

ATTACHMENT

For Item

#1

Wednesday,
September 15, 2021

PUBLIC COMMUNICATION RECEIVED BY THE
CLERK OF THE BOARD

DISTRIBUTED 09/14/2021



September 13, 2021

Honorable Nathan Fletcher
San Diego County Board of Supervisors
1600 Pacific Highway
San Diego, CA 92101

Re: Opposition to removal of the County Transportation Study Guide

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California Building
Industry Association

National Association
of Home Builders

The Building Industry Association of San Diego County is comprised of 650-member companies representing over 35,000 individuals who make a living in the construction industry. As the voice of the regulated community, we wish to express our strong opposition to the elimination of the County's Transportation Study Guide (TSG) that will be considered at your September 15th board meeting. (Agenda Item 1)

The Board Letter for Agenda Item 1 implies that the County is compelled to rescind the TSG due to clarification from the Office of Planning and Research (OPR) that defines a regional VMT threshold. This is a false assumption. OPR makes it clear that their VMT Technical Advisory is advisory only and that jurisdictions are free to adopt their own CEQA methodologies, thresholds, and guidelines based on environmental conditions and considerations specific to their jurisdiction. The following language is directly from the OPR Technical Advisory.

"The purpose of this document is to provide advice and recommendations, which agencies and other entities may use at their discretion. This document does not alter lead agency discretion in preparing environmental documents subject to CEQA. This document should not be construed as legal advice."

The Board clearly has the latitude in this matter. This is not a requirement but a choice that could push the unincorporated area into regulatory uncertainty in the midst of a severe housing crisis.

We would also note that OPR's guidance documents are regularly updated and revised as inconsistencies and implementation issues often arise with new regulations. For example, OPR's current Technical Advisory contains a fundamental inconsistency related to their recommendations for incorporated cities versus unincorporated communities. OPR recommends that cities either use the per capita regional VMT average or their jurisdictional boundaries to establish a per

capita city-wide VMT average, however their Technical Advisory recommends that unincorporated areas (i.e., unincorporated communities) only use a regional average. Unincorporated communities as large or larger than incorporated cities exist all around the state, including in San Diego County. And, like many cities around the state, these unincorporated communities are often separated from major metropolitan areas and effectively surrounded by greenbelts or agricultural land. They are functionally no different than smaller incorporated cities, yet OPR's Technical Advisory treats them differently. This issue has been brought to the attention of OPR and OPR should be given time to clarify why their Technical Advisory recommends fundamentally different thresholds.

The County adopted the current TSG and VMT threshold methodology after extensive analysis and deliberation. Its elimination will have a detrimental effect on projects currently in process ("in the pipeline"). Projects that are relying on the TSG will find themselves facing costly delays due to regulatory uncertainty as they struggle to determine the appropriate means for compliance or find their projects economically infeasible altogether with application of a regional threshold without a mitigation strategy. Such uncertainty is a project applicant's worst nightmare and such projects already in the process must be provided protection with grandfathering.

Lastly, the TSG contains important guidance on how Local Mobility Analyses should be conducted. Eliminating these LMA guidelines will create uncertainty for existing and future projects on how LMA's should be conducted.

The Board should not eliminate the TSG with the promise of future reforms. Instead, the County should focus on the 13 items staff was directed to analyze as the basis for developing a realistic and comprehensive program for analyzing and mitigating VMT impacts. We ask that the Board take no action until it has fully evaluated these 13 issues that were identified at the May 2021 hearing. They must be part of a comprehensive package that will encourage development in areas envisioned in the current General Plan, specifically Village areas. The package should include components such as incentives, density bonuses, ministerial processing, zoning changes, and more.

In the spirit of collaboration, the BIA has been evaluating the 13 issues and provide the following initial comments and recommendations:

1. Assess and explore the process by which infill development can be done in a manner to ensure no VMT mitigation is necessary.

The County's General Plan framework of villages surrounded by greenbelts is well-suited to leveraging new development to reduce existing per capita VMT. Projects that include a mix of uses and/or affordable housing should be conditionally exempt. Projects should also be evaluated based on their blended per capita VMT. For example, a project that includes retail or affordable housing will generate less per capita VMT than a project that does not. Retail will

generate “internal capture” and SANDAG studies have shown that affordable housing residents drive less and are more likely to use transit or ride share options. Affordable housing residents generate significantly lower per capita VMT and this should be reflected in the VMT analysis of any project that includes affordable housing.

2. Explore the potential creation of transit accessible areas and look at the intersection between VMT efficient areas or lower thresholds in accordance with the areas that do not require further analysis. Explore the potential transit corridors and look at the SANDAG Regional Transportation Plan, Metropolitan Transit System (MTS), North County Transit District (NCTD), and other possible areas and how that may impact VMT efficient areas or areas covered by the exemption

The County should explore local shuttle service with regular loops in and around Villages to reduce existing VMT. VMT mitigation fees can be used to help pay for the cost of the shuttles. User fees, County General Fund dollars, and potentially SANDAG funding can be used to fund these shuttle services.

3. Explore mitigation of VMT opportunities, looking at a regional mitigation bank, the opportunity for mitigation to not be tied or connected to the project along with the potential of a sliding scale of mitigation based on severity.

The County’s TIF Program should be converted into a VMT mitigation program focused on implementing the bicycle routes, improving pedestrian access, and incorporating the County Trails Program.

4. By-right process for development in VMT efficient areas.

Using a regional average will result in virtually no VMT efficient areas. Projects in areas designated Village should be exempt from VMT mitigation or subject to a fixed and lower VMT mitigation fee than non-Village areas.

5. Further exploration of exceptions to the VMT thresholds for affordable housing projects at less than 100% affordable, including mixed income and various components of Area Median Income (AMI), along with exploring the possibility of exceptions for middle income or workforce housing, local hire, and agriculture type projects that might have a net impact of lowering VMT.

See recommendations for items 1 and 4 above.

6. Explore land use density of land that is in VMT efficient areas.

The County should increase allowable densities on Village designated land and rectify the inconsistencies between the Zoning and General Plan designations in Village areas.

7. Continue to track guidance from the California Office of Planning and Research (OPR), along with other governing body efforts, including the SANDAG Regional Transportation Plan.

As noted above, a significant inconsistency has been identified in OPR's Technical Advisory as it relates to how OPR recommends incorporated cities vs. unincorporated communities be treated. OPR's Technical Advisory also does not address the need for a baseline year for measuring VMT. The Technical Advisory recommends establishing a threshold that is 15% below the regional average or a city-wide average, however the Technical Advisory doesn't clarify what year to use to establish the average. These are just two examples of ambiguities in the Technical Advisory that should be rectified.

8. Monitor the progress of other jurisdictions as it relates to their adoption, along with what unique programs, exemptions, or opportunities they may be exploring that the County may want to consider.
9. Consider a phase in timeline to allow for a transition into a Regional geography.

Using a regional average as the basis for the County's threshold is the least scientifically valid approach. Instead, sub-regional averages should be established so that good projects can move forward. Subregional averages can and should include incorporated areas adjacent to unincorporated communities. Good development projects can be leveraged to reduce the per capita VMT of an entire community.

10. Consider compliance options for projects that have already been proposed or are in the process now.

Any project with an application deemed complete should be grandfathered in under the County's existing/previously adopted County-wide threshold and TSG.

11. Conduct an analysis of the options to remove the Local Mobility Analysis.

The Local Mobility Analysis (LMA) is focused on intersections and road segments within the immediate vicinity of a project and project frontage/access. The LMA is an analysis rooted in traffic circulation and public safety and the LMA guidance should be retained. While there is always opportunity to improve or refine required analyses,

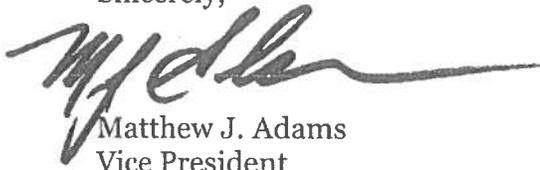
it's important to recognize that the LMA will not and cannot be eliminated.

12. Inform the Board regarding updates on development of the Smart Growth component of the Climate Action Plan (CAP) SEIR to ensure it is integrated and aligned with efforts around VMT.
13. Conduct an analysis of proposed housing projects designated for individuals under 60% AMI and under 80% AMI and the potential cost impact of switching to a regional geography.

Implementation of a per capita regional VMT average as the basis of the County's threshold without a corresponding Programmatic EIR and feasible VMT mitigation program will shutdown not only affordable housing projects, but all housing projects in the County. Many unincorporated communities are experiencing exceedingly high and growing vacancy rates for commercial/non-residential land in Village Core areas. For example, Ramona's commercial vacancy rate is approaching 60%. If these commercial properties in Village Core areas cannot be redeveloped with residential and mixed-use development, and commercial vacancies turn into dilapidated abandoned properties, these communities may become blighted or subject to urban decay as a result. CEQA requires social and economic effects be considered when related to physical change. If the County's VMT regulations would have the potential to result in urban decay or other adverse social or economic effects, either directly or in combination with other effects (cumulatively), the County is required to analyze these impacts under CEQA as part of any action to adopt new VMT regulations.

We urge the County to not rescind the TSG at this time but instead wait until staff has completed their analysis on the 13 items and returned to the Board with recommendations. We appreciate this opportunity to provide comments on those 13 items and we will continue to work collaboratively with County staff and the Board to develop a feasible, compliant, and responsible approach to addressing VMT in unincorporated areas.

Sincerely,



Matthew J. Adams
Vice President



September 14, 2021

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Re: Transportation Study Guide

Dear Supervisors:

I urge you not to rescind the Transportation Study Guide used to calculate Vehicle Miles Traveled when you meet on September 15, 2021. The elimination of the guide will create a de facto moratorium because the County will have no clear regulatory process for applicants to rely upon. Existing projects may find themselves facing years of delays, and future housing opportunities will cease because of the regulatory uncertainty throughout the unincorporated area.

Please do not make any changes to the Transportation Study Guide until a comprehensive package including incentives and regulatory reforms are created to ensure a smooth transition.

Sincerely,

A handwritten signature in black ink, appearing to read 'Paul Barnes', with a long horizontal line extending to the right.

Paul Barnes
Division President
Shea Homes, San Diego Division

September 14, 2021

Client-Matter: 66113-030

VIA E-MAIL

Chair Nathan Fletcher
Vice Chair Nora Vargas
Supervisor Joel Anderson
Supervisor Terra Lawson-Remer
Supervisor Jim Desmond
County of San Diego Board of Supervisors
County Administration Center
Room 310
1600 Pacific Highway
San Diego, CA 92101

Re: September 15, 2021 Board of Supervisors Agenda Item #1: "Consider Rescinding the Transportation Study Guidelines Implementing Vehicle Miles Traveled Analysis in the Unincorporated Region"

Dear Board of Supervisors:

We understand that, in light of recent clarification from the Governor's Office of Planning and Research, the Board of Supervisors is considering rescission of the existing Transportation Study Guide ("TSG"), which provides the technical guidance for how transportation and vehicle miles traveled analyses are done for development projects within the County.

However, there are currently more than fifty project applications under review at the County and at various stages in their entitlement efforts. Rescinding the TSG for these projects midstream will result in significant and unanticipated schedule disruptions and cost changes for these projects, which have been proceeding, for months, in good faith reliance on the County's existing TSG. Thus, we ask that the Board consider allowing current applications to proceed under the guidance of the existing TSG.

Sincerely,



Jennifer J. Lynch

manatt

Nora Vargas
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September 13, 2021
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September 14, 2021

Via Electronic Mail

San Diego County Board of Supervisors
1600 Pacific Highway, Room 402
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Attn: Clerk of the Board
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LSDOCS@sdcountry.ca.gov

Re: September 15, 2021 Agenda Item 1:
Rescission of Transportation Study Guide

Dear Chair Fletcher and Members of the Board:

My firm represents Cleveland National Forest Foundation (“CNFF”) and Coastal Environmental Rights Foundation (“CERF”) in pending litigation challenging San Diego County’s June 24, 2020 adoption of a Transportation Study Guide (“TSG”) containing thresholds for analysis of vehicle miles traveled (“VMT”) under the California Environmental Quality Act.¹

Agenda Item 1 recommends rescinding approval of the TSG adopted in June 2020. CNFF and CERF support rescission of the TSG, which contains numerous fundamental flaws and errors documented in petitioners’ opening brief to the Superior Court.² Rescission of the TSG is a necessary first step toward meaningful analysis and reduction of VMT, which is essential to preserving the County’s climate, clean air, public health, and quality of life.

The proposed rescission alone, however, will not fully correct the County’s flawed approach to VMT analysis for at least two reasons.

¹ *Cleveland National Forest Foundation, et al. v. County of San Diego* (San Diego Super. Ct. No. 37-2020-00031320-CU-WM-CTL, filed Sept. 4, 2020).

² Petitioners’ Opening Brief (August 6, 2021), attached as Ex. A.

First, the draft resolution attached to Agenda Item 1 does not fully rescind the actions this Board took in approving the TSG last June. Resolution No. 20-082 not only adopted changes to the TSG, but also made specific findings that (a) adoption of the TSG was either not subject to or was exempt from the California Environmental Quality Act, and (b) substantial evidence supported the TSG's VMT threshold.³ The draft resolution before your Board today, in contrast, appears to rescind only approval of the TSG.

The Board should rescind not only adoption of the TSG itself, but also the findings associated with adoption of the TSG in Resolution No. 20-082. The CEQA exemption finding no longer has any purpose if the underlying approval of the TSG is rescinded. The finding of substantial evidence is likewise unnecessary; it is also incorrect, as the Board Letter implicitly acknowledges in proposing that the Board rescind the TSG. The Board also should direct staff to withdraw the July 9, 2020 CEQA Notice of Exemption posted following approval of Resolution No. 20-082. Ambiguity about whether these findings or the Notice of Exemption survive rescission of the TSG may create uncertainty regarding any effect the Board's action may have on the pending litigation.

Second, the Board Letter's assertion that projects will "develop their own project threshold[s] and provide substantial evidence" for VMT analysis after the TSG is rescinded raises serious concerns about transparency and consistency. The draft resolution attached to the Board Letter does not describe what thresholds might be considered or what evidence might suffice. Nor would the resolution necessarily prevent a project from using the same thresholds or screening criteria described in the rescinded TSG on a project-by-project basis. Shifting to project-by-project development of thresholds also will make it very difficult for the public and this Board to ascertain what thresholds are being used and what evidence is being offered to support them.

As explained in CERF's September 12, 2021 comments on this agenda item, the County must move expeditiously to adopt VMT thresholds and screening criteria that are not only supported by the evidence but also responsive to the scale and immediacy of the climate crisis currently threatening the San Diego region, California, and the rest of the world. We recognize that the Board wishes to gather additional information from staff and the public as part of this process. But this issue should not languish while development projects continue to proceed using project-specific

³ Reso. No. 20-082 at 2 & Ex. A (June 24, 2020), attached as Ex. B.

San Diego County Board of Supervisors
September 14, 2021
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thresholds that may serve neither transparency nor the County's overall efforts to fight climate change.

Thank you very much for your consideration of CNFF's and CERF's views in this matter.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Kevin P. Bundy

Encl.: Ex. A: Petitioners' Opening Brief

Ex. B: San Diego County Board of Supervisors Resolution No. 20-082

cc: Joshua Heinlein, San Diego County Counsel's Office (via email)

1416125.1

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17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **COUNTY OF SAN DIEGO, CENTRAL DIVISION**

19 CLEVELAND NATIONAL FOREST
FOUNDATION, COASTAL
20 ENVIRONMENTAL RIGHTS
FOUNDATION, and SIERRA CLUB,

21 Petitioners,

22 v.

23 COUNTY OF SAN DIEGO; BOARD OF
24 SUPERVISORS OF COUNTY OF SAN
DIEGO; COUNTY OF SAN DIEGO
25 PLANNING AND DEVELOPMENT
SERVICES; and DOES 1-10, inclusive,

26 Respondents.
27

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

08/06/2021 at 03:15:00 PM

Clerk of the Superior Court
By Kristin Sorianosos, Deputy Clerk

Case No. 37-2020-00031320-CU-WM-CTL

PETITIONERS' OPENING BRIEF

Date: October 1, 2021
Time: 1:30 p.m.
Dept.: C-72

Assigned for All Purposes to:
Judge Timothy Taylor, Dept. C-72

Action Filed: September 4, 2020
Trial Date: October 1, 2021

Filed Concurrently with Request for Judicial
Notice; Notice of Lodging of Excerpts of
Administrative Record

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1 **INTRODUCTION**

2 Senate Bill 743 (“SB 743”) amended the California Environmental Quality Act (“CEQA”) to
3 better align analysis of transportation-related environmental impacts with the state’s climate and
4 greenhouse gas (“GHG”) reduction goals. The legislation directed the Office of Planning and Research
5 (“OPR”)—a division of the Governor’s office that guides local governments in land use planning—to
6 develop new CEQA Guidelines that would shift transportation analysis away from its historic focus on
7 traffic congestion and toward “vehicle miles traveled” (“VMT”), a better proxy for the full range of
8 climate, air quality, and other environmental impacts caused by car and truck trips. OPR prepared
9 Guidelines that gave local agencies until July 1, 2020, to implement this shift, and supplemented the
10 Guidelines with detailed technical guidance.

11 A week before the deadline, San Diego County adopted a SB 743 implementation strategy that
12 contradicts the statute’s purpose. The County revised its Transportation Study Guidelines (“TSG”) to
13 incorporate VMT analysis, but adopted “thresholds of significance”—standards used in CEQA to
14 determine the severity of an environmental impact—that would *exempt* nearly three quarters of the
15 residential development capacity in the County’s General Plan from any need to analyze or reduce
16 VMT. The County accomplished this by inflating the geographic baseline against which VMT
17 reductions would be measured and by adopting a “screening” threshold for “small” projects that failed to
18 account for the length of vehicle trips. The County’s thresholds have nothing to do with determining the
19 significance of environmental impacts, and everything to do with promoting the County’s favored
20 development schemes. As a result, the thresholds are unsupported by either law or evidence. The County
21 also found adoption of the TSG exempt from CEQA, despite admitting its actions were discretionary
22 and acknowledging that its choices would lead to greater GHG emissions and less mitigation.

23 CEQA plays a critical role in ensuring local agencies do their part in achieving the state’s climate
24 goals. SB 743 was intended to ensure that VMT analysis and mitigation support that role. Yet the
25 County appears to view CEQA analysis and mitigation as mere hindrances to development rather than as
26 essential tools in confronting the climate crisis. The TSG and thresholds rest on a fundamental
27 misapprehension of the law, lack evidentiary support, and conflict with SB 743. Their adoption was an
28 abuse of discretion and must be set aside.

1 **STATEMENT OF FACTS**

2 **I. SB 743 and the Shift to VMT Analysis**

3 SB 743 signaled a fundamental shift in analysis of transportation impacts under CEQA. *See*
4 Stats.2013, ch. 386, § 1; Pub. Resources Code § 21099.¹ Before SB 743, transportation analysis typically
5 focused on traffic congestion and automobile delay. SB 743, § 1(a)(2). SB 743, however, recognized
6 that reducing VMT is closely related to meeting the state’s greenhouse gas reduction and sustainable
7 communities planning goals. *Id.*, § 1(a)(2). As a result, “[n]ew methodologies under [CEQA] are needed
8 for evaluating transportation impacts that are better able to promote the state’s goals of reducing
9 greenhouse gas emissions and traffic-related air pollution, promoting the development of a multimodal
10 transportation system, and providing clean, efficient access to destinations.” *Id.* SB 743 was intended to
11 “[e]nsure that the environmental impacts of traffic, such as noise, air pollution, and safety concerns,
12 continue to be properly addressed and mitigated” as well as to “[m]ore appropriately balance the needs
13 of congestion management with statewide goals related to infill development, promotion of public health
14 through active transportation, and reduction of greenhouse gas emissions.” *Id.*, § 1(b)(1), (2).

15 SB 743 amended CEQA directly, adding section 21099 to the Public Resources Code. SB 743, §
16 5. That section directed OPR to develop and transmit to the Natural Resources Agency CEQA
17 Guidelines revisions “establishing criteria for determining the significance of transportation impacts”
18 that “shall promote the reduction of greenhouse gas emissions, the development of multimodal
19 transportation networks, and a diversity of land uses.” § 21099(b)(1). The bill also directed OPR to
20 “recommend potential metrics to measure transportation impacts”—including VMT—that focus on the
21 number and length of vehicle trips rather than measures of congestion. *Id.* SB 743 also preserved local
22 agencies’ authority “to establish or adopt thresholds of significance that are more protective of the
23 environment” than the CEQA Guidelines. § 21099(e).

24 In response to SB 743, OPR developed and the Natural Resources Agency adopted CEQA
25 Guidelines section 15064.3. The new section established that VMT—meaning “the amount and distance

26 _____
27 ¹ Undesignated statutory citations are to the Public Resources Code. Citations to “SB 743” are to
28 provisions in the chaptered version of the bill (Stats.2013, ch. 386) not codified in the Public Resources
Code. Citations to the “Guidelines” are to the CEQA Guidelines codified at title 14, California Code of
Regulations, section 15000 et seq.

1 of automobile travel attributable to a project”—is generally “the most appropriate measure of
2 transportation impacts.” Guidelines § 15064.3(a). The new section provided that VMT “exceeding an
3 applicable threshold of significance may indicate a significant impact.” Guidelines § 15064.3(b)(1). The
4 new section did not mandate a specific threshold of significance, but it gave examples indicating where
5 such a threshold should be set; for instance, projects that “decrease vehicle miles traveled in the project
6 area compared to existing conditions should be presumed to have a less than significant transportation
7 impact.” *Id.* Although local agencies could “elect to be governed by” its provisions “immediately” after
8 its adoption, section 15064.3 took effect statewide on July 1, 2020, and it applies to all environmental
9 documents set out for public review after that date. Guidelines §§ 15007(c), 15064.3(c).

10 In December 2018, contemporaneously with the promulgation of CEQA Guidelines section
11 15064.3, OPR published a “Technical Advisory on Evaluating Transportation Impacts in CEQA” (the
12 “Technical Advisory”). AR 162-197.² Reflecting SB 743’s express purpose, the advisory underscored
13 that “it will not be possible to achieve the State’s 2030 and post-2030 emissions goals without reducing
14 VMT growth” (AR 165) and that CEQA analysis can facilitate necessary reductions through
15 identification of significant VMT impacts and adoption of mitigation measures (AR 165-166).

16 The Technical Advisory recommended thresholds of significance for use in determining whether
17 transportation impacts are significant and thus require mitigation. Informed by a California Air
18 Resources Board assessment evaluating the degree of VMT reduction necessary to meet the State’s
19 long-term climate goals, the Technical Advisory concluded that a project with a per capita or per
20 employee VMT that is *15% below* that of existing development may reasonably be found not to have a
21 significant transportation impact. AR 173-175, 178. For residential projects in unincorporated areas, this
22 “existing development” baseline should be measured as either “(1) the region’s VMT per capita, or (2)
23 the aggregate population-weighted VMT per capita of all cities in the region.” AR 178. The Technical
24 Advisory used the term “region” synonymously with the “areas” subject to metropolitan planning
25 organization jurisdiction (*id.*)—here, the entire region encompassed by the San Diego Association of
26 Governments’ (“SANDAG”) regional transportation plan, including both the unincorporated County and
27

28 ² Citations to the Administrative Record are designated “AR” followed by a Bates number or range.

1 incorporated cities (*see* AR 290). The Technical Advisory also discussed a possible “screening
2 threshold” for “smaller projects”—derived from a CEQA exemption for additions to “existing
3 facilities”—under which projects generating fewer than 110 average daily trips (“ADT”) could be
4 assumed to cause a less-than-significant transportation impact. AR 175. Finally, the Technical Advisory
5 identified a range of potentially feasible mitigation measures and alternatives that could be adopted to
6 reduce significant VMT impacts from development projects. AR 189-191.

7 **II. The County’s Flawed Effort to Comply with SB 743**

8 VMT is a serious problem in unincorporated San Diego County because “the number of vehicle
9 trips in the unincorporated area are less in quantity, but longer in distance. Lacking transit services and
10 with a much less developed road network, many of the residents within the unincorporated area drive to
11 the cities for employment and services.” AR 139. County staff estimated that average VMT across the
12 San Diego region (including both incorporated and unincorporated areas) is 21.85 miles per capita,
13 while average VMT in the unincorporated area is 32.54 miles per capita. AR 616. In some areas of the
14 County, VMT is as high as 152 miles per capita. AR 1450.

15 The County first began soliciting consultant support in developing SB 743 implementation
16 strategies in mid-2018. *See* AR 6677-6682 (draft scope of work). From the very beginning, the County’s
17 direction to consultants included developing different implementation “options” and providing
18 information to decision makers about the “potential implications” of each option for unincorporated area
19 development projects. AR 6680. The County retained multiple consultants, including Fehr & Peers and
20 Chen Ryan, who assisted in development of the TSG and thresholds and prepared technical memoranda
21 outlining different policy options. *See, e.g.*, AR 141, 199-203, 1111-1117, 1201-1208, 1345, 1395-1401,
22 1448-1450. The County also conducted some public outreach. AR 151-152.

23 On May 7, 2020, the County issued a “Notice of Intent to Adopt Updated Transportation Study
24 Guide” referencing a draft version of proposed “Transportation Study Guidelines.” AR 3067-3068
25 (notice of intent). According to the Notice of Intent, the draft “Guide” included “options for the Board of
26 Supervisors to consider related to: 1) the geography to use in calculating total/average VMT for the
27 unincorporated county; 2) criteria to use in determining which projects must conduct detailed VMT
28 analysis; and, 3) the VMT threshold to use in determining” whether environmental impacts from

1 transportation are significant. AR 3067.

2 On May 15, 2020, the San Diego County Planning Commission considered the proposed TSG.
3 Commission staff prepared a Hearing Report for the Commission’s consideration identifying “three
4 policy decisions” relevant here: (1) establishment of a “geographic boundary” to serve as the “average
5 baseline VMT” for comparison to estimated VMT from future projects; (2) establishment of “project
6 analysis screening criteria for which projects must conduct a VMT analysis”; and (3) establishment of a
7 “Level of Significant Impact (Significance Threshold), which is the amount of VMT created by a project
8 that will be considered to have a transportation impact.” AR 613.

9 The Hearing Report identified three options for a “geographic boundary”: Option A, “the San
10 Diego region as a whole”; Option B, the unincorporated area of the County alone; and Option C,
11 “smaller subareas within the unincorporated area.” *See* AR 615-618. The Hearing Report proposed that
12 these geographic baseline averages be used for two purposes: first, to define “VMT-efficient” areas of
13 the County, within which VMT would be expected to be 15% or more below the baseline average (AR
14 614), and second, to establish a project-specific “threshold of significance” under which projects with
15 VMT at least 15% below the existing regional VMT average would be presumed to have less-than-
16 significant transportation impacts (AR 615-619).

17 The Hearing Report compared the three options primarily in terms of how many “potential
18 dwelling units” contemplated in the County’s General Plan would be *exempt* from VMT analysis and
19 CEQA mitigation under each option. AR 616-617. The Hearing Report recommended Option B—using
20 the unincorporated area of the County as the “geographic boundary”—claiming that it “follows General
21 Plan Goals and Policies” and “reflects the pattern of General Plan compliant development observed
22 since 2011.” AR 617. Option B also would result in “less required VMT reductions,” fewer development
23 projects having to prepare environmental impact reports, reduced costs and time to process land
24 development permits, and “less of a decrease” in developments within the unincorporated area. *Id.* It
25 also would provide a particular advantage to developments “along the western edge of the
26 unincorporated area.” *Id.* Option B would further these goals primarily by designating a larger area of
27 the County as “VMT efficient,” which would “exempt” approximately 18,940 potential dwelling units
28 (about 31% of total General Plan residential development potential) from VMT analysis and mitigation.

1 See AR 615-617, 936. The Hearing Report also recommended adoption of a “screening threshold”
2 exempting “small” projects generating less than 110 ADT from VMT analysis and mitigation. AR 618.
3 Using this threshold, the Hearing Report concluded that *all* of the potential dwelling unit capacity in the
4 General Plan’s rural and semi-rural land use categories—approximately 30,860 units, roughly 50% of
5 the General Plan’s total capacity—would be “exempt from SB 743.” AR 614, 934. Accounting for the
6 “overlap” between projects in “VMT-efficient” areas under Option B and “small projects” subject to the
7 110-ADT screening thresholds, *staff estimated that 73% of General Plan residential development*
8 *potential would be “exempt” from VMT analysis and mitigation.* AR 937. Notwithstanding objections
9 (*see, e.g.,* AR 2089-2091), the Planning Commission voted 5-2 to recommend approval of the staff
10 recommendations outlined in the Hearing Report, including selection of Option B for the “geographic
11 boundary” and adoption of the 110-ADT small project screening threshold (AR 926).

12 The Board of Supervisors considered the TSG and thresholds on June 24, 2021. AR 103-105,
13 118-120. A staff report (or “Board Letter”) accompanying the item reiterated many of the same points as
14 the Hearing Report. *See* AR 133-154. Like the Planning Commission Hearing Report, the Board Letter
15 outlined three options for the “geographic boundary” used to calculate existing regional average VMT:
16 (A) the entire San Diego region; (B) the unincorporated County alone; and (C) five unincorporated
17 County subareas. AR 145-147. The Board Letter also evaluated each option primarily in terms of the
18 number of potential dwelling units under the General Plan that would not be subject to VMT analysis
19 and mitigation. *Id.* Maps appended to a draft version of the TSG attached to the Board Letter
20 demonstrated that selection of Option B vastly increased the areas of the County that would be
21 considered VMT-efficient. AR 269-277. The Board Letter conceded that Option A (the San Diego
22 region) would achieve greater greenhouse gas reductions and require more projects to mitigate for
23 transportation impacts (AR 145), while Option B (the unincorporated County) would result in “[n]ot as
24 much” greenhouse gas reduction or mitigation (AR 146). Yet the Board Letter recommended Option B,
25 claiming that it would incentivize “infill” development by designating more VMT-efficient areas in the
26 western part of the County (AR 147)—even though this would eliminate both analysis of and mitigation
27 for those “infill” projects’ transportation impacts. Finally, the Board letter recommended a “screening
28 threshold” that would eliminate VMT analysis for projects generating less than 110 ADT. AR 147-150.

1 Numerous organizations and individuals, including Petitioners, submitted comments to the Board
2 objecting to the recommended selection of the unincorporated County as the “geographic boundary” for
3 analysis, the 110-ADT screening threshold, and staff’s proposal to find adoption of the TSG and
4 thresholds exempt from CEQA. *See, e.g.*, AR 419-429, 494, 500-501, 504-507, 510, 527-530, 2033-
5 2044, 2059-2060. County staff responded to some of these comments in a memorandum. AR 512-522.
6 The Board nonetheless approved Resolution 20-082, which adopted the final TSG and thresholds and
7 found the Board’s action exempt from CEQA. AR 5-9, 906-909. The final TSG reflects the Board’s
8 selection of Option B—the unincorporated County—as the “geographic boundary” for determining
9 VMT-efficient areas and applying the project-specific threshold of significance (15% below the
10 unincorporated County average). AR 35-38, 93-95. The final TSG also included a “small project”
11 screening threshold exempting projects generating less than 110 ADT from VMT analysis and
12 mitigation requirements. AR 36, 90-91. The Board left “Phase 2” of the SB 743 implementation
13 process—development of VMT mitigation strategies—for another day. *See* AR 134, 906-909.

14 The County filed a notice of exemption confirming its finding that adoption of the TSG and
15 thresholds was exempt from CEQA on July 9, 2020. AR 1-4. This challenge was timely filed pursuant to
16 Public Resources Code section 21167(d) and 9 (as amended May 29, 2020) on September 4, 2020.³
17 Petitioners filed the operative First Amended Petition for Writ of Mandate and Complaint for
18 Declaratory and Injunctive Relief on October 27, 2020.

19 STANDARD OF REVIEW

20 A court reviews an agency’s CEQA determinations for abuse of discretion. Under this standard,
21 if the agency did not proceed in a manner required by law, or its determination or decision is not
22 supported by substantial evidence, then the agency action is unlawful. *See* §§ 21168, 21168.5. Questions
23 involving compliance with CEQA’s procedures or interpretation of CEQA’s requirements are reviewed
24 de novo; only the agency’s factual determinations are reviewed for substantial evidence. *See Sierra Club*
25 *v. County of Fresno* (2018) 6 Cal.5th 502, 512. Standards of review for particular claims are discussed
26

27 ³ Emergency Rule 9(b) tolled the statute of limitations for actions with limitations periods less than 180
28 days until August 3, 2020. This action was timely filed within 35 days following the end of the tolling
period. § 21167(d).

1 further in the Argument section below.

2 ARGUMENT

3 I. The TSG’s Thresholds of Significance Are Unsupported By Law or Substantial Evidence.

4 A CEQA threshold of significance draws a line between environmental impacts that are
5 significant and those that are not. But the line the County drew here has nothing to do with whether
6 transportation impacts are significant in terms of the changes they cause to the physical environment. On
7 the contrary, the County drew its line in order to exempt as much development as possible from CEQA’s
8 analysis and mitigation requirements. As a result, the County’s adoption of the TSG and thresholds was
9 unsupported by either law or relevant substantial evidence and must be set aside.

10 A threshold of significance must be supported by substantial evidence. Guidelines § 15064.7(b).
11 Substantial evidence means “enough *relevant* information . . . to support a conclusion.” Guidelines §
12 15384(a) (emphasis added). The substantial evidence standard requires an agency to support its
13 conclusions with concrete, relevant evidence. *See, e.g., Center for Biological Diversity v. California*
14 *Department of Fish & Wildlife* (2015) 62 Cal.4th 204, 227-28. To the extent the County’s actions rest on
15 an interpretation of CEQA, moreover, this Court’s review is de novo. *City of Marina v. Board of*
16 *Trustees of California State University* (2006) 39 Cal.4th 341, 355-56.

17 A. Thresholds of Significance Must Be Supported By Evidence Relevant to the Degree 18 and Substantiality of a Project’s Effects on the Physical Environment.

19 Determining whether an environmental impact is “significant” is critical to CEQA’s purpose and
20 structure. Guidelines § 15064(a). Significance determinations govern the level of environmental review
21 required before project approval. If there is substantial evidence to support a fair argument that a project
22 will have one or more significant impacts, the lead agency must prepare an environmental impact report;
23 if not, the agency may prepare a negative declaration. *See* § 21100; Guidelines §§ 15063(b),
24 15064(a)(1). Significance determinations also dictate whether mitigation is required; agencies must
25 incorporate feasible mitigation measures or adopt feasible alternatives only for impacts deemed
26 significant. §§ 21002, 21002.1(b), 21081; *see also* Guidelines §§ 15064(a)(2), 15091, 15126.4, 15126.6.

27 The concept of “significance” in CEQA is inextricable from the physical environment. A
28 “significant effect on the environment” means “a substantial, or potentially substantial, adverse change

1 in the environment.” § 21068. CEQA defines the “environment” as “the physical conditions which exist
2 within the area which will be affected by a proposed project, including land, air, water, minerals, flora,
3 fauna, noise, objects of historic or aesthetic significance.” § 21060.5. A significance determination thus
4 measures whether a project will cause a substantial change in the physical environment.

5 The determination of whether an impact is significant “calls for careful judgment” on the part of
6 the public agency, “based to the extent possible on scientific and factual data.” Guidelines §
7 15064(b)(1). Agencies may adopt “thresholds of significance” to aid in these determinations. A
8 “threshold of significance” is “an identifiable quantitative, qualitative, or performance *level of a*
9 *particular environmental effect*, non-compliance with which means the effect will normally be
10 determined to be significant by the agency and compliance with which means the effect normally will be
11 determined to be less than significant.” Guidelines § 15064.7(a) (emphasis added). Accordingly, a
12 threshold of significance has utility only insofar as it measures the magnitude of a particular effect on
13 the physical environment and aids the agency in making a determination as to whether that change is
14 significant. *See* Guidelines § 15064(b)(2); *Protect the Historic Amador Waterways v. Amador Water*
15 *Agency* (2004) 116 Cal.App.4th 1099, 1111.

16 SB 743 preserves agency discretion to adopt transportation-related thresholds of significance, but
17 only if those thresholds are “more protective of the environment” than the state Guidelines. § 21099(e).

18 **B. The Board’s Selection of the Unincorporated County as the “Geographic**
19 **Boundary” for Analysis Is Unsupported By Law or Substantial Evidence.**

20 Given the plain meaning and purpose of CEQA’s definitions of the “environment” and
21 “significant effect on the environment,” the only evidence “relevant” to supporting a threshold of
22 significance is evidence that goes to the nature and magnitude of a change in the physical environment.
23 Such evidence is absent from the record here. Moreover, the County erred as a matter of law by
24 interpreting CEQA as allowing a threshold based on factors unrelated to environmental impacts.

25 The Board’s selection of the unincorporated County as the “geographic boundary” used to
26 determine existing, average VMT underlies two of the thresholds in the TSG. First, the TSG designates
27 and maps “VMT-efficient areas” where VMT is already 15% or more below the unincorporated County
28 average; projects in these areas are thus deemed to have less-than-significant transportation impacts and

1 screened out of further analysis. AR 35, 75-77. Second, the TSG establishes a threshold of significance
2 for use on a project-by-project basis under which projects that are not located in VMT efficient areas or
3 otherwise “screened,” but that generate VMT at least 15% below the unincorporated County average (or,
4 put another way, less than 85% of the unincorporated County average), are similarly deemed to have no
5 significant transportation impacts. AR 37-38. Because the County’s selection of the unincorporated
6 County as the “geographic boundary” lacks both legal and evidentiary support, both thresholds must fail.

7 The Board Letter offered a choice of three geographic areas upon which to set the TSG baseline:
8 1) Option A, the SANDAG region, including all the cities and the unincorporated area in the County; 2)
9 Option B, the unincorporated portion of the County, not including any cities; and 3) Option C, several
10 subunits of the unincorporated area, drawn based on similar trip lengths and destinations. AR 145-146.
11 The Board Letter stated that Option A (the SANDAG region) would “likely” result in the greatest GHG
12 reduction overall of the three Options, with Options B and C resulting in higher GHG emissions. AR
13 145-147. The Board chose Option B, which the Board Letter acknowledged would “likely” result in
14 higher GHG emissions. AR 145, 147. Option B also expanded “VMT-efficient” areas, in which
15 developments would be screened out of VMT analysis and mitigation altogether. AR 145.

16 The County’s stated reasons for choosing Option B, however, have nothing to do with the
17 environmental impacts of transportation projects. Neither the Board Letter nor the Hearing Report
18 explained how selecting the unincorporated County as the geographical baseline would help determine
19 whether a project’s transportation-related impacts represent substantial changes in the physical
20 environment. Rather, the Board Letter claimed that “increasing the VMT average” to unincorporated
21 County levels would provide the “greatest benefit to infill development in the unincorporated area” by
22 locating more “VMT-efficient” areas in locations the County prefers to develop. AR 145-146. The
23 Hearing Report was even more blunt, recommending the unincorporated County baseline because it
24 “follows General Plan Goals and Policies” and “reflects the pattern of General Plan compliant
25 development observed since 2011.” AR 617. The Hearing Report also stated that using the
26 unincorporated County baseline to define VMT-efficient areas would “exempt” more than 18,000
27 General Plan dwelling units—roughly a third of the total potential—from all VMT analysis and
28 mitigation requirements. AR 615-617, 936. According to the Hearing Report, the unincorporated County

1 baseline also would result in fewer projects having to prepare detailed environmental analyses under
2 CEQA or mitigate transportation impacts, as well as “[l]ess of a decrease” in infill developments, larger
3 residential subdivisions, and medium to large commercial projects. AR 616-617.

4 The Board Letter and Hearing Report thus indicate that the County chose Option B not because it
5 aided in determining the significance of transportation impacts, but rather because it exempted the
6 largest number of potential dwelling units from VMT analysis and mitigation. Tellingly, the Board
7 Letter’s discussion derived from a Planning and Development Services “Housing Production and
8 Capacity Portal Analysis” that was “not intended to determine the level of environmental review needed
9 for a specific project,” but rather to assess “the impact of SB 743” on “how much new development
10 could occur” in the unincorporated County. AR 931. That report’s conclusions regarding the number of
11 dwelling units that could be rendered “exempt” from VMT analysis and mitigation formed the primary
12 basis for the discussion of options in the Board Letter and Hearing Report. *Compare* AR 935-936 (report
13 calculating “the estimated number of units that would be exempt in SB 743 based on . . . VMT efficient
14 areas”) *with* AR 145-147, 616-617 (Board Letter and Hearing Report presenting same calculations).

15 The TSG contains a “justification” section that emphasizes the County’s “discretion” to choose a
16 geographic area that reflects its own “planning goals and policies” (AR 89-90), but it says nothing about
17 whether such a choice rationally distinguishes between significant and non-significant environmental
18 impacts. Nor do the technical memoranda prepared by the County’s consultants fill the evidentiary gap.
19 On the contrary, many of the memos assess how different thresholds might apply to different projects.
20 *See, e.g.*, AR 1111-1117, 1201-1208. Other memos describe other jurisdictions’ thresholds (AR 199-
21 203), but fail to explain how the County’s choices here relate to the significance of environmental
22 impacts. One memo recommends that County thresholds “not be based on the SANDAG regional
23 average” (AR 1345) but contains no explanation. *Cf. Protect the Historic Amador Waterways*, 116
24 Cal.App.4th at 1111-12 (finding bare significance conclusion without explanation inadequate). Another
25 draft memo by the same consultant, however, baldly recommends “choosing the geography which is
26 most consistent with the County’s development goals.” AR 6078. The record overall thus shows that the
27 County’s reasons for choosing one “geographic boundary” over another had *nothing* to do with
28 determining the significance of environmental impacts, and *everything* to do with limiting the perceived

1 “impact” of VMT analysis and mitigation on the County’s preferred development schemes. None of
2 these reasons provides substantial evidence to support a threshold of significance.

3 The County’s responses to public comments further fail to justify the choice of an
4 unincorporated County baseline. If anything, the responses merely confirm that the County’s main
5 interest was in promoting its own General Plan development goals, not identifying significant
6 environmental impacts. *See* AR 517-518. The responses claim “existing conditions” reflect “the
7 County’s existing General Plan and land use regulations,” which purportedly concentrate development
8 in defined “Village” areas, and assert that “a project with decreased VMT” proposed for a “Village”
9 may have less significant impacts “compared to the same project in an area planned for less intense
10 development” and “locat[ed] further from local destinations.” AR 517-518. But this hypothetical does
11 not establish that a choice of baseline allowing projects with far *higher* VMT than the regional average
12 to be considered “VMT-efficient” will avoid significant transportation impacts simply because those
13 projects are located in a “Village.” Indeed, the responses conclude that “the relevant factual information
14 before the Board and reasonable inferences therefrom” could support selection of “*any* of the three
15 geographic areas analyzed.” AR 518 (emphasis added). Given the substantial differences in the
16 thresholds above which VMT would be addressed and mitigated, this actually seems to say that the facts
17 do not matter at all. The County’s consultants warned against designing a threshold based solely on “the
18 most ability to screen projects” (*see* AR 14717), but the record shows the County elevated its desire to
19 exempt as much development as possible over all other concerns.

20 The County’s description of “existing conditions” is also inconsistent. For large land use plans,
21 such as specific or community plans, the TSG uses a *regional* baseline—not the unincorporated
22 County—because “large land use plans can have an effect on regional VMT.” AR 38. However, the
23 same is true for most residential development within the unincorporated County; many home-based trips
24 begin in unincorporated areas and end in the incorporated cities. AR 5487, 5490-5504, 5506. The
25 County’s selection of a baseline that expands “VMT-efficient” areas to the point that nearly a third of all
26 General Plan residential capacity will be exempt from analysis and mitigation (AR 615-617) will also
27 have an effect on regional VMT. The County’s acknowledgment that land use planning contributes to
28 regional VMT further undercuts its selection of project-specific thresholds that ignore that contribution.

1 Nor does the County’s selection of the unincorporated County baseline find any support in
2 OPR’s Technical Advisory. The Board Letter failed to mention the Technical Advisory’s
3 recommendation that “[e]xisting VMT per capita may be measured as *regional* VMT per capita or as
4 *city* VMT per capita,” (AR 178, emphasis added), and the Hearing Report went so far as to misstate the
5 Technical Advisory as “not provid[ing] a recommended geography to use” (AR 615). On the contrary,
6 the Technical Advisory clearly used the term “regional” to mean the area under the regional
7 metropolitan planning organization’s jurisdiction. *See* AR 178. The County’s consultants pointed this
8 out as well. *See, e.g.*, AR 202-203 (Chen Ryan memo describing non-regional baselines as “deviations”
9 from Technical Advisory); 24256 (Fehr & Peers January 8, 2019 Memo, Comment noting “regional
10 average” in Technical Advisory does not mean “only” the unincorporated areas). Even the County’s
11 own final draft TSG conceded that the Technical Advisory’s reference to the “region” meant the
12 “SANDAG region,” not the unincorporated County. AR 289-290.⁴ The Technical Advisory offers no
13 support for the County’s choice of baseline here.

14 In sum, the County’s choice of the unincorporated area as the baseline for VMT comparisons
15 ignores any connection to physical environmental impacts and thus rests on a legally erroneous
16 interpretation of CEQA. It also lacks any relevant, substantial evidentiary support in the record.

17 **C. The County’s 110-ADT “Small Project” Screening Threshold Is Unsupported.**

18 The TSG’s separate screening threshold for “small residential and employment projects” that
19 generate 110 or fewer ADT (AR 35-36, 147-148) also lacks substantial evidentiary support because it
20 considers only the number of trips—not their length—and fails to tailor the threshold to County
21 conditions. The County primarily relies on the Technical Advisory’s conclusion that “[a]bsent
22 substantial evidence indicating that a project would generate a potentially significant level of VMT,” a
23 project causing 110 ADT or less “generally may be assumed to cause a less-than significant
24

25 ⁴ In the “Frequently Asked Questions” section of its SB 743 website, OPR recently clarified that “[a]s
26 used in the VMT Technical Advisory, ‘regional’ refers to the full geography within the jurisdictional
27 borders of a metropolitan planning organization (MPO) or a regional transportation planning agency
28 (RTPA). . . . Comparison to only a portion of the region or city could result in a less environmentally
protective significance threshold, potentially disconnecting significance determinations from
[California’s climate] commitments.” *See* Petitioners’ Request for Judicial Notice, Ex. A at 9;
<https://opr.ca.gov/ceqa/updates/sb-743/faq.html#VMT-TA-regional> (visited July 30, 2021).

1 transportation impact.” AR 175. The County’s reliance on this general, non-binding conclusion (*see* AR
2 164) fails for two main reasons.

3 *First*, OPR derived the 110-ADT threshold from an CEQA exemption that does not apply to the
4 projects the County’s threshold would exempt from VMT analysis. OPR cited Guidelines section
5 15301(e)(2), which exempts from CEQA “[a]dditions to existing structures” of less than 10,000 square
6 feet in areas that are “not environmentally sensitive” and “where all public services and facilities are
7 available to allow for maximum development permissible in the General Plan.” For projects like office
8 buildings and business parks where trip generation “increases relatively linearly with building
9 footprint,” OPR concluded such “additions” would generate or attract 110-124 ADT per 10,000 square
10 feet, and therefore concluded that addition of 110 ADT could be considered less than significant. AR
11 175. OPR’s opinion is thus replete with qualifiers and does not address residential development at all.

12 The TSG ignores all of OPR’s qualifiers and the underlying exemption’s limitations. It cites the
13 Technical Advisory as a basis for exempting *all* projects, including new residential projects, expected to
14 generate 110 ADT or less from VMT analysis and mitigation. *See* AR 35-36, 424. The TSG thus goes
15 far beyond both the Technical Advisory’s conclusions and the scope of the underlying exemption in
16 Guidelines section 15301(e)(2). The TSG also subverts the general purpose of Guidelines section
17 15301—to exempt projects involving “negligible or no expansion” of existing uses—into a blanket
18 criterion that screens out of VMT analysis new projects generating 110 ADT or less that are not
19 additions to any existing facility, that may not be in an area with adequate infrastructure for growth, and
20 that might be in an environmentally sensitive area. The County’s screening threshold departs so far from
21 the exemption underlying OPR’s recommendation that it would exempt roughly *half of the residential*
22 *growth capacity* in the County’s General Plan from VMT analysis and mitigation through 2050. AR
23 139, 614, 934. The slender reed of the Technical Advisory, which itself relies on an extremely limited
24 CEQA exemption for existing facilities, cannot bear the weight of the County’s decision.

25 *Second*, the “small project” threshold lacks support because it considers only the number of
26 vehicle trips, not their length. The length of trips is obviously a critical factor in considering VMT. *See*
27 Guidelines § 15064.3(a) (defining VMT as “the amount and distance” of travel). The TSG itself
28 concedes that “VMT is a metric that accounts for the number of vehicle trips generated *and* the length or

1 distance of those trips.” AR 32 (emphasis added). Yet the TSG’s “small projects” threshold completely
2 ignores the trip length component of VMT, despite evidence in the record that average trips in the
3 unincorporated area are longer than those in the County’s cities. *See, e.g.*, AR 422-423, 501, 530, 1401,
4 1450. The County’s conclusion that the 110-ADT threshold would exempt *all* residential projects in
5 rural and semi-rural areas (AR 614, 934)—despite many of those areas having some of the *highest* VMT
6 (*compare* AR 934 with AR 1450)—underscores the lack of support for a threshold that counts only the
7 number of trips while ignoring their length.⁵ The 110-ADT threshold does not account for actual VMT.

8 For similar reasons, the County has failed to identify evidence that the Technical Advisory’s
9 recommendations are applicable to local conditions. Even if OPR’s opinion on the potential significance
10 of VMT from projects causing 110 ADT or less were valid in some situations or areas, the Technical
11 Advisory is a document of general application, intended to give general advice to agencies throughout
12 the state on how to comply with SB 743. The County cannot rely on that guidance without evidence that
13 it applies locally. Indeed, the County has misapplied statewide guidance in much the same way before.
14 In *Golden Door Properties, LLC v. County of San Diego* (2018) 27 Cal.App.5th 892, 904-05 (“*Golden*
15 *Door*”), the Court of Appeal held that an Efficiency Metric (a measure of annual per capita GHG
16 emissions caused by a project) the County adopted as a standard for determining the significance of a
17 project’s climate impact was invalid, on grounds that “[t]he Efficiency Metric, which relies on statewide
18 standards, must be justified by substantial evidence to explain why it is sufficient for use in projects in
19 the County.” The *Golden Door* court relied on the Supreme Court’s decision in *Center for Biological*
20 *Diversity*, where a state agency had applied statewide GHG emissions reduction targets to a local project
21 to find that the project had a less than significant impact on climate change. *Golden Door*, 27
22 Cal.App.5th at 904 (citing *Center for Biological Diversity*, 62 Cal.4th at 227). As the Supreme Court
23 held, a statewide standard can form the basis for a local standard, but only where substantial evidence
24 supports application of the state standard to local conditions and projects. *See* 62 Cal.4th at 227-28.

25 _____
26 ⁵ As an example, a project with 110 ADT and average VMT for the region as a whole (21.85 miles [AR
27 608]) would generate 2,403.5 VMT, while the same project with the same 110 ADT and the average
28 VMT in the unincorporated area (32.54 miles [AR 611]) would generate 3,579.4 VMT, roughly one-
third more VMT. A 110-ADT project in a high-VMT area (with an average of 64.4 miles [AR 501])
would generate 7,084 VMT, almost triple the regional average. There is no rational basis for treating
each of these projects as if they have exactly the same, less-than-significant transportation impacts.

1 Here, the County similarly relies on a general, statewide number in the Technical Advisory as
2 support for a County-specific screening threshold for analysis of VMT and the resultant impact on GHG
3 emissions and climate change. As the record shows, vehicle trips in unincorporated San Diego County
4 are unusually long. Moreover, the number of trips assumed in the Technical Advisory for 10,000-square
5 foot projects also fails to reflect local conditions; SANDAG trip generation models estimate 200 ADT
6 for such developments (AR 147-149, 1358), which would nearly *double* the associated VMT for a
7 “small” project in the County (*see* AR 506). The County has made no attempt to show that the Technical
8 Advisory’s statewide recommendations are applicable in San Diego. Without such a showing, the
9 Technical Advisory cannot provide substantial evidentiary support for adoption of the TSG.

10 **II. The Board Improperly Found Approval of the TSG and Thresholds Exempt From CEQA.**

11 Through the TSG and thresholds, the County attempted to use SB 743 implementation to
12 promote favored types of development in certain locations. It did so primarily by *exempting* that
13 development from VMT analysis and mitigation requirements. Yet the County declined to review the
14 environmental consequences of its decisions, finding its actions exempt from CEQA because adoption
15 of the TSG was: (1) not a “project” under CEQA; (2) a “ministerial” effort to comply with state law; (3)
16 subject to a CEQA categorical exemption for actions that enhance the environment; and (4) subject to
17 CEQA’s “common sense” exemption for actions with no possibility of significant impacts. AR 8-9.
18 None of the County’s findings has adequate legal or evidentiary support.

19 **A. The County’s Adoption of the TSG Is a Project Subject to CEQA.**

20 CEQA applies to discretionary projects approved or carried out by public agencies. *See* §
21 21080(a). A “project” is any activity undertaken by an agency that may cause a direct or reasonably
22 foreseeable indirect physical environmental change. *See* § 21065; Guidelines §15378(a). Where the
23 underlying facts are undisputed, a court may determine whether an activity is a project as a matter of
24 law. *See Protecting Our Water & Environmental Resources v. County of Stanislaus* (2020) 10 Cal.5th
25 479, 495 (“*POWER*”); *Muzzy Ranch Co. v. Solano County Airport Land Use Commission* (2007) 41
26 Cal.4th 372, 382. Here, the County claims that the TSG is not a project—and in fact was purely
27 ministerial—because it simply implements SB 743 and does not authorize any development. *See* AR 8.
28 The County’s exemption determination thus rests primarily on a legal interpretation, which this Court

1 reviews de novo. *See POWER*, 10 Cal.5th at 496. But even if substantial evidence review applied here,
2 the County’s conclusions would fail.

3 **1. The County’s Action Was Discretionary, Not Ministerial.**

4 A project is discretionary if a public agency exercises judgment or deliberation in approving it or
5 carrying it out. Guidelines § 15357; *see also Sierra Club v. County of Sonoma* (2017) 11 Cal.App.5th
6 11, 20. The relevant question is whether the County had the power to shape the project in ways that
7 would have mitigated potential environmental problems. *See Friends of Westwood, Inc. v. City of Los*
8 *Angeles* (1987) 191 Cal.App.3d 259, 272. In contrast, CEQA does not apply to purely ministerial
9 actions, which involve “only the use of fixed standards or objective measurements,” and where the
10 public agency “cannot use personal, subjective judgment in deciding whether or how the project should
11 be carried out.” Guidelines § 15369; *see also Sierra Club*, 11 Cal.App.5th at 20. Projects that have both
12 ministerial and discretionary elements are deemed discretionary. Guidelines § 15268(d).

13 The County exercised considerable discretion in adopting the TSG. The “policy decisions”
14 outlined in the Board Letter included defining the threshold level of transportation impacts beyond
15 which VMT analysis is required, choosing a geographic boundary, and adopting project screening
16 criteria (*see* AR 142-144), each of which required an exercise of judgment for which there was no fixed
17 standard. Rather, at each decision point, the Board actively chose among policy options presented by
18 staff. *See* AR 143-150. During the Board hearing, Supervisor Fletcher moved to adopt thresholds
19 different from those ultimately approved. AR 569, 908. Where, as here, an agency departs from fixed
20 standards and exercises judgment at many decision points, its action is discretionary. *Friends of*
21 *Westwood*, 191 Cal.App.3d at 273. Indeed, the County *itself* affirmatively and repeatedly characterized
22 its own actions as discretionary. For example, the Board Letter asserted that “jurisdictions have a certain
23 amount of discretion” in implementing SB 743. AR 152. And in justifying the County’s ultimate choice,
24 the final TSG itself asserts that “[t]he County has the discretion to determine thresholds.” AR 31, 89.

25 Despite repeatedly and explicitly invoking its own discretion to adopt thresholds, the County
26 nonetheless found the TSG and thresholds were “ministerial” (and therefore exempt from CEQA)
27 because they implement state law and because compliance with SB 743 is mandatory. AR 8. To be
28 blunt, this is preposterous. As the Board Letter concedes, the County did not have to adopt general

1 thresholds *at all*: “SB 743 does not require that lead agencies adopt new CEQA thresholds and
2 guidelines.” AR 137. The County chose new thresholds to implement SB 743, but none of those
3 thresholds simply restated the law; rather, each involved substantive decision-making. *Cf. Union of*
4 *Medical Marijuana Patients, Inc. v. City of Upland* (2016) 245 Cal.App.4th 1265, 1273 (finding an
5 ordinance that merely restated an existing prohibition ministerial). The County’s related reliance on a
6 CEQA exemption for proposed state legislation (AR 8) is wildly off the mark; the TSG obviously is not
7 proposed state legislation. Nor does SB 743’s mandatory nature aid the County. For example, general
8 plans are also required and far more extensively regulated by state law, yet CEQA considers the
9 adoption and amendment of general plans to be a “project” by definition. *See* Guidelines § 15378(a)(1).
10 Having repeatedly insisted on its discretion to choose among various thresholds it was not required to
11 adopt—and having actually done so—the County cannot seriously contend its actions were ministerial.

12 **2. Adoption of the TSG May Result in Physical Changes in the Environment.**

13 CEQA’s definition of “project” encompasses agency activity “which *may* cause either a direct
14 physical change . . . or a reasonably foreseeable indirect physical change in the environment.” § 21065
15 (emphasis added); Guidelines § 15378(a). An indirect physical change is reasonably foreseeable if it is
16 one that “the activity is capable, at least in theory, of causing.” *See Union of Medical Marijuana*
17 *Patients*, 7 Cal.5th at 1197 (citing Guidelines § 15064(d)(3)). Whether adoption of the TSG is an
18 activity that may result in physical change in the environment presents a legal question and is reviewed
19 *de novo*. *See Muzzy Ranch*, 31 Cal.4th at 382. Petitioners do not need to show that physical changes will
20 actually occur. *Union of Medical Marijuana Patients*, 7 Cal.5th at 1198.

21 The TSG plainly may cause changes to the physical environment; indeed, the County selected its
22 thresholds for that very purpose. Under the TSG, projects that meet screening criteria—including
23 projects within “VMT-efficient” areas and projects generating less than 110 ADT—are deemed to have
24 less-than-significant transportation impacts and are exempted from VMT analysis and mitigation. *See*
25 AR 35, 229. By dictating the level of analysis and mitigation required for future development projects,
26 the TSG attempts to influence where development will take place. *See* AR 21438 (reflecting Planning
27 Director understood the thresholds created “winners and losers”); *see also Muzzy Ranch Co.*, 41 Cal.4th
28 at 382-83 (“[a] government agency may reasonably anticipate that its placing a ban on development in

1 one area . . . may . . . displac[e] development to other areas.”). County staff explicitly acknowledged the
2 TSG could be shaped to influence construction, noting that “Options B and C screen out more units and
3 would likely facilitate housing projects.” AR 457. The Board Letter similarly focused on each option’s
4 ability to incentivize certain kinds of development in certain locations. *See* AR 144-47. Future
5 development that generates additional VMT, even if consistent with the General Plan, will likely
6 exacerbate the region’s already severe air quality problems. *See* AR 528-529.

7 Furthermore, the primary effect of the County’s screening thresholds was to eliminate VMT
8 mitigation requirements—an action with obvious environmental consequences. Although the Board
9 deferred development of VMT mitigation to Phase 2 of its process (AR 137), the record shows County
10 staff was keen to avoid requiring mitigation to the extent possible. *See, e.g.,* AR 146, 149-150.
11 Accordingly, the County attempted to “adjust” the thresholds to ensure favored projects would be
12 “screened out” and not required to mitigate for VMT. AR 23998. The County’s “Housing Portal
13 Analysis” shows that the TSG’s screening thresholds together would exempt 73% of General Plan
14 residential capacity from VMT mitigation. *See* AR 937. County consultants also prepared case studies
15 illustrating the thresholds’ impact on residential and industrial development, demonstrating in many
16 cases that using the unincorporated county baseline would reduce the need for mitigation compared to
17 the regional baseline. *See* AR 3419-3429; *see also* AR 2468-2470 (list of approved and in-process
18 projects making similar comparisons). Among the options considered, the County adopted the one that
19 would result in maximum development and minimum mitigation—both of which may cause
20 environmental impacts.

21 The County claims the TSG cannot affect the environment because future planning decisions are
22 subject to state law. *See* AR 8. However, this has no bearing on whether physical changes may occur. In
23 *City of Livermore v. LAFCO* (1986) 184 Cal.App.3d 531, for example, petitioners challenged the
24 revision of guidelines relating to spheres of influence that did not directly authorize or prohibit specific
25 developments. The court found the revisions were a “project” subject to CEQA because they would
26 inform future development and result in reasonably foreseeable physical changes in the environment.
27 *See id.* at 538; *see also* *Union of Medical Marijuana Patients*, 7 Cal.5th at 1199 (ordinance authorizing
28 cannabis dispensaries was a project because it “could foreseeably result in new retail construction”);

1 *Bozung v. LAFCO* (1975) 13 Cal.3d 263, 279 (potential effect on future development rendered LAFCO
2 approval of annexation a “project” even before City vote to accept it). The TSG and thresholds are a
3 “project,” and the County abused its discretion in approving them without CEQA review.

4 **B. Adoption of the TSG Is Not Exempt from CEQA.**

5 The County also found its adoption of the TSG (1) exempt under CEQA’s categorical exemption
6 for activities that protect the environment and (2) subject to CEQA’s “common sense” exemption for
7 projects that have no possibility of causing significant impacts. AR 8-9. These alternative conclusions
8 are also contrary to law and fail for lack of evidentiary support.

9 **1. The Class 8 Categorical Exemption Does Not Apply.**

10 CEQA’s “Class 8” categorical exemption applies to actions that “assure the maintenance,
11 restoration, enhancement, or protection of the environment.” Guidelines § 15308. Courts construe
12 categorical exemptions narrowly “in order to afford the fullest possible environmental protection. . . .
13 [I]n all but the clearest cases of categorical exemptions, a project will be subject to some level of
14 environmental review.” *Save Our Carmel River v. Monterey Peninsula Water Management District*
15 (2006) 141 Cal.App.4th 677, 697 (emphasis added). The scope of a categorical exemption is a question
16 of law and underlying factual determinations are subject to the substantial evidence test. *Save Our Big*
17 *Trees v. City of Santa Cruz* (2015) 241 Cal.App.4th 694, 706 (“*Big Trees*”). The County bears the
18 burden of showing that “substantial evidence supports its finding that a particular CEQA exemption
19 applies.” *Bus Riders Union v. Los Angeles County Metropolitan Transportation Agency* (2009) 179
20 Cal.App.4th 101, 107. A court will not uphold an agency’s exemption determination if the record lacks
21 evidence showing that the project falls within the exemption. *See Big Trees*, 241 Cal.App.4th at 712.

22 As a matter of law, the Class 8 exemption is inapplicable to actions that diminish environmental
23 protection. *Id.* at 707. The County nonetheless claims that because one of SB 743’s aims is “promot[ing]
24 the reduction of [GHG] emissions,” it follows that the TSG also reduces GHGs and thus enhances the
25 environment. AR 8-9. Both the law and the record compel a contrary conclusion. In *California Unions*
26 *for Reliable Energy v. Mojave Desert Air Quality Management District* (2009) 178 Cal.App.4th 1225,
27 1230 (“*CURE*”), the court found the Class 8 exemption inapplicable to an air district’s adoption of a rule
28 that authorized road paving as a method of offsetting dust pollution. The court found the District had

1 failed to show the rule would exclusively protect the environment; on the contrary, the rule made it more
2 likely road paving would occur, creating additional impacts and reducing future environmental review
3 and mitigation requirements. *See id.* at 1246-47. The court thus looked beyond the rule’s stated goal—
4 the reduction of PM10 from road dust—and considered the other potential environmental impacts that
5 might result from compliance with the rule. *See id.* at 1245. In *Big Trees*, the court similarly found
6 insufficient evidence to support reliance on the Class 8 exemption because the city’s amendments to a
7 tree protection ordinance reduced protections for certain trees. 241 Cal.App.4th at 707-13.

8 The County’s reliance on the Class 8 exemption here fails for similar reasons. The County
9 selected thresholds with the goal of incentivizing residential development in particular locations by
10 maximizing exemptions from VMT analysis and mitigation requirements. *See* AR 477, 937. The 110-
11 ADT screening threshold would similarly exempt 30,860 potential dwelling units, or 50% of the General
12 Plan’s residential potential, from SB 743. AR 614. Again, taken together, these thresholds exempt nearly
13 three-quarters of potential dwelling units from VMT mitigation and review. As a result, like the rule in
14 *CURE*, the TSG will incentivize developers to take actions that affect the environment—and it will do
15 so by exempting developments from the very CEQA analysis it claims to implement. Moreover, by
16 exempting the vast majority of residential development in unincorporated areas from mitigation
17 requirements, the TSG could *increase* VMT, and thus GHG emissions, compared to the existing
18 regional average.⁶ The TSG thus both increases environmental impacts and weakens existing CEQA
19 review, precluding reliance on the Class 8 exemption. *See Big Trees*, 241 Cal.App.4th at 707.

20 **2. The Cumulative Impact Exception to Categorical Exemptions Applies.**

21 Even if the Class 8 exemption did apply to adoption of the TSG, the cumulative impacts
22 exception would preclude reliance on it here. An agency may not rely on a categorical exemption where
23 “the cumulative impact of successive projects of the same type in the same place, over time is
24 significant.” Guidelines § 15300.2 (b). Factual issues underlying the agency’s determination are

25 ⁶ County staff estimates that existing average unincorporated County VMT is 32.54 miles per capita,
26 while average VMT across the San Diego region is only 21.85 miles per capita. AR 145. A 15%
27 reduction from the unincorporated County average (85% of 32.54) yields 27.66 miles per capita.
28 Therefore, using the unincorporated County average as the baseline results in areas being deemed VMT-
efficient, project impacts being deemed less than significant, and mitigation requirements being waived
for projects that could *increase* VMT by nearly six miles per capita over the existing regional average.

1 reviewed for substantial evidence. *Aptos Residents Association v. County of Santa Cruz* (2018) 20
2 Cal.App.5th 1039, 1049. Here, however, the County did not make a factual determination as to whether
3 the cumulative impacts exception applies. Rather, the County found that none of the exceptions applies
4 “because the TSG does not authorize, ban or exempt any development” and because the County claims
5 future projects will be reviewed and impacts mitigated. AR 9, 522. These are legal conclusions, which
6 this Court reviews de novo. *See City of Marina*, 39 Cal.4th at 355-56.

7 To begin, the County’s conclusions are baseless. The TSG and associated thresholds were
8 *designed* to “screen out” nearly three quarters of General Plan residential development capacity.
9 Although the County claims these projects’ environmental impacts will be reviewed in the future (AR 9,
10 522), the County’s own documents repeatedly state that the TSG and thresholds will “exempt” screened
11 projects from VMT analysis and mitigation. *See, e.g.*, AR 326, 616-618, 932. In many cases, an
12 exemption from VMT analysis may mean that the entire project is exempt from CEQA review. And
13 even if a screened project is not exempt from CEQA, its transportation impacts will not be analyzed or
14 mitigated. The County’s assertion that it will consider substantial evidence of significant impacts (AR
15 522) notwithstanding its explicit effort to “screen out” and “exempt” favored development rings hollow.

16 The cumulative impact of these exemptions clearly puts the TSG within the scope of the
17 exception. These exemptions will all occur within San Diego County and their resulting environmental
18 impacts will only compound over time. *See Santa Monica Chamber of Commerce v. City of Santa*
19 *Monica* (2002) 101 Cal.App.4th 786, 797-98 (successive preferential parking permits within the City’s
20 borders satisfied the “same place” requirement under the exception). The exemptions are also all related
21 to mitigation for VMT caused primarily by residential development and therefore are of the same type.
22 *See id.* Screening out thousands of dwelling units from any VMT analysis or mitigation is rife with
23 potential impacts, including increased GHG and conventional air pollutant emissions. *See* AR 528-529.

24 This is a classic example of an action where the individual contribution of one small project may
25 not be significant, but the collective contributions of literally thousands of projects may become highly
26 significant. Guidelines § 15355; *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124
27 Cal.App.4th 1184, 1217-18. If not addressed here, the compounding environmental impacts on San
28 Diego County will be exempt from analysis and mitigation. These foreseeable cumulative impacts

1 preclude reliance on a categorical exemption here.

2 **3. The “Common Sense” Exemption Does Not Apply.**

3 The County bears the burden of showing that the common sense exemption applies. *See Muzzy*
4 *Ranch Co.*, 41 Cal.4th at 386; *California Farm Bureau Federation v. California Wildlife Conservation*
5 *Board* (2006) 143 Cal.App.4th 173, 186. This exemption applies only where “it can be seen with
6 certainty that there is no possibility that the activity in question may have a significant effect on the
7 environment.” Guidelines § 15061(b)(3). “[It] is reserved for those obviously exempt projects where its
8 absolute and precise language clearly applies.” *California Farm Bureau Federation*, 143 Cal.App.4th at
9 194 (internal quotations omitted); *see also Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th
10 106, 117 (“If legitimate questions can be raised about whether the project might have a significant
11 impact . . . the agency cannot find with certainty that a project is exempt.”).

12 In *California Farm Bureau Federation*, the court found that the common sense exemption did
13 not apply to state agencies’ acquisition of a conservation easement that required restoration of wildlife
14 habitat on agricultural land. *See* 143 Cal.App.4th at 194-96. The court found the project would actually
15 involve physical reshaping of the land and alter drainage patterns, which could lead to effects on
16 neighboring property and water supply as well as health concerns due to a potential increase in the
17 mosquito population. *See id.* at 195. Thus, the court held the exemption inapplicable because the
18 agencies could not show with a certainty the environmental impacts were insignificant. *Id.* at 196.

19 Here, the County has not even tried to make the necessary showing. Nor could it on this record.
20 The County feebly asserts that any impacts from the TSG will result from either SB 743 itself or future
21 land use approvals. *See* AR 9. But the County affirmatively chose to adopt thresholds designed to
22 incentivize certain kinds of development in particular locations by reducing mitigation requirements. *See*
23 AR 457 (“Options B and C screen out more units and would likely facilitate housing projects.”). At the
24 very least, the County’s decisions will cause transportation impacts to go unmitigated. Other potential
25 environmental impacts from the development the County seeks to promote include increased traffic,
26 grading and sloping land, or harm to local and endangered species. The County cannot show to a
27 certainty that it is impossible for adoption of the TSG and thresholds to cause significant environmental
28 impacts. Accordingly, this project falls outside the scope of the common sense exemption.

1 **III. The Court Should Declare that the County’s Actions Conflict with the Purpose of SB 743.**

2 In addition to a writ of mandate ordering the County to set aside its adoption of the TSG,
3 Petitioners seek a declaratory judgment that the County’s thresholds contravene SB 743. Declaratory
4 relief is appropriate here. *See* Cal. Code Civ. Proc. § 1060. “An action for declaratory relief lies when
5 the parties are in fundamental disagreement over the construction of particular legislation, or they
6 dispute whether a public entity has engaged in conduct or established policies in violation of applicable
7 law.” *Alameda County Land Use Association. v. City of Hayward* (1995) 38 Cal.App.4th 1716, 1723. An
8 “actual controversy” is “one which admits of definitive and conclusive relief by judgment within the
9 field of judicial administration, as distinguished from an advisory opinion upon a particular or
10 hypothetical state of facts.” *Selby Realty Co. v. City of San Buenaventura* (1973) 10 Cal.3d 110, 117.

11 There is an actual controversy between the parties here as to SB 743’s requirements. The
12 County’s thresholds—designed to exempt as many projects as possible from what the County perceived
13 as a burden of VMT analysis and mitigation—run directly counter to the Legislature’s manifest intent.
14 SB 743, like the landmark pieces of legislation preceding it, “signaled [the Legislature’s] commitment to
15 encouraging land use and transportation planning decisions and investments that reduce vehicle miles
16 traveled” and “contribute to the reductions in greenhouse gas emissions required” to meet the state’s
17 climate goals. SB 743, § 1(a)(1). The Legislature thus sought to shift CEQA analysis of transportation
18 impacts away from “automobile delay” and “congestion management” and toward “[n]ew
19 methodologies . . . that are better able to promote the state’s goals of reducing greenhouse gas emissions
20 and traffic-related air pollution.” *Id.*, § 1(a)(2), (b)(2); *see also* § 21099(b)(1).

21 For the reasons discussed *supra*, the County’s implementation of SB 743 turns the Legislature’s
22 intent on its head. First, the County’s decision to choose the unincorporated area as the baseline against
23 which “reductions” in VMT will be measured could actually *increase* VMT across the San Diego region
24 without any analysis or mitigation whatsoever. Second, the County selected a “small project” screening
25 threshold that ended up perversely exempting all General Plan residential development capacity in rural
26 and semi-rural areas from VMT requirements—even though these areas have some of the County’s
27 longest trips and highest VMT. AR 1401, 1450.

28 The main purpose of SB 743 was to use the CEQA process—which at its core requires

1 identifying significant impacts and adopting feasible mitigation or alternatives to reduce or avoid those
2 impacts—to help fight the climate crisis. But in adopting the TSG and thresholds, the County has
3 thwarted that purpose, seeking at every turn to exempt as much planned development as possible from
4 VMT analysis and mitigation requirements. Petitioners thus respectfully ask that this Court declare the
5 TSG and thresholds in fundamental conflict with the purpose and intent of SB 743.

6 **CONCLUSION**

7 For the foregoing reasons, the County’s adoption of the TSG and thresholds was a prejudicial
8 abuse of discretion and must be set aside. The Court also should declare that the County’s
9 implementation of SB 743 conflicts with and impedes the statute’s purpose.

10 DATED: August 6, 2021

SHUTE, MIHALY & WEINBERGER LLP

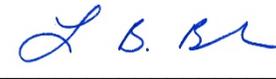
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1 **PROOF OF SERVICE**

2 *Cleveland National Forest Foundation, et al. v. County of San Diego, et al.*
3 **Case No. 37-2020-00031320-CU-WM-CTL**
4 **San Diego County Superior Court**

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

8 On August 6, 2021, I served true copies of the following document(s) described as:

9 **PETITIONERS' OPENING BRIEF**

10 on the parties in this action as follows:

11 **SEE ATTACHED SERVICE LIST**

12 **BY E-MAIL OR ELECTRONIC TRANSMISSION:** Based on a court order or an agreement
13 of the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent
14 from e-mail address Weibel@smwlaw.com to the persons at the e-mail addresses listed in the Service
15 List. I did not receive, within a reasonable time after the transmission, any electronic message or other
16 indication that the transmission was unsuccessful.

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

19 Executed on August 6, 2021, at Union City, California.

20 

21 _____
22 David Weibel

1 **SERVICE LIST**

2 ***Cleveland National Forest Foundation, et al. v. County of San Diego, et al.***
3 **Case No. 37-2020-00031320-CU-WM-CTL**
4 **San Diego County Superior Court**

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EXHIBIT B

Resolution No.: 20-082
Meeting Date: 06/24/2020 (06)

RESOLUTION OF THE COUNTY OF SAN DIEGO BOARD OF SUPERVISORS ADOPTING THE TRANSPORTATION STUDY GUIDE INCLUDING TRANSPORTATION THRESHOLD OF SIGNIFICANCE FOR VEHICLE MILES TRAVELED, DATED JULY 1, 2020, AND SUSPENSION OF LOCAL TRANSPORTATION IMPACT FEE PURSUANT TO COUNTY CODE 77.216

WHEREAS, Governor Edmund G. Brown signed Senate Bill (SB) 743 in 2013, which directed the Office of Planning and Research (OPR) to develop updated criteria for measuring transportation impacts pursuant to the California Environmental Quality Act, Public Resources Code section 21000, et seq. (CEQA) using alternative metrics that promote a reduction in greenhouse gasses, the development of multimodal transportation, and a diversity of land uses; and

WHEREAS, the California Natural Resources Agency (Agency) has certified and adopted changes to the CEQA Guidelines (14 California Code of Regulations section 15000 et seq.) that identify vehicle miles traveled (VMT) as the most appropriate metric to evaluate a project's transportation impacts; and

WHEREAS, OPR released a Technical Advisory on Evaluating Transportation Impacts in CEQA dated December 2018; and

WHEREAS, in order to comply with the requirements of SB 743 and CEQA Guidelines section 15064.3, the County has prepared the Transportation Study Guide for consideration by the Board of Supervisors; and

WHEREAS, the Transportation Study Guide includes and outlines the County's VMT significance thresholds, screening criteria, and methodology for conducting the transportation VMT Analysis in compliance with SB 743 and CEQA Guidelines section 15063.4; and

WHEREAS, in accordance with CEQA Guidelines Section 15064.7(b), the Transportation Study Guide was developed through a public review process supported by substantial evidence; and

WHEREAS, County Code section 77.209 establishes a local TIF fee, separate and apart from the RTCIP fee, and County Code section 77.216 provides that adjustments to the TIF fees may be made by resolution amending the Fee Rate Tables contained in the TIF Report; and

WHEREAS, to the extent the current local TIF fee has been established to mitigate LOS impacts determined pursuant to CEQA, it is recommended that those fees be suspended for projects set out for public review on or after July 1, 2020 pending review to determine the appropriate basis and amount of fees applicable to development in the County; and

WHEREAS, on May 15, 2020, the Planning Commission held a duly advertised public hearing on the Transportation Study Guide and VMT thresholds of significance; and

WHEREAS, on May 15, 2020, the Planning Commission has made its detailed recommendations concerning the above item; and

WHEREAS, prior to making its recommendation to approve the project, the Planning Commission reviewed and found that this action complies with the California Environmental

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Quality Act (CEQA) and State and County CEQA Guidelines because this resolution for adoption of the Transportation Study Guide is: (1) not a project as defined in Public Resources Code section 21065 and CEQA Guidelines section 15378, and is therefore not subject to CEQA pursuant to CEQA Guidelines section 15060(c); and because this action is considered ministerial, pursuant to Section 21080(b)(1) of the Public Resources Code, as the County is mandated to comply with Senate Bill 743 and CEQA Guidelines section 15064.3; and

WHEREAS, prior to making its recommendation to approve the project the Planning Commission separately and independently reviewed and found that, if the adoption of the Transportation Study Guide is a project, it is categorically exempt pursuant to section 15308 of the CEQA Guidelines because this action will enhance and protect the environment; and subject to the common sense exemption, CEQA Guidelines section 15061(b)(3), because the guide implements existing law and therefore it can be seen with certainty that there is no possibility that it may have a significant effect on the environment; and

WHEREAS, on June 24, 2020, the Board of Supervisors, pursuant to CEQA Guidelines section 15064.7 held a duly advertised public hearing on the Transportation Study Guide, which includes the County's VMT threshold of significance; and

WHEREAS, on June 24, 2020, the Board of Supervisors upon its independent review and within its independent discretion has made findings pursuant to Recommendation 1 of the Board of Supervisors Planning Report for the project and included in the Notice of Exemption dated June 24, 2020, as set forth in Exhibit A attached hereto and incorporated by this reference herein, that the project complies with the California Environmental Quality Act pursuant to Public Resource Code sections 21065 and 21080(b)(1) and CEQA Guidelines sections 15378, 15060(c), 15308, and 15061(b)(3), and no exceptions to these exemptions pursuant to CEQA Guidelines section 15300.2 apply,

NOW THEREFORE BE IT RESOLVED that the Board of Supervisors takes the following action:

1. Adopt the VMT thresholds, significance criteria, methodology and substantial evidence as identified in the Transportation Study Guide dated June 2020 (Attachment B), together with all changes approved by the Board upon completion of the public hearing referenced herein.

BE IT FURTHER RESOLVED that the Board of Supervisors finds that the VMT threshold of significance is supported by substantial evidence in the record and is consistent with the San Diego County General Plan in that the goals, objectives, and policies of all the elements of the plan have been or will be met.

BE IT FURTHER RESOLVED that the local TIF fee established by County Code section 77.209 shall be reduced to zero for all projects with CEQA documents set out for public review on or after July 1, 2020 until such time as the Board of Supervisors adopts a revised fee in accordance with applicable law; provided, however, (1) that the RTCIP Impact Fee shall continue to be collected as a separate component and shall not be reduced pursuant to this action and (2) that permits associated with discretionary approvals including subdivisions, site plans or major use permits that have relied on a Certified Environmental Impact Report, or Mitigated Negative Declaration/Negative Declaration or other environmental document set out for public review prior to July 1, 2020 and required to pay TIF as a condition of approval shall continue to be subject to the local portion of the TIF.

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BE IT FURTHER RESOLVED that this Resolution shall take effect and be in force on July 1, 2020.

APPROVED AS TO FORM AND LEGALITY
COUNTY COUNSEL

By: Brooke Miller, Senior Deputy County Counsel

EXHIBIT A

The proposed resolution complies with the California Environmental Quality Act (CEQA) and State and County CEQA Guidelines because the resolution is: (1) not a project as defined in the Public Resources Code section 21065 and CEQA Guidelines section 15378, and is therefore not subject to CEQA pursuant to CEQA Guidelines sections 15060(c); (2) considered ministerial, pursuant to Section 21080(b)(1) of the Public Resources Code, as the County is mandated to comply with Senate Bill 743; (3) separately and independently, is categorically exempt pursuant to section 15308 of the CEQA Guidelines because this action will enhance and protect the environment; and (4) subject to the common sense exemption, CEQA Guidelines section 15061(b)(3), because the resolution implements existing law and therefore it can be seen with certainty that there is no possibility that it may have a significant effect on the environment. No exceptions to these exemptions pursuant to CEQA Guidelines section 15300.2 apply.

The adoption of the proposed resolution updating the TSG is not a "project" as defined in Public Resources Code section 21065 and CEQA Guidelines sections 15378 and 15060(c)(3) and is therefore not subject to CEQA. A project, as defined by CEQA, is the whole of an action that has the potential to result in either a direct or physical change or reasonably foreseeable indirect physical change to the environment. Adoption of the resolution is consistent with the requirements of State law under SB 743 and does not authorize or ban any development, open any new areas to development or exempt any project from CEQA review, and therefore has no potential to cause a physical change in the environment. An action that restates or codifies existing law is not a project under CEQA because it has no potential to cause a physical change in the environment.

CEQA Guidelines section 15378(b)(1) states that a project does not include "proposals for legislation to be enacted by the State Legislature." The proposal to update the TSG is due to the passage of State Senate Bill (SB) 743. Upon certification of new CEQA Guideline section 15064.3, SB 743 (Public Resources Code section 21099) provides that traffic congestion, as measured by LOS, is no longer considered a potentially significant impact. Instead of LOS, SB 743 and Guideline 15064.3 provide that the amount of driving, as measured by VMT, is the most appropriate measure of transportation impacts. Guideline 15064.3 states that for land use projects, projects within specified proximity to transit or that decrease VMT in the project area compared to existing conditions should be presumed to have a less than significant transportation impact. Guideline 15064.3 implementing SB 743 goes into effect statewide July 1, 2020 and is required to be adhered to by any Lead Agency in California, including the County of San Diego. Therefore, as the proposed TSG implements legislation enacted by the State, the action is not a project under CEQA.

Adoption of the TSG would also be considered ministerial, and is therefore not a project pursuant to Section 21080(b)(1) of the Public Resources Code, as the County is mandated to comply with Senate Bill 743 and CEQA Guidelines section 15064.3. CEQA Guideline section 15378(b)(5) also excludes from the definition of "project" "administrative activities of governments that will not result in direct or indirect physical changes in the environment."

Separately and independently, even if the action constitutes a project under CEQA, it would be categorically exempt pursuant to Section 15308 of the CEQA Guidelines. This categorical exemption consists of actions taken by agencies as authorized by state or local ordinance to assure the enhancement or protection of the environment where the regulatory process involves procedures for the protection of the environment. The proposed updates to the TSG comprise several options for the PC and BOS to consider; however, all these actions would

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result in the application of VMT as directed by SB 743. SB 743 specifically requires that the revised Guidelines establishing criteria for determining the significance of transportation impacts shall promote the reduction of greenhouse gas (GHG) emissions from vehicles. By adopting the TSG in accordance with SB 743 and Guideline 15064.3, this action will enhance and protect the environment because it will require discretionary projects to evaluate VMT. The VMT methodology supports three statutory goals: "the reduction of greenhouse gas emissions, the development of multi-modal transportation networks, and a diversity of land uses." (Pub. Resources Code, § 21099, subd. (b)(1)). These three goals would be supported by the County's implementation of the TSG and thus would constitute an action that protects and enhances the environment.

Finally, even if the action constitutes a project under CEQA, because the TSG implements existing law it can be seen with certainty that there is no possibility that it may have a significant effect on the environment, since any effects would have occurred due to the change in State law, and therefore the subject to the common sense exemption, CEQA Guidelines section 15061(b)(3). Moreover, any future development projects subject to the TSG will also be subject to existing General Plan and zoning requirements, and therefore the adoption of the TSG will not create any additional impacts. None of the exceptions to the exemptions apply (Section 15300.2 of the CEQA Guidelines) because the TSG does not authorize, ban or exempt any development and therefore will not cause impacts to scenic highways, hazardous waste sites or historical resources, and because the TSG requires identification of the significant transportation impacts of any project subject to CEQA, including projects below the threshold of significance if there is substantial evidence that the project may still have significant impacts, and requires projects to mitigate their significant effects, including their cumulative impacts.

ON MOTION of Supervisor Jacob, seconded by Supervisor Gaspar, the above Resolution was passed and adopted by the Board of Supervisors, County of San Diego, State of California, on this 24th day of June 2020, by the following vote:

AYES: Cox, Jacob, Gaspar, Desmond
NOES: Fletcher

- - -

STATE OF CALIFORNIA)
County of San Diego)^{SS}

I hereby certify that the foregoing is a full, true and correct copy of the Original Resolution entered in the Minutes of the Board of Supervisors.

ANDREW POTTER
Clerk of the Board of Supervisors

By:  _____
Joana Santiago, Deputy



Resolution No. 20-082
Meeting Date: 06/24/2020 (06)



September 12, 2021

San Diego County Board of Supervisors
1600 Pacific Highway, Room 402
San Diego, CA 92101
Attn: Clerk of the Board

Via Electronic Mail
publiccomment@sdcounty.ca.gov
LSDOCS@sdcounty.ca.gov

RE: Agenda Item 1: Rescission of Transportation Study Guide
CERF Comments in Support and Request for Protective Screening Criteria

Dear Chair Fletcher and Members of the Board:

Please accept the following comments regarding the County's rescission and potential updates to the Transportation Study Guide (TSG) on behalf of the Coastal Environmental Rights Foundation. CERF is a nonprofit environmental organization founded by surfers in North San Diego County and active throughout California's coastal communities. CERF was established to aggressively advocate, including through litigation, for the protection and enhancement of coastal natural resources and the quality of life for coastal residents.

First and foremost, as a petitioner in the pending lawsuit¹ challenging the County's TSG, CERF feels a sense of gratification in accomplishing its litigation goals. Chief among them is the County's rescission of the TSG. Equally important is the County's admission that its baseline must include the entire region, not just the unincorporated county.

As environmentalists have noted from the beginning, the Office of Planning and Research (OPR) Technical Advisory on SB 743 was always clear: residential development VMT should be measured against "the region or the city." (Technical Advisory, p. 15). The Technical Advisory explained, a case-by-case analysis would be appropriate for non-Metropolitan Planning Organization (MPO) counties. (Id., p. 19). OPR further cautioned, "[i]n MPO areas, development in unincorporated areas measured against aggregate city VMT per capita (rather than regional VMT per capita) should not cumulatively exceed the population or number of units specified in the SCS for that city because greater-than-planned amounts of development in areas above the regional threshold would undermine achievement of regional targets under SB 375." (Id., p. 15). Attaining regional transportation plan targets and regional VMT reductions by excising the most VMT-efficient areas from the analysis is exactly what OPR advised against, and precisely what the County did. OPR recently clarified what everyone (including the County) already knew:

In the VMT Technical Advisory, does the term "regional" refer to the MPO/RTPA?

Yes. As used in the VMT Technical Advisory, "regional" refers to the full geography within the jurisdictional borders of a metropolitan planning organization (MPO) or a regional transportation planning agency (RTPA). Comparing a project's VMT per capita or VMT per employee to that of the

¹ San Diego Superior Court Case No. 37-2020-00031320-CU-WM-CTL, [Cleveland National Forest Foundation et. al. vs. County of San Diego](#)



entire region (i.e., MPO or RTPA) or entire city allows a lead agency to better align with the state's climate commitments. Comparison to only a portion of the region or city could result in a less environmentally protective significance threshold, potentially disconnecting significance determinations from those commitments. For example, comparing a project to only the unincorporated areas of a county, or just a select portion of a county, may exclude lower VMT areas. However, thresholds that vary by location, but where each threshold is more environmentally protective than a region- or city-based threshold, would still be aligned with state climate commitments.²

The County intentionally chose to ignore the Technical Advisory. The County's consultant informed County staff that "regional" included the incorporated cities before the TSG was finalized and adopted. Motivated by a desire to ensure most development projects came under the threshold, the County nonetheless adopted the flawed TSG.

CERF also acknowledges the mess the current Board must clean up was not of its making. The prior Board was clearly motivated to make the required California Environmental Quality Act (CEQA) transportation analysis more lenient in order to enable more development. The resultant environmental impacts and legality of the TSG were not critical factors in the analysis. And yet, it has taken over a year since the lawsuit was filed and multiple hearings to achieve rescission of the TSG. As the board letter implies with a reference to the recent closed session, the impending October 1st hearing in the TSG lawsuit has clearly motivated the Board's anticipated action. (Board Letter, p. 1).

But more is necessary. California is burning - again. The summer is the hottest on record - again. Our frontline communities continue to bear the brunt of climate change.³ As one climate scientist recently noted in a Union of Concerned Scientists article:

"To make a real difference in tackling climate change and ozone pollution, we need to center the frontline communities that feel these burdens the hardest," said Dr. Rachel Licker, a senior climate scientist at UCS. "As climate change progresses, the climate penalty grows, making it increasingly difficult to achieve national ozone standards. In other words, **the longer we wait, the bigger the challenge gets. To safeguard people's health, we need to take swift and aggressive action to reduce heat-trapping emissions.** We also hope others will do more local analyses like this to inform policymakers who can deploy the necessary public health resources."⁴

At the last Board hearing on the TSG in May, the Board was put on notice that OPR was updating its guidance to clarify that regional meant regional, as alleged in the TSG lawsuit. The Board delayed action. Now, on the eve of the trial court hearing, the Board is poised to rescind the TSG, leaving it up to project applicants to develop their own thresholds of significance. What will the County apply as its screening criteria? Will it continue to apply the 110 average daily trip (ADT) screening threshold of the TSG? To do so would only contribute to the challenge ahead.

² OPR SB 743 FAQ, available at <https://opr.ca.gov/ceqa/updates/sb-743/faq.html#VMT-TA-regional>

³ See, for example: Extreme Heat Is Worse For Low-Income, Nonwhite Americans, A New Study Shows, available at <https://www.npr.org/2021/07/14/1015983700/extreme-heat-is-getting-worse-for-low-income-non-white-americans-a-new-study-sho>

⁴ New Analysis Finds Climate Change Worsens Harmful Ozone Levels in Colorado's Front Range: Frontline Communities Disproportionately Bear the Burden, available at <https://ucsusa.org/about/news/new-analysis-climate-change-worsens-ozone-colorado-front-range> (emphasis added)

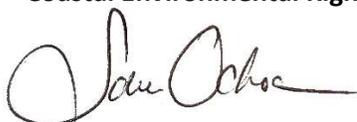
In parts of Ramona, the average VMT per resident is 68.06. In Pine Valley, it's 90.27. In parts of Jamul, 63.68. The regional average VMT is 21.85 VMT per resident. A project using the 110 ADT screening criteria in these areas can result in three to five times more VMT *per resident* than a project in the incorporated cities or VMT efficient areas. At a time when bold, swift action is needed to address climate change and meet the County's expressed carbon neutrality goals, application of the same screening criteria in the urban core and the unincorporated County does not make sense. When traffic accounts for half of the County's greenhouse gas emissions, incentivizing projects that increase VMT and GHG emissions is illogical.

Application of the regional VMT baseline to modify the 110 ADT screening criteria would result in a measurable decrease in VMT. Continued delay to enable development projects in the wrong place, without necessary resources only exacerbates climate change and social inequities. We urge the County to rescind the TSG and take swift action to adopt a screening criteria that truly measures transportation impacts and moves the County closer to meeting its climate goals.

Thank you for consideration of our comments.

Sincerely,

Coastal Environmental Rights Foundation



Sara Ochoa
Programs Director

Enc. CERF Prior Comments dated June 8, 2020, June 23, 2020, and May 18, 2021



May 18, 2021

San Diego County Board of Supervisors
1600 Pacific Highway, Room 402
San Diego, CA 92101
Attn: Clerk of the Board

Via Electronic Mail
publiccomment@sdcounty.ca.gov
LSDOCS@sdcounty.ca.gov

RE: Agenda Item 1: Update on Implementing SB 743 Transportation Study Guidelines
CERF Comments in Support of Revisions and Updates to Analysis

Dear Chair Fletcher and Members of the Board:

Please accept the following comments regarding the County's implementation and potential updates to the Transportation Study Guidelines (TSG) on behalf of the Coastal Environmental Rights Foundation. CERF is a nonprofit environmental organization founded by surfers in North San Diego County and active throughout California's coastal communities. CERF was established to aggressively advocate, including through litigation, for the protection and enhancement of coastal natural resources and the quality of life for coastal residents.

CERF is encouraged to see the Board's reconsideration of its TSG, which are based on a flawed analysis and were approved in contravention of the California Environmental Quality Act (CEQA). CERF is a petitioner in the lawsuit challenging the County's approval of the TSG for violations of CEQA.¹ The fate of the County's TSG (as its Climate Action Plan) may well be decided by the courts. Nonetheless if the County fails to correct course now, it will lose precious time in developing revised guidelines and criteria, resulting in setbacks to the County's quest to reduce its greenhouse gas (GHG) emissions. Likewise, rushing into flawed standards, unsupported by the facts or the law, will only exacerbate existing social and environmental injustices.

As detailed below, staff have done a disservice to the Board, failing to provide viable alternatives to the status quo. Instead, staff have conflated regional housing needs with environmental review. Hyperbole and foreshadowed dire consequences of compliance with state laws is not substantial evidence. The only legally, factually defensible threshold is the one dictated by the Office of Planning and Research (OPR): a switch to regional baseline for vehicle miles traveled (VMT) analysis. The 110 ADT criteria must also be modified, but staff have given no data or evidence to help the Board with such a change in direction. CERF offers some options below, but hopes next time the Board considers this issue, staff will provide the Board with options, not exaggerations.

1. CEQA Review and the TSG Guidelines

It is important to note that CEQA review is not an all-or-nothing exercise. The staff analysis presents only two options: development can be built if it falls under the County threshold and it cannot be built if it exceeds it. This is false.

¹ San Diego Superior Court Case No. 37-2020-00031320-CU-WM-CTL, [Cleveland National Forest Foundation et. al. vs. County of San Diego](#)



CEQA is intended to inform the public and decision-makers of the environmental impacts of projects. CEQA requires any identified impacts to be mitigated where feasible. If impacts cannot be feasibly mitigated, a project may nonetheless be approved with a statement of overriding considerations. Staff has assumed projects which must mitigate VMT impacts would never be built based on another fallacy: that VMT mitigation is financially infeasible.

First, VMT mitigation is Phase 2 of this process. Initially, the County must decide what thresholds indicate a significant impact.² A threshold of significance is “an identifiable quantitative, qualitative or performance level of a particular environmental effect, noncompliance with which means the effect will normally be determined to be significant by the agency and compliance with which means the effect normally will be determined to be less than significant.”³ Staff has provided no information to support such a determination. Rather, staff has backed into a preferred threshold – using the County’s unincorporated average VMT – to ensure more housing is built. This ensures increased environmental impacts because more sprawl housing will be built without meaningful review or mitigation. In all other respects, the County’s proposed approach is analytically divorced from environmental impacts.

Second, staff have hidden behind the fact that VMT mitigation is being developed in Phase 2 to offer precious little in the way of information, facts, or reasoning to support their astronomical mitigation cost estimates. On the other hand, the expensive mitigation estimates enable staff to speculate that projects which must undergo VMT analysis will never be built.

Nonetheless, the limited information offered to the public makes a few things clear. Staff has chosen a flawed methodology which forces new development to pay for all County-wide development. Though the analysis has not been made public, it certainly begs the question of whether the mitigation is roughly proportionate to the impact.

Compounding the issue, the mitigation suite does not appear to include some of the most cost-effective mitigation options. Some principles which may not have been effectively applied include the six “D’s”: Density, Diversity, Design, Destination accessibility, Distance to transit, and Demand management of parking. Case studies applying VMT reduction strategies of shifting mode choice, increasing vehicle occupancy, reducing trip generation, and reducing trip lengths, can be found [here](#)⁴. Though expanding sidewalks and bike lanes is a step in the right direction, a myopic focus on such measures will lead to ineffective mitigation at a high cost.

Instead, mitigation measures which include transit passes, teleworking, affordable housing, increased density, incentivizing mixed-use development, and increased access to grocery stores and other commercial uses within Frontline Communities should be explored. The OPR SB 743 Technical Advisory lists a suite of options:

- Improve or increase access to transit.
- Increase access to common goods and services, such as groceries, schools, and daycare.
- Incorporate affordable housing into the project.
- Incorporate neighborhood electric vehicle network.

² See, CEQA Guidelines §15064.3(b)(1).

³ CEQA Guidelines §15064.7(a).

⁴ [https://opr.ca.gov/docs/Mitigating_Vehicle-Miles_Traveled_\(VMT\)_in_Rural_Development.pdf](https://opr.ca.gov/docs/Mitigating_Vehicle-Miles_Traveled_(VMT)_in_Rural_Development.pdf)

- Orient the project toward transit, bicycle and pedestrian facilities.
- Improve pedestrian or bicycle networks, or transit service.
- Provide traffic calming.
- Provide bicycle parking.
- Limit or eliminate parking supply.
- Unbundle parking costs.
- Provide parking cash-out programs.
- Implement roadway pricing.
- Implement or provide access to a commute reduction program.
- Provide car-sharing, bike sharing, and ride-sharing programs.
- Provide transit passes.
- Shifting single occupancy vehicle trips to carpooling or vanpooling, for example providing ridematching services.
- Providing telework options.
- Providing incentives or subsidies that increase the use of modes other than single-occupancy vehicle.
- Providing on-site amenities at places of work, such as priority parking for carpools and vanpools, secure bike parking, and showers and locker rooms.
- Providing employee transportation coordinators at employment sites.
- Providing a guaranteed ride home service to users of non-auto modes.

Notably, the Technical Advisory notes that because VMT is largely a regional impact, regional VMT-reduction programs may be an appropriate form of mitigation.⁵ In that regard, Communities of Concern, including EJ Communities of North El Cajon, North Lemon Grove, Spring Valley, and Sweetwater and communities within the incorporated cities, including Portside and Border Communities, face more pronounced pollution burdens⁶ and are disproportionately affected by climate change and air quality impacts. Therefore, regional mitigation efforts should prioritize investments within these communities, both within the unincorporated County and incorporated cities. As a VMT-reduction measures, increased access to world-class transit⁷ also addresses multiple inequities, including:

- 1) A car-owner in San Diego can access 30 times more jobs than a public transit user. The median travel time to work of those using transit is double that of drivers.⁸
- 2) Transportation accounts for almost half of the region's GHG emissions.⁹

⁵ OPR Technical Advisory on Evaluating Transportation Impacts in CEQA, p. 27

⁶ <https://bosagenda.sandiegocounty.gov/cob/cosd/cob/doc?id=0901127e80d03378>

(REDUCING COMMUNITY EXPOSURES TO HEALTH HAZARDS BY ESTABLISHING AN OFFICE OF ENVIRONMENTAL AND CLIMATE JUSTICE)

⁷ [https://fdf6c023-5b7d-432c-8dc6-](https://fdf6c023-5b7d-432c-8dc6-5ede15037fd.filesusr.com/ugd/91c4c2_eb13f003098140698147ea03848c4773.pdf?index=true)

[5ede15037fd.filesusr.com/ugd/91c4c2_eb13f003098140698147ea03848c4773.pdf?index=true](https://fdf6c023-5b7d-432c-8dc6-5ede15037fd.filesusr.com/ugd/91c4c2_eb13f003098140698147ea03848c4773.pdf?index=true)

(THE DREAM IS POSSIBLE: World-Class Transit In The San Diego Region)

⁸ Id., p. 3.

⁹ Id.

- 3) Highways, a major source of dangerous pollutants such as ozone, have been routinely constructed through redlined neighborhoods, resulting in disproportionate rates of asthma, heart disease, and other chronic illnesses for those same residents.¹⁰

As a result, all climate investments and especially transportation improvements must be prioritized in communities on the frontlines of the climate crisis.¹¹

In short, once the legally-defensible VMT baseline is in place, staff can instead focus on developing regional VMT mitigation that is equitable, cost-effective, and achieves true VMT reductions.

2. TSG Screening Criteria

The TSG currently include a 110 ADT screening criteria which is inappropriate for the unincorporated County. First, trips within the County result in greater VMT. Therefore, focusing on ADT alone will not capture the true VMT impact of rural and semi-rural projects. Further, in adopting CEQA Guidelines Section 15064.3(a), the Natural Resources Agency clarified “the primary consideration, in an environmental analysis, regarding transportation is the amount and distance that a project might cause people to drive. This captures two measures of transportation impacts: auto trips generated **and** vehicle miles traveled.”¹² The County’s TSG admits as much: “VMT measures the number of vehicle trips generated and the length or distance of those trips.”¹³

For purposes of CEQA Guideline section 15064.3, “ ‘vehicle miles traveled’ refers to the amount and distance of automobile travel attributable to a project.” Therefore, the County’s reliance on only the amount of trips (and not the distance) to set a screening threshold is contrary to the CEQA Guidelines and will result in significant impacts.¹⁴

A defensible approach would be to modify the 110 ADT screening criteria, which is based on the CEQA categorical exemption for existing facilities, including structures up to 10,000 square feet, to account for trip length.¹⁵ This screening criteria is based on a presumption of available public infrastructure and a linear increase in trip generation for existing projects.¹⁶ In a rural area with limited infrastructure and where average VMT can be more than double the regional average, consideration of trips without trip length is indefensible. An alternative approach could consider both:

110 trips X regional average VMT/capita = approximately 2,310 VMT total/project

A project could have longer trips, or more of them, so long as the total VMT for the project stayed within the allocation. This methodology is not the only possible option, but it does approximate the VMT impact of a project and support a presumption that its impact will be less than significant – which a screening criteria aims to do.

¹⁰ Id., p. 10.

¹¹ Id., p. 14.

¹² California Natural Resources Agency Final Statement of Reasons for Regulatory Action Amendments to the State CEQA Guidelines, November 2018, pp. 14-15 [emphasis added].

¹³ TSG, p. 1.

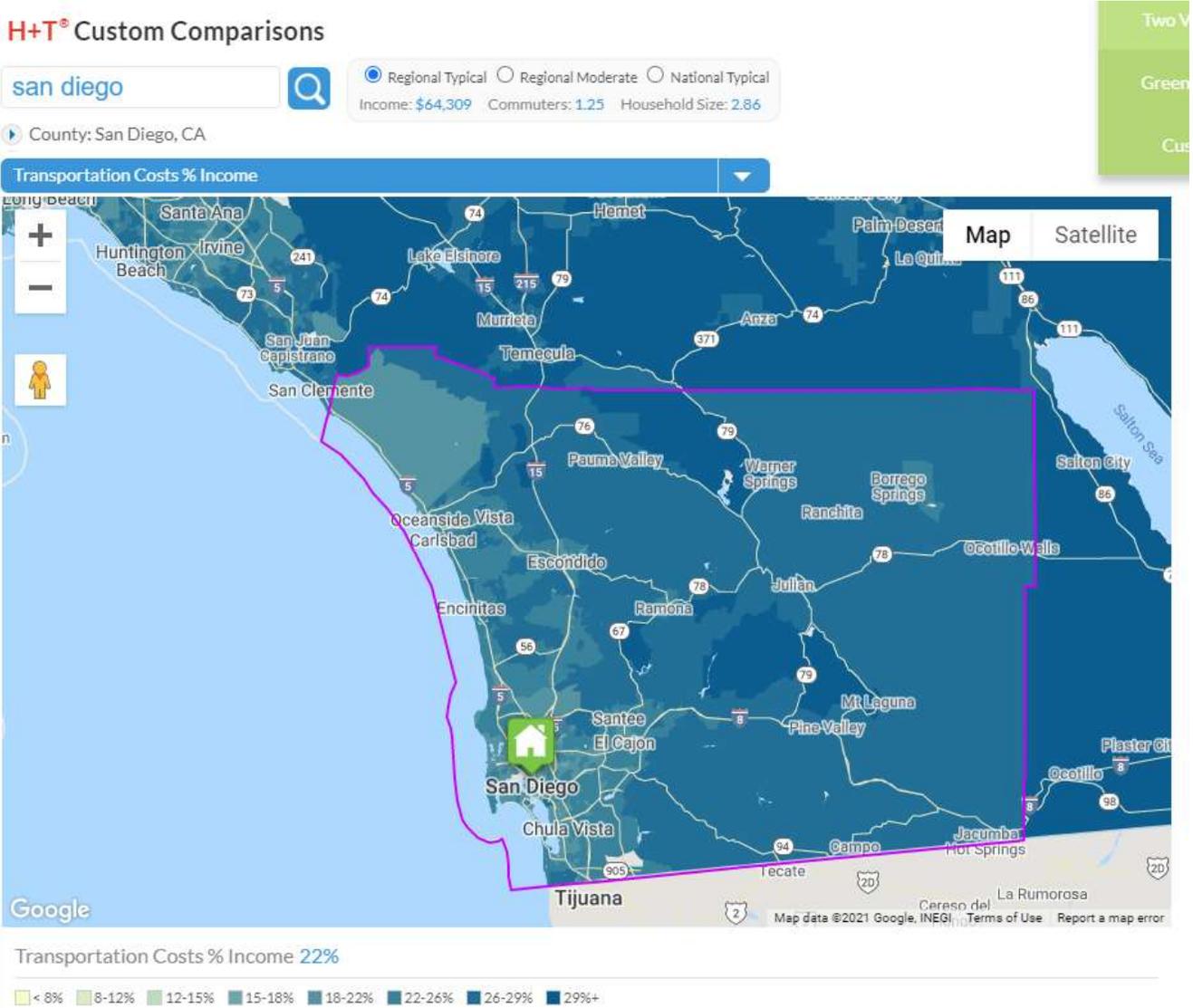
¹⁴ CEQA Guidelines §15064.3(a).

¹⁵ OPR Technical Advisory on Evaluating Transportation Impacts in CEQA, p. 12, footnote 19

¹⁶ Id.

CERF also encourages the County to consider additional screening criteria that incentivize affordable housing near transit.¹⁷ Transportation costs are the second-highest household cost after housing.¹⁸ Therefore, building housing (largely unattainable to Communities of Concern to begin with) in areas far from employment opportunities and amenities exacerbates inequities. Reducing VMTs and increasing mobility also increases societal health and results in additional economic benefits.

On the flip side, research indicates reductions in housing costs associated with sprawl are offset by increasing transportation costs. Generally, the farther east one resides in the County, the greater the transportation costs and VMT.¹⁹

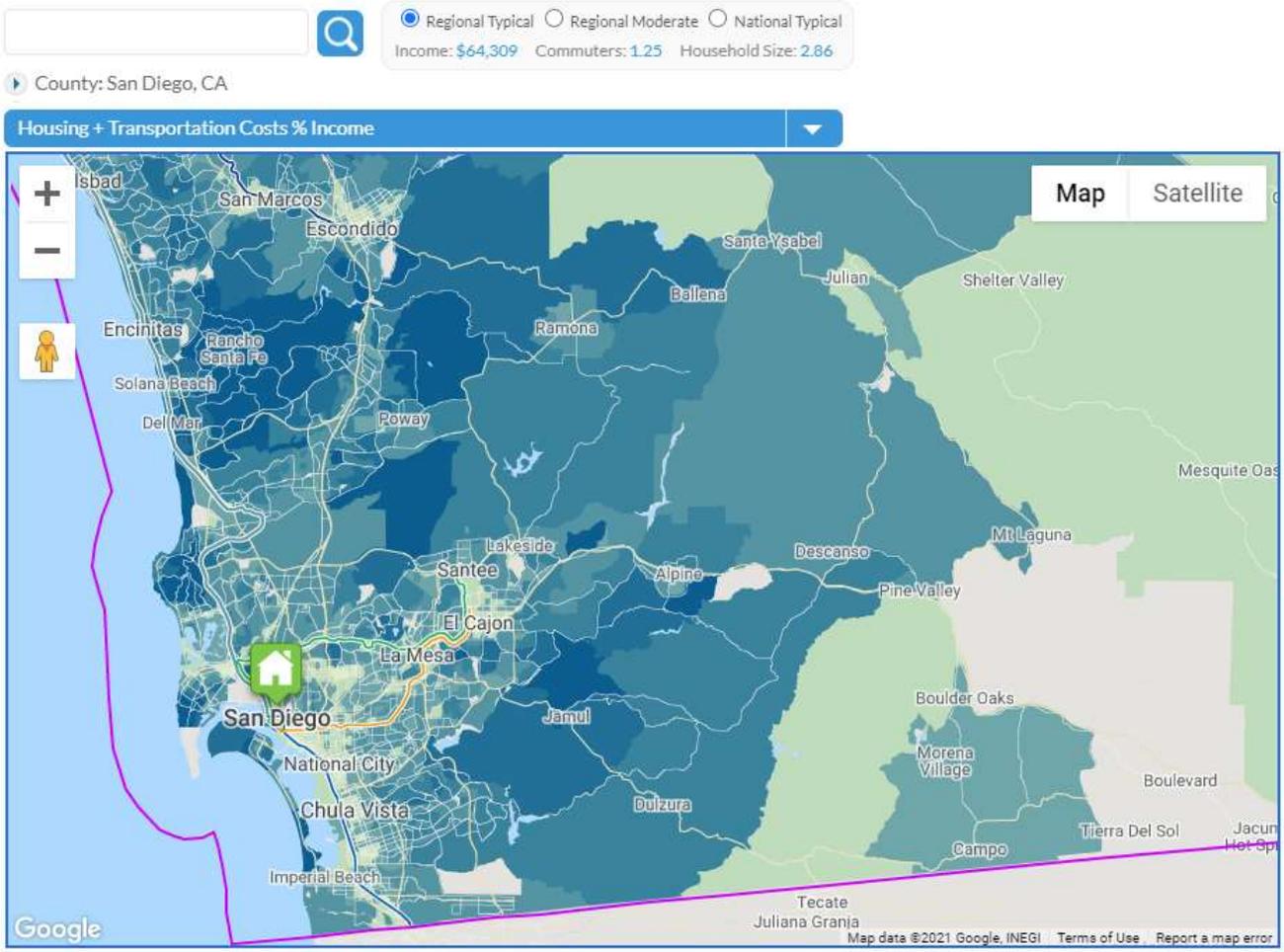


¹⁷ “Lead agencies may develop their own presumption of less than significant impact for residential projects (or residential portions of mixed use projects) containing a particular amount of affordable housing, based on local circumstances and evidence.” (OPR Technical Advisory on Evaluating Transportation Impacts in CEQA, p. 15).

¹⁸ <https://opr.ca.gov/ceqa/updates/sb-743/faq.html#housing-costs>

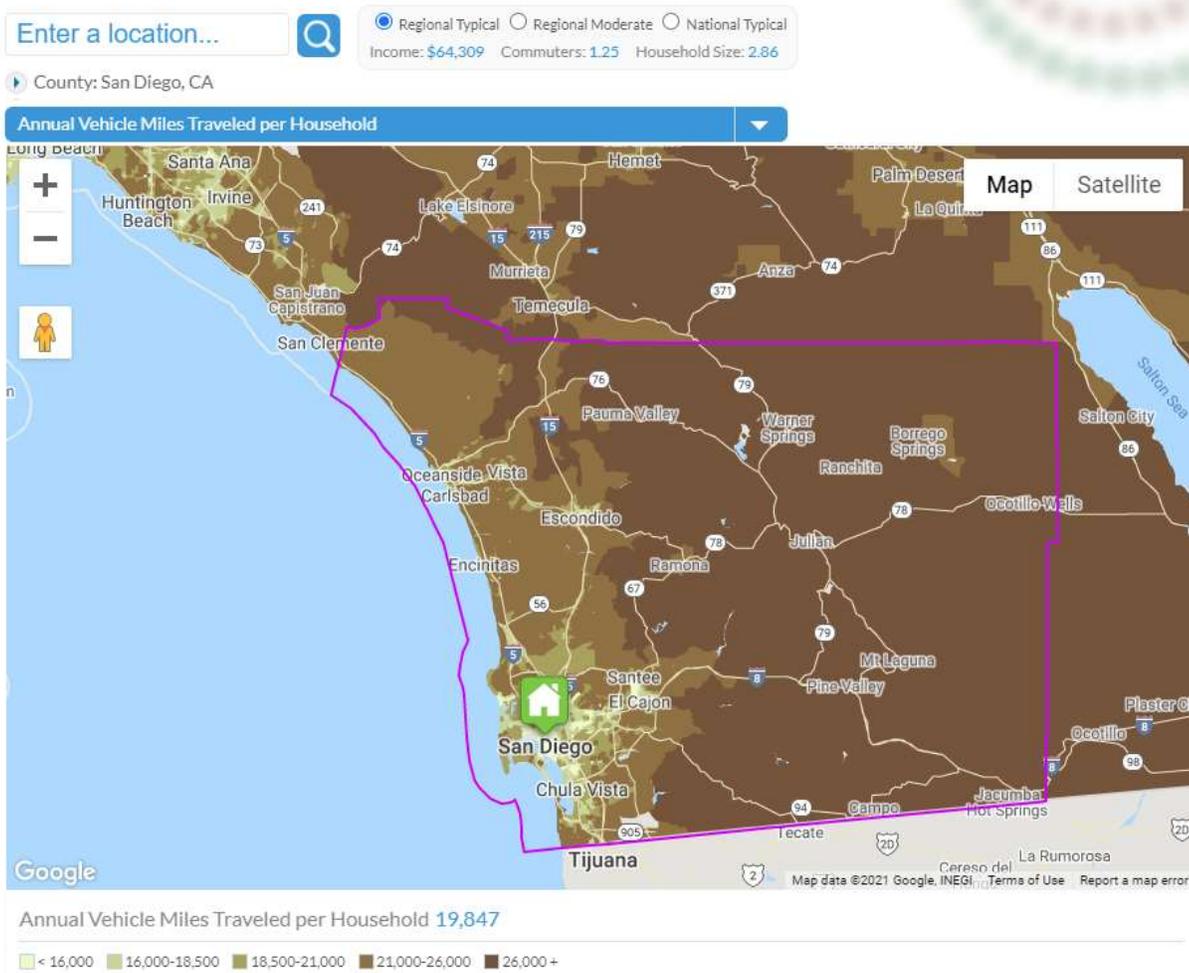
¹⁹ <https://htaindex.cnt.org/>

H+T[®] Custom Comparisons



Housing + Transportation Costs % Income 57%





In short, the current 110 ADT screening criteria results in increased GHG emissions and VMT and fail to prioritize and incentivize projects that decrease VMT (such as affordable housing), not just ADT.

3. *The County Must Revise its TSG*

The County has an opportunity to address the largest source of GHG emissions in the County before the Court orders it to do so. CERF therefore urges the County to realign its Transportation Study Guide with the State’s goals and the Technical Advisory and adopt a significance threshold that is 15% below the average VMT based on the San Diego region (incorporated and unincorporated County). (Question 1: Option B; Question 2: Option A).

CERF also urges the Board to direct staff to provide explore screening criteria that incentivize increases in affordable housing, especially near transit, and result in reduced VMT as well as additional alternatives to the current 110 ADT threshold.

Thank you for consideration of our comments.

Sincerely,

Coastal Environmental Rights Foundation



Sara Kent
Programs Director



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June 23, 2020

San Diego County Board of Supervisors
1600 Pacific Highway, Room 402
San Diego, CA 92101
Attn: Clerk of the Board

Via Electronic Mail

publiccomment@sdcountry.ca.gov
LSDOCS@sdcountry.ca.gov

**RE: Agenda Item 6: SB 743 Transportation Study Guidelines
CERF Comments in Opposition**

Dear Chair Cox and Members of the Board:

Please accept the following comments regarding the County's Transportation Study Guidelines (TSG) on behalf of our client the Coastal Environmental Rights Foundation. CERF is a nonprofit environmental organization founded by surfers in North San Diego County and active throughout California's coastal communities. CERF was established to aggressively advocate, including through litigation, for the protection and enhancement of coastal natural resources and the quality of life for coastal residents.

CERF reiterates its June 8, 2020 comments and once again strongly encourages the County to reconsider its approach to SB 743 compliance. The County's methodology not only undermines the intent of SB 743 and the State's greenhouse gas reduction goals, but also incentivizes inefficient sprawl development. As a result, the County's approach would result in significant environmental impacts, including increased greenhouse gas emissions and air quality impacts. Such impacts have not been analyzed or disclosed as a result of the County's failure to conduct California Environmental Quality Act (CEQA) review in connection therewith.¹

Nonetheless, the staff report admits both geographic boundary Options B and C would result in fewer GHG reductions and more VMT efficient areas (resulting in less project-specific CEQA review and less VMT mitigation). (Staff Report, pp. 13-15). Thus, Options B and C would result in more GHG emissions and greater VMT. The TSG would therefore result in significant GHG and air quality impacts. The County's own documents support this conclusion. In 2011, the County's General Plan EIR concluded air quality impacts would be significant and

¹ Instead, the County relies on a variety of inapplicable and inconsistent exemptions – none of which apply. Numerous commenters have already articulated the problems underlying the County's reliance on the CEQA exceptions.

unavoidable. (General Plan FEIR, p. 2.3-1).² Notably, automobiles were responsible for the majority of air quality impacts:

- [A]ir quality in San Diego County does not meet State and federal health standards for O₃ or the State standard for particulate matter. On-road motor vehicles (car, trucks and buses) are responsible for approximately 60 percent of regional smog-forming emissions. (FEIR, p. 2.3-5)
- [D]uring the last 60 years, new land uses have been arranged in a low-density pattern, fostering almost complete dependence on automobiles for transportation. This dependence has resulted in traffic congestion and air quality problems throughout the County. (*Id.*).
- Although [Toxic Air Contaminant] emissions from stationary sources in San Diego County have been reduced by approximately 82 percent since 1989, large amounts of toxic compounds are still emitted into the air from a wide variety of sources including motor vehicles, industrial facilities, household products, area sources, and natural processes. Motor vehicles and natural sources emit more than 26 million pounds per year (APCD 2007a). (*Id.* at p. 2.3-6).
- Diesel particulates are also emitted from mobile sources such as traffic and temporary construction equipment. Diesel particulates contribute significantly to ambient cancer risk levels. (*Id.*).
- Measures to reduce vehicle trips and miles traveled reduce toxic emissions which result from the burning gasoline. (*Id.* at p. 2.3-7).
- As discussed in Section 2.3.3.2, Issue 2, emissions associated with implementation of the General Plan Update would exceed the SLTs for PM₁₀, PM_{2.5}, NO_X, and VOCs. These emissions would primarily come from vehicles trips associated with new development under the General Plan Update, and equipment and construction materials used during construction of future development and infrastructure. (*Id.* at p. 2.3-21).
- The APCD's Eight-Hour O₃ Attainment Plan for San Diego County (APCD 2007c) recognizes that one of the key contributors to O₃ levels in the County is emissions from motor vehicles. Motor vehicle emissions account for 48 percent of the O₃ precursor emissions in the SDAB, with other mobile sources such as off-road vehicles accounting for an additional 33 percent of the O₃ precursor emissions. (*Id.* at p. 2.3-21-22).
- Current background risks measured in San Diego County are above both the significance threshold of 1 in a million excess cancer risk without T-BACT, and 10 in a million excess cancer risk with application of T-BACT. The risks are mainly attributable to exposure to emissions from on-road vehicles. (*Id.* at p. 2.3-24).

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- Because the number of truck trips and other vehicle trips would increase under the General Plan Update, emissions of diesel particulates would also increase. The current background risk exceeds the significance threshold; therefore, any proposed general plan update would result in a potentially significant impact. (*Id.*).

As reflected in FEIR Table 2.3-9, vehicle emissions accounted for the greatest increase in VOCs, NO_x, CO, SO_x, PM₁₀ and PM_{2.5}. (*Id.* at p. 2.3-47). Since then, the situation has not improved.

“Since certification of the 2011 GPU PEIR in August 2011, more recent ambient background air quality data has been made available by the San Diego Air Pollution Control District (SDAPCD). Changes to the monitoring station concentration data and ambient risk levels in the County have been updated and are described below. Updated attainment designations for the County are also provided; however, this updated information does not substantially change the existing conditions or alter any conclusions previously described for air quality in the 2011 GPU PEIR.” (Climate Action Plan SEIR, p. 2.3-1).

“Air quality impacts with respect to conformance with Federal and State air quality standards, non-attainment of criteria pollutants, and sensitive receptors remained significant and unavoidable.” (SEIR, p. 21-23).

Climate change will only exacerbate these air quality impacts with increasing levels of ozone and particulate matter leading to public health issues. (County CAP, p. 4-3). With its TSG, the County has an opportunity to address increasing VMT and air quality impacts. Instead, the County has presented two options which exacerbate both.

Compounding the impacts of the geographic boundary options, the County relies on ADT as a screening threshold. (Staff Report, p. 6, 15). First, trips within the County result in greater VMT, as reflected in the Planning Commission Staff Report. (PC Staff Report, pp. 5-6). Therefore, focusing on ADT alone will not capture the true VMT impact of rural and semi-rural projects. (*Id.*).

Further, in adopting CEQA Guidelines Section 15064.3(a), the Natural Resources Agency clarified “the primary consideration, in an environmental analysis, regarding transportation is the **amount and distance** that a project might cause people to drive. This captures two measures of transportation impacts: auto trips generated **and** vehicle miles traveled.” (California Natural Resources Agency Final Statement of Reasons for Regulatory Action Amendments to the State CEQA Guidelines, November 2018, pp. 14-15 [emphasis added]). The County’s Draft

TSG admits as much: “VMT measures the number of vehicle trips generated and the length or distance of those trips.” (Draft TSG, p. 1).

As reflected in Section 15064.3(b)(1) “[v]ehicle miles traveled exceeding an applicable threshold of significance may indicate a significant impact.” For purposes of section 15064.3, “ ‘vehicle miles traveled’ refers to the amount and distance of automobile travel attributable to a project.” Therefore, the County’s reliance on only the amount of trips (and not the distance) to set a screening threshold, the County’s approach is both contrary to the CEQA Guidelines and will result in significant impacts. (CEQA Guidelines §15064.3(a)).

The County’s TSG screening threshold and geography boundaries Option B and C fail to comply with the letter and spirit of SB 743 and its implementing CEQA Guidelines. For almost a decade, the County has failed to take its CEQA obligations seriously and adequately address its GHG impacts. Time and again, the County’s planning documents have been judicially invalidated. The County now has an opportunity to address the largest source of GHG emissions in the County. CERF therefore urges the County to realign its Transportation Study Guide with the State’s goals and the Technical Advisory. To do so, the County must change the baseline VMT to a regional or metropolitan average and include VMT in its screening threshold. Anything less is legally indefensible.

Thank you in advance for your consideration of our comments.

Sincerely,

COAST LAW GROUP LLP



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June 8, 2020

County of San Diego
Planning & Development Services
Attn: Greg Kazmer
5510 Overland Avenue, Suite 310
San Diego, CA 92123

Via U.S. Mail & Electronic Mail
Gregory.Kazmer@sdcounty.ca.gov

RE: Public Comment Regarding SB 743 Transportation Study Guidelines

Dear Mr. Kazmer:

Please accept the following comments regarding Senate Bill 743 on behalf of our client the Coastal Environmental Rights Foundation. CERF is a nonprofit environmental organization founded by surfers in North San Diego County and active throughout California's coastal communities. CERF was established to aggressively advocate, including through litigation, for the protection and enhancement of coastal natural resources and the quality of life for coastal residents.

CERF strongly encourages the County to reconsider its approach to SB 743. The County's methodology not only undermines the intent of SB 743 and the State's greenhouse gas reduction goals, but also incentivizes inefficient sprawl development. With the passage of SB 743, the Legislature expressly found:

New methodologies under the California Environmental Quality Act are needed for evaluating transportation impacts that are better able to promote the state's goals of reducing greenhouse gas emissions and traffic-related air pollution, promoting the development of a multimodal transportation system, and providing clean, efficient access to destinations.

Likewise, the Legislature intended to "[m]ore appropriately balance the needs of congestion management with statewide goals related to infill development, promotion of public health through active transportation, and reduction of greenhouse gas emissions." Affording sprawl development a more lenient baseline has the process exactly backwards "[b]ecause location within the region is the most important determinant of VMT." (OPR Technical Advisory, p. 10).

To support continued inefficient planning, the Transportation Study Guidelines rely on a nonsensical interpretation of the Office of Planning and

Research (OPR) Technical Advisory. The Technical Advisory cannot – as the County suggests – be read to allow transportation impact analysis based on rural VMT figures. Rather, the Technical Advisory suggests a threshold for residential projects which is 15 percent below baseline, where the baseline is existing VMT per capita measured as regional VMT per capita or as city VMT per capita. (Technical Advisory, p. 15). Regional VMT applies to a Metropolitan Planning Organization (MPO) area – not an unincorporated “region.” (See, County Transportation Guide, p. F-6 [relying on County Selected Geography] and pp. F.1-F.2 explaining definition of “region”). The Technical Advisory is clear on this issue – region is an MPO area, not an agency-specific “region.” The County’s interpretation allows rural areas to measure impacts against an artificially increased baseline (higher VMT) in order to conceal transportation impacts and frustrate the State’s greenhouse gas reduction and infill development goals.

Though the County’s Transportation Study Guidelines present an opportunity to align the County’s future development with State goals and reduce environmental impacts of future CEQA projects, the current draft of the Guidelines will have the opposite effect. The County’s inflated “County Selected Geography” VMT figures are all significantly higher than the region’s VMT averages. As a result, the County’s Guidelines will result in greater transportation impacts, increased greenhouse gas emissions, and air quality impacts – none of which have been studied in an Environmental Impact Report.

CERF therefore urges the County to realign its Guidelines with the State’s goals and the Technical Advisory and change the baseline VMT to a regional or metropolitan average. Thank you in advance for your consideration of our comments.

Sincerely,

COAST LAW GROUP LLP



Livia B. Beaudin