



# ECOS

ENVIRONMENTAL  
♦ COUNCIL ♦  
OF SACRAMENTO

Post Office Box 1526 | Sacramento, CA 95812-1526

April 21, 2022

Yessica Ramirez  
Environmental Justice Liasion - Staff Services Manager  
[Yessica.Ramirez@slc.ca.gov](mailto:Yessica.Ramirez@slc.ca.gov)  
California State Lands Commission  
[CSLC.CommissionMeetings@slc.ca.gov](mailto:CSLC.CommissionMeetings@slc.ca.gov)

Subject: American River Bridge Deck Replacement Project

Thank you for your outreach notice of a proposed action (agenda item #26, consent calendar) at your April 26 Commission meeting:

**CALIFORNIA DEPARTMENT OF TRANSPORTATION (APPLICANT):** Termination of a Public Agency Permit and Right-of-Way Map and approval of a Public Agency Permit and Right-of-Way Map, pursuant to Section 101.5 of the Streets and Highway Code and Section 6210.3 of the Public Resources Code, of sovereign land in the American River, for the American River Bridge Deck Replacement Project, including approval of two Temporary Construction Areas, near Cal Expo, Sacramento, Sacramento County. CEQA Consideration: Mitigated Negative Declaration and Addendum, adopted by the California Department of Transportation, State Clearinghouse No. 2020100388, and adoption of a Mitigation Monitoring Program. (A3187; RA# 2021020) (A 7; S 6) (Staff: A. Franzoia)

The Environmental Council of Sacramento (ECOS) represents several organizations and individuals concerned about environmental justice. Our mission is to achieve regional sustainability, livable communities, environmental justice, and a healthy environment for existing and future residents.

ECOS requests you pull this item from your consent calendar to enable a full discussion of this item. ECOS further requests that the Commission deny Caltrans' application for a public agency permit and approval of a right-of-way map for the American River Bridge Deck Replacement Project.

In 2021, ECOS filed a lawsuit against Caltrans for this Project, asserting that their Mitigated Negative Declaration is inappropriate, for reasons cited below. Our subsequent settlement negotiation for this Project has not led to a resolution.

A copy of the Petition for Writ of Mandate is attached. ECOS may seek an injunction against Caltrans proceeding with the construction pending court's resolution of the Petition for Writ of Mandate.

In 2017, Caltrans released a Notice of Preparation for an Environmental Impact Report (EIR) to widen the CapCity freeway for 3.4 miles, including the bridge. To date, nearly 5 years later Caltrans has not released a Draft EIR, let alone a Final EIR. Instead, Caltrans plans to start construction this summer on the project based upon a flawed Mitigated Negative Declaration.

- The California Environmental Quality Act prohibits this "piecemealing" of review.
- The impact of induced travel on greenhouse gas emissions and air pollution must be considered.
- An EIR would explore non-expansion options, such as better transit service in that corridor.

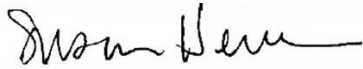
- Caltrans provided no credible explanation for going forward with bridge repair and expansion prior to circulating an EIR.

An EIR should consider:

- Changes to on/off ramps near the bridge
- High-Occupancy Toll (HOT) lanes, with funds for public transit
- Bridge design to accommodate light rail
- Various bicycle and pedestrian access possibilities
- Impacts along the river - to fish, migratory birds, and wildlife habitat

In addition to the flawed environmental review documents, ECOS is concerned that this Project will cause a two-year closure of the bike route along the American River, which many in the environmental justice community rely upon for commuting to and from downtown, as well as by many recreational users. It will also disrupt the habitat of the American River, e.g., jeopardizing fish populations that rely on passage to/from the Nimbus Fish Hatchery. Many in the environmental justice community rely on harvesting fish from the river for sustenance.

Thank you for considering this request.

A handwritten signature in black ink, appearing to read "Susan Herre", with a stylized, flowing script.

Susan Herre  
ECOS President

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LAW OFFICES OF DONALD B. MOONEY  
DONALD B. MOONEY (SBN 153721)  
417 Mace Boulevard, Suite J-334  
Davis, California 95618  
Telephone: (530) 758-2377  
Facsimile: (530) 758-7169  
Email: dbmooney@dcn.org

Attorneys for Petitioner  
Environmental Council  
of Sacramento

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SACRAMENTO

ENVIRONMENTAL COUNCIL )  
OF SACRAMENTO, a California )  
non-profit Corporation )  
Petitioner )  
v. )  
CALIFORNIA DEPARTMENT OF )  
TRANSPORTATION; TOKS )  
OMISHAKIN, DIRECTOR OF )  
CALIFORNIA DEPARTMENT OF )  
TRANSPORTATION; and DOES )  
1-20; )  
Respondents )

FILED/ENDORSED  
MAR 29 2021  
By: T. Crowther  
Deputy Clerk

34-2021-80003617

Case No. \_\_\_\_\_

VERIFIED PETITION FOR WRIT  
OF MANDATE

BY FAX

1. By this action, Petitioner ENVIRONMENTAL COUNCIL OF SACRAMENTO challenges Respondent CALIFORNIA DEPARTMENT OF TRANSPORTATION'S approval of the Mitigated Negative Declaration ("MND") for American River Bridge Deck Replacement Project ("Project"), the required findings under the California Environmental Quality Act ("CEQA"), Public Resources Code, section 21000 *et seq.*, and the approval of the Project. The MND asserts that the purpose of the Project is to rehabilitate the American River Bridge along State Route ("SR") 51 in Sacramento County from post mile 2.0 to 3.5.

2. The IS/MND does not provide adequate environmental review under CEQA. The MND fails to provide an adequate project description and piecemeals environmental review of other planned improvements and widening of SR 51. Additionally, substantial evidence supports a fair argument that the Project may have potentially significant impacts to greenhouse gas emissions (“GHG”) and climate change.

3. Petitioner seeks a determination from this Court that Respondents' approval of the Project is invalid and void and that Initial Study/Mitigated Negative ("IS/MND") Declaration for the Project fails to satisfy the requirements of CEQA, and the CEQA Guidelines, Title 14, California Code of Regulations, section 15000 *et seq.*

## PARTIES

4. Petitioner Environmental Council of Sacramento ("ECOS") is a California nonprofit public benefit corporation working to protect and improve the environmental quality of the Greater Sacramento Metropolitan Region and its adjoining ecosystems. Its members include other environmental organizations, neighborhood groups, and individuals. ECOS has expressed particular concern for the environment in which its members live, including Sacramento County.

5. The environment and residents of Sacramento County will be directly affected by the impacts of the Project. ECOS members live, work, travel, and enjoy recreational activities in Sacramento County. These members have a particular interest in the protection of the environment of Sacramento County, and are increasingly concerned about worsening of environmental and land use conditions that detrimentally affect their well-being and that of other residents and visitors to Sacramento County. ECOS and its members have a direct and

1 substantial beneficial interest in ensuring that Respondents comply with laws relating to  
2 environmental protection. ECOS and its members are adversely affected by Respondents'  
3 failure to comply with CEQA in approving the Project.

4 6. Respondent California Department of Transportation ("CalTrans") is an agency of  
5 the State of California. CalTrans is the CEQA "lead agency" for the Project. As lead agency  
6 for the Project, CalTrans is responsible for preparation of an environmental document and  
7 describes the Project and its impacts, and if necessary evaluates mitigation measures and/or  
8 alternatives to lessen or avoid any significant environmental impacts. CalTrans is responsible  
9 for implementing and complying with the provisions of CEQA and the CEQA Guidelines with  
10 respect to the Project.

11 7. Respondent Toks Omishakin, is the Director of CalTrans. As Director, Mr.  
12 Omishakin is responsible for the day-to-day operation of CalTrans. Mr. Omishakin is sued in  
13 his official capacity as Director of CalTrans.

14 8. Petitioner is unaware of the true names and capacities of Respondents identified as  
15 Does 1-20. Petitioner is informed and believes, and on that basis alleges, that Respondents Does  
16 1-20, inclusive, are individuals, entities or agencies with material interests affected by the  
17 Project with respect to the Project or by the County's actions with respect to the Project. When  
18 the true identities and capacities of these Respondents have been determined, Petitioner will,  
19 with leave of Court if necessary, amend this Petition to insert such identities and capacities.

## 20 **BACKGROUND FACTS**

### 21 **A. THE PROJECT**

22 9. The Project is located on State Route 51 in Sacramento County from mile post  
23 ("PM") 2.0 to 3.5. The American River Bridge, a multi-span bridge, was originally built in  
24 1954 with two lanes in each direction. In 1966, an additional lane was added in each direction  
25 in the median. In 1977 and again in 1988, the American River Bridge was seismically  
26 retrofitted in various locations.

27 10. A thin asphalt concrete overlay that has worn off covers the American River  
28 Bridge Deck. Caltrans' Bridge Needs Report for the American River Bridge identified bridge

1 deck has cracks/spalls and needs major deck rehabilitation to help preserve the deck and  
2 provide a better wearing surface.

3 11. The Project is programmed in the Sacramento Area Council of Governments  
4 ("SACOG") Metropolitan Transportation Implementation Plan (MTIP, 2019-2020).

5 12. Another proposed project (Caltrans EA 03-0H931, SR 51 Corridor Improvements)  
6 provides for the widening of SR 51 and American River Bridge to accommodate three mixed  
7 flow lanes, one bus/carpool lane, and one auxiliary lane in each direction. This would occur  
8 from E Street to El Camino Avenue in the City of Sacramento (PM 1.0 to 4.4). The SR 51  
9 Corridor Improvements Project is currently not fully funded and the IS/MND did not discuss or  
10 analyze that project. On September 18, 2017 Caltrans released a Notice of Preparation of a  
11 Draft Environmental Impact Report for the SR 51 Corridor Improvements Project.

12 13. The Initial Study identified three build alternatives. The Project Description for  
13 Alternative 1 includes the following:

14 a. Remove and replace the existing concrete bridge deck with a 1¼" thicker  
15 deck than existing deck.

16 b. Widen the American River Bridge to maintain 3 lanes of traffic in each  
17 direction during construction.

18 c. Provide a 14 foot bike/pedestrian path on the northbound side of the bridge  
19 separated from the traffic by a concrete barrier. The bike/pedestrian path will extend from  
20 levee to levee. Portions of the path outside of the bridge limits are anticipated to be funded  
21 with 2020 SHOPP Complete Streets Reservation funds.

22 d. Widen the substructure and superstructure by 54'-11"± on the northbound  
23 side of the structure.

24 e. Widen the approaches of SR 51 to accommodate the widening of the  
25 American River Bridge.

26 f. Modification of an existing soundwall on the southeast side of the  
27 American River bridge.

28 g. Construct 30 foot approach slabs.

- 1 h. Strengthen existing girders.
- 2 i. Lengthen a box culvert to the East, North of the American River Bridge.
- 3 j. Install overhead sign.
- 4 k. Widen bridge abutments, footings, bents, and piers supported by piles.
- 5 l. Install permanent sheet piles at piers 4-6 for scour mitigation.
- 6 m. Construct temporary construction access trestles and cofferdams to
- 7 facilitate construction on in-water piers.
- 8 o. Install lighting on the proposed bike/pedestrian path.
- 9 p. Create a temporary construction access road across a wetland area or/and
- 10 use existing dirt road to access the construction site.
- 11 q. Construct median barrier (Type 60) and bridge barrier (Type 842).
- 12 r. Upgrade existing metal beam guardrail to Midwest Guardrail System.
- 13 s. Replace steel girder post-tensioning system at spans 1 & 2.
- 14 t. Construct concrete catcher blocks underneath existing girders.
- 15 u. Install new joint seals.
- 16 v. Near abutment 1, construct a retaining wall and soundwall from the
- 17 modified soundwall along the Northbound side of the highway, near the Southeast quadrant of
- 18 the American River Bridge and extend the retaining wall down the bike/pedestrian path.
- 19 w. Construct retaining walls between American River Bridge and Cal Expo
- 20 undercrossing.
- 21 x. Remove vegetation and trees to accommodate widening of SR 51 for
- 22 bridge deck construction staging.
- 23 y. Modify Exposition Boulevard northbound off-Ramp.
- 24 z. Widen Cal Expo undercrossing on the northbound side.
- 25 aa. Modify the Exposition Boulevard off-ramp in the northbound direction
- 26 14. The Project Description for Alternative 2 includes the project scope for Alternative,
- 27 but varies in the following elements:
- 28 a. Widen the substructure to the ultimate width by 38' -11"± on the

1 southbound side to accommodate the future widening of SR 51.

2 b. Alternative 2 is contingent on obtaining additional construction capital  
3 funding (Non-SHOPP) prior to RTL.

4 15. The Project Description for Alternative 3 includes the project scope for Alternative,  
5 but varies in the following elements:

6 a. Widen superstructure and substructure by 38' -11"± on the southbound side  
7 to accommodate the future widening of SR 51.

8 b. Requires no girder strengthening.

9 c. Alternative 3 is contingent on obtaining additional construction capital  
10 funding (Non-SHOPP) prior to RTL.

11 d. Re-align the portion of the American River bicycle trail, which runs below  
12 and parallel to the bridge to be further from the edge of deck.

13 16. The Project provides for the new substructure of the bridge to be built to  
14 accommodate Caltrans' widening for with the SR 51 Corridor Improvements Project

15 17. The Initial Study failed to identify a preferred alternative.

16 **B. CALTRANS' APPROVAL OF THE PROJECT**

17 18. In October 2020, CalTrans released for public review and comment the Initial  
18 Study with Proposed Negative Declaration.

19 19. On February 17, 2021, CalTrans approved the Project and found the Project will  
20 not have a significant effect on the environment.

21 20. On March 1, 2021, CalTrans posted with the State of California, Office of  
22 Planning and Research (State Clearing House) a Notice of Determination under Public  
23 Resources Code, section 21152. The Notice of Determination fails to identify which Project  
24 alternative CalTrans approved.

25 **JURISDICTION AND VENUE**

26 21. This Court has jurisdiction over the matters alleged in this Petition pursuant to  
27 Code of Civil Procedure section 1085, and Public Resources Code section 21168.5. In the  
28



1 alternative, this Court has jurisdiction pursuant to Code of Civil Procedure section 1094.5 and  
2 Public Resources Code section 21168.

3 22. Pursuant to Code of Civil Procedure section 394(a), venue is proper in this Court  
4 because the Project is located in the County of Sacramento.

5 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**  
6 **AND INADEQUACY OF REMEDY**

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

9 24. Petitioner has complied with the requirements of Public Resources Code, section  
10 21167.5 by sending via facsimile and Federal Express written notice of this action to the  
11 Respondents. A copy of this written notice and proof of service are attached as Exhibit A to this  
12 Petition for Writ of Mandate.

13 25. Petitioner has complied with Public Resources Code section 21167.6 by  
14 concurrently filing a request concerning preparation of the record of administrative proceedings  
15 relating to this action.

16 26. Petitioner has no plain, speedy or adequate remedy in the course of ordinary law  
17 unless this Court grants the requested writ of mandate to require respondents to set aside their  
18 approval of the Project and certification of the EIR. In the absence of such remedies, CalTrans'  
19 approval will remain in effect in violation of State law.

20 27. This action has been brought within 30 days of CalTrans filing of the Notice of  
21 Determination as required by Public Resources Code section 21167(c).

22 **STANDING**

23 28. Petitioner has standing to assert the claims raised in this Petition because Petitioner  
24 and its members' aesthetic and environmental interests are directly and adversely affected by  
25 the CalTrans' approval of the Project.

26 **CAUSE OF ACTION**  
27 **(Violation of the California Environmental Quality Act,**  
28 **Public Resources Code, § 21000 *et seq.*)**

29 29. Petitioner realleges and incorporate by reference Paragraphs 1 through 28,  
inclusive, of this Petition, as if fully set forth below.

1           30.     Respondents committed a prejudicial abuse of discretion and failed to proceed in  
2 a manner required by law by relying on an IS/MND that fails to meet CEQA's requirements  
3 for disclosure, analysis, and/or mitigation of significant project impacts.

4           31.     Respondents' action in adopting the IS/MND violates CEQA in that Respondents  
5 failed to proceed in the manner required by law and their decision not to prepare an  
6 environmental impact report ("EIR") and to segment environmental review of the whole SR51  
7 widening project is not supported by substantial evidence.

8           32.     Approval of the Project, based on a MND instead of an EIR violates CEQA as  
9 substantial evidence supports a fair argument that the Project may have potentially significant  
10 impacts. CEQA requires full disclosure of a project's significant environmental effects so that  
11 decision makers and the public are informed of consequences *before* a project is approved, to  
12 ensure that government officials are held accountable for these consequences. (*Laurel Heights*  
13 *Improvement Ass'n of San Francisco v. Regents of the University of California* ("*Laurel Heights*  
14 *I*") (1988) 47 Cal.3d 376, 392.)

15          33.     An agency must prepare an EIR instead of a MND whenever a proposed project  
16 may have a significant impact on the environment. (Pub. Resources Code, § 21082.2(d) ["If  
17 there is substantial evidence, in light of the whole record before the lead agency, that a project  
18 may have a significant effect on the environment, an environmental impact report shall be  
19 prepared."]) An agency's decision not to prepare an EIR is judged by the "fair argument"  
20 standard of review. Under this standard, an EIR must be prepared "whenever it can be fairly  
21 argued on the basis of substantial evidence that the project *may* have significant environmental  
22 impact." (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, emphasis added; *Laurel*  
23 *Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1123.)  
24 The fair argument standard is a "low threshold" test for requiring the preparation of an EIR.  
25 (*No Oil, supra*, 13 Cal.3d at 84.)

26           **A.     THE MND CONTAINS A LEGALLY INADEQUATE PROJECT DESCRIPTION**

27          34.     An initial study must accurately describe the proposed project. (Guidelines  
28 §15071(a).) "An accurate, stable and finite project description is the *sine qua non* of an

1 informative and legally sufficient [CEQA document].” (*County of Inyo v. City of Los Angeles*  
2 (1977) 71 Cal.App.3d 185, 193.) CEQA requires a complete project description to ensure that  
3 all of the project’s environmental impacts are considered. (*City of Santee v. County of San*  
4 *Diego* (1989) 214 Cal.App.3d 1450, 1454; *see also Communities for a Better Environment v.*  
5 *City of Richmond* (2010) 184 Cal.App.4th 70, 82.) A curtailed, enigmatic or unstable project  
6 description draws a red herring across the path of public input.” (*San Joaquin Raptor Rescue*  
7 *Center v. County of Merced* (2007) 149 Cal.App.4th 645, 656; quoting *County of Inyo, supra*,  
8 71 Cal.App.3d at 197-198.)

9 35. The Project Description describes three Project Alternatives, but fails to identify  
10 which alternative is the actual Project and which alternative is specifically addressed in the  
11 Initial Study. Thus, the Project Description is vague and ambiguous as to what has been  
12 evaluated and what has been approved.

13 36. The Project Description also fails to address the whole of the action which is the  
14 expansion and widening of SR 51, along with the widening the American River Bridge. CEQA  
15 defines a “project” as “an activity that may cause either a direct physical change in the  
16 environment, or a reasonably foreseeable indirect physical change in the environment, which  
17 constitutes an activity directly undertaken by any public agency.” (Pub. Resources Code, §  
18 21065.) The CEQA Guidelines further define a “project” as “the whole of an action, which has  
19 a potential for resulting in either a direct physical change in the environment, or a reasonably  
20 foreseeable indirect physical change in the environment” and that is an activity directly  
21 undertaken by any public agency activity which is being approved. (CEQA Guidelines, §  
22 15378(a)(1).) “The term project refers to the activity which is being approved and which may  
23 be subject to several discretionary approvals by governmental agencies. The term ‘project’  
24 does not mean each separate governmental approval.” (*Id.*, § 15378(c).) The term “approval”  
25 refers to a public agency decision that commits the agency to a definite course of action in  
26 regard to a project. (*Id.*, § 15352(a).) The definition of “approval” applies to all projects  
27 including actions authorized or carried out by a public agency. (*Id.*) Thus, an initial study must  
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1 consider all phases of project planning, implementation, and operation, including phases  
2 planned for future implementation. (CEQA Guidelines, § 15063(a)(1).)

3 37. The IS/MND states that the new structure will be built to accommodate the  
4 proposed widening of future Caltrans' Project. The SR 51 Corridor Improvements Project,  
5 which includes the widening of the American River Bridge is currently under environmental  
6 review by Caltrans. The NOP for the SR51 Corridor Improvement Project states that Project  
7 consists of replacing the bridge deck of the American River Bridge and widen the bridge to  
8 accommodate 3 mixed flows in each direction, one bus/carpool lane in each direction, and one  
9 auxiliary lane in each direction, for a total of 10 lanes. Thus, the widening of SR 51, including  
10 the expansion of lanes is the whole of the Project. That expansion includes the widening of the  
11 American River Bridge that is the subject of the MND.

12 38. The IS/MND's failure to describe the whole of the project violates CEQA's  
13 requirements and constitutes a prejudicial abuse of discretion and is contrary to law.

14 **B. THE MND SEGMENTS ENVIRONMENTAL REVIEW OF THE WHOLE PROJECT**

15 39. CEQA forbids "piecemeal" review of the significant environmental impacts of a  
16 project. (*Berkeley Keep Jets Over the Bay Com. v. Board of Port Commissioners* (2001) 91  
17 Cal.App.4th 1344, 1358; and *Laurel Heights I, supra*, 47 Cal.3d at 396 ["*Laurel Heights I*"];  
18 and Guidelines § 15165.) When a specific project contemplates future expansion, the lead  
19 agency is required to review all phases of the project. (*Laurel Heights I, supra*, 47 Cal.3d at  
20 376; *see also Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal.App.4th  
21 1209, 1224.) This requirement reflects CEQA's broad definition of "project" as "the whole of  
22 an action" that may impact the environment. (Guidelines § 15378; and *see Habitat &*  
23 *Watershed Caretakers v. City of Santa Cruz* (2013) 213 Cal.App.4th 1277, 1297.) What  
24 constitutes the "whole of an action" is a question of law that courts independently decide.  
25 (*Tuolumne County Citizens for Responsible Growth, Inc. v City of Sonora* (2007) 155  
26 Cal.App.4th 1214, 1224.) "[T]he requirements of CEQA cannot be avoided by chopping up  
27 proposed projects into bite-sized pieces which, when taken individually, may have no  
28 significant adverse effect on the environment." (*Id.* at 1222-1223.)

1           40.     The Supreme Court explained that an agency must analyze the effects of potential  
2 future development if such development is: (1) “a reasonably foreseeable consequence of the  
3 initial project;” and (2) “will likely change the scope or nature of the initial project or its  
4 environmental effects.” (*Laurel Heights I, supra*, 47 Cal.3d at 396.)

5           41.     The Project meets the first part of the test as the widening and expansion of SR51  
6 is a reasonably foreseeable consequence of the American River Bridge deck replacement, since  
7 it is more than just a deck replacement but a widening and expansion of bridge capacity that  
8 will facilitate the construction of the SR51 Corridor Improvement Project (Caltrans EA 03-  
9 OH931). The foreseeability is not speculation as in September 2017 Caltrans released an NOP  
10 for the SR51 Corridor Improvement Project and is preparing a draft environmental impact  
11 report for that project, which specifically includes the Project that is the subject of the IS/MND.

12           42.     The Project meets the second part of the test of whether the future development  
13 “will likely change the scope or nature of the initial project or its environmental effects.” As  
14 the future development includes the significant expansion of SR 51, including the American  
15 River Bridge, it includes the expansion to three mixed flow lanes, one bus/carpool lane, and one  
16 auxiliary lane in each direction for a total of 10 lanes. Such expansion of SR51 will most  
17 certainly change the scope and nature of American River Bridge Project and its environmental  
18 effects, especially as set forth in the IS/MND.

19           43.     Caltrans’ decision to limit environmental review to only the deck replacement for  
20 the American River Bridge violates CEQA’s prohibition on segmentation of environmental  
21 review. As such, Caltrans’ approval of the IS/MND and approval of the Project constitutes a  
22 prejudicial abuse of discretion and is contrary to law.

23           **C.     THE MND FAILS TO ADDRESS CUMULATIVE IMPACTS ASSOCIATED WITH**  
24           **THE CAPITOL CITY FREEWAY IMPROVEMENT PROJECT**

25           44.     The IS/MND fails to comply with the requirements of CEQA in that it fails to  
26 adequately disclose, analyze and/or mitigate the Project’s cumulative environmental impacts as  
27 required by law. CEQA requires an EIR to discuss a project’s significant cumulative effect on  
28 the environment in conjunction with other closely related past, present and reasonably

1 foreseeable probable future projects. (Pub. Resources Code, § 21083(b); CEQA Guidelines, §§  
2 15130(b)(1)(A), 15355.) The term “[c]umulative impacts’ refer[s] to two or more individual  
3 effects which, when considered together, are considerable or which compound or increase other  
4 environmental impacts.” (CEQA Guidelines, § 15355.) An EIR must discuss if the  
5 “cumulative impact may be significant and the project’s incremental effect, though individually  
6 limited, is cumulatively considerable.” (*Id.*, § 15064(h)(1).) “‘Cumulatively considerable’  
7 means that the incremental effects of past projects, the effects of other current projects, and the  
8 effects of probable future projects.” (*Id.*)

9 45. A legally adequate “cumulative impacts analysis” views a particular project over  
10 time and in conjunction with other related past, present, and reasonably foreseeable probable  
11 future projects whose impacts might compound or interrelate with those of the project at hand.  
12 “Cumulative impacts can result from individually minor but collectively significant projects  
13 taking place over a period of time.” (CEQA Guidelines, § 15355(b); *see Communities for a*  
14 *Better Environment supra*, 103 Cal.App.4th at 117, [“The cumulative impact from several  
15 projects is the change in the environment which results from the incremental impact of the  
16 project when added to other closely related past, present, and reasonably foreseeable probable  
17 future projects..”].)

18 46. The NOP for the SR51 Corridor Improvement Project identifies a reasonably  
19 foreseeable probable future project that is not only related to this Project, but includes this  
20 Project. The NOP identifies numerous temporary and permanent environmental effects such  
21 aesthetics, air quality, biological resources, cultural resources, land use planning, recreation;  
22 and transportation/traffic.

23 47. Caltrans’ failure to includes a cumulative impacts analysis that includes the SR51  
24 Corridor Improvement Project violates CEQA. As such approval of the Project constitutes a  
25 prejudicial abuse of discretion and is contrary to law.

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27 //

28 //



**D. SUBSTANTIAL EVIDENCE SUPPORTS A FAIR ARGUMENT THE PROJECT MAY HAVE SIGNIFICANT ENVIRONMENTAL IMPACT.**

48. Substantial evidence in the administrative record supports a “fair argument” that the Project may result in a significant impact to the environment. The substantial evidence before Respondents demonstrate that:

**1. GREENHOUSE GAS EMISSIONS FROM CONSTRUCTION**

49. The IS/MND discussion of construction impacts to climate change fails to address emissions associated with the use of substantial quantities of concrete. Concrete production contributes 8 percent of global GHG. While the IS/MND clearly states the construction includes the use of concrete, the Initial Study makes no effort to quantify or analyze the amount of GHG emissions associated with the use of concrete. The IS/MND references GHG emissions from material processing, but does not state if that includes GHG emissions from the concrete. Table 3 provides estimates of GHG Emissions during construction, but provides no breakdown of the source of the emissions. (IS, Table 3 at 86.) Thus, it is unclear what constitutes the source of the GHG emissions.

50. The IS/MND concludes that “With implementation of construction GHG-reduction measures, the impact would be less than significant.” The IS/MND also does not identify any threshold of significance for GHG emissions, yet it makes a conclusion that the Projection’s construction impacts are less than significant. It is unclear how that conclusion can be reached without any quantification of the supposed reduction of GHG during construction and without any standards to apply. (CEQA Guidelines, 15064(b)(1); *Cleveland National Forest Foundation v. San Diego Association of Governments* (2017) 3 Cal.5th 497, 515 [lead agency’s choice of thresholds of significance must be “based to the extent possible on scientific and factual data.”].)

51. Caltrans makes a significance determination without any standard of significance and without any substantial evidence that the impact would be less than significant. The IS/MND simply cannot make this statement without having quantified the reduction in GHG emissions and then applying that to a standard that Caltrans has failed to identify.

1           52.     The IS/MND also provides for the implementation of measures to reduce GHG  
2 emissions from construction activities, such as compliance with emission reduction regulations  
3 mandated by the California Air Resources Board. The IS/MND, however, makes no effort to  
4 identify or disclose what activities are required so as to reduce the emissions nor does it  
5 quantify the reductions in emissions from those activities.

6           53.     The IS/MND specifically states that it is the implementation of the reduction  
7 measures that makes the impact less than significant, but fails to include them or require them  
8 as mitigation measures. (*See* Pub. Resources Code, § 21080(c); CEQA Guidelines, §§  
9 15070(b)(1); 15071(e).)

10          54.     The record supports a fair argument that the Project may have significant impacts  
11 to greenhouse gas emissions.

## 12                   2.     Vehicle Miles Travelled

13          55.     The IS/MND fails to include any discussion regarding VMT and simply concludes  
14 that the project will not result in any increase in operational GHG emissions. This is based upon  
15 the false assumption the Project will not increase traffic capacity. The IS/MND also ignores that  
16 it is reasonably foreseeable that the Project will result in widening the American River Bridge  
17 and adjacent portions of SR 51.

18          56.     The record supports a fair argument that the Project will lead to an increase in  
19 highway which leads to increased VMT that the IS/MND has not evaluated.

## 20                   3.     Biological Resources

21          57.     The IS/MND fails to evaluate the Project's impacts to bats and the Western Pond  
22 Turtle. Substantial evidence in the record supports a fair argument that the Project, as well as  
23 the widening Project, will result in significant impact bats that use the bridge for habitat, as well  
24 as impacts to the Western Pond Turtle.

25          58.     The IS/MND fails to adequately mitigate the permanent loss of 0.33 acres of habitat  
26 for federally listed salmonids and the permanent removal of 3.83 acres of riparian vegetation as  
27 it directly relates to Chinook Salmon. As such, substantial evidence in the record supports a fair  
28



1 argument that the Project will result in significant impacts to biological resources, including  
2 salmon.

3 **PRAYER FOR RELIEF**


4 **WHEREFORE**, Petitioner prays for judgment as follows:

- 5 1. That this Court issue a peremptory writ of mandate ordering Respondents to:
- 6 (a) vacate and set aside approval of the Mitigated Negative Declaration on the  
7 grounds that it violates the California Environmental Quality Act, Public Resources Code  
8 section 21000 *et seq.*
- 9 (b) vacate and set aside its approval of the Project on the grounds that it  
10 violates the California Environmental Quality Act, Public Resources Code section 21000 *et*  
11 *seq.*
- 12 (c) withdraw the Notice of Determination for the Project;
- 13 (d) prepare, circulate and consider a legally adequate EIR for the whole  
14 project;
- 15 (e) suspend approval of any and all construction of the Project until the  
16 Respondents are in compliance with CEQA;
- 17 (f) suspend all activity that could result in any change or alteration to the  
18 physical environment until Respondents have taken such actions as may be necessary to bring  
19 their determination, findings or decision regarding the Project into compliance with CEQA;
- 20 2. For Petitioner's costs associated with this action;
- 21 3. For an award of reasonable attorneys' fees pursuant to Code of Civil Procedure  
22 section 1021.5; and
- 23 4. For such other and further relief as the Court may deem just and proper.

24 Dated: March 29, 2021

Respectfully submitted,

25 LAW OFFICE OF DONALD B. MOONEY

26 By   
27 Donald B. Mooney  
28 Attorney for Environmental  
Council of Sacramento

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# **EXHIBIT A**

**EXHIBIT A**

**LAW OFFICE OF DONALD B. MOONEY**

417 Mace Boulevard, Suite J-334

Davis, CA 95618

530-304-2424

dbmooney@dcn.org

March 25, 2021

**VIA FEDERAL EXPRESS  
AND FASCIMILE  
(916-654-6608)**

Toks Omishakin, Director  
California Department of Transportation  
1120 "N" Street  
Sacramento, CA 95814

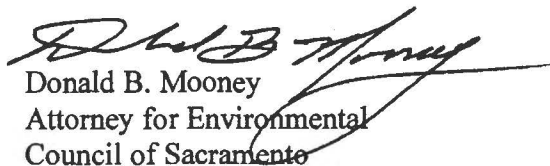
**Re: NOTICE OF INTENT TO FILE CEQA PETITION**

Dear Mr. Dougherty:

Please take notice that under Public Resources Code section 21167.5, that Petitioner Environmental Council of Sacramento intends to file a petition for Writ of Mandate in Sacramento County Superior Court under the provisions of the California Environmental Quality Act against you and the California Department of Transportation ("Caltrans"), challenging CalTrans' approval of the Mitigated Negative Declaration for the American River Bridge Deck Replacement Project.

The petition for writ of mandate will request that the court direct respondents to vacate and rescind approval of the Mitigated Negative Declaration and approval of the Project. Additionally, the petition will seek Petitioner's costs and attorney's fees associated with this action.

Very truly yours,

  
Donald B. Mooney  
Attorney for Environmental  
Council of Sacramento

**PROOF OF SERVICE**

I am employed in the County of Yolo; my business address is 417 Mace Boulevard, Suite J-334, Davis, California; I am over the age of 18 years and not a party to the foregoing action. On March 25, 2021, I served a true and correct copy of as follows:

**NOTICE OF INTENT LETTER DATED MARCH 25, 2021**

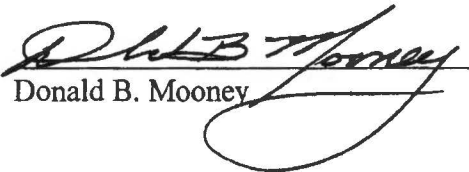
\_\_\_(by mail) on all parties in said action listed below, in accordance with Code of Civil Procedure §1013a(3), by placing a true copy thereof enclosed in a sealed envelope in a United States mailbox in Davis, California.

X (by facsimile) to the person at the phone number address set forth below:

X (by overnight delivery service) via Federal Express to the person at the address set forth below:

Toks Omishakin, Director  
California Department of Transportation  
1120 "N" Street  
Sacramento, CA 95814  
(916-654-6608)

I declare under penalty of perjury that the foregoing is true and correct. Executed on March 25, 2021, at Davis, California.

  
Donald B. Mooney