and CEQA litigation obstacles and risks to housing by decreeing that
2 projects subject to CEQA (including new housing) should use a “net zero” GHG threshold of
3 significance: “Achieving no net additional increase in GHG emissions, resulting in no contribution
4 to GHG impacts, is an appropriate overall objective for new development.”²⁹⁴ Under this CARB
5 significance threshold, future occupants of housing would be forced to pay the increase in housing
6 prices required to fully “mitigate” to “net zero” all GHG emissions from the electricity, energy and
7 fuel consumption used during both the construction and occupancy of a new housing unit.²⁹⁵

8 452. Since all construction and human occupancy currently requires electricity,
9 energy, and fuel consumption, this “net zero” threshold can only be achieved by paying GHG
10 mitigation fees to have someone else, somewhere else, for some unknown cost, in some unknown
11 or non-existent regulatory context, reduce GHG emissions by the amount required to get to “net
12 zero” GHG emissions for each new housing unit. If that “mitigation” obligation drives up housing
13 costs by \$40,000 or more and thereby prices out tens of thousands of aspiring homeowners from the
14 opportunity to own a home, and those most likely to be priced out are hard-working minority
15 households who then continue the current out-migration pattern to states like Texas where owning a
16 home is still affordable but per capita GHG is nearly three times higher than California, then global
17 GHG will increase, the California housing crisis will continue to cause disparate harm to minorities
18 – but California will continue to pursue the unlegislated policy objective of de-population so those
19 wealthy enough to remain can rejoice in the absence of “those people.”

21 ²⁹⁴ CARB, California’s 2017 Climate Change Scoping Plan, *supra* note 77, at 101.

22 ²⁹⁵ CARB also notes that net zero “may not be feasible or appropriate for every project” and [l]ead
23 agencies have the discretion to develop evidence-based numeric thresholds” that are “consistent
24 with this Scoping Plan” and other unlegislated criteria, but that “CARB is not endorsing” any
25 alternate thresholds. *Id.* at 102. This is, and continues to be, a recipe for CEQA litigation disputes.
26 *See, e.g.*, Center for Biological Diversity, Letter to Los Angeles County (April 16, 2018),
http://planning.lacounty.gov/assets/upl/case/tr073336_correspondence-20180418.pdf, which
27 resulted in a lawsuit challenging this Los Angeles County housing project based in part on the claim
28 that the project was required to offset its GHG emissions to “net zero.”
<https://www.biologicaldiversity.org/programs/urban/pdfs/2019-05-01-Verified-Petition-for-Writ-of-Mandate.pdf>.

1 policies, or ordinances governing the review and approval of housing applications.

2 456. By enacting bare-boned statutory mandates, the Legislature has escaped
3 deciding crucial questions under CEQA, leaving Respondents with “unrestricted authority to make
4 fundamental policy determinations” regarding new standards for evaluating GHG emissions and
5 transportation impacts under CEQA. *Clean Air Constituency v. California State Air Resources Bd.*
6 (1974) 11 Cal.3d 801, 816. This is exactly the type of misallocation of duties between the
7 Legislative and Executive branches of state government that the nondelegation doctrine prohibits.²⁹⁸

8 457. Respondents’ further delegation of these fundamental policy determinations,
9 by willfully and expressly declining to provide legislatively mandated significance criteria, and
10 clarity and content in the Redlining Revisions, to private sector CEQA technical consultants hired
11 by city and county staff to determine “significance,” mandate “mitigation,” and assess “feasibility”
12 of global GHG and related VMT CEQA impacts on an ad hoc, project-by-project basis, whereby
13 similarly-situated persons and projects are differentially treated is an even more egregious
14 delegation of fundamental housing and transportation mobility choices to the private sector.

15 **FOURTH CAUSE OF ACTION**

16 **(Violation of Federal Fair Housing Act and Housing and Urban Development Regulations, 42**

17 **U.S.C., § 3601 et seq.; 24 C.F.R. Part 100)**

18 458. Petitioners hereby re-allege and incorporate paragraphs 1-457, above.

19 459. The Federal Housing Act (42 U.S.C. § 3601 *et seq.*) (“FHA”) was enacted in
20 1968 to combat and prevent segregation and discrimination in housing. The FHA’s language
21 prohibiting discrimination in housing is broad and inclusive, and the purpose of its reach is to
22 replace segregated neighborhoods with truly integrated and balanced living patterns.

23 ²⁹⁸ *See, e.g., Gundy v. United States* (2019) 139 S.Ct. 2116 (Gorsuch, J., dissenting)(“by directing
24 that legislating be done only by elected representatives in a public process, the Constitution sought
25 to ensure that the lines of accountability would be clear: The sovereign people would know, without
26 ambiguity, whom to hold accountable for the laws they would have to follow.”); *United States v.*
Horn (6th Cir. 2012) 679 F.3d 397, 401 (“[A]n administrative agency cannot be granted the power
27 to issue legislative rules ... without having any political accountability and without having to follow
28 any procedure whatsoever”).

1 evidence of minority community displacement and evidence that this policy will require the
2 demolition of “tens if not hundreds of thousands” of occupied single family homes.

3 465. The Redlining Revisions also increase transportation barriers and
4 transportation costs to residents of new housing (who are disproportionately likely to be minorities)
5 in relation to their already-housed (and less likely to be minority) neighbors, creating disparate
6 transportation harms to minority communities. The Redlining Revisions also directly promote
7 subsidized rental housing in lieu of creating adequate supplies of housing that can be purchased
8 without government subsidies by minority families, and thereby promote racially segregated rental
9 housing and perpetuate the wealth gap by depriving minority families of homeownership.

10 466. The Redlining Revisions’ promotion of high cost, high rise housing nearest
11 frequent transit ignores, and thus creates and further exacerbates, the displacement of existing (more
12 likely to be minority) residents in these locations to more distant locations with less costly housing,
13 where displaced residents and their families are likely to be harmed by lengthy commutes that cause
14 adverse health impacts for drivers and result in a variety of harms to family welfare by depriving
15 children and the community of the time workers are forced to spend behind the wheel.

16 467. Because of the discriminatory effect of the Redlining Revisions, Respondents
17 have the burden of proving that these regulations do not violate the FHA as interpreted and
18 implemented through HUD regulations.

19 468. Respondents have not met, and cannot meet, their burden of trying to justify
20 the discriminatory effect of the Redlining Revisions, since imposing higher CEQA compliance
21 costs and greater litigation obstacles on housing is not necessary to achieve the policy goal of
22 addressing the environmental impact of climate change by reducing global GHG emissions, and
23 which instead promotes the relocation of California residents and jobs to higher per capita GHG
24 states and countries, thereby increasing global GHG emissions. Respondents likewise cannot meet
25 their burden of justifying the discriminatory effects of the Redlining Revisions by goals falling
26 outside the statutory scope of CEQA such as “promoting wellness and active transportation.”

1 Finally, Respondents have not met their burden of showing the necessity of such racially
2 discriminatory Redlining Revisions since GHG emission reductions can and should be pursued
3 through other measures having a less discriminatory effect, such as reducing GHG emissions from
4 forest fires or pursuing less regressive GHG emission reduction measures such as reducing the
5 GHG emissions associated with the manufacturing and shipping practices for the furniture
6 purchased annually by the state’s wealthier households.

7 469. Because Respondents’ Redlining Revisions have an unjustified
8 discriminatory effect on members of minority communities, including Petitioners, they violate the
9 FHA as implemented through HUD regulations. Consequently, Respondents’ Redlining Revisions
10 should be declared unlawful and enjoined, and Petitioners are entitled to other and further relief
11 pursuant to 42 U.S.C. § 1983.

12 **FIFTH CAUSE OF ACTION**

13 (Violation of the Fair Employment and Housing Act, Gov. Code, § 12955 et seq.)

14 470. Petitioners hereby re-allege and incorporate herein by reference the
15 allegations contained in paragraphs 1-469, above.

16 471. The Fair Employment and Housing Act (Gov. Code, §12955 et seq.)
17 (“FEHA”) provides, inter alia, that: “It shall be unlawful. . . (l) To discriminate through public or
18 private land use practices, decisions, and authorizations, because of race, color, ... national origin,
19 source of income or ancestry.”

20 472. Respondents’ Redlining Revisions, on their face and as applied, constitute
21 public land use practices decisions and/or policies subject to the FEHA.

22 473. Respondents’ Redlining Revisions, on their face and as applied, actually and
23 predictably have a disparate negative impact on minority communities and are discriminatory
24 against minority communities and their members, including but not limited to Petitioners, because
25 they increase the cost of housing and exacerbate anti-housing CEQA litigation obstacles, and
26 litigation-related costs (including but not limited to attorney fees and the taxes, fees, and costs of

1 litigation delays, which increase the cost of the housing project and result in higher purchase price
2 or rents for future occupants).

3 474. Respondents' Redlining Revisions and their discriminatory effect have no
4 legally sufficient justification. They are not necessary to achieve (nor do they actually tend to
5 achieve) any substantial, legitimate, nondiscriminatory interest of the state, and in any event such
6 interests can be served by other, properly-enacted standards and regulations having a less
7 discriminatory effect.

8 475. Because of their unjustified disparate negative impact on members of
9 minority communities, including Petitioners, Respondents' Redlining Revisions violate the FEHA,
10 and should be declared unlawful and enjoined.

11 **SIXTH CAUSE OF ACTION**

12 (Violation of General Plan Law, Gov. Code §§ 65300 *et seq.* including § 65584 (Regional Housing
13 Needs Assessment Law))

14 476. Petitioners hereby re-allege and incorporate paragraphs 1-475, above.

15 477. The California Constitution establishes Home Rule doctrine for California
16 cities and counties.²⁹⁹

17 478. The Legislature has enacted specific mandates requiring local governments to
18 plan and zone for sufficient housing and circulation elements to meet, among other goals, the
19 housing and transportation needs of existing and future residents, including, but not limited to,
20 General Plan law, and laws requiring each city and county in California to plan for and approve its
21 share of projected population growth including, but not limited to, the RHNA laws (first adopted in
22 1969, and substantially strengthened with numerous amendments in subsequent years, including
23 2019) (Gov. Code §§ 65580 *et seq.*), Density Bonus Laws (first adopted in 1979, and substantially
24 strengthened with numerous amendments in subsequent years, including 2019) (Gov. Code §§
25 65915 *et seq.*), and the Housing Accountability Act (first adopted in 1982, and substantially

26 ²⁹⁹ Cal. Const., Art. XI, §§ 5, 7, 9, 11.

1 strengthened with numerous amendments in subsequent years, including 2019) (Gov. Code §§
2 65589.5 *et seq.*).³⁰⁰

3 479. The Legislature enacted specific mandates requiring regional transportation
4 agencies to work with local governments, as well as state and federal air quality and transportation
5 agencies, to prepare regionally integrated land use and transportation plans that respect statutorily-
6 mandated General Plans, comply with state and federal transportation laws, state and federal air
7 quality laws, and state GHG reduction laws, while also accommodating a growing population and
8 economy.³⁰¹

9 480. Respondents' Redlining Revisions increase housing costs, and expand CEQA
10 litigation obstacles that delay or derail new housing, notwithstanding a housing shortfall of 3.5
11 million units and housing costs that are already causing poverty, homelessness, and the relocation
12 of Californians to states such as Texas, Arizona and Nevada with lower housing costs and higher
13 per capita GHG emissions.

14 481. Respondents' Redlining Revisions are inconsistent with, and unlawfully
15 impede, compliance with General Plan laws requiring cities and towns to plan for economically
16 diverse housing that meets existing and projected future needs. As described above, Respondents'
17 Redlining Revisions generally, and the Section 15064.3(b)(1) threshold in particular, provides that
18 projects located even 10 feet outside the one-half mile boundary surrounding a transit stop are
19 presumed to have a less than significant VMT impact only if that project results in an actual net
20 decrease in VMT in the project area. Since new housing includes vehicles used during construction,
21 as well as vehicles used during occupancy by future residents (along with their guests and repair

22 _____
23 ³⁰⁰ Gov. Code §§ 65040.2, 65584, 65589.5.

24 ³⁰¹ *See* Sen. Bill No. 375 (2007-2008 Reg. Sess.) §§ 2-15, amending Gov. Code §§ 65080, 65400,
25 65583, 65584.02, 65584.04, 65587, 65588; adding Gov. Code §§ 14522.1, 14522.2 and 65080.01;
26 amending Pub. Res. Code § 21061.3, adding Pub. Res. Code § 21159.29, and adding Pub. Res. Code
Chapter 4.2 (commencing with § 21155). *See also* HCD, Memorandum for Planning Directors and
Interested Parties, Re: Senate Bill 375 (SB 375) Chapter 728, Statutes of 2008, (Oct. 2, 2013),
[http://www.hcd.ca.gov/community-development/housing-element/housing-element-
memos/docs/sb375_final100413.pdf](http://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/sb375_final100413.pdf).

1 workers etc.), eligibility for this “less than significant” VMT determination requires occupants of
2 new housing to pay vast and unknown sums to transit providers and others purporting to reduce
3 VMT by an amount that offsets the new VMT from housing that cities and counties are required to
4 plan for and approve.

5 482. The new housing must also meet affordability criteria for a range of
6 household incomes including low and median income future residents for whom housing is already
7 completely unaffordable. Adding tens if not hundreds of thousands of dollars to make housing even
8 less affordable is directly contrary to state General Plan laws compelling affordable and median
9 income housing. To the extent that Respondents’ may argue that taxpayers – or ratepayers – or fuel
10 purchasers – or post-capitalism governance structure – or any other “magic potion” will fund these
11 added costs, today’s housing obligations fall on local government and current housing victims who
12 cannot conjure or wait for magic potion pots of money to appear.

13 483. To the extent that Respondents assert that exorbitant new VMT mitigation
14 mandates that increase housing costs and cause disparate harms can be avoided only if all new
15 housing is built in the three percent of the SCAG region that qualifies for a presumption of less than
16 significant VMT impacts, another magic pollution solution must be conjured. We already know that
17 the cost of building the most expensive type of housing unit (even small apartments in buildings of
18 eight stories or more), on the most expensive type of land (already-developed neighborhoods with
19 homes and businesses that must be bought out and demolished), with the most expensive and
20 expansive retrofit needs (interconnected systems of aging and undersized water, sewer and other
21 infrastructure designed to accommodate a fraction of the new density), is extraordinarily high and
22 entirely unaffordable to median income workers. As recently reported by the City of Los Angeles’
23 non-partisan City Controller, Ron Galperin, building even small apartments for the homeless cost
24 about \$530,000 per unit in urban neighborhoods even without transit proximity – most of these
25 units exceed the median cost of an existing condominium in the City of Los Angeles or single
26 family home in Los Angeles County, which are more appropriately sized for families and are not

1 affordable for aspiring median (or even 120% and 150% above median) income homeowners.³⁰²

2 484. Finally, to the extent Respondents' Redlining Revisions are intentionally
3 designed to make housing so expensive that more people will depart California entirely, and thereby
4 reduce GHG emissions in California based on CARB's flawed GHG metric, even though GHG
5 emissions will actually increase based on the much higher per capita GHG emissions in the top
6 three destination states for departing Californians (Texas, Arizona and Nevada), these Redlining
7 Revisions are flatly in conflict with the Legislature's GHG emission reduction mandates in SB 375,
8 which require California's region to achieve GHG emission reduction goals from the land use and
9 transportation sectors while also accommodating population and economic growth. Respondents
10 cannot hijack CEQA into a population reduction strategy under the guise of global climate change
11 leadership by increasing housing costs and anti-housing litigation obstacles in order to expel all
12 Californians except existing homeowners and high income earners, along with those too poor to
13 move.

14 **SEVENTH CAUSE OF ACTION**

15 **(Violation of the Congestion Management Plan Law, Gov. Code § 65088 *et seq.*)**

16 485. Petitioners hereby re-allege and incorporate paragraphs 1-484, above.

17 486. California's transportation laws, including its Congestion Management Plan
18 ("CMP") law (Gov. Code § 65088 *et seq.*), recognize the need for integrated regional transportation
19 planning: "To keep our California moving, all methods and means of transport between major
20 destinations must be coordinated to connect our vital economic and population centers." Gov. Code,
21 § 65088. The Legislature has concurrently affirmed its commitment to "solving California's traffic
22 congestion crisis," and its "intent to do everything within its power to remove regulatory barriers
23 around the development of infill housing," and to assure that CMPs accommodate expanding

24 _____
25 ³⁰² Letter from Ron Galperin, Los Angeles Controller, to Eric Garcetti, Mayor, Michael Feuer, City
26 Attorney, and Members of the Los Angeles City Council, Re: The High Cost of Homeless Housing:
27 Review of Proposition HHH, dated Oct. 8, 2019, at 1-2, [https://lacontroller.org/wp-
28 content/uploads/2019/10/The-High-Cost-of-Homeless-Housing_Review-of-Prop-
HHH_10.8.19.pdf](https://lacontroller.org/wp-content/uploads/2019/10/The-High-Cost-of-Homeless-Housing_Review-of-Prop-HHH_10.8.19.pdf).

1 homeownership “because homeownership is only now available to most Californians who are on
2 the fringes of metropolitan areas and far from employment centers.” *Id.*

3 487. Proposed amendments to the CMP law that would have eliminated required
4 compliance with traffic congestion standards, and eliminated required roadway improvements to
5 achieve compliance with such standards in unacceptable traffic congestion areas, were considered
6 and expressly rejected by the Legislature.³⁰³ CMPs are used to satisfy federal transportation laws
7 and regulations, including the federal Intermodal Surface Transportation Efficiency Act of 1991 and
8 other federal laws governing the disbursement of federal funds to California for transportation
9 projects.³⁰⁴ Federal transportation funding is critical for California transportation infrastructure.
10 CMPs must include performance metrics, including LOS measurements of traffic delay that were
11 deleted as CEQA impacts by the challenged VMT regulations.³⁰⁵

12 488. In adopting the current version of section 65088 in the CMP law in 2003,
13 traffic congestion was determined by the Legislature to cause hundreds of thousands of lost hours
14 by commuters, hundreds of tons of air pollutants, and millions of added costs to “the motoring
15 public.” Senate Bill No. 743 (2013-2014 Reg. Sess.), which authorized, but did not require,
16 Respondents to amend CEQA regulations to eliminate LOS congestion impacts as a transportation
17 impact, expressly provided that no change to CEQA was authorized for assessing air impacts.

18 489. Respondents OPR and NRA repeatedly, and falsely in response to comments,
19 asserted that the new VMT impact would reduce CEQA compliance costs by eliminating the need
20 to evaluate LOS traffic delay impacts. In fact, traffic delay impacts and improvements to avoid or
21 minimize traffic delay impacts are required by CMP law (and in many local jurisdictions are also
22 required by the Circulation elements of local General Plans). Respondents failed to disclose that an

23 ³⁰³ *See, e.g.*, Assem. Bill No. 1098 (2015-2016 Reg. Sess.) as introduced Feb. 27, 2015 (AB 1098
24 ultimately died in committee pursuant to Cal. Const., Art IV, § 10(c) on Jan. 31, 2016).

25 ³⁰⁴ Gov. Code § 65089(e).

26 ³⁰⁵ *See, e.g.*, San Bernardino Associated Governments and Governments of SANBAG Working
27 Together, San Bernardino County Congestion Management Plan: 2016 Update, (June 2016), at 1-3,
28 <https://www.gosbcta.com/wp-content/uploads/2019/10/2016-Congestion-Management-Plan-.pdf>.

1 assessment of traffic delay continued to be required in project air emission analyses under CEQA,
2 and in the required analyses of consistency with adopted plans to reduce environmental impacts,
3 including CMPs, to reduce excess air and other impacts caused by excessive congestion-related
4 traffic delays.

5 490. Respondents OPR and NRA repeatedly, and falsely in response to comments,
6 asserted that the new VMT impact would result in less costly transportation mitigation measures
7 because congestion-related mitigation measures would no longer be required; however, CMP law
8 (and in many local jurisdictions the Circulation Elements of local General Plans) continue to have
9 legal force and effect as adopted plans which avoid the environmental impacts caused by excessive
10 congestion-related traffic delays.

11 491. Respondents' Section 15064.3 VMT regulation that only transportation
12 projects that reduce VMT can be presumed to have a less than significant impact, and Respondents'
13 Underground VMT Regulation, implement Respondent OPR's policy decision that reducing traffic
14 gridlock will "induce" more VMT by shifting travelers toward auto use and away from other travel
15 modes," i.e., that increasing traffic congestion will create an environmental benefit by inducing
16 more people to take transit.³⁰⁶ Unilaterally implementing, through CEQA, the promotion of gridlock
17 on state and local roadways is in direct conflict with, and thereby specifically prohibited by, specific
18 legal mandates requiring safe and sufficient highways and roadways, and pollution reduction from
19 decreased congestion, such as the state's CMP laws as well as other federal and state highway and
20 roadway transportation, safety, and air quality laws.

21 492. For example, CMP laws allow, pursuant to a very specific procedure, local
22 jurisdictions to opt out of the CMP's planning and monitoring requirements *only if* opting out of
23 this anti-gridlock state law is supported by a majority of jurisdictions within a county, representing

24 ³⁰⁶ OPR, Updating Transportation Impact Analysis in the CEQA Guidelines: Preliminary
25 Discussion Draft of Updates to the CEQA Guidelines Implementing Senate Bill 743 (Steinberg,
26 2013) (Aug. 6, 2014) at 5, 9, 32-33, [https://la.streetsblog.org/wp-
content/uploads/sites/2/2014/08/Final_Preliminary_Discussion_Draft_of_Updates_Implementing_S
B_743_080614.pdf](https://la.streetsblog.org/wp-content/uploads/sites/2/2014/08/Final_Preliminary_Discussion_Draft_of_Updates_Implementing_S_B_743_080614.pdf)

1 a majority of the population within that county. Gov. Code § 65088.3. Los Angeles County, for
2 example, did just that and opted out of the CMP process.³⁰⁷ Transportation projects not approved in
3 conformance with CMPs and related transportation laws are also not eligible for federal funding,
4 including, but not limited to, transportation improvements approved by voters with sales tax and
5 other funding mechanisms that assume ongoing compliance with law and access to federal
6 transportation funding.

7 493. Apart from being flatly at odds with express federal and state legislated
8 mandates to transportation efficiency and safety, and reductions of air emissions from longer
9 gridlocked commute trips, Respondents' assertion that promoting gridlock will "induce" transit
10 ridership is not supported by substantial evidence, and is in fact arbitrary and capricious. The
11 longstanding consensus of transportation researchers is that in the absence of a recession or
12 declining population (both of which result in fewer commuters): (a) on urban commuter
13 expressways and major urban roads, traffic congestion increases to meet maximum capacity; (b)
14 public transit does not alleviate congestion; and (c) congestion pricing – charging for the use of
15 roads during peak commute hours – does alleviate congestion.³⁰⁸

16 494. Empirical evidence supporting public transit as an alternative to roadway use
17 is scant, and certainly does not extend statewide. For example, one of the studies relied on by
18 Respondents is an observed increase in roadway congestion along a transit route during a transit
19 worker strike in Los Angeles in 2003.³⁰⁹ This common sense temporary result - when a successful
20 transit system is temporarily removed, more people will drive to get to their destination – does not

21 _____
22 ³⁰⁷ Memorandum from Los Angeles County Metropolitan Transportation Authority to City of Los
23 Angeles Department of Transportation, Re: Dissolution of the Congestion Management Program in
24 Los Angeles County (Aug. 28, 2019), a true and correct copy of which is included as Exhibit F
25 hereto.

26 ³⁰⁸ Transportation research summarized at Jaffe, *The Only Hope for Reducing Traffic*, CityLab,
27 (Oct. 19, 2011), <https://www.citylab.com/transportation/2011/10/only-hope-reducing-traffic/315/>.

28 ³⁰⁹ See, e.g., Jaffe, *Public Transportation Does Relieve Traffic Congestion, Just Not Everywhere*,
CityLab, (Apr. 1, 2013), <https://www.citylab.com/transportation/2013/04/public-transportation-does-relieve-traffic-congestion-just-not-everywhere/5149/>.

1 translate into any long-term or widespread conclusion that increasing congestion will induce transit
2 use, since all data confirm that public transit use has declined even with expanded transit service
3 and ever-increasing congestion.

4 495. Respondents’ unlegislated policy decision expands CEQA to induce transit
5 use by defining roadway safety increases that also increase roadway capacity and reduce gridlock-
6 related air emissions as an adverse impact requiring mitigation, or to burden new housing occupants
7 with VMT mitigation costs because they, like their more fortunate already-housed neighbors, must
8 drive.

9 496. Far more minority residents, including homeowners, live in San Bernardino
10 and other Inland Empire locations where housing costs are up to 80 percent lower than Santa
11 Monica and other Coastal Job Centers. Minority residents of these areas are at higher risk of
12 adverse health, safety and environmental harms caused by excessive traffic congestion. Fewer than
13 two percent of San Bernardino residents use public transit, and transit ridership’s most precipitous
14 decline in the SCAG region has been for lower income minority commuters living throughout the
15 region. The evidence presented to Respondents, and known to Respondents as of promulgation of
16 the Redlining Revisions, unequivocally demonstrated that intentionally increasing congestion does
17 not increase transit use even when transit system services have expanded. Increasing congestion –
18 and the Los Angeles region now has the worst congestion conditions in the U.S. – extends commute
19 times with consequent adverse air quality, GHG emission, and health consequences to minority
20 drivers and the majority-minority population in the region.

21 497. Respondents’ Redlining Revisions are accordingly inconsistent with, and
22 unlawfully impede, compliance with the Transportation Congestion Management Plan law, in
23 addition to General Plan laws requiring cities and towns to plan for economically diverse housing
24 that meets existing and projected future needs.

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EIGHTH CAUSE OF ACTION

(Violations of the Health & Safety Code, § 39000 et seq., including the California Clean Air Act, Stats. 1988, Ch. 1568 (AB 2595))

498. Petitioners hereby re-allege and incorporate herein by reference the allegations contained in paragraphs 1-497, above.

499. California has ambient air quality standards (“CAAQS”) which set the maximum amount of a pollutant (averaged over a specified period of time) that can be present in outdoor air without any harmful effects on people or the environment.

500. CAAQS are established for particulate matter (“PM”), ozone, nitrogen dioxide (“NO₂”), sulfate, CO, SO₂, visibility-reducing particles, lead, hydrogen sulfide (“H₂S”), and vinyl chloride.

501. In California, local and regional authorities have the primary responsibility for control of air pollution from all sources other than motor vehicles. Health & Safety Code § 39002.

502. Under the California Clean Air Act (“CCAA”), air districts must endeavor to achieve and maintain the CAAQS for ozone, CO, SO₂, and NO₂ by the earliest practicable date. Health & Safety Code § 40910. Air districts must develop attainment plans and regulations to achieve this objective. *Id.*; Health & Safety Code § 40911.

503. Each plan must be designed to achieve a reduction in districtwide emissions of five percent or more per year for each nonattainment pollutant or its precursors. Health & Safety Code § 40914(a). CARB reviews and approves district plans to attain the CAAQS (Health & Safety Code §§ 40923 and 41503) and must ensure that every reasonable action is taken to achieve the CAAQS at the earliest practicable date (Health & Safety Code § 41503.5).

504. If a local air district is not effectively working to achieve the CAAQS, CARB may establish a program or rules or regulations to enable the district to achieve and maintain the CAAQS. Health & Safety Code § 41504. CARB may also exercise all the powers of a district if it

1 finds the district is not taking reasonable efforts to achieve and maintain ambient air quality
2 standards. Health & Safety Code, § 41505.

3 505. The vast majority of California is designated nonattainment for the CAAQS
4 for ozone and PM, including San Bernardino County.

5 506. Nitrogen oxides, including NO₂, CO, and VOCs are precursor pollutants for
6 ozone, meaning they react in the atmosphere in the presence of sunlight to form ozone.

7 507. PM is a complex mixture of extremely small particles and liquid droplets
8 found in the air which can cause serious health effects when inhaled, including asthma and other
9 lung issues and heart problems. Some particles are large enough to see while others are so small
10 that they can get into the bloodstream. PM is made up of PM₁₀ (inhalable particles with diameters
11 10 micrometers and smaller) and PM_{2.5} (fine inhalable particles with diameters 2.5 micrometers and
12 smaller).

13 508. PM emissions in California and in San Bernardino County increased in 2016
14 as compared to prior years.

15 509. OPR's proposal for updating the CEQA Guidelines to include VMT as a
16 metric for analyzing transportation impacts states that adding new roadway capacity increases
17 VMT.³¹⁰ The OPR proposal further states that "[r]educing roadway capacity (i.e. a "road diet") will
18 generally reduce VMT and therefore is presumed to cause a less than significant impact on
19 transportation. Building new roadways, adding roadway capacity in congested areas, or adding
20 roadway capacity to areas where congestion is expected in the future, typically induces additional
21 vehicle travel."³¹¹

22 510. Attempting to reduce VMT by purposefully increasing congestion by
23 reducing roadway capacity will not lead to GHG emission reductions. Instead, increasing

24 _____
25 ³¹⁰ OPR, Revised Proposal on Updates to the CEQA Guidelines Evaluating Transportation Impacts
26 in CEQA: Implementing Senate Bill 743 (Steinberg, 2013) (Jan. 20, 2016), at I:4,
http://opr.ca.gov/docs/Revised_VMT_CEQA_Guidelines_Proposal_January_20_2016.pdf.

27 ³¹¹ *Id.* at III:32.

1 congestion will cause greater GHG emissions due to idling, not to mention increased criteria air
2 pollutant³¹² and toxic air contaminant³¹³ emissions. Increasing congestion increases emissions of
3 multiple pollutants including NO_x, CO, and PM. This would increase ozone and inhibit California's
4 ability to meet the CAAQS for ozone, NO₂, and PM, among others.

5 511. Because Respondents rely on the unsupported assertion that substantial VMT
6 reductions will occur if traffic congestion and gridlock conditions increase, and willfully ignored
7 evidence that VMT increases with population and economic activity, and is particularly important
8 for minority workers breaking out of poverty with entry level jobs as well as median income
9 minority workers who have attained or aspire to attain affordable homeownership in communities
10 like San Bernardino, and because longer-duration commutes increase emissions of smog-forming
11 and health risk creating pollutants such as NO₂ and PM, Respondents are violating their statutory
12 duty to align CEQA with legislative and regulatory mandates to achieve the environmental and
13 public health benefits of expeditiously achieving attainment of the CAAQS.

14 512. California law also creates a statutory duty under the Health & Safety Code
15 to ensure that California meets the National Ambient Air Quality Standards ("NAAQS") set by the
16 EPA.

17 513. Like the CAAQS, the NAAQS are limits on criteria pollutant emissions
18 which each air district must attain and maintain. U.S. EPA has set NAAQS for CO, lead, NO₂,
19 ozone, PM, and SO₂.

20 514. CARB is designated the air pollution control agency for all purposes set forth
21 in federal law. Health & Safety Code § 39602. CARB is responsible for preparation of the state
22 implementation plan ("SIP") required by the federal Clean Air Act ("CAA") to show how
23

24 ³¹² The six criteria air pollutants designated by the U.S. EPA are PM, ozone, nitrogen dioxide
25 ("NO₂" or "NO_x"), CO, SO₂, and lead. *See* Criteria Air Pollutants, US EPA
<https://www.epa.gov/criteria-air-pollutants> (last updated Mar. 8, 2018).

26 ³¹³ Toxic air contaminants, or TACs, include benzene, hexavalent chrome, cadmium, chloroform,
27 vinyl chloride, formaldehyde, and numerous other chemicals.

1 California will attain the NAAQS. CARB approves SIPs and sends them to EPA for approval under
2 the CAA. Health & Safety Code § 40923.

3 515. While the local air districts have primary authority to adopt rules and
4 regulations to achieve emissions reductions from non-mobile sources of air emissions and to
5 develop the SIPs to attain the NAAQS (Health & Safety Code § 39602.5), CARB is charged with
6 coordinating efforts to attain and maintain ambient air quality standards (Health & Safety Code
7 § 39003) and to comply with the CAA (Health & Safety Code § 39602).

8 516. San Bernardino County is within the region designated as
9 nonattainment/extreme for the ozone NAAQS and nonattainment for PM_{2.5}.

10 517. The vast majority of California is nonattainment for the ozone NAAQS and
11 much of California is nonattainment for PM₁₀.

12 518. It is unlawful for Respondents to adopt CEQA regulations to intentionally
13 undermine California's efforts to attain and maintain the NAAQS by adopting measures that
14 intentionally increase congestion in an attempt to lower VMT to purportedly achieve GHG emission
15 reductions.

16 519. In modifying CEQA to ignore traffic congestion and thereby increase the
17 duration of vehicular trips, reduce VMT by intentionally increasing traffic congestion, and failing to
18 provide express significance criteria for transportation projects, thereby increasing CEQA
19 regulatory burdens, direct and indirect project costs, and regulatory delays to the completion of
20 transportation improvements approved by regional, state and federal air quality and transportation
21 agencies as consistent with NAAQS, CAAQS, and GHG emission reduction legal mandates,
22 Respondents have unlawfully induced higher quantities of air pollution in San Bernardino County
23 in violation of the California Clean Air Act.

24 **NINTH CAUSE OF ACTION**

25 (Violations of the California Global Warming Solutions Act, Health & Safety Code § 38500 *et seq.*)

26 520. Petitioners hereby re-allege and incorporate herein by reference the

1 allegations contained in paragraphs 1-519, above.

2 521. When adopting amendments to CEQA regulations, Respondents are limited
3 to making amendments that are authorized by statutes enacted by the Legislature, or making
4 amendments to conform to judicial interpretations of statutes and regulations. All such regulatory
5 amendments must also comply with the APA.

6 522. Respondents have repeatedly, and expressly, exceeded their authority and
7 adopted regulatory amendments to comply with GHG emission reduction targets that were either
8 expressly rejected by the Legislature, or never enacted by the Legislature.

9 523. SB 32 was originally proposed to require both a 40 percent GHG reduction
10 target by 2030, and an 80 percent emission reduction target by 2050. The Legislature expressly
11 rejected the 80 percent emission reduction target by 2050 in the final enacted version of SB 32,³¹⁴
12 yet Respondents have unlawfully incorporated this unlegislated 2050 GHG target with its oblique
13 and unlawful new GHG regulatory criteria of “consistency with the State’s long-term climate goals
14 or strategies” in subsection (b)(3) of Section 15064.4.

15 524. SB 375 was originally proposed to mandate VMT reductions, but VMT
16 reduction mandates were expressly rejected in the final enacted version of SB 375.³¹⁵ Even more
17 recently, Senate Bill No. 150 (2017) (“SB 150”) was originally proposed to mandate VMT
18 reductions, but VMT reduction mandates were again expressly rejected in the final enacted version
19 of SB 150.³¹⁶ Directly thwarting the Legislature’s refusal to mandate VMT reductions,
20 Respondents’ have imposed a “zero-minus-one” VMT reduction significance criteria for otherwise
21 lawful housing projects located ten feet outside TPAs in subsection (b)(1) of Section 15064.3. This

22
23 ³¹⁴ Compare Sen. Bill 32 (2015-2016 Reg. Sess.) as introduced on Dec. 1, 2014 *with* Stats. 2016,
ch. 249 (S.B. 32).

24 ³¹⁵ Compare Sen. Bill 375 (2007-2008 Reg. Sess.) as amended on Apr. 17, 2017 *with* Stats. 2008,
25 ch. 728 (S.B. 375) (early version stating bill would require regional transportation plan to include
preferred growth scenario designed to achieve reductions in VMT but modified before passage)

26 ³¹⁶ Compare Sen. Bill 150 (2017-2018 Reg. Sess.) as introduced on Jan. 18, 2017 *with* Stats. 2017,
27 ch. 646 (S.B. 150).

1 policy thereby imposes CEQA mitigation costs of hundreds of thousands of dollars on each new
2 housing unit in furtherance of the State’s “long-term climate goals or strategies” (aka the 2017
3 CARB Scoping Plan), even if such housing is fully compliant with all applicable GHG emission
4 reduction laws and regulations, and even if such housing is fully consistent with the future housing
5 development planned for in regional GHG emission reduction plans adopted and approved by
6 CARB itself pursuant to SB 375.

7 525. Respondents refer to Executive Orders and an agreement made by the prior
8 administration as their authority to mandate VMT reductions as a GHG emission reduction under
9 CEQA, and to rely on Executive Orders to require GHG emission reductions to housing projects
10 more generally.³¹⁷ Respondents further identify their intention to use regulatory amendments to
11 promote an evolving set of policy preferences. For example, in their original (and least camouflaged
12 through unlawful feints like the Underground VMT Regulation) version of the proposed VMT
13 regulation in 2014, Respondent OPR explained its policy reasons for wanting to define VMT as an
14 “impact” under CEQA:

- 15 • Improving or increasing access to transit
- 16 • Increasing access to common goods and services such as groceries, school
17 and daycare
- 18 • Incorporating affordable housing into the project
- 19 • Improving the jobs/housing fit of a community
- 20 • Incorporating neighborhood electric vehicle network.³¹⁸

21 526. These may or may not be feasible, appropriate, attainable, or lawful policy
22 directives as applied to any particular county, city or project – but without question, none falls

23 _____
24 ³¹⁷ See, e.g., OPR, Revised Proposal on Updates to the CEQA Guidelines Evaluating Transportation
25 Impacts in CEQA: Implementing Senate Bill 743 (Steinberg, 2013) (Jan. 20, 2016),
http://opr.ca.gov/docs/Revised_VMT_CEQA_Guidelines_Proposal_January_20_2016.pdf.

26 ³¹⁸ Hernandez and MacLean, *OPR Proposes to Increase CEQA’s Costs, Complexity and Litigation*
27 *obstacles with SB 743 Implementation*, JDSUPRA (Aug. 25, 2014),
<https://www.jdsupra.com/legalnews/opr-proposes-to-increase-ceqas-costs-c-48743/>.

1 within Respondents’ lawful authority in promulgating regulations under CEQA.

2 527. Over time, Respondents have softened their pro-traffic congestion rhetoric
3 and settled on promoting “infill housing” and “transit” as policy directives already established by
4 the Legislature, but the Legislature’s directives on these issues have been surgical and rely much
5 more on the “carrot approach” of exempting certain kinds of infill projects from certain types of
6 CEQA processing or analytical requirements (e.g., aesthetics and parking, as described above). The
7 Legislature has not, however, authorized any “stick approach” of charging new housing residents
8 steep VMT mitigation fees, or requiring residents to pay for someone else’s transit somewhere else.
9 The Legislature has also not authorized any additional tax or fee aimed at reducing GHG emission
10 for the consumption of gasoline by new housing occupants, or given CARB statutory authority to
11 ignore the “wells-to-wheels” comprehensive cap-and-trade fee to impose differentially higher GHG
12 transportation costs on new housing residents.

13 528. In fact, Respondents have provided zero evidence of their statutory authority
14 to require VMT reductions under CEQA, or to require any GHG emission reduction beyond those
15 already required by other laws and regulations applicable to housing projects, such as the solar
16 rooftop standard, stringent water and energy conservation standards, and laws and regulations more
17 uniformly applicable to such projects, such as renewable energy mandates for electricity
18 production, mandates to phase in electric and other lower GHG-emitting cars, and the cap-and-trade
19 program for reducing GHG from fossil fuels from “wells to wheels” (aka production through
20 refining through ultimate consumer consumption).³¹⁹

21
22 ³¹⁹ In 2017, the Legislature expanded its landmark “Cap and Trade” program establishing a
23 comprehensive approach for transitioning from fossil fuels to electric or other zero GHG emission
24 technologies, which already includes a “wells to wheels” program for taxing oil and natural gas
25 extraction, refinement, and ultimate consumer use. Stats. 2017, ch. 135 (A.B. 398), 2017. CARB
26 has explained that emissions from transportation fuel combustion and fuels used for residential,
27 commercial, and small industry sources “are covered indirectly through the inclusion of fuel
28 distributors [in the Cap and Trade Program].” CARB, Final Statement of Reasons for California's
Cap-and-Trade Program at 2 (Oct. 2011),
<https://www.arb.ca.gov/regact/2010/capandtrade10/fsor.pdf>. The courts, too, have found it
appropriate for a lead agency to rely on cap-and-trade to address both capped and uncapped,

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sequestration sinks and suppliers of sustainable building products that do not have to be sent across the ocean with waste biomass used for renewable energy, is one of many far more effective global GHG emission reduction strategies that avoids the disparate harms of the Redlining Revisions – and could be replicated to help improve sustainable forestry management practices globally.

- Using climate as the latest excuse to cause disparate harms to minority communities where hard working families are deprived of purchasing homes and getting to work is a civil rights violation, so other GHG emission reduction strategies – such as changing GHG requirements for furniture purchased by wealthier households – should be pursued.
- CEQA has been distorted from a tool to challenge construction of freeways, clear-cutting of old growth forests, and pollution from new factories, into a redlining tool targeting housing in existing communities. Housing is an existential crisis. Adding compliance and litigation costs, ambiguities, and delays hurts housing the most – and minorities needing housing the most of all.
- There is no scientific rationale supporting the weaponization of CEQA in furtherance of unlegislated, unlawful, and ultimately ineffective climate policies.

TENTH CAUSE OF ACTION

(Violation of CEQA for Mandatory Content of Guidelines, Pub. Res. Code § 21083(b))

530. Petitioners hereby re-allege and incorporate paragraphs 1-529, above.

531. Respondents NRA and OPR violated section 21083(b) of the Public Resources Code by failing to include in regulations implementing CEQA the required “express”

1 criteria for public agencies to use in determining whether a project causes a significant impact to the
2 environment.

3 532. **Section 15064** includes an unlawful new mandate for each lead agency to
4 “briefly explain” why each significance threshold it elects to use for each and every project that is
5 subject to CEQA is in fact appropriately used in the context of that project. Respondents’ partially
6 accepted the substantial new compliance burden – and the cornucopia of new litigation
7 opportunities – created by an earlier version of this new mandate which was the subject of a critical
8 comment by Petitioners. Respondents’ original version required that each lead agency for each
9 threshold for each project defend that threshold with “substantial evidence.” Respondents’ revised
10 version – calling for only a “brief explanation” – has no clear meaning in the litigious context of
11 CEQA, and is most likely to be interpreted as being valid only if the “explanation” indeed
12 constitutes “substantial evidence.”

13 533. This regulatory addition that applies to *all* CEQA significance thresholds for
14 *all* types of projects by *all* agencies alone turns the “rule of law” into a “we know it when we see it
15 – and anybody can second-guess anything we think we know or see” litigation jump shot where
16 anything can, and over time will, happen. This amendment is wholly at odds with Public Resources
17 Code section 21083(b).

18 534. A second amendment to this regulation (§ 15064(b)(2)) encourages agencies
19 to develop and use thresholds on a “case-by-case” basis whereby there would be no advance public
20 disclosure of what threshold was going to be used when and for what type of project. This is
21 another example of Respondents’ weaponization of CEQA and use of the Redlining Revisions as an
22 assault on the rule of law that governs all of American jurisprudence, even CEQA. Allowing any
23 agency for any project to use arbitrary, surprise, and virtually unreviewable thresholds for
24 determining significance – and thereafter impose all feasible mitigation to reduce such surprise new
25 impacts that can be expressly tailored to impose burdens on some, but not other, types of housing in
26 some, but not other, neighborhoods in staff- or consultant-invented significance threshold, is a

1 textbook definition of an arbitrary and capricious regulation that is not authorized by section
2 21083(b) or any other known or knowable California or federal law. This Redlining Revision also
3 empowers private consultants and agency staff with virtually unreviewable authority to impose any
4 significance threshold anytime, anywhere, on any project for any reason.

5 535. **Section 15064.7.** Amendments to Section 15064.7(b) endorse the same “case
6 by case” threshold approach set forth in challenged Section 15064(b)(2), and is unlawful for the
7 reasons discussed in the preceding paragraph. Subsection (d) of this section includes new, and
8 unlawfully constrained, direction on when a lead agency can rely on compliance with another law
9 or regulation to conclude that a CEQA impact is less than significant. This subsection suffers from
10 important omissions which render it unlawful under Public Resources Code section 21083(b).

11 536. This subsection only references “environmental” standards as thresholds of
12 significance when CEQA also protects public health and safety, and public health and safety
13 standards are routinely used and have been upheld as appropriate thresholds under CEQA. For
14 example, seismic building code compliance was upheld as an appropriate CEQA mitigation
15 measure for protecting people against the hazard of buildings failing during earthquakes – but as a
16 building code, its purpose is to protect public safety and not the environment.³²¹ Petitioners
17 commented on this issue and requested that public health and safety standards be included
18 alongside environmental standards, but Respondents summarily refused to make the requested
19 change without explanation – but while readily admitting that lead agencies could use public health
20 and safety standards. Respondents legal obligation under Public Resources Code section 21083(b),
21 however, is to include appropriate thresholds in the regulations – not to summarily reject inclusion
22 of appropriate thresholds and thereby force both lead agencies and the courts to guess at whether
23 public health and safety standards may or should be used.

24 537. Respondents also ignore a fundamental maxim of interpreting statutes and
25 regulations that provides that, when specific examples are provided and others are omitted, the

26 ³²¹ See *Oakland Heritage*, 195 Cal.App.4th at 912.

1 omission is legally relevant and should be given effect.³²² Respondents’ failure to make this simple,
2 and entirely appropriate and lawful, amendment in response to Petitioners’ comments demonstrates
3 both bias as well as willful refusal to increase clarity, and reduce litigation obstacles and
4 compliance costs, to preserve and enhance CEQA’s weaponization value against housing and other
5 projects.

6 538. **Section 15064.3, Appendix G section XVII(b), and Underground VMT**
7 **Regulation.** As described at length above, these contradictory, ambiguous, and unlawful provisions
8 fall well short of the mandatory express regulatory content required by the Legislature in Public
9 Resources Code section 21083(b).

10 539. **Section 15064.4, Appendix G section VIII(a) and (b), and Underground**
11 **GHG Regulation.** As described at length above, these contradictory, ambiguous, and unlawful
12 provisions fall well short of the mandatory regulatory content required by the Legislature in Public
13 Resources Code section 21083(b).

14 540. **Section 15126.4 (performance standard mitigation measures), Appendix**
15 **G section I(c) (Aesthetic impacts),** and all other Redlining Revisions, are unlawful under CEQA
16 itself. Section 20183(a) of the Public Resources Code directs Respondent OPR to prepare the
17 CEQA regulations “in a manner consistent with this division [CEQA].” The Legislature has
18 unequivocally stated in section 20014 of the Public Resources Code:

19 In mitigating or avoiding a significant effect of a project on the environment, a
20 public agency may exercise only those express or implied powers provided by law
21 other than this division. However, a public agency may use discretionary powers
22 provided by such other law for the purpose of mitigating or avoiding a significant
23 effect on the environment subject to the express or implied constraints or limitations
24 that may be provided by law.

25 541. The VMT and GHG Redlining Revisions violate each and every provision of
26 Public Resources Code section 20014.

27 ³²² *Williams v. The Pep Boys Manny Moe & Jack of California* (2018) 27 Cal.App.5th 225, 239, as
28 modified (Sept. 24, 2018), review denied (Nov. 14, 2018) (quoting *People v. Salas* (2017) 9
Cal.App.5th 736, 742 (“Under the principle *expressio unius est exclusio alterius*, ‘the enumeration
of things to which a statute applies is presumed to exclude things not mentioned.’”)).

1 542. Respondents have not shown, and cannot show, that the act of driving a car
2 to work by a resident of a new home is itself an “effect on the environment,” whereas the secondary
3 environmental consequences of driving a car, such as the fact that air emissions are worse when
4 traffic congestion extends the duration of commutes – not when a new home is 10 feet plus one-half
5 mile further away from a bus stop used by 2 residents per acre in population centers like the
6 Gateway Cities that have more than 8,000 residents per acre, are not an effect on the environment.

7 543. Similarly, keeping people in California with an adequate housing supply and
8 lower housing costs, in homes meeting California’s stringent energy and water conservation
9 standards, serving as mini-renewable power plants by generating electricity on roofs, and driving
10 the cleanest fleet of cars in the country, is a far better global GHG emission reduction and climate
11 change leadership outcome than increasing housing prices and anti-housing CEQA litigation
12 obstacles, and thereby inducing even more of the 48 percent of Californians currently
13 contemplating moves to higher per capita GHG states to do so. Further, exacerbating residential
14 racial segregation, and worsening the housing, poverty and homelessness crisis as a climate strategy
15 is unlikely to inspire other states or countries to follow our lead and is thus, as former Governor
16 Brown said, “futile.”³²³

17 544. As the California Supreme Court’s dissent plainly explained in *Newhall*,³²⁴
18 CEQA is absolutely not a population control statute – nor does it authorize Respondents to adopt
19 Redlining Revisions to induce the departure of California residents and jobs to other states.
20 Respondents have zero legal authority to pursue de-population by weaponizing CEQA to make it
21 difficult, if not impossible, to build a home that is affordable to California’s majority-minority
22 median income aspiring homeowners given the complete black hole of GHG and VMT CEQA
23
24

25 ³²³ See generally Hernandez & Friedman, California Greenhouse Gas Regulation, and Climate
26 Change, Center for Demographics & Policy, Chapman University (2015)
https://www.chapman.edu/wilkinson/_files/cas-oc-prio-fn-sm2.pdf.

27 ³²⁴ *Newhall*, 62 Cal.4th at 244 (J. Chin dissenting).

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1 compliance uncertainty created by the Redlining Revisions.³²⁵

2
3 ³²⁵ San Diego is the epicenter of this CEQA black hole, in a tortured and ongoing series of judicial
4 decisions. In 2011, San Diego’s regional transportation agency (“SANDAG”) completed a regional
5 land use and transportation plan that complied with the GHG reduction targets established for the
6 region under SB 375, but which also acknowledged that—in the later years of the plan—regional
7 GHG levels would increase with population growth even as per capita GHG would decrease. From
8 2012 to 2017, this regional plan was in litigation, losing at both the trial and appellate court levels
9 before posting a partial win at the California Supreme Court, which disagreed with the Attorney
10 General and environmental advocates that an unlegislated Executive Order GHG emission
11 reduction target for 2050 was required as a CEQA GHG significance threshold independent of the
12 region’s compliance with the legislated SB 375 GHG reduction target. *Cleveland Nat’l Forest*
13 *Found. v. San Diego Ass’n of Gov’ts* (2017) 3 Cal.5th 497. During the litigation, the challenged
14 regional plan had been superseded by an updated plan mandated by SB 375 and the CEQA
15 streamlining benefits conferred by SB 375 on housing projects that complied with the regional
16 GHG reduction plans remained ephemeral. In a separate but related local agency action, in 2011,
17 San Diego County adopted a requirement to prepare a climate action plan (“CAP”) as part of its
18 General Plan update. The County’s 2012 CAP was challenged, and both the trial and appellate court
19 concluded that the CAP was legally inadequate because it did not include sufficiently enforceable
20 GHG reduction measures and because it was not supported by a supplemental EIR. *Sierra Club v.*
21 *County of San Diego* (2014) 231 Cal.App.4th 1152. The County then approved a second CAP in
22 2018, which—among other provisions—required via a mitigation measure that new housing
23 projects with General Plan amendments achieve a “net zero” GHG outcome, imposing on new
24 housing the full cost of reducing GHGs – a CEQA GHG compliance strategy that had been
25 endorsed by OPR, CARB and the California Attorney General for a master planned community in
26 Los Angeles County that included, for example, converting dung- and wood-burning cook stoves to
27 cleaner fuels on other continents. The County’s second CAP was immediately challenged, however,
28 for failing to require VMT reductions beyond “net zero” GHG; for allowing an option for some
reductions to occur outside San Diego County (something already allowed by the regulatory
agencies and the Attorney General for the Los Angeles project); and for continuing to allow single-
family home development in San Diego County, rather than limiting new housing to transit-
oriented, higher density housing in existing urbanized areas. The trial court ruled against the
County’s second CAP, and an appeal is pending. *Sierra Club v. County of San Diego* (Case No.
D075478). Meanwhile, on a third litigation track, multiple anti-housing CEQA lawsuits were also
filed against all approved County housing projects that relied on the “net zero” GHG CEQA
compliance pathway. *See, e.g., Center for Biological Diversity v. County of San Diego* (San Diego
County Superior Court Case No. 37-2018-00054312-CU-TT-CTL [Newland Sierra project]);
Endangered Habitats League v. County of San Diego (San Diego County Superior Court Case No.
37-2019-00038672-CU-TT-CTL [Village 14 project]); *Elfin Forest Harmony Grove Town Council*
v. County of San Diego (San Diego County Superior Court Case No. 37-2018-00043049-CU-TT-
CTL [Valiano project]); *Elfin Forest Harmony Grove Town Council v. County of San Diego* (San
Diego County Superior Court Case No. 37-2018-00042927-CU-TT-CTL [Harmony Grove Village
South project]). In a fourth litigation track, San Diego County also published, as the Redlining
Revisions endorse, its own CEQA guidance setting forth criteria for determining whether project
GHG impacts are significant (and require mitigation) under CEQA, relying in part on CARB-
endorsed “efficiency metric” that established a per capita GHG threshold as opposed to a mass
reduction threshold. The County’s Guidelines were then targeted by another lawsuit, led by a luxury
spa resort opposed to allowing nearby housing. Again the County lost in trial and appellate courts,
who were not persuaded that the County’s reliance on a CARB-endorsed per capita GHG efficiency
metric was supported by substantial evidence, and further concluded that no CEQA significance
criteria could be completed in advance of the County’s then-pending second CAP. *Golden Door*

1 545. Respondents likewise have zero legal authority to reject CEQA jurisprudence
2 in favor of their own (rejected) policy preferences of elevating unlegislated state climate policies as
3 significance criteria while adamantly refusing to accept judicial decisions that endorse compliance
4 with California’s extensive GHG legislative and regulatory mandates as a CEQA compliance
5 pathway given their (rejected) policy preferences that CEQA always require “additive” mitigation
6 mandates above and beyond those required by other laws and regulations.³²⁶

7 546. Respondents have not shown, and cannot show, why the subjective aesthetics
8 judgment of a sidewalk gazer peering at a new fourplex in Beverly Hills is an effect on the
9 environment when the identical fourplex in the city of San Bernardino is not under Appendix G
10 section I(c).

11 547. Respondents have not shown how Section 15064.7(b)’s express endorsement
12 of “case-by-case” (and thus inherently arbitrary) significance criteria aimed at a particular project
13 by a CEQA consultant or agency staff member, or by an anti-housing CEQA litigant, are
14 appropriate or lawful substitutes for the significance criteria that the Legislature expressly directed
15 be included in the CEQA regulations pursuant to section 20083(b) of the Public Resources Code.

16 548. Respondents have not shown why subsection (d) of Section 15064.7
17 recognizes some environmental standards as appropriate significance criteria, but rejects public
18 health and safety standards that have been expressly endorsed as appropriate CEQA compliance
19 pathways by many courts over many years,³²⁷ given its persistent violations of its statutory

21 *Properties, LLC v. County of San Diego* (2018) 27 Cal.App.5th 892. Anti-housing CEQA lawsuits
22 against specific projects remain in litigation, with no housing expected to be constructed while this
23 litigation onslaught is weaving its way through the courts. And, one fact is undisputed: additional
24 years of housing construction delay is a certainty. The terms “black hole” and “legal miasma” are
not intended as hyperbole or mere rhetoric, but as the ongoing reality for approved housing—and
critically needed housing that no one is even trying to get approved—in San Diego County.

24 ³²⁶ *Newhall*, 62 Cal.4th at 229

25 ³²⁷ *See, e.g., Oakland Heritage*, 195 Cal.App.4th at 906 (upholding CEQA document’s reliance on
26 building code seismic standards compliance to reduce related impacts); *Tracy First v. City of Tracy*
27 (2009) 177 Cal.App.4th 912, 636-637 (upholding CEQA document’s reliance on building code
energy efficiency standards compliance to reduce related impacts); *Leonoff v. Monterey County Bd.*

1 obligation to update CEQA regulations every two years pursuant to Public Resources Code section
2 20083(f), and its own regulatory mandate requiring regulatory amendments to “match new
3 developments relating to CEQA” under CEQA Guidelines section 15007.

4 549. Finally, Respondents have not shown any legal authority under CEQA to
5 reject CEQA jurisprudence upholding performance standard mitigation measures and instead
6 require detailed mitigation requirements that can only be finalized with design and engineering
7 unless it is “infeasible or impracticable” to prepare such costly details for a project that may never
8 be approved, will certainly be modified, and will accordingly be misleading at the CEQA stage and
9 require costly and potentially litigious revisions once the final configuration of a project receives
10 agency approvals.

11 550. CEQA does not confer on Respondents the legal authority to neuter statutory
12 mandates to safely accommodate population and economic growth in CMPs and General Plans, or
13 SIPs or Sustainable Communities Strategies for regional reductions in GHG emission from land use
14 and transportation decisions. CEQA does not confer on Respondents the authority to pretend that
15 commuters behave differently if their home is ten feet further away from the one-half mile donut
16 around a rail station, and proclaim that housing in the three percent of the SCAG region in the donut
17 hole has no VMT impact, while the new house next door has to fund tens or even hundreds of
18 thousands of dollars of transit passes for strangers.

19 551. Finally, CEQA does not confer on Respondents the legal authority to enforce
20 purportedly “environmental” mandates that the Legislature has considered but soundly rejected, like
21 the urban growth boundaries and ecosystem service taxes in the CARB Vibrant Communities
22 Appendix that Respondents OPR and NRA vowed to implement – unlawfully – in their Redlining
23 Revisions.

24
25 *of Supervisors* (1990) 222 Cal.App.3d 1337, 1355 (upholding CEQA document’s reliance on
26 hazardous material registration regulation compliance to reduce related impacts); *Sundstrom v.*
27 *County of Mendocino* (1988) 202 Cal.App.3d 296, 308 (upholding CEQA document’s reliance on
28 air and water quality standards compliance to reduce related impacts).

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ELEVENTH CAUSE OF ACTION

(Violation of Administrative Procedure Act (“APA”), Gov. Code §11349)

552. Petitioners hereby re-allege and incorporate paragraphs 1-551, above.

553. Respondents violated section 11349 and 11349.1 of the APA in promulgating amendments to the CEQA regulations that fail mandatory APA criteria for necessity, authority, clarity and/or consistency, as more specifically described below. Gov. Code §§ 11349, 11349.1.

554. **Section 15064** newly mandates that lead agencies “briefly explain” how compliance with each significance criteria “means that the project’s impacts are less than significant.” Respondents’ initially proposed that this explanation be supported by substantial evidence in the record, but then dropped the substantial evidence phrase and left the adequacy of the brief explanation to the imagination of lead agencies, contentious CEQA litigants, and judges.

555. CEQA allows,³²⁸ and scores of judicial decisions have upheld as legally adequate,³²⁹ the common practice of public agencies to use a “checklist” format for making significance determinations, including but not limited to the “Environmental Checklist Form” included as Appendix G of the CEQA regulations. Use of a checklist is particularly prevalent for smaller projects that are “categorically exempt” from the need for detailed and more costly CEQA compliance processes such as “environmental impact reports.”

556. Smaller housing projects of the type far more likely to be affordable for minority family homeownership, such as building one to three single family homes in an existing residential area, or building lower density, lower cost small apartment structures that include up to six apartments, qualify for CEQA exemptions. 14 C.C.R. § 15303(a)-(b). Confirming project eligibility for CEQA categorical (as well as the more limited subset of statutory) exemptions constitutes the majority of CEQA compliance actions completed by public agencies and reported to

³²⁸ 14 C.C.R. § 15064(b)(1).

³²⁹ See *Oakland Heritage*, 195 Cal.App.4th at 896; see also *Eureka Citizens for Responsible Gov. v. City of Eureka* (2007) 147 Cal.App.4th 357, 498.

1 Respondent OPR each year, as shown by Table 1 (Summary of CEQA Document Submittals by
2 Year and Type) in Respondents NRA’s December 2017 “Standardized Regulatory Impact
3 Assessment” (“SRIA”) prepared for the Redlining Revisions.³³⁰

4 557. Agencies using Appendix G or a similar “checklist” format that identify
5 significance thresholds of general applicability to projects cannot legally preclude a member of the
6 public from making a “fair argument” supported by “substantial evidence in the record” that a
7 project may have a significant adverse impact on the environment due either to “unusual
8 circumstances” or because the project at issue does not qualify for an exemption.³³¹ Lawsuits
9 challenging CEQA exemptions, however, are not common: only 17 percent of all lawsuits filed
10 statewide over a three year period (2010-2012) challenged exemptions.³³² When challenged in
11 court, even the smallest of CEQA-exempt housing projects lose access to lower cost conventional
12 construction loans and are typically delayed until the lawsuit is resolved: one CEQA-exempt
13 replacement single family home in Berkeley was delayed by more than 11 years of judicial
14 proceedings and by the time the exemption was judicially upheld the homeowner had abandoned
15 the project.³³³

16 558. CEQA-exempt projects also have the lowest CEQA compliance costs.
17 Respondents NRA lacks the legal authority under the APA “necessity” and “authority” mandates to
18 require public agencies to expand the content of each checklist for each project to separately, but
19

20 ³³⁰ NRA, Standardized Regulatory Impact Assessment: CEQA Guidelines Updates (Dec. 6, 2017) at
21 4,
22 [http://www.dof.ca.gov/Forecasting/Economics/Major_Regulations/Major_Regulations_Table/docu](http://www.dof.ca.gov/Forecasting/Economics/Major_Regulations/Major_Regulations_Table/documents/CEQAUpdatesSRIA_CNRA_12-6-17.pdf)
23 [ments/CEQAUpdatesSRIA_CNRA_12-6-17.pdf](http://www.dof.ca.gov/Forecasting/Economics/Major_Regulations/Major_Regulations_Table/documents/CEQAUpdatesSRIA_CNRA_12-6-17.pdf) (hereinafter “SRIA”). The actual number of
24 CEQA-exempt projects are actually much greater since agencies are not required to file Notices of
25 Exemption for exempt projects, and the SRIA reports only Notices of Exemptions.

26 ³³¹ *Berkeley Hillside Preservation*, 60 Cal.4th at 1115; *Berkeley Hillside Preservation*, 241
27 Cal.App.4th 943.

28 ³³² Hernandez, Friedman, and DeHerrera, In the Name of the Environment: Litigation Abuse Under
CEQA (Aug. 2015), at 14, [https://www.hklaw.com/publications/in-the-name-of-the-environment-](https://www.hklaw.com/publications/in-the-name-of-the-environment-litigation-abuse-underceqa-august-2015/)
litigation-abuse-underceqa-august-2015/.

³³³ *Id.* at 1086.

1 “briefly,” explain why each threshold is appropriate for each project. Respondents’ Appendix G
2 includes 88 project-specific thresholds (some of which involve sub-components and multi-part
3 thresholds).

4 559. Respondents OPR and NRA are charged with updating CEQA’s regulations
5 based on new statutes or new judicial interpretations of CEQA. There is no new statute requiring
6 this type of explanation to be added to long-established CEQA checklist practices. Two cases are
7 cited by Defendant NRA to defend this new mandate.

8 560. *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116
9 Cal.App.4th 1099, 1108-09, as modified (Apr. 9, 2004), which states in the context of a judicial
10 dispute about the significance of an impact that “thresholds cannot be used to *determine*
11 *automatically* whether a given effect will or will not be significant.”³³⁴ *Rominger v. County of*
12 *Colusa (Adams Group Inc., Real Party in Interest and Respondent)* (2014) 229 Cal.App.4th 690,
13 717, which likewise involves a disputed impact, and requires only that agencies consider
14 *information presented to the agency* when determining whether an impact is significant.³³⁵ Neither
15 the *Amador* nor *Rominger* decisions can be read as imposing a legal obligation requiring all state
16 and local agencies to proactively defend the use of each of the 88 thresholds in Appendix G as
17 applied to each and every project.

18 561. Petitioners specifically commented on Respondents’ initially proposed
19 expanded CEQA compliance obligation in subsection (b)(2) of Section 15064, which required that
20 lead agencies provide “substantial evidence” explaining why compliance with a threshold meant
21 that a project would have a less than significant effect. In one of the only examples of Respondents’
22 changing the proposed regulation in response to comments, the “substantial evidence” phrase was
23

24 _____
25 ³³⁴ NRA, Final Statement of Reasons for Regulatory Action, Amendments to the State CEQA
26 Guidelines (Nov. 2018), Exhibit A, Response 84.3, at 447,
http://resources.ca.gov/ceqa/docs/2018_CEQA_ExA_FSOR.pdf (hereinafter “NRA FSOR”).

27 ³³⁵ *Id.*

1 deleted and only the “briefly explain” text was retained.³³⁶ Respondents’ do not explain what text
2 content is required to satisfy this new “briefly explain” mandate, or why the generally applicable
3 CEQA standard of review requiring “substantial evidence” is not applicable to this new “briefly
4 explain” mandate.

5 562. Respondent NRA’s addition of subsection (b)(2) of Section 15064 unlawfully
6 expands the scope and cost of lead agencies’ obligations under CEQA, which in turn increase
7 housing costs because applicants pay agency costs in the form of higher application fees or
8 reimbursement requirements, and increase CEQA litigation obstacles for housing because the
9 sufficiency of the newly-required “explanations” as to why each of the 88 impacts is appropriately
10 used for a particular housing project present a new litigation target that shifts the evidentiary burden
11 to the agency to proactively and repeatedly defend its CEQA methodology instead of the housing
12 opponent who under current law is required to present substantial evidence of a fair argument that
13 unusual circumstances render an otherwise categorical exempt project non-exempt.³³⁷

14 563. This new Redlining Revision fails the Government Code section 11349(a)
15 criteria of necessity and Government Code section 11349(b) criteria of authority: neither any statute
16 nor any judicial precedent require lead agencies to defend the adequacy of the approximately 88
17 significance thresholds – including significance thresholds included in the CEQA regulations
18 promulgated by Respondents – as applied to every project. The absence of any criteria for what
19 constitutes a lawful “brief explanation” fails the Government Code section 11349(c) criteria of
20 clarity and reference as well.

21 564. **Section 15064.7** expressly encourages and endorses the use of “case-by-
22 case” significance criteria. This fails the Government Code section 11349 criteria of necessity,
23 authority, clarity, reference, and non-duplication.

24
25 ³³⁶ *Id.* at 172.

26 ³³⁷ *See generally Friends of College of San Mateo Gardens v. San Mateo County Community*
College Dist. (2016) 1 Cal.5th 937.

1 Gov. Code § 11340.5. Under the APA, an underground regulation is void: only regulations properly
2 promulgated under the APA are valid.

3 572. The Underground VMT Regulation and Underground GHG Regulation are
4 standards of general application for public agencies to implement and interpret CEQA. The
5 Underground VMT Regulation includes recommended significance criteria that flatly contradict the
6 promulgated Section 15064.3 VMT regulation, as described above. The Underground GHG
7 Regulation describes references to some but by no means all CEQA jurisprudence on GHG, and
8 endorses significance criteria that differ from those in the promulgated Section 15064.4 GHG
9 regulation, as described above.

10 573. These Underground regulations are particularly abhorrent in the context of
11 civil rights violations and CEQA.

12 574. First, it is well-established, particularly in the context of civil rights, that
13 claims may be based on an agency guideline, practice, or custom. *See, e.g., Castro v. County of Los*
14 *Angeles* (9th Cir. 2016) 833 F.3d 1060, 1094 (upholding civil rights judgment for plaintiff based on
15 jury instruction that “‘Practice or custom’ means any permanent, widespread, well-settled practice
16 or custom that constitutes a standard operating procedure of the defendant. . . .”).

17 575. Second, in the context of CEQA, it is hornbook law that “guidance” in
18 documents such as these two Underground Regulations are generally accepted by other lead
19 agencies as a benchmark. *See Kostka and Zischke, Practice Under the California Environmental*
20 *Quality Act* § 13.13 (CEB, 2d. Ed. 2018) (“Lead agencies often use performance standards adopted
21 by regulatory agencies as thresholds of significance.”); *Id.* at § 13.13 (Some “agencies have adopted
22 manuals or other guidance documents designed to give lead agencies direction on how to assess
23 impacts in CEQA documents”). Compliance with such “guidance” often conveys a presumption of
24 adequacy, thereby adding force and weight to the “guidance.” *See, e.g., Mission Bay Alliance v.*
25 *Office of Community Investment & Infrastructure (GSW Arena LLC et al., Real Parties in Interest*
26 *and Respondents)* (2016) 6 Cal.App.5th 160, 205 (upholding threshold for toxic air contaminants

1 based on US EPA standards).

2 576. Such expert agency guidance documents have sufficient legal weight under
3 CEQA that the California Supreme Court considered a non-binding CEQA guidance document
4 issued by the Bay Area Air Quality Management District (“BAAQMD”), and found that some of
5 the District’s recommended significance criteria and other guidance “goes too far” and was in fact
6 not authorized at all under CEQA. *California Building Industry Assn. v. Bay Area Air Quality*
7 *Management Dist.* (2015) 62 Cal.4th 369, 386-87.

8 577. The Underground VMT and GHG regulations are far more unlawful than the
9 non-binding guidance issued by BAAQMD, and then litigated up to the California Supreme Court,
10 because the Legislature specifically directed that CEQA’s regulations – not mere “guidance” – be
11 amended to address GHG impacts (Pub. Res. Code § 21083.05), and to eliminate traffic delay as a
12 stand-alone CEQA impact (Pub. Res. Code § 21099).

13 **THIRTEENTH CAUSE OF ACTION**

14 **(Violation of APA – Mandatory Economic Impact Assessment, Gov. Code § 11346 et seq.)**

15 578. Petitioners hereby re-allege and re-incorporate herein by reference the
16 allegations of paragraphs 1-577, above.

17 579. Section 2003 of the California Department of Finance regulations (1 C.C.R.
18 § 2003(a)) (“Methodology for Making Estimates”) provides that, “[i]n conducting the SRIA
19 required by section 11346.3,” Respondents “shall use an economic impact method and approach
20 that has all of the following capabilities:

- 21 (1) Can estimate the total economic effects of changes due to regulatory policies over a
22 multi-year time period.
23 (2) Can generate California economic variable estimates such as personal income,
24 employment by economic sector, exports and imports, and gross state product, based on
25 inter-industry relationships that are equivalent in structure to the Regional Industry
26 Modeling System published by the Bureau of Economic Analysis.
27 (3) Can produce (to the extent possible) quantitative estimates of economic variables that
28 address or facilitate the quantitative or qualitative estimation of the following:
(A) The creation or elimination of jobs within the state;
(B) The creation of new businesses or the elimination of existing businesses within
the state;
(C) The competitive advantages or disadvantages for businesses currently doing
business within the state;

- (D) The increase or decrease of investment in the state;
- (E) The incentives for innovation in products, materials, or processes; and
- (F) The benefits of the regulations, including but not limited to benefits to the health, safety, and welfare of California residents, worker safety, and the state’s environment and quality of life, among any other benefits identified by the agency.”

580. Department of Finance (“DOF”) regulations require that DOF’s “most current publicly available economic and demographic projections, which may be found on the department’s website, shall be used unless the department approves the agency’s written request to use a different projection for a specific proposed major regulation.” 1 C.C.R. § 2003(b).

581. DOF regulations also provide that: “An analysis of estimated changes in behavior by businesses and/or individuals in response to the proposed major regulation shall be conducted and, if feasible, an estimate made of the extent to which costs or benefits are retained within the business and/or by individuals or passed on to others, including customers, employees, suppliers and owners.” 1 C.C.R. § 2003(f).

582. Respondents OPR and NRA prepared a SRIA in December of 2017 for the Redlining Revisions as required by the APA for “major” regulatory proposals that “will have an economic impact on California business enterprises and individuals in an amount exceeding \$50 million in any 12-month period.”³³⁸ As notified by several commenters, including Petitioners, the SRIA suffered from numerous fatal legal flaws.

583. First, the SRIA quantitatively considered only the cost of preparing CEQA documents such as VMT studies, and not the cost of complying with new CEQA compliance obligations such as mitigating significant VMT impacts. This is fundamentally flawed: the SRIA must evaluate all economic consequences of the regulatory proposal, and not simply document preparation costs – including the cost to a family of paying \$58,000 in new VMT mitigation fees to purchase a new home that is actually affordable to median income minority families.

584. Second, the SRIA qualitatively assumed that new “infill” housing located in existing communities would not be required to pay any VMT or traffic congestion mitigation costs.

³³⁸ SRIA, *supra* note 330, at 3.

1 Even for most “infill” projects – such as the 80 percent of non-TPA acres in the region’s most
2 densely populated cities in the Gateway Cities COG – VMT mitigation would in fact be required
3 based on the Section 15064.3(b) regulatory threshold that projects must actually reduce total VMT
4 in the project area, as well as in the un-promulgated Underground VMT Regulation dictating that
5 projects outside TPAs should have 15 percent less VMT than the average for that jurisdiction, even
6 if the project would reduce regional VMT.

7 585. Third, the SRIA qualitatively assumed that any VMT mitigation costs for
8 non-infill development would be lower than traffic improvements required to reduce congestion
9 delays under the traditional traffic congestion-based LOS standard, thereby reducing project costs.
10 In fact, however, local, state and federal transportation laws – such as Circulation elements required
11 to be included in local General Plans, regional CMP laws, and laws and regulations requiring
12 adequate transportation capacity to efficiently move people and goods, and avoid excess emissions
13 from longer commute durations – continue to apply to new housing through other mandatory
14 CEQA impact topics such as air quality, transportation safety, and land use plan consistency.
15 Residents occupying new housing could thus continue to be required to fund roadway
16 improvements as well as pay VMT costs, both under CEQA and under local land use law, making
17 VMT mitigation a net increase in CEQA compliance costs.

18 586. Fourth, Respondents’ ignored all comments about increased litigation
19 obstacles, and associated increased costs and delays, regarding the absence of validated, consistent,
20 or even knowable VMT data such as VMT “averages” for cities *or* regions. Respondents’ instead
21 delayed the effective date for required use of VMT under CEQA, apparently based on the
22 assumption that California’s 482 cities and 58 counties would develop (with substantial evidence)
23 VMT data, VMT evaluation methodologies, VMT significance criteria, and effective VMT
24 mitigation measures, at zero cost to any “individual” or “business.” Cities and counties are
25 scrambling to comply with this dramatic regulatory expansion of CEQA, but routinely pass through
26 CEQA compliance costs to new housing applicants in the form of increased application and

1 development fees – and all agency costs not paid by new housing residents are ultimately borne by
2 individual and business taxpayers. Respondents’ assertion in the SRIA that readily-available VMT
3 models and mitigation measures are available is directly at odds with non-partisan transportation
4 experts such as the scholars from U.C. Davis who have shown how inconsistent the VMT models
5 actually are – and further how the absence of actual VMT validation data undermined the
6 evidentiary value of any of these models. With agency fees already topping \$100,000 per housing
7 unit, and with the housing affordability crisis, Respondents’ refusal to acknowledge and quantify
8 the costs of expanding CEQA to VMT was likewise unlawful under the APA.

9 587. Fifth, Respondents applied arbitrary and inconsistent methodologies in the
10 SRIA to assess the increased costs required to implement the Redlining Revisions. As noted above,
11 for example, Respondents’ quantified and claimed credit for the purportedly reduced regulatory
12 costs for preparing VMT studies and no longer requiring traditional traffic studies that measure
13 congestion-related delay based on LOS delay metrics. Respondents ignored or summarily rejected
14 comments from traffic experts and other stakeholders that LOS studies would continue to be
15 required under CEQA to accurately measure air emissions, transportation safety impacts, and
16 consistency with other transportation laws, plans and policies including, but not limited to, the
17 mandatory “circulation element” components of state-mandated local General Plans. In fact, recent
18 surveys have confirmed that the majority of local jurisdictions are now requiring both LOS and
19 VMT studies. Respondents likewise ignored or summarily rejected expert comments that LOS
20 studies were required to accurately measure VMT, as well as comments regarding the adverse
21 human health impacts of Respondents’ decision to manipulate CEQA as part of Respondents’ and
22 CARB’s unlegislated non-regulatory policy decision to intentionally worsening gridlock statewide
23 to discourage driving and thereby decrease VMT.

24 588. Respondents likewise ignored or summarily dismissed comments about
25 increased CEQA litigation costs and lawsuit loss risks engendered by the absence of validated VMT
26 data, study methodologies, or mitigation measures. Respondents likewise ignored or summarily

1 dismissed comments by experts and other stakeholders that the Redlining Restriction’s unlawful
2 new constraint on Performance-Based Mitigation Measures in Section 15126.4 would require
3 applicants to build housing and other projects to prepare very detailed mitigation specifications
4 without knowing whether the project was going to be approved, reconfigured, downsized, or
5 denied.

6 589. For example, instead of using the common and judicially upheld “menu” of
7 construction phase measures for reducing airborne dust and protecting water quality to meet
8 specified regulatory standards and avoid “significant” CEQA impacts, Respondents’ new constraint
9 on Performance-Based Mitigation Measures would effectively require engineering-level drawings
10 to demonstrate prescriptive dust control measures that may be redundant or counterproductive (i.e.,
11 watering surface dust during construction would be counterproductive on days when the only
12 construction work underway is painting or pouring concrete), or deciding precisely where hay bales
13 would be placed to protect stormwater runoff quality when bale placement would shift based on the
14 construction status of permanent storm drain solutions. Even the expert air agencies (for
15 construction dust management) and water quality agencies (for stormwater quality) recognize the
16 effectiveness of Performance-Based Mitigation Measures with a menu of performance options, but
17 Respondents refused to acknowledge or quantify in the SRIA the cost consequences of requiring
18 prescriptive and precise, instead of performance-based, mitigation measures. Ignoring all such cost
19 comments, Respondents’ decreed that their more costly precise mitigation mandate would result in
20 “the benefit of greater certainty regarding legal requirements,” while providing no quantification of
21 or evidence supporting this purported economic “benefit.”³³⁹

22 590. Sixth, Respondents’ ignored the global GHG consequences of increasing
23 housing costs from both CEQA’s expansion to VMT and the other Redlining Revisions, which
24 continue to result in the out-migration of Californians to higher GHG states led by Texas, Nevada
25 and Arizona.

26 ³³⁹ SRIA, *supra* note 330, at 27.

1 for Regulatory Action” for amending CEQA regulations, Respondent NRA either summarily
2 dismissed or rejected many of Petitioners’ comments with the following form response: “The
3 Agency is not making any change in response to this comment. This is beyond the scope of this
4 regulatory package.”³⁴⁰ Examples of Petitioners’ comments that were summarily dismissed as being
5 “outside the scope of this rulemaking” include:

6 596. “Expanding CEQA, and increasing CEQA litigation risks, imposes
7 stunningly regressive new costs and burdens on California lower and middle income families in the
8 form of higher costs for basic necessities like utilities, transportation, fees and other CEQA
9 ‘mitigation’ costs that are imposed solely on those needing the new housing and infrastructure.

10 597. OPR’s decision to impose new bundles of regressive cost burdens – like the
11 VMT threshold and ‘all feasible’ mitigation mandates for ‘significant’ VMT quantities that
12 universally occur in the inland areas of California that provide the only homeownership
13 opportunities available to median or below median income families – makes homeownership even
14 less affordable and accessible to our communities.

15 598. No one in the Legislature voted to impose regressive new cost burdens that
16 disproportionately harm California’s minority communities. No one in the Legislature voted to
17 authorize OPR to expand CEQA, or increase uncertainty and litigation risks. OPR is not
18 empowered, in pursuant of climate or environmental goals, to worsen the housing, poverty and
19 homelessness crisis.”³⁴¹

20 599. Petitioners submitted a second comment letter to Respondent NRA on July
21 20, 2018, again providing both detailed comments and extensive attachments and citations in
22 support of the need to change proposed amendments to CEQA regulations. Again, Respondent
23 NRA summarily dismissed as “outside the scope of this rulemaking” the commenters’ urgent
24 requests to avoid weaponizing CEQA to exacerbate the housing crisis and cause disparate harms to

25 _____
26 ³⁴⁰ NRA FSOR, *supra* note 334, at 501-577.

27 ³⁴¹ *Id.* at 506-507.

1 California’s minority communities, particularly given Respondents’ very clear explanation that it
2 was making “policy” changes to CEQA regulations to advance the administration’s climate goals.
3 Examples of the comments that Respondents’ summarily dismissed as “outside the scope of this
4 rulemaking” include:

5 600. “Because California’s climate leaders have chosen to enact GHG reduction
6 metrics that count as GHG ‘reductions’ the act of forcing California residents and jobs to other
7 states and countries, it is true that making CEQA ever more burdensome will likely induce even
8 more Californians to depart to other states rather than continuing to suffer from our housing,
9 homelessness, poverty and transportation crises.

10 601. However, this is not a color-blind government policy choice: wealthier,
11 whiter and older Californians benefit, and poorer, minority and younger Californians are harmed,
12 by further exacerbating our housing and related crises.

13 602. This is also not a defensible choice for California as a global climate leader.
14 Since California’s per capita and per GDP GHG emissions are among the lowest of any state in the
15 nation, forcing Californians and jobs to move to other states and countries results in increased
16 global GHG – and it is global GHG, rather than the less than 1 percent of global GHG attributable
17 to California’s economy that must be addressed by effective climate leaders. Attachment 4 is a
18 research brief, ‘California, Greenhouse Gas Regulation, and Climate Change’ (2018), documenting
19 the ineffectiveness and inequity of California’s GHG reduction strategies to date, as well as the fact
20 that implementing the infill-only housing strategy included in the [CARB] Scoping Plan will
21 achieve less than 1 percent of California’s own GHG reduction goal and require the demolition of
22 ‘tens if not hundreds of thousands’ of single family homes. California’s GHG reductions account
23 for only about 5 percent of the GHG reductions achieved in the United States since AB 32 was
24 enacted in 2007, even though we have the country’s largest economy and population.

25 603. With any honest accounting of global GHG emissions, weaponizing CEQA
26 to further increase housing, energy and transportation costs against projects that meet every single

1 environmental mandate (other than CEQA) approved by the Legislature or any state or local
2 agency, will simply increase global GHG as well as income inequity and the housing, poverty,
3 homelessness, and transportation crises.”³⁴²

4 604. Respondents’ summary dismissal of Petitioners’ civil rights, environmental,
5 and APA comments – in the context of nearly 40 pages of detailed comments and suggested
6 revisions to regulatory amendments which would protect the environment as well as public health
7 and not cause disparate harm to minority communities – with the response “[t]his comment is
8 outside the scope of this rulemaking” violates section 11346.9 of the APA, which requires
9 Respondents to include a written “explanation of how the proposed action has been changed to
10 accommodate each objection or recommendation, or the reasons for making no change.”

11 605. Respondents’ NRA’s near-blanket refusal to make any of the specific
12 changes described on nearly 40 pages of text of the proposed regulations requested by Petitioners,
13 or to recognize and address the SRIA’s failure to quantify, disclose and assess the economic
14 impacts to individuals and businesses of the Redlining Revisions, violate the APA.

15 606. Respondent NRA’s failure to provide content in response to comments as
16 required by section 11346.9 of the APA also extended to comments filed by other interested parties.

17 607. Respondent OAL also violated the APA in allowing the Redlining Revisions
18 to be promulgated as regulations based on Respondent NRA’s failure to include the required
19 content in responding to comments.

20 **FIFTEENTH CAUSE OF ACTION**

21 **(Ultra Vires Agency Action, Cal. Code of Civil Proc. § 1085)**

22 608. Petitioners hereby re-allege and incorporate herein by reference the
23 allegations contained in paragraphs 1-607, above.

24 609. The Redlining Revisions generally, and the Underground VMT and GHG
25 Regulations in particular, are an unlawful attempt to achieve the 2050 GHG emission reduction

26 ³⁴² *Id.* at 640-641.

1 target that was expressly rejected by the Legislature in SB 32, and to compel VMT reduction
2 mandates that were expressly rejected by the Legislature in SB 150.

3 610. The GHG Redlining Revisions elevate to CEQA significance criteria status
4 the “State’s long-term climate goals or strategies” notwithstanding the Legislature’s express
5 rejection of numerous “goals or strategies” included in CARB’s 2017 Scoping Plan, including but
6 not limited to: reducing VMT as a GHG reduction mandate, mandating reduction of GHG emission
7 by 80 percent by 2050, mandating the use of “net zero GHG” as a CEQA significance threshold,
8 and mandating the urban growth boundaries, land conversion prohibitions, and eco-system service
9 taxes and fees on urban residents included in the Scoping Plan’s “Vibrant Communities” appendix.
10 The GHG Redlining Revisions also elevate to CEQA significance criteria status unlegislated GHG
11 Executive Orders such as Executive Order S-3-05 or other unlegislated actions undertaken by the
12 Executive Branch such as the Subnational Memorandum of Understanding (Under 2 MOU)
13 referenced by Respondents as among the policy mandates for the Redlining Revisions. Even the
14 LAO has stated that, in consultation with Legislative Counsel, it is unlikely that even the state’s
15 primary climate regulator, CARB, has authority to adopt and enforce regulations to achieve 2050
16 GHG reduction targets.³⁴³

17 611. Respondents lack the legal authority to enforce through regulations GHG and
18 VMT reduction targets that have been expressly rejected by the Legislature. Under section 11349(a)
19 of the APA, California regulations must meet the “necessity” criteria whereby the “rulemaking
20 proceeding *demonstrates by substantial evidence the need for a regulation to effectuate the purpose*
21 *of the statute, court decision, or other provision of law*” (emphasis added). Under section 11349(b)
22 of the APA, California regulations must also meet the “authority” criteria and be based on “*the*
23 *provision of law* which permits or obligates the agency to adopt, amend, or repeal a regulation”
24 (emphasis added). Only statutes, court decisions, or “other provision of law” – such as a regulation

25
26 ³⁴³ Taylor, Cap-and-Trade Revenues: Strategies to Promote Legislative Priorities, LAO (Jan, 21,
27 2016), at 7, <https://lao.ca.gov/reports/2016/3328/cap-trade-revenues-012116.pdf>.

1 authorized by another statute – can authorize regulations. In the rulemaking for the Redlining
2 Revisions, Respondents repeatedly state their purpose as implementing climate change “goals and
3 policies” – and then elevate such unlegislated actions to CEQA significance criteria in Section
4 15064.4.

5 612. The Redlining Revisions are ultra vires because they fail to satisfy either the
6 necessity or authority criteria.

7 613. The Redlining Revisions are also ultra vires to the extent they are based on
8 the 2017 CARB Scoping Plan, which is referenced in Respondents’ rulemaking proceedings. The
9 California Supreme Court determined that the Scoping Plan is not itself a regulation,³⁴⁴ and
10 accordingly cannot serve as the “statute, court decision, or other provision of law” that meets the
11 APA necessity and authority criteria. Further, CARB staff responded in the record on the Scoping
12 Plan that it’s “net zero GHG” significance threshold, Vibrant Communities Appendix setting forth
13 infill and transit policies, and even its per capita VMT reduction measure, were not “part” of the
14 Scoping Plan, were properly excluded from the mandated economic and environmental assessments
15 of the Scoping Plan, or both.³⁴⁵ The Scoping Plan does provide the requisite authority and necessity
16 criteria for the ultra vires Redlining Revisions.

17 **VI. PRAYER FOR RELIEF**

18 WHEREFORE Petitioners/Plaintiffs THE TWO HUNDRED, including Jason Cordova and
19 Lynn Brown-Summers request relief from this Court as follows:

20 A. For a declaration, pursuant to Code of Civil Procedures § 1060, that the
21 abovementioned amendments to the CEQA Guidelines are unlawful as inconsistent with CEQA and
22 prior judicial decisions, and thus shall be void and of no further force or effect;

23 B. For a writ of mandate or peremptory writ issued under the seal of this Court
24

25 ³⁴⁴ *Newhall*, 62 Cal.4th at 223.

26 ³⁴⁵ CARB, 2017 Scoping Plan, Supplemental Response to Comments Document, at 14-22,
27 <https://ww3.arb.ca.gov/cc/scopingplan/final-supplemental-rtc.pdf>.

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1 pursuant to Code of Civil Procedure § 1094.5 or in the alternative § 1085, directing
2 Respondents/Defendants to set aside those sections of the CEQA Guidelines challenged above until
3 such time as Respondents/Defendants have complied with the requirements of the APA, CEQA,
4 and the requirements of the Due Process and Equal Protection clauses of the California and United
5 States Constitutions, and any other applicable laws cited herein;

6 C. For permanent injunctions restraining Respondents/Defendants from issuing
7 any further revisions or amendments to the CEQA Guidelines, or any new sections of the CEQA
8 Guidelines, that address the issues described herein until such time as they have complied with the
9 requirements of the APA, CEQA, and the requirements of the Due Process and Equal Protection
10 clauses of the California and United States Constitutions, and any other applicable laws cited
11 herein;

12 D. For an award of their fees and costs, including reasonable attorneys' fees and
13 expert costs, as authorized by Code of Civil Procedure § 1021.5, 42 U.S. Code, section 1988, and
14 any other applicable provision of law, and the cost of preparing and service of this Petition and
15 Complaint;

16 E. That this Court retain continuing jurisdiction over this matter until such time
17 as the Court has determined that Respondents have fully and properly complied with its orders; and

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F. For any other relief deemed just and proper by this Court.

Dated: December 18, 2019

Respectfully submitted,

HOLLAND & KNIGHT LLP



By: _____

Jennifer L. Hernandez

Attorneys for Petitioners/Plaintiffs
THE TWO HUNDRED, Jason Cordova and Lynn
Brown-Summers, *et al.*

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VERIFICATION

I, John Gamboa, am a member of THE TWO HUNDRED, an unincorporated association, Petitioners/Plaintiffs in this action. I am authorized to make this verification on behalf of THE TWO HUNDRED and its members named herein. I have read the foregoing **Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief** and know the contents thereof. I am informed and believe and on that ground allege that the matters stated therein are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this _____ day of December 2019, at _____, California.

John Gamboa