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

CAPAY VALLEY COALITION  
and YOLO COUNTY FARM BUREAU

Petitioners

v.

CALIFORNIA DEPARTMENT OF  
TRANSPORTATION, RANDELL H. IWASAKI,  
Director; and, DOES 1 through 20;

Respondents

DOES 21-100

Real Parties in Interest

Case No. 34-2010-80000414

**PETITIONERS' REPLY BRIEF  
IN SUPPORT OF PETITION FOR  
WRIT OF MANDATE**

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Judge: The Hon. Michael Kenny

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## INTRODUCTION

Respondents California Department of Transportation and Director Rendell H. Iwasaki (collectively "CalTrans") Opposition Brief attempts to characterize the Highway 16 Safety Improvement Project ("Project") as simply widening and improving the existing roadbed. In reality, the Project is the construction of a new highway. CalTrans' mischaracterization of the Project is consistent with its approach in the Final Environmental Impact Report ("EIR") regarding the Project Description, Alternatives and impact analysis. CalTrans prepared and certified a legally inadequate EIR as the Project Description is vague and unstable; CalTrans refused to provide critical data to support the conclusions and opinions in the EIR; and the lack of critical data regarding traffic collisions severely impacts the public's ability to evaluate the need for the project as well as to evaluate the alternatives. CalTrans also failed to provide for a reasonable range of alternatives and instead had just the preferred alternative and the no impact alternative. CalTrans' Final EIR also fails to adequately discuss and analyze impacts, including impacts to agriculture and land use in the Project area. Contrary to the evidence in the record, CalTrans downplays and understates the impacts to agriculture in the Capay Valley area.

## ARGUMENT

### **A. THE FINAL EIR CONTAINS A LEGALLY INADEQUATE PROJECT DESCRIPTION**

#### **1. The Final EIR's Impact Analysis Is Fatally Flawed as It Failed to Provide Sufficient Information to Constitute a Legally Adequate Project Description**

Petitioners and CalTrans agree "the project description, including the purpose and need, for an EIR must be legally adequate." (Respondents' Opposition to Petitioners' Petition for Mandate ("Opp. Br.") at p. 6, 26-27; see also Petitioners' Opening Brief, at p. 10.) In interpreting what is "legally adequate," CalTrans relies inclusively on *California Oak Foundation v. Regents of University of California* (2010) 188 Cal. App. 227, 269-270, which briefly quotes a *portion* of section 15124 of the CEQA Guidelines regarding the four mandatory items required in an EIR's project description. CalTrans concludes that as long as a brief mention of the four mandatory requirements is included within the project description, "nothing more is required." (Opp. Br. at p. 7, 13.) CalTrans' conclusions are misguided. Upon reading



1 the entire portion of section 15124, the opening sentence describing the required elements clearly  
2 states the description of the project shall contain the following information ... *needed for*  
3 *evaluation and review of the environmental impact*. (14 Cal. Code Regs., (“Guidelines”) §  
4 15124.) Thus, although section 15124 goes on to describe the four mandatory requirements,  
5 such information in each of the four sections must be sufficient to allow for proper and adequate  
6 evaluation and analysis of environmental impacts. (*Ibid.*)

7 Further, the CEQA Guidelines require that a project description, which is the heart of the  
8 EIR, include “*the whole of the action*, which has a potential for resulting in a physical change in  
9 the environment, directly or ultimately . . .” (*Rio Vista Farm Bureau Center v. County of*  
10 *Solano* (1992) 5 Cal.App.4th 351, 369-370 [emphasis added].) Thus, in addition to containing  
11 information sufficient for a proper evaluation of impacts, the details provided in the four  
12 required elements must represent the “whole of the action.” (*Ibid.*) CalTrans’ project  
13 description fails to meet this obligation. “Because of this omission, some important  
14 ramifications of the proposed project remained hidden from view at the time the project was  
15 being discussed and approved. This frustrates one of the core goals of CEQA.” (*Santiago*  
16 *County Water District v. County of Orange* (1981) 118 Cal.App.3d 818, 830.)

## 17 **2. The Purpose and Need Identified in the Project Description is Not Stable**

18 CalTrans’ Opposition fails to respond why the Project Description does not identify and  
19 discuss what constitutes “improved” safety. The use of the term “improved” safety is vague as  
20 the EIR fails to identify any standards for what constitutes “improved” safety. As discussed in  
21 Petitioners’ Opening Brief, is improved safety a reduction in accidents to a level below the  
22 statewide average? Is improved safety that which qualifies for federal highway funds? As the  
23 project is divided into 6 segments, is “improved” safety evaluated segment-by-segment,  
24 especially given the fact that segment 1 was excluded from the funding because it already  
25 constitutes an “improved safety” segment? The lack of detail as to what constitutes  
26 “improved” safety is illustrated by CalTrans’ rejection of Reduced Shoulder Alternative and  
27 Spot Improvement Alternative. (SAR 173-175.)  
28



1 Also, CalTrans removed segment 1 from the Project because the interim projects  
2 improved safety, but fails to adequately explain why segments 2 through 6 could not be  
3 evaluated independently to determine whether any of those segments could be similarly  
4 removed from the Project. While CalTrans was able to evaluate segment 1 independently,  
5 CalTrans refuses to provide any data or information to the public as to whether segments 2  
6 through 6 should be evaluated independently. (See SAR 165.) CalTrans fails to provides a  
7 factual or legal basis why segments 2 through 6 must be considered as one unit, while segment  
8 1 can be removed from the Project. Moreover, CalTrans fails to provide a factual or legal basis  
9 why the traffic collision data cannot be summarized for each segment and to provide data to  
10 show if safety improvements already implemented have resulted in less collisions in the various  
11 segments. CalTrans fails to recognize that one of the principle purposes of an EIR is to be an  
12 informational document for the decisionmakers and the public. (*Laurel Heights Improvement*  
13 *Ass'n v. Regents of the University of California* (1988) 47 Cal.3d 376, 404, quoting *Concerned*  
14 *Citizens of Costa Mesa, Inc., v. 32<sup>nd</sup> Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 93.) Instead,  
15 CalTrans plays a game of hide the ball with critical data and summaries.

16 If CalTans were to provide at least the traffic collision summaries for each of the six  
17 segments, such data would allow CalTrans' decisionmakers and the public to evaluate the need  
18 for the Project in each segement. It would also allow for the development and analysis of  
19 reduced impact alternatives. Alternatives that could be tailored to address various segments to  
20 remove segments. By providing a narrow project description and arguing, with no basis, that  
21 the traffic collision data cannot be evaluated for each segment, CalTrans' limits the alternatives  
22 analysis.

23 **3. The EIR's Project Description Misstates the Need for and the Objectives of**  
24 **the Project.**

25 The Purpose and Need section of the FEIR states that the purpose is to improve safety and  
26 provide a facility that can remain open during a 100-year flood event. (SAR 165.) The Final  
27 EIR provides the summary of collision data from September 1 2005 to August 31, 2008. (*Id.*)  
28 "To facilitate CEQA's informational role, the EIR must contain facts and analysis, not just the  
agency's bare conclusions or opinions." (*Laurel Heights I, supra, supra*, 47 Cal.3d at p. 404,



1 quoting *Concerned Citizens of Costa Mesa, Inc.*, *supra*, 42 Cal.3d at p. 935.) Neither the Final  
2 EIR, the Draft EIR, nor the administrative record, however, provides any evidentiary data  
3 supporting the collision rates. (*Id.*, SAR 022, 165.) Moreover, the raw data supporting  
4 CalTrans' conclusions regarding collisions is not included in the administrative record. As a  
5 result, neither Petitioners nor the public could accurately review collision rates from the  
6 information provided in the Final EIR and the record.

7 CalTrans argues that under 23 U.S.C., section 409, CalTrans is precluded from including  
8 the raw data regarding collision rates. (Opp. Br. at p. 12.)<sup>1</sup> A review of section 409 indicates  
9 that it was intended to prevent the use of collision data in personal injury or tort cases against the  
10 government. (See *Department of Transportation v. Superior Court* (1996) 47 Cal.App.4<sup>th</sup> 852.)  
11 CalTrans cites to *Department of Transportation v. Superior Court* to argue that the collision data  
12 cannot be produced in the administrative record. CalTrans, however, fails to inform the court  
13 that in *Department of Transportation* the appellate court found that section 409 did not apply and  
14 directed CalTrans to produce the requested documents. The court stated that:

15 [S]ection 409 covers (1) reports, surveys, schedules, lists, or data; (2) compiled or  
16 collected; (3) for the purpose of identifying, evaluating, or planning the safety  
17 enhancement of potential accident sites or hazardous roadway conditions; <sup>4</sup> (4)  
18 pursuant to *section 152*; <sup>5</sup> and (5) at a location mentioned or addressed in such  
19 reports, surveys, schedules, lists, or data. (See *ante*, pp. 854-855.) Caltrans has  
20 the burden of establishing each of these requirements before the discovery and  
21 admissibility provisions of section 409 become operative. (*Southern Pacific*  
*Transp. Co. v. Yarnell* (1995) 181 Ariz. 316; see also *Kizer v. Sulnick* (1988) 202  
*Cal. App. 3d* 431, 439.)

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22 <sup>1</sup> 23 U.S.C. § 409 states:

23 Notwithstanding any other provision of law, reports, surveys, schedules, lists, or  
24 data compiled or collected for the purpose of identifying evaluating, or planning  
25 the safety enhancement of potential accident sites, hazardous roadway conditions,  
26 or railway-highway crossings, pursuant to sections 130, 144, and 148 of this title  
27 [23 USCS §§ 130, 144, and 148] or for the purpose of developing any highway  
28 safety construction improvement project which may be implemented utilizing  
Federal-aid highway funds shall not be subject to discovery or admitted into  
evidence in a Federal or State court proceeding or considered for other purposes  
in any action for damages arising from any occurrence at a location mentioned or  
addressed in such reports, surveys, schedules, lists, or data.



1 The court declined "to give section 409 the broad construction advanced by CalTrans.  
2 (*Dept. of Transportation, supra*, 47 Cal.App.4<sup>th</sup> at p. 857.) The court held that "[w]here, as  
3 here, the intrusion is into an area traditionally occupied by the states, Congress' intent to  
4 preempt must be clear. (*Ibid.*) When the possibility of intrusion into a field traditionally left to  
5 the states is perceived, there exists a presumption that the states' laws remain valid." (*Ibid.*  
6 [citations omitted].)

7 The court further stated, "[s]ince preemption is never presumed, [section] 409 must be  
8 construed restrictively to prohibit only what is expressly proscribed." (*Id.*; [citations omitted].)  
9 "Furthermore, privileges "are not lightly created nor expansively construed, for they are in  
10 derogation of the search for truth." (*Dept. of Transportation, supra*, 47 Cal.App.4<sup>th</sup> at p. 857;  
11 citing *United States v. Nixon* (1974) 418 U.S. 683, 710, fn. omitted; see also *Pierce County v.*  
12 *Guillen* (2003) 537 U.S. 129, 144.)<sup>2</sup>

13 In the present case, CalTrans has not meet its burden of establishing that the documents are  
14 preempted from disclosure in an administrative review action as opposed to personal injury or  
15 tort action. Moreover, as was rejected in *Department of Transportation*, CalTrans attempts to  
16 similarly broaden the scope and application of section 409 to areas beyond actions for damages.

17 CalTrans argues that the data was gathered and maintained under the requirements of 23  
18 U.S.C. section 152. (Opp. Br. at p. 12.) CalTrans, however, does not cite to any evidence in the  
19 record to support this assertion. Thus, CalTrans' response to Petitioners and its argument to this  
20 Court is "trust us" about the data that supports the basis for the Project. CalTrans' also fails to  
21 explain, how a statute designed to protect public agencies from tort actions and not increase  
22 their liability as a result of collecting safety data, applies to an administrative review action to  
23 determine whether a project satisfies the requirements for federal funding and/or whether the  
24 agency has prepared a legally adequate EIR as required by CEQA.. Moreover, if the data were  
25 to be released and disclosed in the EIR or the in the administrative record for this action, that  
26

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27 <sup>2</sup> See *Pierce County v. Guillen* (2003) 537 U.S. 129 (section 409 protects only information  
28 compiled or collected for section 152 purposes, and does not protect information compiled or  
collected for purposes unrelated to section 152, as held by the agencies that compiled or  
collected that information).)



1 such disclosure does not mean that the same data could be used as evidence in a separate tort  
2 action against CalTrans. (See 23 U.S.C. § 409.) The plain language of section 409 clearly  
3 indicates that it is intended for tort actions wherein it states: “or considered for other purposes  
4 in any action for damages arising from any occurrence at a location mentioned or addressed in  
5 such reports, surveys, schedules, lists, or data.” (*Ibid.*) Thus, the statute clearly was intended to  
6 apply to tort actions or actions for damages, not an administrative review case where state law  
7 requires that conclusions and expert opinions be supported by substantial evidence.

8 CalTrans correctly states that CEQA encourages agencies to summarize technical analysis  
9 and data. (Guidelines, § 15147; Opp. Br. at p. 13.) However, section 15147 also states:

10 Placement of highly technical and specialized analysis and data in the  
11 body of an EIR should be avoided *through inclusion of supporting*  
12 *information and analyses as appendices to the main body of the EIR.*  
13 Appendices to the EIR may be prepared in volumes separate from the  
14 basic EIR document, but *shall be readily available for public*  
*examination and shall be submitted to all clearinghouses which*  
*assist in public review.* (Guidelines, § 15147 [emphasis added].)

15 Moreover, in order for expert opinion to constitute substantial evidence it must be  
16 supported by facts. (Guidelines, § 15384(b).) Without the supporting documentation and data,  
17 the EIR contains CalTrans’ bare conclusions and opinions, as they are not supported by evidence  
18 in the administrative record. CalTrans essentially admits as such since CalTrans admits the  
19 evidence is not in the record. As the opinions and conclusions are supported by substantial  
20 evidence in the administrative record, CalTrans’ approval of the Project and certification of the  
21 Final EIR constitute a prejudicial abuse of discretion.

22 **4. The Project Description’s Lack of Information Regarding How State Route**  
**16 Will be Raised is Improper and Violates CEQA**

23 CalTrans acknowledges that “the Project Description” section in the FEIR states only that  
24 the project “ will provide improved flood protection between Esparto and I-505.” (Opp. Br. at  
25 p. 17; SAR 142.) CalTrans admits further that upon review of the entire FEIR, “the FEIR has  
26 not discussed detailed engineering and design information concerning the height and other  
27 specific aspects of the raised roadway” because designs for the raised roadway, including the  
28 height, have not been finalized at this point. (Opp. Br. at p. 17.) Notwithstanding the apparent



1 CEQA violations of deferring environmental analysis to an unknown date, CalTrans concludes  
2 that the lack of information provided in the FEIR regarding the new height of the roadway is  
3 proper since “detail is not required in the project description.” (*Ibid.*)

4 Project descriptions must include a description of the policy objectives to be served by the  
5 proposed project and a general description of the project itself. (Guidelines, § 15124.) The  
6 project description should include detail sufficient to ascertain the nature and general magnitude  
7 of environmental impacts. (*Ibid.*) “A curtailed, enigmatic or unstable project description  
8 draws a red herring across the path of public input.” (*County of Inyo v. City of Los Angeles*  
9 (1977) 71 Cal. App. 3d 185, 198.)

10 As discussed above, not only must the project description include the four required  
11 elements of section 15124, the information within each required element must be *sufficient in*  
12 *detail* to allow both decision makers and the public to evaluate and review the associated  
13 environmental impacts. (Guidelines, § 15124.) By failing to provide *any* details regarding the  
14 roadway design, height, slope, gradients, shoulder width, accessibility, or other aspects of  
15 raising the portion of the highway, the decision makers, as well as the public, have been  
16 prevented from intelligently evaluating the potential environmental impacts. (*Nelson v. County*  
17 *of Kern* (2010) 190 Cal.App.4th 252, 272 , [“An accurate and complete project description is  
18 necessary for an intelligent evaluation of the potential environmental impacts of the agency's  
19 action”].) Further, the distorted, incomplete, and inadequate project description precludes  
20 affected outsiders and public decision makers from balancing the chosen roadway elevation  
21 increase against its environmental impacts, cost, necessary mitigation measures, and possible  
22 advantages from terminating the proposal. (*County of Inyo v. City of Los Angeles, supra*, 71  
23 Cal. App. 3d at p. 193 (“A curtailed or distorted project description may stultify the objectives  
24 of the reporting process. Only through an accurate view of the project may affected outsiders  
25 and public decision-makers balance the proposal's benefit against its environmental cost,  
26 consider mitigation measures, assess the advantage of terminating the proposal (i.e., the “no  
27 project” alternative) and weigh other alternatives in the balance. An accurate, stable and finite  
28 project description is the sine qua non of an informative and legally sufficient EIR.”].)



1 By failing to provide *any* details within the Project description about the manner in which  
2 State Route 16 will be elevated, the FEIR fails to inform the decision makers and the public, and  
3 thus, is legally insufficient.<sup>3</sup>

4 **B. THE FINAL EIR FAILED TO ADEQUATELY DISCUSS AND EVALUATE THE PROJECT'S**  
5 **ENVIRONMENTAL IMPACTS**

6 **1. The Final EIR Failed to Identify and Discuss the Project's Inconsistency with**  
7 **Relevant Local Plans**

8 CalTrans states, "A project is consistent with the general plan if, considering all its  
9 aspects, it will further the objectives and policies of the general plan and not obstruct their  
10 attainment." (*California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal. App.  
11 4th 603, 637-638 [citations and internal quotation marks omitted]; Opp. Br. at pp. 20:21-23)  
12 CalTrans further concludes that in order to be consistent with the general plan, the proposed  
13 project must be compatible with the objectives, policies, general land uses, and programs  
14 specified in the applicable plan. (*Eureka Citizens for Responsible Government v. City of Eureka*  
15 (2007) 147 Cal. App. 4th 357, 373, citing Gov. Code, § 66473.5; Opp. Br. at pp. 20:26-28.)

16 In order to attempt to prove consistency, CalTrans ventures to show the project's  
17 compatibility by picking and choosing a few elements from the Yolo County General Plan and  
18 the Capay Valley Area General Plan, focusing mainly on the circulation element, and dismissing  
19 the agriculture and land use elements. (Opp. Br. at p. 21.) However, CalTrans may not focus  
20 only on the elements of its choosing; rather, the agency is required to show "that there be little or  
21 no probability that the development would be detrimental to or interfere with the...adopted  
22 general plan" as a whole. (Gov. Code, § 65361(c)(3), (d), (e); *Harroman Co. v. Town of Tiburon*  
23 (1991) 235 Cal.App.3d 388, 394-396.) Inconsistency with simply one general plan policy is  
24 enough to scuttle a project. (See *San Bernardino Valley Audubon Society, Inc. v. County of San*  
25 *Bernardino* (1984) 155 Cal. App. 3d 738, 753 [court held that the project was inconsistent with a  
26 general plan because it conflicted *with one policy in the conservation element*].)

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27 <sup>3</sup> It should be noted that the Final EIR's project description also fails to state or discuss what  
28 CalTrans will do with the portions of the old highway after it is realigned. Will the old sections  
of highway be returned to their natural state, returned to farmland or remain under the ownership  
of CalTrans?



1 It is readily apparent that the State Route Highway 16 SIP is inconsistent with the  
2 agriculture and land use policies set forth within the Yolo County General Plan and the Capay  
3 Valley Area General Plan governing the conservation and preservation of all farmland within the  
4 County. By failing to adequately disclose, analyze, and/or mitigate the Project's inconsistencies  
5 with the Yolo County General Plan and the Capay Valley Area General Plan, the FEIR fails is  
6 legally sufficient.

7 **2. The Final EIR Failed to Identify and Discuss the Project's Impacts Associated**  
8 **with Raising and Elevating State Route 16**

9 CalTrans acknowledges that the FEIR failed to evaluate the impacts, risks, feasibility,  
10 cost, alternatives, and possible mitigation measures associated with raising State Route 16.<sup>4</sup>  
11 (Opp. Br. at p. 17.) This acknowledgement substantiates findings within Petitioners' prior  
12 comments submitted on this issue. (SAR 288-290, 298, 306-307, 558-561.)

13 Rather than disclosing even the most basic information regarding the potential impacts  
14 associated with raising and elevating State Route 16, analysis and discussion within the FEIR is  
15 silent. Only in response to comments submitted by Petitioners did Yolo County Farm Bureau  
16 learn "it is expected that the highway will increase in height by 4 feet but may be as high as 8  
17 feet. The exact height cannot be determined until the design is finalized." (SAR 298.)

18 "The process of analyzing a project's impacts must be an interactive one between the  
19 public and the lead agencies. The process "must be open to the public, premised upon a full and  
20 meaningful disclosure of the scope, purposes, and effect of a consistently described project,

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21  
22 <sup>4</sup> CalTrans clearly concedes and agrees with the Petitioners that the "FEIR has not discussed  
23 detailed engineering and design information concerning the height and other specific aspects of  
24 the raised roadway...nor have detailed designs for the raised roadway, including the height, been  
25 finalized at this point." (Opp. Br. at p. 17.) The FEIR further states that information about the  
26 "exact height cannot be determined until the design is finalized." (SAR 298), and, according to  
27 CalTrans, that information "is not currently available." (Opp. Br. at p. 19.) Although CalTrans  
28 concedes that no environmental analysis was conducted, CalTrans attempt to argue that the FEIR  
discussed the flood protection improvements, specifically the roadway height issue, "in several  
places throughout the FEIR." (Opp. Br. at pp. 17, 18, 22.) However, CalTrans fails to cite to  
any section of the FEIR that contains any detailed information, design plans, or environmental  
analysis of raising State Route 16. (*Ibid.*) CalTrans references no authority to support its  
position that failing to conduct *any* environmental review of a significant portion of the Project,  
one that accomplishes the very "objective" of the Project, is proper.



1 with flexibility to respond to unforeseen insights that emerge from the process.” (*County of*  
2 *Inyo v. City of Los Angeles* (1984) 160 Cal.App.3d 1178, 1185.) The complete failure to  
3 provide even the most basic design information and analysis regarding the increase in roadway  
4 height deprives the public of *any* opportunity to meaningfully participate in the CEQA process.  
5 The failure to disclose any of the details or scope of this impact renders the FEIR legally  
6 inadequate.

7       **3.       The Final EIR’s Evaluation of Raising State Route 16 Is Incomplete and**  
8       **Impermissibly Deferred**

9       CalTrans attempts to construe CEQA’s standards for adequacy of an EIR in such a way  
10 that a reasonable analysis of information within an EIR is met even if components of the project  
11 are not analyzed within the EIR. (Opp. Br. at p. 19.) However, CalTrans is misguided. CEQA  
12 requires an EIR to disclose all potential direct and indirect, significant environmental impacts of  
13 a project. (Guidelines, § 15151.) “This requirement enables the decision-makers and the public  
14 to make an ‘independent, reasoned judgment’ about a proposed project. (*Santiago County*  
15 *Water Dist.*, *supra*, 118 Cal.App.3d at p. 831 ; *People v. County of Kern* (1974) 39 Cal.App.3d  
16 830, 841 [*requirement of detail in EIR* ‘helps insure the integrity of the process of decision by  
17 precluding stubborn problems or serious criticism from being swept under the rug.’] [emphasis  
18 added]; see also Guidelines, § 15151.)” (*Concerned Citizens of Costa Mesa, Inc.*, *supra*, 42  
19 Cal.3d at p. 935.)

20       By improperly failing to analyze a large portion of the Project’s impacts within the EIR  
21 and instead, deferring such analysis to a future unknown date after project approval, CalTrans  
22 fails to evaluate, let alone disclose, all potential significant impacts of the Project. To facilitate  
23 CEQA’s informational role, the EIR must contain facts and analysis, not just the agency’s bare  
24 conclusions or opinions. (*Laurel Heights I*, *supra*, 47 Cal.3d at p. 404; quoting *Concerned*  
25 *Citizens of Costa Mesa*, *supra*, 42 Cal.3d at p. 935.)

26       Further, by delaying any determinations on the roadway elevation design, including levee  
27 elevation, slope gradients, and accessibility to surrounding farms, as well as all analysis and  
28 evaluation of any resulting impacts until after certification of the FEIR and final Project  
approval, CalTrans attempts to conduct piecemeal review and deferred analysis, which is



1 precluded by CEQA. Segmentation of a program is improper. (See Guidelines §  
2 15126.4(a)(1)(B).) “There is no dispute that CEQA *forbids* “piecemeal” review of the  
3 significant environmental impacts of a project. This rule derives, in part, from section 21002.1,  
4 subdivision (d), which requires the lead agency . . . to ‘consider[] the effects, both individual and  
5 collective, of all activities involved in [the] project.’ It has been recognized that ‘[a] curtailed or  
6 distorted project description may stultify the objectives of the reporting process. Only through  
7 an accurate view of the project may affected outsiders and public decision-makers balance the  
8 proposal’s benefit against its environmental cost, consider mitigation measures, assess the  
9 advantage of terminating the proposal . . . and weigh other alternatives in the balance.’”  
10 (*Berkeley Keep Jets Over the Bay Com. v. Board of Port Cmrs* (2001) 91 Cal.App.4th 1344,  
11 1358 [internal citations omitted].)

12 The EIR’s attempt to segment portions of the Project in order to defer analysis of  
13 components of the Project, analysis of impacts, and feasibility of mitigation measures is contrary  
14 to the basis principles of CEQA and must be deemed invalid. (Guidelines, § 15126.4(a)(1)(B).)  
15 The court in *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova*  
16 (2007) 40 Cal. 4th 412, 431 spoke directly on the issue of deferring environmental review:

17 While proper tiering of environmental review allows an agency to defer analysis of  
18 certain details of later phases of long-term linked or complex projects until those  
19 phases are up for approval, CEQA’s demand for meaningful information “is not  
20 satisfied by simply stating information will be provided in the future.” (*Santa*  
21 *Clarita, supra*, 106 Cal.App.4th at p. 723.) As the CEQA Guidelines explain:  
22 “Tiering does not excuse the lead agency from adequately analyzing reasonably  
23 foreseeable significant environmental effects of the project and does not justify  
24 deferring such analysis to a later tier EIR or negative declaration.” (Cal. Code  
25 Regs., tit. 14, § 15152, subd. (b).) Tiering is properly used to defer analysis of  
26 environmental impacts and mitigation measures to later phases when the impacts or  
27 mitigation measures are not determined by the first-tier approval decision but are  
28 specific to the later phases. For example, to evaluate or formulate mitigation for  
“site specific effects such as aesthetics or parking” (*id.*, § 15152 [Discussion]) may  
be impractical when an entire large project is first approved; under some  
circumstances analysis of such impacts might be deferred to a later-tier EIR. But  
the future water sources for a large land use project and the impacts of exploiting  
those sources are not the type of information that can be deferred for future  
analysis. An EIR evaluating a planned land use project must assume that all phases  
of the project will eventually be built and will need water, and must analyze, to the  
extent reasonably possible, the impacts of providing water to the entire proposed  
project. (*Stanislaus Natural Heritage, supra*, 48 Cal.App.4th at p. 206.)



1 The EIR for the Highway 16 Safety Improvement Project is not a master EIR, program  
2 EIR, supplement to a staged EIR, or tiering off of a previous (or subsequent) EIR.  
3 Nevertheless, CalTrans argues that it may defer the environmental analysis of substantially  
4 raising the height of the roadway to an unknown date in the future is proper and that such action  
5 is proper. Deferral is not proper when utilizing tiered EIRs and is certainly not proper in  
6 situations such as the one here, when *only one EIR* will be prepared. (Guidelines, §15152(b)  
7 [“Tiering does not excuse the lead agency from adequately analyzing reasonably foreseeable  
8 significant environmental effects of the project and does not justify deferring such analysis to a  
9 later tier EIR or negative declaration.”].) No future EIR will be prepared to analyze the impacts  
10 of the roadway. The public, as well as the Project decision makers, will have no opportunity to  
11 analyze or even know of the significant environmental impacts associated with the Project  
12 elevation. The blatant lack of information and analysis withheld from the public directly  
13 contravenes the *very intent and purpose* of CEQA. (Pub. Resources Code, § 21000(g);  
14 Guidelines, § 15003.)

15 **4. The Final EIR Failed to Identify and Discuss the Project’s Land Use**  
16 **Patterns**

17 Growth may be induced by improving transportation access to an area. This is the very  
18 objective of the State Route 16 SIP, as stated in the FEIR. (SAR 142, 165.)

19 CEQA requires agencies to analyze the ways in which a project may directly or indirectly  
20 foster economic or population growth in the surrounding environment. (Pub. Resources Code,  
21 § 21100(b)(5); Guidelines, § 15126.6(d).) ““It must *not be assumed* that growth in any area is  
22 necessarily beneficial, detrimental, or of little significance to the environment.” (*Id.* [emphasis  
23 added].) Rather, project specific analysis must be complete. “Subsection (d), discussing  
24 growth-inducing impacts, clarifies that the construction of new facilities may be important  
25 because that *construction itself* may have significant effects.” (See discussion following  
26 Guidelines, § 15126.2(d) [emphasis added].)

27 CalTrans alleges that the FEIR properly concluded that the Project would result in less  
28 than significant growth-related impacts due to restrictions in the applicable General Plan. (SAR  
184, 187, 189; Opp. Br. at p. 23.) The mere existence of local plans does not excuse an agency



1 from adequately disclosing, analyzing, and mitigating the project's growth inducing impacts.  
2 "However, there is no indication in CEQA that mere conformity with the general plan will  
3 justify a finding that the project has no significant environmental effect. Certainly general plan  
4 conformity alone does not effectively "mitigate" significant environmental impacts of a  
5 project." (*City of Antioch v. City Council* (1986) 187 Cal.App.3d 1325, 1332.)

6 In *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal. App. 4th 144,  
7 153, the court held that it is improper to conclude that a stand alone project will not trigger  
8 subsequent growth-inducing impacts. Further, the court stated, "Although the project site as  
9 well as surrounding lands are covered by the provision of a Williamson Act Land Contract, staff  
10 cannot completely negate the possibility of future estate residential development." (*Ibid.*) The  
11 court went on to conclude that even though the land surrounding the project was in agricultural  
12 production, growth-inducing impacts, as well as cumulative impacts, must be analyzed as "there  
13 is no guarantee that the intentions ... will not change or the property may change hands and the  
14 new owners may want to develop the property." (*Id.* at p. 154.) Given the reasonable  
15 probability that growth-inducing impacts, either direct or indirect, may occur, such impacts  
16 must be reasonably analyzed within the FEIR.

17 Because the Project provides for the construction of a new highway adjacent to the present  
18 roadbed, rather than utilizing the present bed and constructing one lane at a time, CalTrans  
19 should analyze the potential for growth inducement of developing a four-lane highway,  
20 regardless of claims as to whether or not it currently has plans to do so. (SAR 445; AR 76483.)  
21 Since such analysis is not included within the FEIR, the FEIR violates CEQA.

## 22 **5. The Final EIR Failed to Adequately Evaluate the Project's Impacts to** 23 **Agriculture and Farmland**

24 As previously stated, the Project will result in the conversion of prime farmlands, unique  
25 farmlands, farmland of statewide importance or land actively utilized for agricultural production  
26 to a variety of non-agricultural uses. (SAR 189, *et. seq.*) Petitioner Yolo County Farm Bureau  
27 raised these concerns in its January 23, 2006 letter to CalTrans in which it urged CalTrans to re-  
28 examine the Farmland Conversion Impact Rating (SAR 328) given the unique agricultural  
features within the Capay Valley, including the presence of small farms in a small agricultural



1 region. (SAR 558-561; AR 74293-74296.) Rather than examining the Project's impacts on  
2 individual parcels, or the Capay Valley region as a whole, analysis was limited to Yolo County  
3 *in its entirety*. (SAR 190; .) Using Yolo County as a whole to examine agricultural impacts,  
4 results in underestimating the impacts to the unique agricultural region affected by the Project,  
5 the Capay Valley. (See SAR 560.) The Capay Valley agricultural region is unique in that it  
6 includes small parcels and intensive, high-value farming and the farms grow many specialty  
7 crops, farming is intensive. (SAR 559-560.) Thus, CalTrans' mere conclusions such as "the  
8 use of slivers of large parcels of farmland in order to create a safer highway would not likely  
9 have a substantial impact on farming in this area," "the project would not prevent the continued  
10 use of land adjacent to SR 16 as farmland," and "this project would not have substantial effect  
11 on farmland and therefore no mitigation is proposed" are improper, speculative, and are not  
12 supported by substantial evidence in the record. (SAR 190, 288.)

13 If this were a housing development, there would be no question that the permanent loss of  
14 166 acres of farmland would be a cumulatively significant impact. (SAR 190; see *Building*  
15 *Industry Association v. County of Stanislaus* (2010) 190 Cal.App.4<sup>th</sup> 582; *Watsonville Pilots*  
16 *Association v. City of Watsonville* (2010) 183 Cal.App.4<sup>th</sup> 1059, 1086-1088.)

17 **C. THE FINAL EIR FAILED TO ADEQUATELY ADDRESS THE PROJECT'S CUMULATIVE**  
18 **IMPACTS**

19 **1. Cumulative Impacts to Farmlands**

20 Petitioners have fully addressed this issue, *infra*, in argument B.4 and B.5 and therefore do  
21 not repeat this argument here. (See discussion, *infra*, Sections B.4 and B.5.)

22 **2. The EIR Failed to Discuss Listed Projects and/or Failed to Specify All of the**  
23 **Planning Documents Used in the Cumulative Impacts Analysis and Location**  
24 **of Planning Documents for Public Review**

25 CalTrans claims that the list of past, present, and future actions within the Cumulative  
26 Impacts section of the FEIR constitutes a "list of past, present, and probable future projects  
27 producing related or cumulative impacts, including, if necessary, those projects outside the  
28 control of the agency." (Opp. Br. at p. 29; SAR 261; Guidelines, § 15130(b)(1)(A).) Regardless



1 of whether this “list” meets the criteria requirements of section 15130(b)(1)(A), the FEIR failed  
2 to discuss, in any manner, those listed projects. The Discussion following Section 15130 states:

3 When analyzing the cumulative impacts of a project under 15130 (b)(1)(A), the  
4 lead agency *is required to discuss* not only approved projects under construction  
5 and approved related projects not yet under construction, but also unapproved  
6 projects currently under environmental review with related impacts or which  
7 result in significant cumulative impacts. This analysis should include a *discussion*  
8 *of projects under review by the Lead Agency and projects under review by other*  
9 *relevant public agencies*, using reasonable efforts to discover, disclose, and  
10 discuss the other related projects. The cumulative impact analysis requires a  
11 discussion of projects with related cumulative impacts which required EIRs,  
12 Negative Declarations, or were exempt from CEQA. (See discussion following  
13 Guidelines , § 15130(b)(1)(A) [emphasis added].)

14 Within the brief three and a half pages of the Cumulative Impacts section, the FEIR  
15 contains no discussion, details, analysis, or evaluation of any of the ten past, present, or future  
16 actions that will impact biological resources. (See SAR 261-264.) By omitting from its  
17 calculations and analyses of cumulative impacts other “reasonably probably future projects” or  
18 other closely related projects that are currently under environmental review, CalTrans applied an  
19 unreasonably narrow interpretation of the CEQA Guidelines and, in so doing, abused its  
20 discretion. (*Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1128.)

21 In addition to failing to discuss, in any detail, projects listed pursuant to section  
22 15130(b)(1)(A), the FEIR also failed to specify the location of the planning documents used in  
23 the Cumulative Impacts section, specifically the “farmland” section, for public review pursuant  
24 to section 15130(b)(1)(B). Within the “farmland” section, the FEIR briefly discusses possible  
25 cumulative impacts to farmland. However, instead of utilizing “a list of past, present, and  
26 probably future projects,” (Guidelines §15130(b)(1)(A)), this section includes “a summary of  
27 projections contained in an adopted general plan or related planning document, or in a prior  
28 environmental document which has been adopted or certified, which described or evaluated  
regional or areawide conditions contributing to the cumulative impact.” (Guidelines,  
§15130(b)(1)(B).) The FEIR’s “farmland” section refers to the “2002 Census of Agriculture,”  
“land use plans for Madison,” “land use policies, zoning restrictions” for the County, and the  
“County’s Zoning Code.” (SAR 263-264.) All of these documents are classified as “an adopted



1 general plan or related planning document,...a prior environmental document,...or area wide  
2 conditions contributing to the cumulative impact.” (Guidelines, §15130(b)(1)(B).) The  
3 Guidelines explicitly state that any planning document, such as all of the documents listed above,  
4 “shall be referenced and made available to the public at a location specified by the lead agency.”  
5 (*Ibid.*; see also *Gray, supra*, 167 Cal.App.4th at p. 1128.) Case law further supports the  
6 requirement that the location of all referenced planning documents within a cumulative impact  
7 section *must be specified within the EIR*. (*Gray, supra*, 167 Cal.App.4th at p. 1128.) The DEIR  
8 only referenced the Madera County General Plan. It also did not specify where the Madera  
9 County General Plan could be located. The lead agency has the duty to specify all of the  
10 planning documents that are being used in the cumulative impacts analysis, and to specify where  
11 those planning documents can be publicly viewed.”)

12 **D. THE EIR FAILED TO PROVIDE A LEGALLY ADEQUATE ALTERNATIVE ANALYSIS**

13 The EIR itself, and not precursory project reports or documents, must describe all  
14 reasonable alternatives to the project. (See Pub. Resources Code, § 21061; Guidelines, §  
15 15143(d); *County of Inyo, supra*, 71 Cal.App.3d at p. 200 [“An EIR must describe all  
16 reasonable alternatives to the project.”].) “A major function of an EIR is ‘to ensure that all  
17 reasonable alternatives to proposed projects are thoroughly assessed by the responsible official’  
18 or board.); *Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 197.) The report must describe  
19 all reasonable alternatives to the project including those capable of reducing or eliminating  
20 environmental effects; the specific alternative of ‘no project’ must also be evaluated. (Pub.  
21 Resources Code, §§ 21002, 21100; Guidelines, § 15143, subd. (d).)” (*County of Inyo, supra*, 71  
22 Cal.App.3d at p. 203.)

23 The ultimate “responsible official” or board for this Project was CalTrans’ Director, not  
24 project staffers. Thus, the true governing body must review and assess all project alternatives  
25 and decide which alternative best meets the objectives of the Project. This decision making  
26 power is not left to the hands of those working on the project, but, as clearly stated by CEQA, is  
27 up to the actual decision makers themselves. Thus, it was prejudicial error for four of the six  
28 Project alternatives to be dismissed by project staff as infeasible and not carried through and



1 included in the EIR. This failure to include the full reasonable range of alternatives in the  
2 environmental analysis directly contrasts with the explicit intent and heart of CEQA. Moreover,  
3 it was a prejudicial abuse of discretion not to provide the decision makers with the ability to  
4 select a reduced impact alternative. (*See Watsonville Pilots Association, supra*, 183 Cal.App.4<sup>th</sup>  
5 at pp. 1086-1088.)

6 CEQA places the burden on the approving agency, here CalTrans, to affirmatively show  
7 that it has considered the project alternatives as well as identified means of lessening or  
8 avoiding the project's significant effects, and to explain its decision to proceed with or reject  
9 alternatives and mitigation measures. (Guidelines, § 15126.6.) "The writing of a perfect EIR  
10 becomes a futile action if that EIR is not adequately considered by the public agency  
11 responsible for approving a project. Indeed, it is almost as if no EIR was prepared at all . . ."  
12 (*Resource Defense Fund v. Local Agency Formation Com.* (1987) 191 Cal.App.3d 886, 898.)

### 13 **1. The EIR Failed to Analyze a Reasonable Range of Alternatives**

14 As discussed in Petitioners' Memorandum of Points and Authorities, the EIR identified  
15 alternatives that CalTrans rejected on the grounds that they failed to meet the Project's  
16 objectives. (SAR 171-174.) The alternatives rejected from further consideration and analysis  
17 were: Alternative B (Widen in Place to both sides of highway (SAR 171-173); New Alignment  
18 (AR 173); Reduced Shoulders (SAR173); and Spot Improvements (SAR 175). (See SAR 171-  
19 175.) As these four alternatives were considered infeasible and were not fully analyzed in the  
20 EIR, they do not qualify as a part of the reasonable range of alternatives required by CEQA as  
21 they were not evaluated or analyzed as required. (See Guidelines, § 15126.6(c); [EIR should  
22 also identify any alternatives that were considered by the Lead Agency but were rejected as  
23 infeasible during the scoping process and briefly explain the reasons underlying the Lead  
24 Agency's determination.] )

25 CalTrans argues that the alternatives rejected as infeasible and not considered for further  
26 study constituted a reasonable range of alternatives as required by CEQA. CalTrans has a  
27 fundamental misunderstanding of CEQA's requirement that an agency must consider a  
28 reasonable range of alternatives in an EIR.



1 CalTrans claims that the “range of alternatives” requirement can be satisfied by the  
2 “infeasible” alternatives that were rejected during the scoping process. (Opp. Br. at p. 32.)  
3 Section 15126.6(c) of the CEQA Guidelines discuss the alternatives analysis required for an EIR.  
4 The first step involves identifying a range of alternatives that will satisfy basic project objectives  
5 while reducing significant impacts. (*California Native Plant Society v. City of Santa Cruz* (2009)  
6 177 Cal.App.4<sup>th</sup> 957, 981.) Alternatives that are not “potentially feasible” are excluded at this  
7 stage as there is no point in studying alternatives that cannot be implemented. (*Ibid.*) In the  
8 second stage, the final decision on the project, the agency evaluates whether the alternatives are  
9 actually feasible. (*Ibid.*; Guidelines, § 15126.6(c); *see also* Guidelines, § 15091(a)(3).) At this  
10 point, the agency may reject as infeasible alternatives that were identified in the EIR as  
11 potentially feasible. (*California Native Plant Society, supra*, 177 Cal.App.4<sup>th</sup> at 981.)

12 The plain language of Guidelines section 15126.6(c) supports Petitioners’ argument and is  
13 contrary to CalTrans’ position. The alternatives analysis consists of a two step process. The first  
14 sentence in section 15126.6(c) states that the “range of potential alternatives to the proposed  
15 project *shall* include those that could feasibly accomplish most of the basic objectives of the  
16 project and could avoid or substantially lessen one or more of the significant effects.” (*Id*  
17 [emphasis added].) The alternatives that CalTrans relies upon to argue that it considered to be  
18 part of the reasonable range were rejected as infeasible as CalTrans determined that *they would*  
19 *not satisfy any* of the Project’s objectives. (Opp. Br. at p. 33 [emphasis added]; *see also* SAR  
20 171-176.) Thus, based upon the plain language of the first sentence of section 15126.6(c), these  
21 alternatives do not meet the “range of alternatives” as such potential alternatives “shall include  
22 those that could feasibly accomplish most of the basic objectives.” As they meet none of the  
23 Project objectives, they are not and cannot be part of the range of alternatives.

24 The second sentence of section 15126.6(c) states that “the EIR should briefly describe the  
25 rationale for selecting the alternatives to be discussed.” The use of the plural for “alternatives”  
26 clearly contemplates that the EIR would describe more alternatives other than the proposed  
27 project and that there would be further discussion and analysis of those alternatives. CalTrans  
28



1 cannot point to any alternative – other than the no Project alternative – that meets the  
2 requirement of the second sentence.

3 The third sentence of section 15126.6(c), states that “the EIR should *also* identify any  
4 alternatives that were considered by the lead agency but were rejected as infeasible during the  
5 scoping process and briefly explain the reasons underlying the lead agency’s determination.”  
6 (Emphasis added.) The use of the term “also” indicates that the discussion of these rejected  
7 alternatives is separate and distinct from the alternatives that constitute a “reasonable range of  
8 alternatives, which are discussed in the first and second sentences of section 15126.6(c). This is  
9 consistent with the court’s holding in *Watsonville Pilots Association, supra*, 183 Cal.App.4<sup>th</sup> at  
10 pp. 1086-1088. CalTrans states that it is confused by Petitioners’ citation to *Watsonville Pilots*  
11 *Association* and then attempts to argue that *Watsonville Pilots Association* does not apply to this  
12 case because CalTrans considered a reduced project alternative. (Opp. Br. at pp. 40-41)  
13 CalTrans refuses to acknowledge and/or understand that the requirement of a reduced impact  
14 alternative discussed in *Watsonville* is one of the alternatives under the first and second sentences  
15 in section 15126.6(c), not the third sentence. The *Watsonville Pilots Association* Court held that:

16 The purpose of an EIR is *not* to identify alleged alternatives that meet few if any of  
17 the project's objectives so that these alleged alternatives may be readily eliminated.  
18 Since the purpose of an alternatives analysis is to allow the decision maker to  
19 determine whether there is an environmentally superior alternative that will meet  
20 most of the project's objectives, the key to the selection of the range of alternatives  
21 is to identify alternatives that meet most of the project's objectives but have a  
22 reduced level of environmental impacts. (*Id.* at p. 1089 [emphasis in original].)

23 One quick way to determine whether CalTrans violated CEQA’s requirement for an  
24 alternatives analysis is to evaluate whether the EIR carried forward alternatives to allow the  
25 decisionmaker to determine whether there is an environmentally superior alternative that will  
26 meet most of the Project's objectives. In the present case, it is without dispute that the only  
27 alternatives carried forward for the decisionmaker to act upon were either the Project or the no-  
28 Project.

29 Petitioners’ application and interpretation of section 15126.6(c) is consistent with  
30 numerous court rulings. (See *Watsonville Pilots Association, supra*, 183 Cal.App.4<sup>th</sup> at pp. 1086-  
31 1088; *Mir Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4<sup>th</sup> 477, 489-490;



1 *California Native Plant Society v. City of Santa Cruz, supra*, 177 Cal.App.4<sup>th</sup> at p. 981 [The  
2 determination of whether an alternative is feasible is made in two stages].)

3 Thus, the EIR failed to provide a selection and discussion of alternatives that fosters  
4 informed decision-making and informed public participation. (See SAR 167.) The EIR, in  
5 violation of CEQA, does not contain a reasonable range of alternatives that lessen the Project's  
6 significant environmental impacts, and does not focus on alternatives that either eliminate  
7 adverse impacts or reduce them to insignificance, even if they would to some degree impede the  
8 Project's objectives, as required by CEQA. Other than the required No Project Alternative  
9 (Guidelines, § 15126.6(e); SAR 171), the FEIR's alternative analysis contained only the  
10 proposed project – Alternative A. (SAR 167-171.) The EIR neglected to describe even one, let  
11 alone “a range,” of reasonable alternatives that would feasibly attain the Project's objectives.  
12 (Guidelines, § 15126.6(a).)<sup>5</sup>

13 CalTrans' failure to consider a reasonable range of alternatives constitutes a failure to  
14 proceed in the manner required by law, and a prejudicial abuse of discretion. (See *Kings*  
15 *County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 731, [“An inadequate  
16 discussion of alternatives constitutes an abuse of discretion.”].) CEQA does not allow an  
17 agency to reject every alternative during the scoping process as infeasible and then claim that  
18 the discussion of “infeasible” alternatives met the requirement that the EIR described a range of  
19 potentially feasible alternatives to the project. (See Guidelines, § 15126.6; *Watsonville Pilots*  
20 *Association, supra*, 183 Cal.App.4<sup>th</sup> at p. 1089.) As such, the Court should set aside the  
21 certification of the EIR.

## 22 **2. The EIR Failed to Include a Reduced Impact Alternative**

23 As discussed in Petitioners' Memorandum of Points and Authorities, the EIR contained  
24 only two alternatives: 1) Alternative A, the approved project, which consists of reconstructing  
25

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26 <sup>5</sup> The courts have stated that when a project objectives are defined too narrowly, an EIR's  
27 alternative analysis may also be inadequate. (*City of Santee v. County of San Diego* (1989) 214  
28 Cal.App.3d 1438, 1455.) In the present case, CalTrans' interprets its project objectives so  
narrowly as to prevent a consideration of a reasonable range of alternatives. Thus, as written, or  
as interpreted by CalTrans, there are no feasible alternatives for the Project.



1 SR 16 to include 12 foot lanes and 8 foot shoulders on each side of the highway (SAR 167); and  
2 2) a “no build” alternative. (*Id.*; SAR 171; Opening Br. at p. 40 .) The no-build alternative,  
3 also known as the required No Project Alternative, would make no improvements to the existing  
4 roadway. (*Id.*; see Guidelines § 15126.6(e),[“The specific alternative of “no project” shall also  
5 be evaluated along with its impact.”].) Under the No Build Alternative there would be no  
6 environmental impacts, but there would be continued routine maintenance. (SAR 171.) Other  
7 than the required no project alternative, the EIR did not evaluate a reduced project alternative.  
8 (See SAR 171-175.)

9 CalTrans argues that the EIR’s inclusion of the reduced impact alternatives that were  
10 rejected from further consideration satisfy CEQA’s requirement that an EIR consider a reduced  
11 impact alternative. (See *Watsonville Pilot Association, supra*, 183 Cal.App.4<sup>th</sup> at p. 1086-1089.)  
12 As discussed above, CalTrans fails to understand the distinction between alternatives that were  
13 rejected as infeasible and not carried forward for further discussion and those alternatives that  
14 could feasibly accomplish most of the basic objectives of the Project and could avoid or  
15 substantially lessen one or more of the significant effects. (See Guidelines, § 15126.6(c).) “The  
16 purpose of an EIR is *not* to identify alleged alternatives that meet few if any of the project’s  
17 objectives so that these alleged alternatives may be readily eliminated.” (*Watsonville Pilots*  
18 *Association, supra*, 183 Cal.App.4<sup>th</sup> at p. 1089.) CalTrans cannot identify a reduced impact  
19 alternative that was carried forward for further discussion that would allow “the decision maker  
20 to determine whether there is an environmentally superior alternative that will meet most of the  
21 project's objectives.” (*Id.*) As such, CalTrans’ alternatives violated CEQA and the certification  
22 and approval of the Project constituted a prejudicial abuse of discretion.

### 23 **3. CalTrans’ Rejection of Spot Improvement Alternative is Not Supported by** 24 **Substantial Evidence**

25 CalTrans rejected the Spot Improvement alternative on the grounds that it is infeasible  
26 because collisions are distributed throughout the project area and are not limited to particular  
27 locations. (SAR 175.) As discussed above, the administrative record does not include the  
28 collision data and as such CalTrans’ determination is not supported by substantial evidence.



1           **4.     CalTrans' Rejection of Reduced Shoulders Alternative is Not Supported by the**  
2           **Project Description**

3           CalTrans argues that in addition to the loss of funding associated with the 4-foot shoulders  
4 project, such shoulders are not recommended for routes such as State Route 16 for numerous  
5 reasons. (Opp. Br. at p. 35.) CalTrans' lists 9 reasons and provides a citation to the Final EIR.  
6 (See SAR 175.) CalTrans, however, provides no other citation to support this conclusion based  
7 upon what is recommended for such highways. Again, substantial evidence requires that opinion  
8 be supported by facts. (Guidelines, § 15384.) CalTrans also argues that loss of project funding  
9 is a strong economic factor in determining the feasibility of the alternative. (Opp. Br. at p. 35.)  
10 Again, CalTrans offers no evidence regarding the feasibility of the project without federal  
11 funding. While it may seem obvious that without federal funding, the project cannot be built,  
12 CEQA mandates that such conclusions be supported by substantial evidence. In this case, it is  
13 not supported.

14           CalTrans also does not adequately respond to Petitioners' argument that if 25 percent  
15 reduction were achieved by 4- foot shoulders, then it may reduce the accident rates on several if  
16 not all segments to less than the statewide average. Under such scenario, while the project may  
17 not qualify for federal highway funds, it would meet the Project's objective of improving safety.

18           **5.     The EIR Failed to Include Feasible Alternatives to the Project that were**  
19           **Presented to CalTrans.**

20           Petitioners assert that CalTrans failed to include review or feasible alternatives to the  
21 Project that were presented to CalTrans. (Opening Br. at p. 43.) Such alternatives include a  
22 Reduced-Scale, Increased Enforcement Alternative presented on May 30, 2006 by Petitioner  
23 CVC. (AR 49374-49375.) As discussed in Petitioners' Memorandum of Points and Authorities,  
24 this project design would confine all new work within or immediately adjacent to the present  
25 roadbed with the goal of avoiding all permanent take of prime farmland soils of local importance  
26 and old growth trees. (Opening Br. at p. 43)

27           CalTrans' asserts that it need not respond to Petitioners' comments regarding the  
28 alternatives as the comment was on the initial Draft EIR and not the revised Draft EIR. (Opp.  
Br. at p. 36). CalTrans misses the point. Petitioners do not assert that CalTrans failed to respond



1 to the comments, but instead, that CalTrans failed to consider alternatives that were properly  
2 submitted. The CEQA Guidelines recognize that “comments are most helpful when they suggest  
3 additional specific alternatives or mitigation measures that would provide better ways to avoid or  
4 mitigate the significant environmental effects.” (Guidelines, § 15204(a).) The fact that the  
5 alternative was presented to CalTrans on the original Draft EIR is not a sufficient basis for  
6 refusing to evaluate the consider the alternative or to make a determination or finding regarding  
7 the alternative.

8 CalTrans’ further argues that under the CEQA Guidelines, CalTrans’ EIR “need not  
9 consider every conceivable alternative to a project.” (Guidelines, § 15126.6(a).) Again,  
10 CalTrans, misunderstands Petitioners’ arguments and CEQA. Petitioners do not assert that  
11 CalTrans must consider every conceivable alternative. Instead, Petitioners argue that since the  
12 EIR failed to consider a reasonable range of alternatives, the EIR should have discussed and fully  
13 analyzed alternatives that Petitioners and others presented to CalTrans that would have resulted  
14 in improved safety. (Opp. Br. at p. 43.) At the very least, CalTrans’ findings should have  
15 provided the basis for rejecting the potential alternatives submitted by the public. (See  
16 *Foundation for San Francisco’s Architectural Heritage v. City & County of San Francisco*  
17 (1980) 106 Cal.App.3d 893, 910.) Although these alternatives were presented to CalTrans,  
18 CalTrans refused to evaluate and consider them and made no findings that such alternatives were  
19 not feasible. (See Opp. Br. at pp. 36-37.)

20 **E. THE COUNTY FAILED TO COMPLY WITH CEQA’S PROCEDURAL REQUIREMENTS**

21 **1. The Final EIR’s Response to Public Comments Are Legally Insufficient**

22 CalTrans insist the responses to comments within the FEIR are legally adequate. (Opp. Br.  
23 at p. 37; SAR 262-309.) CEQA provides that responses to comments “shall describe the  
24 disposition of each significant environmental issue that is raised by commenters... consistent  
25 with [Guidelines] § 15088.” (Pub. Resources Code, § 21091(d)(2)(B).) “There must be good  
26 faith, reasoned analysis in response. Conclusory statements unsupported by factual information  
27 will not suffice.” (Guidelines, § 15088(c).) “It is not enough for the EIR simply to contain  
28 information submitted by the public and experts. Problems raised by the public and responsible



1 experts require a good faith reasoned analysis in response”; “[t]he requirement of a detailed  
2 analysis in response ensures that stubborn problems or serious criticism are not ‘swept under the  
3 rug.’” (*California Oak Foundation v. City of Santa Clarita*, *supra*, 133 Cal. App. 4th at p. 1240,  
4 quoting *Santa Clarita Organization for Planning the Environment v. County of Los Angeles*  
5 (2003) 106 Cal.App.4th 715, 723.)

6 Rather than providing a good faith response to public comments, especially those raised by  
7 Petitioners, as required by section 15088(c), the FEIR simply dismissed those concerns as  
8 insignificant or deferred any response until an unspecified time in the future when proper  
9 environmental review *may* occur. (SAR 262-309.) As explained *infra*, deferring environmental  
10 review to an unknown date in the future is improper. As stated by the court in *City of Long*  
11 *Beach v. Los Angeles Unified School Dist.* (2009) 176 Cal.App.4th 889, 904, “the requirement of  
12 a detailed written response to comments helps to ensure that the *lead agency will fully consider*  
13 *the environmental consequences of a decision before it is made*, that the decision is well  
14 informed and open to public scrutiny, and that public participation in the environmental review  
15 process is meaningful.” (*Ibid.*, [emphasis added].) By dismissing concerns without supporting  
16 factual information or evidence, failing to divulge reports referenced by the agency, and  
17 providing speculative answers about possible future project designs does not meet the agency’s  
18 burden to properly respond to comments. (Guidelines, § 15088; *see also Twain Harte*  
19 *Homeowners Ass’n v. County of Tuolumne* (1982) 138 Cal. App. 3d 664, 679 (“A conclusory  
20 statement ‘unsupported by empirical or experimental data, scientific authorities, or explanatory  
21 information of any kind’ not only fails to crystallize issues [citation] but ‘affords no basis for a  
22 comparison of the problems involved with the proposed project and the difficulties involved in  
23 the alternatives.’”)).) Further, withholding information precludes the public and the decision  
24 makers from being properly and appropriately informed on the Project in its entirety.

25 CEQA provides that the EIR process must be “open to the public, premised upon a full and  
26 meaningful disclosure of the scope, purposes, and effect of a consistently described project, with  
27 flexibility to respond to unforeseen insights that emerge from the process.” (*Concerned Citizens*  
28 *of Costa Mesa, Inc.*, *supra*, 42 Cal.3d at p. 936.) As residents and farmers within the Capay



1 Valley, Petitioners' comments, opinions, and insight are not only valuable to the development of  
2 the Project, it are necessary. CalTrans denigrated these insights and precluded the public's role  
3 in the CEQA process by failing to properly review, analyze and respond to public comments.  
4 (Guidelines, § 15088(c).) As such, decision makers lacked information upon which to determine  
5 whether alternatives should be modified to avoid disturbances to biological resources. Caltrans  
6 abused its discretion in failing to proceed as required by law.

7 **2. CalTrans' Findings are Legally Insufficient**

8 CalTrans' Findings violate the requirements of CEQA. The Findings fail to identify all  
9 significant impacts associated with the project (Guidelines, § 15091); the Findings fail to identify  
10 all of the significant the changes or alterations that are required to avoid or substantially lessen  
11 the project's significant environmental effects (*Id.*, § 15091(a)(1)); the Findings are not supported  
12 by substantial evidence (*Id.*, § 15091(b)); the Findings fail to adopt a mitigation monitoring  
13 program (*Id.*, § 15091(d)); and the Findings fail to specify the location and custodian of the  
14 record of proceedings (*Id.*, § 15091(e)). By failing to comply with the procedures of CEQA,  
15 CalTrans' findings are necessarily prejudicial. (*Resource Defense Fund v. Local Agency*  
16 *Formation Com.*, *supra*, 191 Cal. App. 3d at p. 898 ["Failure to comply with the CEQA  
17 procedures *is necessarily prejudicial.*"] [Emphasis added].)

18 **CONCLUSION**

19 Based upon the foregoing, Petitioners respectfully request that the Court issue the writ and  
20 direct CalTrans to vacate and set aside all Project approvals.

21 Dated: January 19, 2011

Respectfully submitted,  
LAW OFFICES OF DONALD B. MOONEY

22 By   
23

Donald B. Mooney

24 Attorneys for Petitioner Capay Valley Coalition  
25 CALIFORNIA FARM BUREAU FEDERATION

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27 By \_\_\_\_\_  
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Kari E. Fisher,

Attorneys for Petitioner Yolo County Farm Bureau



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PROOF OF SERVICE

I am employed in the County of Yolo; my business address is 129 C Street, Suite 2, Davis, California; I am over the age of 18 years and not a party to the foregoing action. On January 19, 2011, I served a true and correct copy of

**PETITIONERS' REPLY BRIEF IN SUPPORT  
OF PETITION FOR WRIT OF MANDATE**

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

Judith A. Carlson  
Legal Division  
Department of Transportation  
1120 N Street (MS-57)  
P.O. Box 1438  
Sacramento, CA 95812-1438

*Representing Respondents  
California Department of  
Transportation and  
Randell H. Iwasaki*

I declare under penalty of perjury that the foregoing is true and correct. Executed on January 19, 2011, at Davis, California.

  
Donald B. Mooney