



January 6, 2014

California Coastal Commission
San Diego Coast District Office
Attn: Gabriel Buhr
7575 Metropolitan Drive Ste. 103
San Diego, CA 92108-4402

RECEIVED

JAN 06 2014

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Click here to go to
original staff report

Th5b

P.O. Box 779
Descanso, CA 91916

via electronic mail
cluster@coastal.ca.gov
gbuhr@coastal.ca.gov

Re: North Coast Corridor Public Works Plan/Transportation and Resource Enhancement Program
Thursday, January 9, 2014, Item Th5b

Dear Members of the Coastal Commission and Staff:

The Cleveland National Forest Foundation (CNFF) submits this letter with respect to the North Coast Corridor Public Works Plan/Transportation and Resource Enhancement Program (PWP). For the reasons set forth below, we request that the Commission reject the PWP.

CNFF is a nonprofit group based in San Diego County dedicated to preserving plants, animals, and other natural resources by protecting the land and water they need to survive. Over the years, CNFF's mission has evolved. To protect our pristine wild spaces, it is necessary to advocate for sustainable land use, transportation systems, and healthy, livable communities. CNFF has set many legal and planning benchmarks for progressive land use and transportation policies and for wilderness protection in San Diego County. *Please see* CNFF.org; Sofar.org.

Transportation in America is at a pivot point; we face a historic opportunity to fundamentally rethink how we plan, fund and build our transportation networks. Moreover, if we are to grow in a sustainable manner, we must change the manner in which we have historically traveled. Yet, SANDAG's and Caltrans' pursuit of accommodating the private-automobile and expanding freeways remains virtually unchanged over the last half century.

The San Diego County Superior Court confirmed these agencies' failed planning paradigms in a dramatic ruling that set aside the environmental impact report (EIR) for SANDAG's 2050 Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS). The Court explained that SANDAG was impermissibly dismissive of the State's climate change goals. Heedless of the Court's clear direction to transportation agencies and the grave dangers inherent in the regional plan, the I-5 North Coast Corridor Project would proceed on the same failed course. Caltrans' primary purpose and resource allocation is to widen the I-5 freeway without considering even one transit-based alternative.

Caltrans estimates that, with the I-5 expansion, the number of vehicles on the freeway will jump by approximately 50% from current levels, resulting in **140,000** more vehicles per day. Put simply, this Project will make it impossible to achieve our climate change goals. The massive increase in vehicular trips will trigger a surge in greenhouse gas (GHG) emissions, in direct conflict with state laws calling for aggressive emissions reductions. As the Urban Land Institute's "Growing Cooler" states, "Recognizing the unsustainable growth in driving, the American Association of State Highway and Transportation Officials (AASHTO), representing state departments of transportation, is urging that the growth of vehicle miles driven be cut in half" in order to achieve climate change goals. Expanding I-5 will also facilitate sprawling land use patterns,

Letter of Opposition /

TWITTER: [@transitsd](https://twitter.com/transitsd) • FACEBOOK: facebook.com/transitsd • WEB: transitsandiego.org and cnff.org

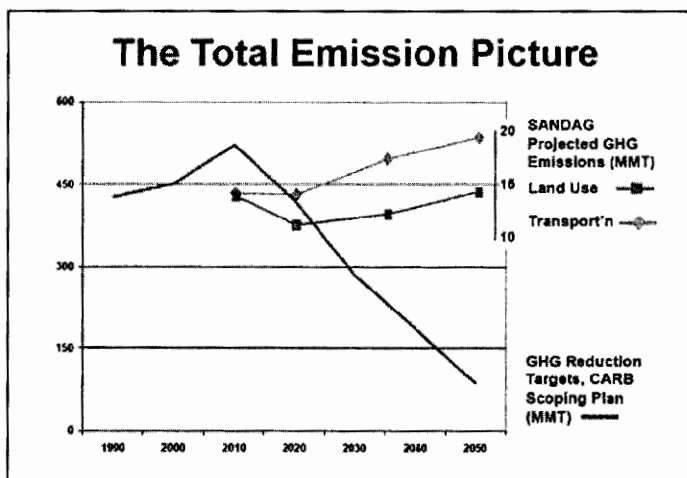
threatening local open space, coastal valleys and our precious back country. The Project will also greatly exacerbate San Diego's air pollution, which already gets a failing grade from the American Lung Association.

Caltrans had ample time to correct the extensive legal deficiencies in its draft EIR identified by CNFF and a number of other individuals and organizations, including the California Coastal Commission. Yet, it mostly ignored numerous substantive comments. Moreover, in an egregious attempt to thwart public participation, Caltrans did not even release its Final EIR until after it had approved the Project on October 23, 2013. CNFF filed a lawsuit challenging the agencies' approval of the Project on December 4, 2013¹. We respectfully request that the Commission review the attached Petition for Writ of Mandate.

While it is admirable that the PWP calls for lagoon improvement projects, it is imperative that these protective measures not be linked to the expansion of the freeway. Indeed, it was the construction and subsequent operation of I-5 that initially caused the severe environmental degradation of our coast. Attempting to ameliorate these disastrous effects by pouring yet more concrete and adding more vehicles is a foolish and dangerous game.

The PWP is an integral component of SANDAG's 2050 RTP/SCS. As mentioned above, CNFF and the People of the State of California (represented by the California Attorney General) along with other state and local organizations filed a lawsuit on this Plan and its EIR. Here too, SANDAG's highway-centric approach to transportation resulted in extensive environmental impacts yet the RTP EIR failed to adequately analyze or mitigate these effects. On December 3, 2012, in a strongly-worded decision in favor of CNFF and the People, the Superior Court ruled that SANDAG had violated CEQA by failing to properly analyze or mitigate the Plan's climate impacts. The Court ruled that SANDAG was "kicking the can down the road" rather than adequately addressing the Plan's climate change impacts.

The chart below shows how drastically GHG emissions will rise under SANDAG's Plan, and the emission reductions needed to achieve the State's Executive Order S-03-05. This is primarily due to SANDAG's and Caltrans' "freeways first" approach to transportation. As this chart makes clear, the agencies have no consistent history of getting it right. The RTP/SCS case is on appeal; the Appellate Court is expected to hear oral argument this spring.



CNFF respectfully requests that the Commission reject the PWP for the following reasons. First, Caltrans' and SANDAG's approach to improving travel along the north coast corridor is fundamentally flawed. Their premise that a "balanced" system of expanding freeway lanes together with some rail improvements and bike ways will solve future transportation

¹ <http://transitsandiego.files.wordpress.com/2013/12/petition-for-writ-of-mandate-and-complaint-for-injunctive-relief.pdf>

needs is severely flawed. Research studies consistently demonstrate that expanding freeways only relieves congestion over the short term, i.e., two to four years. Thus, before we know it, traffic congestion will be as bad, if not worse, than it currently is. Caltrans and SANDAG will then again be clamoring for more freeway lanes, leading to further environmental degradation.

Second, as the Coastal Commission explained in its letters to Caltrans, requirements of Local Coastal Plans need to be integrated into the PWP and the EIR must be revised to address the many inadequacies detailed by the Coastal Commission, CNFF and other members of the public.

Third, the I-5 Project will sabotage efforts to reduce GHG emissions, leading to catastrophic environmental effects.

Fourth, Caltrans refused to consider **any** alternative to meeting the region's mobility needs other than widening the freeway. Members of the public requested that Caltrans consider options such as pricing general-purpose lanes, improving local streets, prioritizing transit over highway expansion, and adopting aggressive transportation demand measures. Caltrans provided no plausible explanation as to why it refused to even study such alternatives. Until the public and decision-makers are apprised of the role that transit, biking and walking can play in meeting our regional transportation needs, San Diego will never turn the corner toward sustainability. We can no longer "kick the can down the road." The stakes are just too high. Other countries and numerous American cities have made this dramatic move. Why not San Diego?

Fifth, and of vital importance, for the reasons set forth above, the Project is in direct conflict with the mission of the California Coastal Commission in that it is neither environmentally sustainable nor prudent.

We appreciate your consideration of this request.

Sincerely,



Duncan McFetridge
Director, CNFF

Encl.

555929.1

3

1 RACHEL B. HOOPER (State Bar No. 98569)
ERIN B. CHALMERS (State Bar No. 245907)
2 SHUTE, MIHALY & WEINBERGER LLP
396 Hayes Street
3 San Francisco, CA 94102
Telephone: (415) 552-7272
4 Facsimile: (415) 552-5816
Hooper@smwlaw.com
5 Chalmers@smwlaw.com

6 DANIEL P. SELMI (State Bar No. 67481)
919 S. Albany Street
7 Los Angeles, CA 90015
Telephone: (213) 736-1098
8 Facsimile: (949) 675-9861
Dselmi@aol.com

9 MARCO A. GONZALEZ (State Bar No. 190832)
10 COAST LAW GROUP LLP
1140 S. Coast Highway 101
11 Encinitas, CA 92024
Telephone: (760) 942-8505
12 Facsimile: (760) 942-8515
Marco@coastlawgroup.com

13 Attorneys for CLEVELAND NATIONAL
14 FOREST FOUNDATION

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

16 **COUNTY OF SAN DIEGO**

17 **CENTRAL DIVISION**

18 CLEVELAND NATIONAL FOREST
19 FOUNDATION,

20 Petitioner,

21 v.

22 CALIFORNIA DEPARTMENT OF
TRANSPORTATION; and DOES 1
23 through 20, inclusive.

24 Respondents.

Case No. 37-2013-00078391-CU-TT-CTL

**PETITION FOR WRIT OF MANDATE
AND COMPLAINT FOR INJUNCTIVE
RELIEF**

[CCP § 1085 (1094.5); California
Environmental Quality Act ("CEQA")]

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

12/04/2013 at 11:09:00 AM
Clerk of the Superior Court
By Rebecca Vela, Deputy Clerk

INTRODUCTION

1
2 1. This action challenges the decision of the California Department of Transportation
3 (“CalTrans” or “Respondent”) to approve the Interstate 5 North Coast Corridor Project
4 (“Project”) on or about October 31, 2013 and to certify the environmental impact report (“EIR”)
5 for the Project on or about October 23, 2013. The challenged Project involves approval for
6 widening a 27-mile stretch of Interstate 5 (“I-5”) by four lanes, plus auxiliary lanes, beginning in
7 San Diego and extending to the north through Del Mar, Solana Beach, Encinitas, Carlsbad, and
8 Oceanside. CalTrans is the lead agency for purposes of conducting environmental review under
9 the California Environmental Quality Act, Public Resources Code section 21000 et seq.
10 (“CEQA”).

11 2. The Project will add four new “managed lanes” to the freeway—two in each
12 direction—which will effectively expand the size and capacity of this section of I-5 by fifty
13 percent. While the new lanes will be available for carpools, vanpools and busses, they may also
14 be used by single-occupant vehicles for a fee. With this expansion, CalTrans projects that by
15 2030 the number of vehicles on the freeway will rise by approximately fifty percent from
16 current levels, adding an additional 140,000 vehicles per day to some sections of the freeway.

17 3. The Project’s massive increase in traffic will result in a correspondingly large
18 increase in emissions of air pollutants. Because this area already suffers from poor air quality,
19 the Project’s impact on public health will therefore be severe. Unfortunately, rather than
20 analyze the Project’s impacts on public health by conducting a health risk assessment or other
21 similar study, the EIR summarily states that there is no feasible way to analyze such risks. It
22 makes this claim despite the fact that other transportation agencies, including the San Diego
23 Association of Governments (“SANDAG”), have previously stated that it is appropriate and
24 practical to conduct health risk assessments for road projects such as this. The EIR’s failure to
25 analyze the manner in which the Project’s emission of criteria and toxic air contaminants may
26 affect public health is a glaring oversight that leaves the public in the dark as to how, and to
27 what extent, they may be impacted.

4. In addition to causing more air pollution, the increased driving from the Project will produce an enormous surge in greenhouse gas emissions as compared to existing conditions. The expanded highway capacity will encourage and induce development in ever more distant regions of San Diego County, forcing residents to endure long commutes and to emit more greenhouse gases. Given that climate science and state policy demand that the state aggressively *reduce* greenhouse gas emissions over the coming decades, this Project takes the region – and the state – in exactly the wrong direction. Rather than address this problem, the EIR does not begin to grapple with the Project’s severe impacts on climate change; instead, it asserts summarily that the Project will actually help reduce greenhouse gas emissions. The EIR’s conclusion is wholly without foundation. The EIR not only fails to measure all types of greenhouse gases, but it also uses legally improper metrics to analyze the significance of the Project’s climate impacts.

5. It cannot be seriously disputed that the Project's increase in highway capacity will facilitate travel – and therefore development – in rural areas in the County. The EIR nevertheless concludes, without any supporting evidence, that the expansion of I-5 will have no effect on patterns of growth in the region. The EIR's rote conclusions that the Project's impacts on noise and energy use will be less-than-significant similarly lack any support in the record.

6. Respondent's action in approving the Project violates CEQA and the CEQA Guidelines, Title 14, California Code of Regulations, § 15000 *et seq.* Specifically, Respondent certified an EIR for the Project that fails to adequately analyze or mitigate the Project's significant individual and cumulative impacts on the environment, including but not limited to the impacts on air quality and human health, climate change, inducement of growth, noise, and energy use.

7. For all of these reasons, Respondent's approval of the Project and certification of the EIR must be rescinded.

PARTIES

8. Petitioner Cleveland National Forest Foundation ("CNFF") is a nonprofit corporation dedicated to preserving the plants, animals and other natural resources of Southern

1 California mountains by protecting the land and water they need to survive. CNFF is committed
2 to sustainable regional land use planning in San Diego County in order to stem the tide of urban
3 encroachment on wildlands. It is also committed to reducing regional emissions of greenhouse
4 gases by, among other things, promoting transit and smart growth and reducing vehicular travel.
5 Members of CNFF are residents and taxpayers of San Diego County who will be adversely
6 affected by the Project's significant environmental impacts. CNFF and its members also have a
7 direct and beneficial interest in CalTrans' compliance with CEQA and the CEQA Guidelines.
8 These interests will be directly and adversely affected by the Project, which violates provisions
9 of law as set forth in this Petition and which would cause substantial and irreversible harm to the
10 natural environment. The maintenance and prosecution of this action will confer a substantial
11 benefit on the public by protecting the public from the environmental and other harms alleged
12 herein. CNFF submitted written comments to CalTrans objecting to and commenting on the
13 Project and the EIR.

14 9. Respondent CalTrans is an agency in the executive branch of the State of
15 California, operating within the California State Transportation Agency. It operates a multi-
16 modal transportation system across the state, and is responsible for the planning, building and
17 maintenance of that system, including the sections of I-5 located in California.

18 10. Petitioner does not know the true names and capacities, whether individual,
19 corporate, associate or otherwise, of respondents DOE 1 through DOE 20, inclusive, and
20 therefore sue said respondents under fictitious names. Petitioner will amend this Petition to
21 show their true names and capacities when the same have been ascertained. Each of the
22 respondents is the agent and/or employee of Respondent CalTrans, and each performed acts on
23 which this action is based within the course and scope of such respondent's agency and/or
24 employment.

25 JURISDICTION AND VENUE

26 11. This Court has jurisdiction over the matters alleged in this Petition pursuant to
27 Code of Civil Procedure sections 1085 and 1094.5, and Public Resources Code sections 21168,
28 21168.5 and 21168.9.

12. Venue is proper in this Court because the causes of action alleged in this Petition arose in San Diego County, where the proposed Project is located, and because the environmental effects of the Project will be felt in San Diego County.

13. Petitioner has complied with the requirements of Public Resources Code section 21167.5 by serving a written notice of Petitioner's intention to commence this action on Respondent on December 3, 2013. A copy of this written notice and proof of transmission is attached as Exhibit A to this Petition.

14. Petitioner is complying with the requirements of Public Resources Code section 21167.6 by concurrently filing a notice of its intent to prepare the administrative record for this action.

15. Petitioner is sending a copy of the Petition to the California Attorney General concurrently with filing, thereby complying with the requirements of Public Resources Code section 21167.7. A copy of this written notice is attached hereto as Exhibit B.

16. Petitioner has performed any and all conditions precedent to filing this instant action and has exhausted any and all available administrative remedies to the extent required by law.

17. Petitioner has no plain, speedy or adequate remedy in the course of ordinary law unless this Court grants the requested writ of mandate to require Respondent to set aside its approval of the Project. In the absence of such remedies, Respondent's approval will remain in effect in violation of State law.

STATEMENT OF FACTS

Environmental Review and Project Approval

18. On or about October 20, 2004, CalTrans filed a Notice of Preparation of a Draft Environmental Impact Report for the Project ("NOP").

19. On or about July 9, 2010, CalTrans circulated a draft environmental impact report ("DEIR") for the Project.

20. In a letter dated November 18, 2010, Petitioner criticized the DEIR and requested that it include more information to help the public understand the Project's true impacts.

1 Among other criticisms, Petitioner faulted Caltrans' business-as-usual approach to expanding
2 the region's auto-based transportation network. Noting that market forces have shifted over the
3 past several years, with more and more people choosing to live in urban areas, Petitioner
4 explained that expanding I-5 is the wrong approach to solving the region's transportation
5 problems. Petitioner specifically criticized the DEIR's failure to consider any alternatives to
6 meeting the region's mobility needs other than widening the freeway, and it requested that
7 CalTrans seriously consider options such as pricing general-purpose lanes, improving local
8 streets, prioritizing transit over highway expansion, and adopting aggressive transportation
9 demand measures. In addition, Petitioner submitted a detailed critique of the DEIR by traffic
10 expert Smart Mobility, which demonstrated that expanding highway capacity causes "induced
11 traffic," thereby increasing vehicle-miles traveled and greenhouse gas emissions. The study
12 noted that the DEIR did not properly account for the Project's induced demand when it analyzed
13 the Project's impacts on traffic, air pollution, inducement of growth and other relevant issues.

14 21. Other organizations submitted comments that echoed Petitioner's concerns and
15 addressed other flaws in the DEIR. For example, the group PLAGUE submitted a letter dated
16 November 18, 2010, noting that the DEIR used a legally improper baseline against which it
17 measured the Project's climate impacts. As PLAGUE explained, the DEIR thus erred in
18 crediting the Project with reducing greenhouse gas emissions and finding that the Project would
19 not have significant climate-related impacts. In fact, future emissions of greenhouse gases with
20 the Project will be substantially higher than existing emissions, which constitutes a significant
21 impact. Likewise, PLAGUE commented that the DEIR's analysis of air quality impacts and
22 resultant health risks was legally inadequate. The group requested that CalTrans undertake a
23 health risk assessment to analyze the Project's risks, and submitted studies demonstrating how
24 such assessments could be carried out. PLAGUE also criticized the DEIR's noise, growth-
25 inducing and other impact analyses. In particular, it questioned the DEIR's conclusion that the
26 Project will not cause any new vehicle trips or induce growth in undeveloped localities. This
27 conclusion was not supported by credible evidence, and in fact was contradicted by evidence
28

1 that PLAGUE and Petitioner submitted to CalTrans. PLAGUE also criticized the DEIR's
2 failure to analyze all feasible mitigation for the Project's many significant impacts.

3 22. Several public agencies also criticized the DEIR on these and other grounds. For
4 example, the U.S. Department of the Interior submitted a letter dated September 30, 2010 in
5 which it criticized the document's scant analysis of greenhouse gas emissions, and directed
6 CalTrans to consider federal guidance on how to conduct a proper analysis of climate impacts.
7 The California Coastal Commission similarly criticized the DEIR's inadequate analysis of
8 greenhouse gas emissions, and in particular disputed the document's failure to analyze
9 emissions and energy use from induced growth. In a letter dated November 22, 2010, the
10 Coastal Commission also listed various mitigation measures that CalTrans should adopt to
11 lessen the significant impacts of the Project's greenhouse gas emissions. For its part, the Carmel
12 Valley Community Planning Board submitted a comment letter dated October 28, 2010 in which
13 it excoriated CalTrans for planning a massive project focused on the personal automobile
14 instead of promoting other forms of transit. It also disagreed with CalTrans' unsupported
15 assertion that the Project would not induce growth or cause increased vehicle trips, and cited a
16 study showing that "increases in road space or traffic signal control systems that smooth traffic
17 flow tend to induce additional vehicle traffic which quickly diminish any initial emission
18 reduction benefits." Likewise, the state Department of Toxic Substances Control commented in
19 a letter dated August 5, 2010 that CalTrans should conduct a health risk assessment to ensure
20 that construction activities protect public health. In all, CalTrans received more than 5,000
21 comments on the DEIR from concerned agencies and members of the public.

22 23. In partial response to these comments, CalTrans issued a supplemental draft
23 environmental impact report ("SDEIR") for the Project in August, 2012. The SDEIR added
24 information regarding: (1) specifics of bridge design for various lagoon crossings, (2) the
25 Project's impacts on lagoon health and water quality, (3) community enhancement projects at
26 lagoons, (4) air quality conformity, and (5) impacts of sea level rise. The SDEIR did not
27 provide more information to address Petitioner and others' concerns related to the Project's
28 severe impacts on air quality, climate change, growth inducement and other areas.

24. CalTrans certified the final environmental impact report ("FEIR") on or about October 23, 2013. According to the Notice of Determination, which was filed on or about November 5, 2013, the agency formally approved the Project on October 31, 2013. However, CalTrans did not release the FEIR to the public until November 1, 2013, *after* it had certified the EIR and approved the Project. Accordingly, CalTrans did not provide the public with any opportunity to comment on the FEIR before Project approval. Regrettably, the FEIR failed to adequately address many of the issues on which Petitioner and others had commented. In particular, the FEIR still lacked adequate analyses of the Project's air quality, climate, growth-inducing and noise impacts, continued to use an improper baseline against which to measure Project impacts, and failed to include all feasible mitigation for significant Project impacts.

CAUSE OF ACTION

(Violations of CEQA: Pub. Res. Code §§ 21000, et seq.)

25. Petitioner hereby realleges and incorporates the allegations set forth in each of the paragraphs above.

26. CEQA requires the lead agency for a project with the potential to cause significant environmental impacts to prepare an EIR that complies with the requirements of the statute, including but not limited to the requirement to analyze the project's potentially significant environmental impacts. The EIR must provide sufficient environmental analysis such that the decision-makers can intelligently consider environmental consequences when acting on the proposed project.

27. CEQA also mandates that the lead agency identify and adopt feasible mitigation measures that will reduce or avoid all of a project's significant environmental impacts. If any of the project's significant impacts cannot be mitigated to a less than significant level, then CEQA bars the lead agency from approving the project if a feasible alternative is available that would meet the project's objectives while avoiding or reducing its significant environmental impacts. If there is an environmentally superior alternative, the lead agency must either select that alternative instead of the project or make formal findings, supported by substantial evidence, that the alternative is infeasible.

1 28. Respondent violated CEQA by certifying an EIR for the Project that is inadequate
2 and fails to comply with the requirements of CEQA and the CEQA Guidelines in numerous
3 respects. For example:

4 a. The EIR fails to adequately analyze and mitigate the Project's significant
5 individual and cumulative air quality impacts, including impacts to the health and welfare of
6 residents and employees who live and work adjacent to I-5. In particular, the EIR:

7 i. uses an improper baseline against which it calculates air quality
8 impacts and measures health risks. The EIR improperly credits the Project with reducing
9 emissions by erroneously comparing emissions in 2030 with the Project to hypothetical future
10 emissions in 2030 without the Project, instead of comparing the Project's emissions to current
11 baseline conditions. In addition, the EIR's predicted 2030 conditions without the Project are not
12 supported by substantial evidence; because they overstate likely future emissions, the EIR's
13 analysis artificially minimizes the Project's actual air quality impacts.

14 ii. fails to conduct a health risk assessment that analyzes risks to nearby
15 residents, schoolchildren and employees from the Project's emission of criteria and toxic air
16 contaminants. While the EIR asserts that there are no valid methods for conducting such
17 analysis, this conclusion is not supported by substantial evidence. To the contrary, members of
18 the public submitted studies and documentation demonstrating that it is possible and practicable
19 to conduct a health risk assessment, and that agencies routinely do so for road projects.
20 CalTrans unlawfully failed to adequately respond to these comments, including comments from
21 experts, with any evidence or analysis to the contrary. Notably, when SANDAG recently
22 prepared and certified its EIR for the 2050 Regional Transportation Plan ("RTP"), it indicated
23 that health risk assessments could and would be performed during project-level environmental
24 review for implementing transportation projects listed in the RTP. This Project is an
25 implementing project that is included in the RTP; however, CalTrans refused to conduct the
26 promised health risk assessment.

27 iii. fails to adopt all feasible mitigation to minimize the Project's
28 significant air quality and health impacts.

1 iv. underestimates Project emissions because it assumes, without
2 substantial evidence, that the Project will not cause any new vehicle trips.

3 b. The EIR fails to provide an adequate analysis of, and mitigation for, the
4 Project's individual and cumulative greenhouse gas and climate change impacts. In particular,
5 the EIR:

6 i. uses an incorrect baseline against which it calculates climate
7 impacts. Instead of comparing the Project's greenhouse gas emissions to current baseline
8 conditions, the EIR compares them to hypothetical future conditions, in 2030. The California
9 Supreme Court recently rejected this approach, holding that agencies must measure the
10 significance of a project's impacts against existing baseline conditions unless the agency
11 provides substantial evidence demonstrating that doing so would be misleading or without
12 informational value. *Neighbors for Smart Rail v. Exposition Metro Line Const. Authority* (2013)
13 57 Cal.4th 439, 445. CalTrans has provided no such evidence here. If it had used a proper
14 baseline, the EIR would have disclosed that the Project will cause significant climate-related
15 impacts, and CalTrans would have been required to adopt all feasible mitigation measures and
16 make statements of overriding consideration. In addition, the EIR's predicted 2030 conditions
17 without the Project are not supported by substantial evidence; because they overstate likely
18 future greenhouse gas emissions, the EIR's analysis artificially minimizes the Project's actual
19 climate impacts.

20 ii. fails to analyze and disclose the Project's emission of greenhouse
21 gases other than carbon dioxide. For example, vehicle exhaust contains nitrous oxide, which is
22 300 times more potent than carbon dioxide in terms of its ability to warm the planet. As a result
23 of this oversight, the EIR substantially underestimates the Project's climate-related impacts.

24 iii. lacks substantial evidence to support its conclusion that the Project
25 will reduce greenhouse gas emissions. This conclusion is based largely on CalTrans'
26 unsupported assumption that significantly widening a major freeway will cause no new vehicle
27 trips. Rebutting CalTrans' erroneous assumption, members of the public submitted expert
28

13

1 reports demonstrating that widening I-5 *will* cause more vehicle trips and associated emissions.
2 CalTrans unlawfully failed to reply to this expert evidence with any contrary evidence.

3 iv. lacks substantial evidence to support its conclusion that the Project
4 will have less than significant climate-related impacts. Even if the EIR were correct that the
5 Project will cause greenhouse gas emissions to remain essentially stable compared to the
6 scenario without the Project, this fact does not support the conclusion that the Project's
7 emissions are not significant. In order to avert the most catastrophic impacts of climate change,
8 the state must *reduce* its greenhouse gas emissions to at least 80 percent below 1990 levels by
9 2050. This aggressive reduction schedule is supported by science and embedded in state policy,
10 including Executive Order S-3-05 and the Scoping Plan for Assembly Bill 32. The EIR's failure
11 to measure the Project's emission of greenhouse gases against these relevant, long-term climate
12 targets violates CEQA. If it had done so, the EIR would have disclosed that the Project's
13 emission of greenhouse gases—even if they did not represent a sharp increase in emissions—
14 was significant.

15 v. fails to contain a legally adequate cumulative impact analysis for
16 greenhouse gases. Instead of conducting an adequate analysis, the EIR relies on prior
17 environmental review that SANDAG conducted for the 2050 RTP. However, the RTP's
18 analysis of climate impacts was legally inadequate, as the San Diego Superior Court found in a
19 judgment issued in December 2012. Accordingly, CalTrans may not rely on the RTP's climate
20 impacts analysis to excuse its own lack of analysis.

21 vi. fails to contain all feasible mitigation to reduce the Project's
22 greenhouse gas emissions.

23 c. The EIR fails to provide adequate analysis of, and mitigation for, the
24 Project's growth-inducing impacts. To begin with, the EIR uses an artificially constrained study
25 area to conduct its analysis, thus overlooking the Project's effect on sprawl development in the
26 County's more distant rural areas. The EIR also fails to support with substantial evidence its
27 assumption that widening the I-5 will not induce growth. Members of the public submitted
28 expert reports documenting how road projects generate growth, but CalTrans failed to

14

adequately respond to, or rebut, this evidence. Because the Project will induce growth in at least some areas of the region, CalTrans was required to analyze the secondary effects of this growth on farmland, biological resources and other relevant impact areas. The EIR's failure to analyze this and other environmental impacts resulting from the Project's inducement of growth violates CEQA.

d. The EIR fails to provide an adequate analysis of, and mitigation for, the Project's construction-related and operational noise impacts, and its conclusions regarding noise impacts are unsupported by substantial evidence. In particular, the EIR:

i. is confusing and contradictory regarding whether the Project will result in significant noise impacts. In numerous locations, the EIR discloses that the Project will expose certain individual homes and other "sensitive receptors" to significant noise increases. Yet the EIR goes on to conclude that the Project overall will not have significant noise-related impacts. Such contradictory analysis does not allow informed decision-making.

ii. does not support with substantial evidence its conclusion that construction-related impacts will be less than significant. Contrary to the EIR's bald conclusion, the temporary nature of the construction-related impacts does not automatically render the impacts insignificant.

iii. fails to separately analyze the significance of the Project's noise at nighttime. Given that construction, including pile-driving and other extremely loud activities, will occur at night, the EIR must analyze the significance of this noise on sleep patterns; it may not simply analyze average noise levels over the course of a day. Similarly, the EIR may not ignore single-noise events such as from pile-driving.

iv. fails to adopt all feasible mitigation and fails to demonstrate that quiet pavement and other mitigation suggested by Petitioner and others are infeasible.

e. The EIR fails to provide an adequate analysis of, and mitigation for, the Project's energy impacts. As in its analysis of other impact areas, the EIR again assumes that the Project will not cause any new vehicle trips. Based on this unsupported assumption, it concludes that the Project will not have any significant energy-related impacts. It also

15

1 summarily concludes, without substantial supporting evidence, that construction-related energy
2 impacts will be more than offset by the alleged energy benefits of the Project. Finally, the EIR
3 again uses an improper, future baseline that artificially minimizes the Project's apparent
4 impacts.

5 29. As a result of the foregoing defects, Respondent prejudicially abused its discretion
6 by certifying an EIR that does not comply with the requirements of CEQA. As such,
7 Respondent's certification of the EIR and approval of the Project must be set aside.

8 **PRAYER FOR RELIEF**

9 1. For alternative and peremptory writs of mandate directing Respondent to vacate
10 and set aside its approval of the Project and its certification of the EIR for the Project;

11 2. For alternative and peremptory writs of mandate directing Respondent to comply
12 with CEQA and the CEQA Guidelines, and to take any other action required by Public
13 Resources Code section 21168.9 or as otherwise required by law;

14 3. For a stay, and preliminary and permanent injunctions restraining Respondent and
15 its agents, employees, officers and representatives from undertaking any activity to implement
16 the Project pending full compliance with the requirements of CEQA and the CEQA Guidelines;

17 4. For costs of the suit;

18 5. For attorneys' fees as authorized by Code of Civil Procedure section 1021.5 and
19 other provisions of law; and

20 6. For such other and further relief as the Court deems just and proper.

21 DATED: December 4, 2013

SHUTE, MIHALY & WEINBERGER LLP

22
23 By: 
24

RACHEL B. HOOPER

25
26 Attorneys for CLEVELAND NATIONAL
27 FOREST FOUNDATION
28

550145.4

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VERIFICATION

I, Duncan McFetridge, am the Executive Director of the Cleveland National Forest Foundation, the Petitioner in this action, and I am authorized to execute this verification on Petitioner's behalf. I have read the foregoing Petition for Writ of Mandate and Complaint for Injunctive Relief ("Petition"). I am familiar with the contents of the Petition. All facts alleged in the above Petition, not otherwise supported by exhibits or other documents, are true of my own knowledge, except as to matters stated on information and belief, and as to those matters I believe them to be true. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed at Orange, California on December 4, 2013.

Duncan McFetridge

549773.1

EXHIBIT A

SHUTE, MIHALY
& WEINBERGER LLP

396 HAYES STREET, SAN FRANCISCO, CA 94102
T: (415) 552-7272 F: (415) 552-5816
www.smwlaw.com

RACHEL B. HOOPER
Attorney
hooper@smwlaw.com

December 3, 2013

Via E-Mail and U.S. Mail

Shay Lynn M. Harrison
California Department of Transportation
District 11
4050 Taylor Street, M.S. 242
San Diego, CA 92110
shay.lynn.harrison@dot.ca.gov

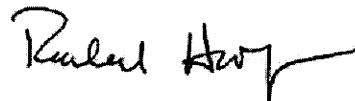
Re: Cleveland National Forest Foundation v. California Department of
Transportation

Dear Ms. Harrison:

This letter is to notify you that the Cleveland National Forest Foundation will file suit against the California Department of Transportation ("CalTrans") for failure to observe the requirements of the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000 et seq., and the CEQA Guidelines, California Code of Regulations section 15000 et seq., in the administrative process that culminated in CalTrans's decision to approve the Interstate 5 North Coast Corridor Project ("Project") on October 31, 2013, and certify the Final Environmental Impact Report for the Project on October 23, 2013. This notice is given pursuant to Public Resources Code section 21167.5.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Rachel B. Hooper

PROOF OF SERVICE

Cleveland National Forest Foundation v. California Department of Transportation

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the City and County of San Francisco, State of California. My business address is 396 Hayes Street, San Francisco, CA 94102.

On December 3, 2013, I served true copies of the following document(s) described as:

NOTICE OF INTENT TO SUE LETTER, DATED DECEMBER 3, 2013

on the parties in this action as follows:


SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Shute, Mihaly & Weinberger LLP's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address Mulligan@smwlaw.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 3, 2013, at San Francisco, California.


Sean P. Mulligan

California Department of Transportation
December 3, 2013
Page 3

SERVICE LIST
Cleveland National Forest Foundation v. California Department of Transportation

Shay Lynn M. Harrison
California Department of Transportation
District 11
4050 Taylor Street, M.S. 242
San Diego, CA 92110
shay.lynn.harrison@dot.ca.gov

EXHIBIT B

SHUTE, MIHALY
& WEINBERGER LLP

396 HAYES STREET, SAN FRANCISCO, CA 94102
T: (415) 552-7272 F: (415) 552-5816
www.smwlaw.com

RACHEL B. HOOPER
Attorney
hooper@smwlaw.com

December 4, 2013

Via U.S. Mail

Attorney General Kamala Harris
Office of the Attorney General
1300 "I" Street
Sacramento, CA 95814-2919

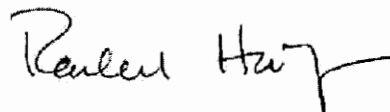
Re: Cleveland National Forest Foundation v. California Department of
Transportation

Dear Attorney General Harris:

Enclosed please find a copy of the Verified Petition for Writ of Mandate and Complaint for Injunctive Relief ("Petition") in the above-captioned action. The Petition is provided to you in compliance with Public Resources Code section 21167.7 and Code of Civil Procedure section 388. Please acknowledge receipt in the enclosed prepaid, self-addressed envelope. Thank you.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Rachel B. Hooper

Enclosure

549989.1

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
(619) 767-2370



Th5b

December 19, 2013

TO: Commissioners and Interested Persons

FROM: Staff

SUBJECT: Time Extension for the North Coast Corridor Public Works
Plan/Transportation and Resource Enhancement Program
PWP-6-NCC-13-0203-1 (NCC PWP/TREP) for the Commission Meeting
of January 8-10, 2014

On November 15, 2013, the California Department of Transportation (Caltrans) and the San Diego Association of Governments (SANDAG) submitted their proposed NCC PWP/TREP to the Commission's San Diego District Office. On November 22, 2013, the Executive Director determined that the submittal was in proper order and legally adequate to comply with the submittal requirements of the Coastal Act and Title 14 of the California Code of Regulations (14 CCR). Therefore, the NCC PWP/TREP has been filed pursuant to Section 30605 of the Coastal Act and the requirements of 14 CCR Section 13354.

The NCC PWP/TREP encompasses a 40 year program of rail, highway, transit, bicycle, pedestrian and coastal resource improvements that span 27 miles of the North San Diego County coastal zone from La Jolla north to Oceanside. The proposed NCC PWP/TREP project area spans the jurisdictions of four cities that have certified Local Coastal Programs (LCPs), including San Diego, Encinitas, Carlsbad and Oceanside. All involved parties (Caltrans, SANDAG, the aforementioned cities and Coastal staff) agree that the Commission can only approve the proposal if these LCPs are first amended.

Pursuant to 14 CCR Section 13356(c), the Executive Director must set the public works plan for public hearing within 60 days of filing. Based on these time limits, the proposed NCC PWP/TREP must be scheduled for a public hearing before the Commission at its January 8-10, 2014 meeting. However, Section 30605 of the Coastal Act states that a public works plan shall be submitted to, and processed by, the Commission in the same manner as prescribed for a local coastal program. Coastal Act Section 30517 and CCR Section 13535(c) state that the Commission may extend for good cause any applicable time limits for a period not to exceed one year.

In this case, the parties agree that the proposed plan cannot be approved until multiple LCPs are amended, and there are ongoing LCP amendment reviews that are being conducted by the affected corridor cities. A time extension is also necessary to allow staff to conduct further analysis of the conformance of the proposed NCC PWP/TREP with the provisions of the Coastal Act and the certified LCPs located within the plan area.

NCC PWP/TREP
Time Extension Request

Furthermore, given the extensive scope and phasing of the proposed NCC PWP/TREP, both the applicants and the local cities have indicated their preference to allow for additional time in order to allow all interested parties to coordinate with Commission staff in order to narrow differences and work toward, to the extent possible, a mutually acceptable plan.

Thus, Commission staff is recommending that the Commission extend the time limit for review of the NCC PWP/TREP. Staff is preliminarily planning to schedule the NCC PWP/TREP for the June 2014 Commission hearing, in southern California. However, such a schedule is dependent upon several workload factors. Thus, although staff believes this matter will be brought to a hearing in the near-term, staff recommends that the Commission extend the deadline for a full year as provided by the Coastal Act to allow for uncertainty in the review process and flexibility for coordination with Caltrans and SANDAG on potential modifications, establishing hearing schedules, and managing competing priorities.

STAFF RECOMMENDATION

Staff recommends that the Commission extend the deadline for Commission action for one year.

MOTION: I move that the Commission extend the 60-day time limit to act on the NCC PWP/TREP for a period of one year.

Staff recommends a **YES** vote. An affirmative vote of a majority of the Commissioners present is needed to pass the motion.