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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
TUCSON DIVISION

COALITION FOR SONORAN DESERT PROTECTION; CENTER FOR BIOLOGICAL DIVERSITY; FRIENDS OF IRONWOOD FOREST; and TUCSON AUDUBON SOCIETY; Plaintiffs, v. FEDERAL HIGHWAY ADMINISTRATION; and KARLA PETTY, acting in her official capacity as DIVISION ADMINISTRATOR, FEDERAL HIGHWAY ADMINISTRATION, ARIZONA; Defendants.	Case No. **COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

INTRODUCTION

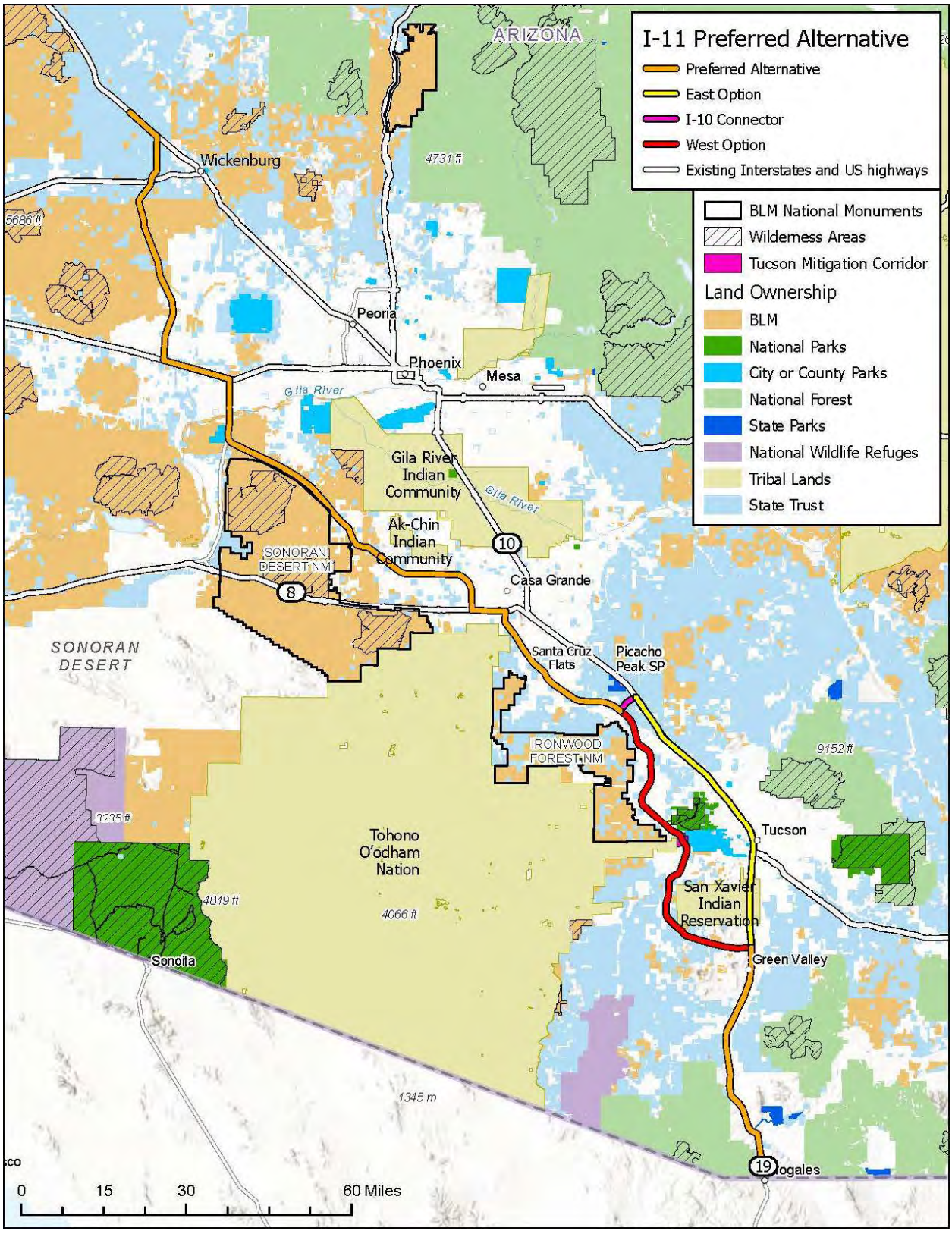
1. Plaintiffs Coalition for Sonoran Desert Protection, Center for Biological Diversity, Friends of Ironwood Forest, and Tucson Audubon Society ("Plaintiffs") challenge the failure of the Federal Highway Administration ("FHWA") to comply with the National Environmental Policy Act ("NEPA"), Section 4(f) of the U.S. Department of Transportation Act ("Section 4(f)"), and the Fish and Wildlife Coordination Act of 1958, in selecting an approximately 280-mile corridor for the proposed Interstate-11 ("I-11") in Arizona ("Project"), which would begin in Nogales on its south end; traverse Santa Cruz, Pima, Pinal, Maricopa, and Yavapai counties; and terminate at Wickenberg on its north end.[1] The Arizona Department of Transportation (ADOT) is the local sponsor of the Project.

2. On November 15, 2021, FHWA issued a Record of Decision selecting a 2,000-foot wide corridor for development of the I-11 Corridor Project. At the same time, FHWA's "Tier 1" decision deferred the selection of the specific route through Pima County, reserving for the Project's "Tier 2" decision-making process whether to select the "West Option," which would impact ecologically important desert lands in the Avra and Altar valleys; or the East Option, which would use or expand existing freeways, including Interstate-19 and Interstate-10 ("I-19" and "I-10") in and around Tucson. Regardless of whether the West or East Option is selected, a large swath of the Project will cross the fragile Sonoran Desert and threaten important public lands, watersheds, air quality and climate, sensitive wildlife and their habitat, scenic and quiet landscapes, dark skies, and recreation.

3. FHWA apparently decided to defer the selection of the Pima County route in response to public outcry protesting the West Option (part of the FHWA's "Preferred Alternative") and opposition from local governments, federal agencies, and elected

[1] An interactive map of the selected I-11 corridor is available at https://adot.maps.arcgis.com/apps/webappviewer/index.html?id=0d91bf0138194ad09df43a0dcb53c14.

I-11 Project: Preferred Alternative Selected by FHWA

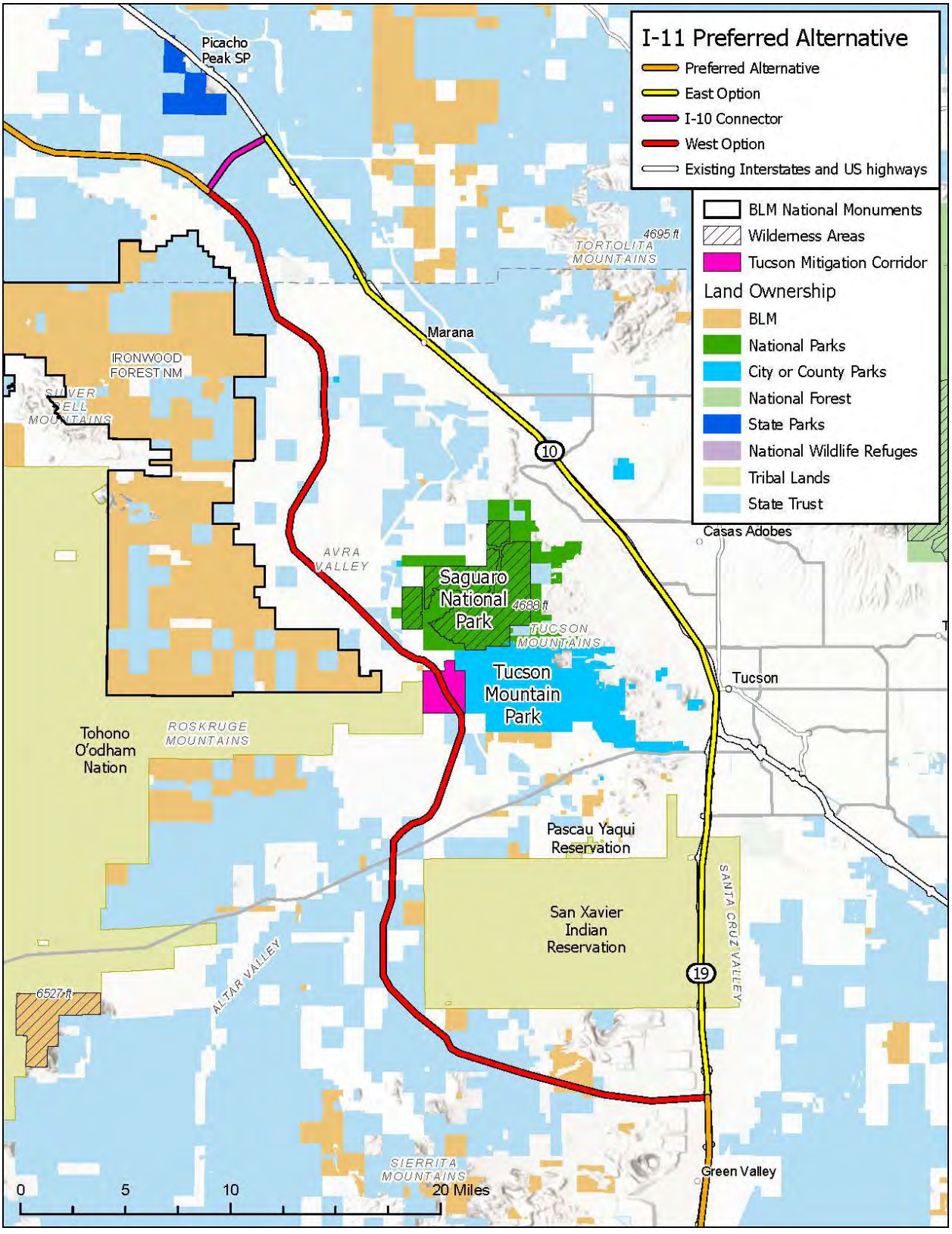


officials, and because the West Option's effects on specific resources in Pima County required further study. For example, the Bureau of Reclamation ("Reclamation"), National Park Service, U.S. Fish and Wildlife Service, Arizona Game and Fish Department, Pima County, and U.S. Forest Service described how the West Option would bisect the Tucson Mitigation Corridor to the detriment of wildlife in Ironwood Forest National Monument, Saguaro National Park, and the Tucson Mountains.

4. In choosing to build the highway while deferring its decision on the route through Pima County, FHWA put the cart before the horse. FHWA decided to proceed with the entire I-11 Project before fully understanding the environmental consequences of one of the most controversial aspects of the Project—its routing through Pima County between, roughly, Sahuarita and Marana, Arizona—in violation of NEPA's directive that federal agencies analyze and disclose the environmental effects of their actions to the public and decisionmakers in an Environmental Impact Statement (EIS) *before* committing to those actions.

5. Reclamation and Pima County flagged major land-use conflicts and legal barriers presented by the West Option, which make this option infeasible. These conflicts include the West Option's (1) likely violation of the Tucson Mitigation Corridor's general plan prohibiting development therein and the Fish & Wildlife Coordination Act's prohibition on activities that would "defeat the initial purpose of [the land's] acquisition," 16 U.S.C. § 663(b), (d)—here, providing for wildlife movement through the Tucson Mitigation Corridor; and (2) conflicts with the Pima County Sonoran Desert Conservation Plan's goals, and commitments under its federal Multi-Species Habitat Conservation Plan to conserve wildlife habitat and open space in the Avra Valley. But FHWA still proceeded to carry forward this West Option without addressing how these conflicts would be reconciled, in violation of the Administrative Procedure Act and NEPA.

Preferred Alternative Routes through Pima County: West and East Options



6. At the same time, FHWA gave short shrift to other alternatives that could avoid these problems. Despite overwhelming support from the City of Tucson and local residents for incorporating passenger rail and/or other transportation modes or traffic management strategies along and around I-19 and I-10 as an alternative to developing the Project—especially within Pima County—FHWA cursorily rejected detailed consideration of a rail or multimodal alternative. Then, it skewed the comparison of alternatives against selection of the "No-Build Alternative" by overestimating future travel demand based on inflated population growth and development projections, while ignoring the benefits of currently planned passenger rail and other projects on reducing congestion and the Project's potential to induce more congestion. And in analyzing each of the "Build Corridor Alternatives," the EIS failed to take a "hard look" at and disclose the Project's potential to worsen air pollution and climate change; disrupt wildlife linkages and isolate, weaken, and/or extirpate wildlife populations; spread and proliferate invasive buffelgrass, increasing wildfire risks; contaminate water resources, including the Santa Cruz River and City of Tucson's Avra Valley drinking water sources; and degrade wilderness, recreation, scenic values, dark skies, soundscapes, and wildlife habitat in and around public lands, including the Sonoran Desert National Monument, Ironwood Forest National Monument, Saguaro National Park, and Tucson Mountain Park.

7. Finally, FHWA's decision rests on an inadequate Section 4(f) evaluation, which FHWA must prepare before it authorizes the use of a public park, historic site, or wildlife refuge for a highway project. The Section 4(f) evaluation must demonstrate to the extent possible that (1) no feasible and prudent alternative is available to using these significant resources, and (2) the agency has conducted "all possible planning" to minimize adverse effects. Here, FHWA erroneously determined that Saguaro National Park and Tucson Mountain Park are not wildlife refuges protected under Section 4(f), despite their providing important refuges for wildlife; and that Section 4(f) does not

protect the Ironwood Forest and Sonoran Desert national monuments because they are not primarily recreational parks, despite their being managed and used for recreation. Further, FHWA failed to consider multimodal transportation options and strategies that could be applied along existing roadways to avoid and minimize harms to the Tucson Mitigation Corridor and other Section 4(f) properties, rendering its Section 4(f) evaluation inadequate.

8. Accordingly, FHWA's Tier 1 approval of the I-11 corridor must be set aside, and any activities to carry out the development of the Project, including the Tier 2 planning and EIS, cannot proceed until FHWA has prepared a legally adequate Tier 1 EIS and Record of Decision fully disclosing the Project's effects, and a legally adequate Section 4(f) evaluation.

JURISDICTION AND VENUE

9. This Court has jurisdiction over this action pursuant to the Administrative Procedure Act (APA), 5 U.S.C. sections 701-706; 28 U.S.C. section 1346 (United States as defendant); and 28 U.S.C. section 1331 (federal question jurisdiction), with claims arising under the APA, NEPA, Section 4(f) of the U.S. Department of Transportation Act, and the Fish and Wildlife Coordination Act of 1958.

10. An actual controversy exists between the parties within the meaning of 28 U.S.C. section 2201(a). This Court may grant declaratory relief and additional relief pursuant to 28 U.S.C. sections 2201-2202 and 5 U.S.C. sections 701-706.

11. Venue is proper in this judicial district and Court pursuant to 28 U.S.C. section 1391(e)(1)(B) because a substantial part of the events or omissions giving rise to the claim occurred in this district, and a substantial part of the property that is the subject of this action is situated in this district. The Project would be entirely located in Arizona. Venue is also proper in the Tucson Division pursuant to Civil Local Rules 77.1 and 5.1, because this case is founded on causes of action arising in the Tucson Division. The southern section of the Project is located in Pima and Santa Cruz counties roughly

between the cities of Nogales and Marana.

PARTIES

12. Plaintiff COALITION FOR SONORAN DESERT PROTECTION (CSDP or "Coalition") is an independent, nonprofit, tax-exempt 501(c)(3) organization based in Pima County, Arizona with members and supporters throughout the United States, with the vast majority residing in southern Arizona. CSDP's mission is to protect the biodiversity of the Sonoran Desert through science-based advocacy. CSDP advocates for the protection of local open spaces; the development of Pima County's Multi-Species Conservation Plan and other jurisdictional Habitat Conservation Plans; the preservation of Sonoran Desert wildlife linkages, including the construction of wildlife crossings over and under local roadways; water resource planning and policy; riparian habitat protection, restoration, and mitigation; and smart planning in private development. The Coalition has 30 member groups, representing over 30,000 members. The Coalition works on a grassroots level and leverages the expertise, experience, and knowledge-base of its member groups and other community partners into long-lasting positive change for Sonoran Desert conservation. The Coalition's goal and success has been to incorporate sound science and planning as Pima County adopted and began its implementation of the ground-breaking Sonoran Desert Conservation Plan (SDCP). The Coalition's scope and mission has broadened to include involvement in virtually every conservation issue in Pima County, including organizing community engagement in the NEPA process involving the proposed Interstate 11. The CSDP brings this action on its own behalf and on behalf of its adversely affected members.

13. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY ("the Center") is a non-profit membership corporation with offices in Arizona, California, Colorado, Florida, Hawaii, Minnesota, Nevada, North Carolina, Oregon, Washington, Washington D.C., and Mexico. The Center works through science, law, and policy to secure a future for all species, great or small, hovering on the brink of extinction. The Center is actively

involved in species and habitat protection issues worldwide, including throughout the southwestern United States, and continues to actively advocate for increased protections for species and their habitats in Arizona and many of its public lands, including Saguaro National Park, Ironwood Forest National Monument, and Sonoran Desert National Monument. The lands that will be affected by the Project include habitat for listed, rare, and imperiled species that the Center has worked to protect, including Jaguar, Tucson Shovel-nosed Snake, Western Yellow-Billed Cuckoo, Pima Pineapple Cactus, Sonoran Desert Tortoise, and Nichol's Turk's Head Cactus. The Center also works to reduce air pollution and greenhouse gas emissions to protect biological diversity, the environment, and public health. The Center has over 89,600 members, including over 4,100 members living in Arizona. Many of these members have visited public lands in Arizona's Sonoran Desert for recreational, scientific, educational, and other pursuits and intend to continue to do so in the future, and are particularly interested in protecting the many native, imperiled, and sensitive species and their habitats that may be affected by the Project. The Center brings this action on its own behalf and on behalf of its adversely affected members.

14. Plaintiff FRIENDS OF IRONWOOD FOREST (FIF) is a non-profit membership corporation with offices in Arizona. FIF works to preserve and protect the Ironwood Forest National Monument (IFNM), including the various natural and cultural objects for which the IFNM was proclaimed. FIF is actively involved in species and habitat protection within the vicinity of the IFNM, issues grants for scientific study of species, provides public education regarding the IFNM, conducts guided nature hikes and volunteer work projects, and actively advocates for the continued protection of the IFNM. The lands that will be affected by the Project include habitat for listed, rare, and imperiled species that migrate in and out of the IFNM, including the only remaining indigenous herd of Desert Bighorn Sheep. FIF members, including those living in and near Tucson, recreate within the IFNM and other public lands in Arizona's Sonoran

Desert. The FIF brings this action on its own behalf, its members' behalf, and on behalf of its mission to protect the IFNM for its current and future enjoyment by the public.

15. Plaintiff TUCSON AUDUBON SOCIETY, founded in 1949, is a non-profit organization dedicated to inspiring people to enjoy and protect birds and their habitats through recreation, education, wildlife conservation, and protection and restoration of the environment on which we all depend. The I-11 freeway project, and especially the "West Option" route for Pima County, would adversely impact a high-priority reservoir of biodiversity that Tucson Audubon has worked, and continues to work, to protect through a wide range of efforts. These efforts include designation of Important Bird Areas, research and conservation pertaining to numerous species at various levels of endangerment, and habitat enhancement and mitigation programs in the Santa Cruz River Watershed and the Altar and Avra Valleys. For example, Tucson Audubon is engaged in efforts to restore Martin Farm, a parcel owned by the City of Tucson, which is directly in the path of the West Option route. Tucson Audubon's activities on this parcel are relied on for the mitigation of development activities, as part of the U.S. Army Corps of Engineers' Section 404 Clean Water Act in-lieu-fee mitigation program. Tucson Audubon has approximately 3,200 members, many of whom live in southeast Arizona in areas that would be directly or indirectly impacted by the Project. These area residents, as well as a great many other Tucson Audubon members, visit areas along the selected I-11 corridor, including lands within and surrounding the Avra Valley and Santa Cruz River corridor in Pima, Pinal, and Santa Cruz counties, for birdwatching and other wildlife-focused recreation; for hiking; for stargazing; for community-science research projects that contribute vital data for wildlife conservation; and for volunteer activities, such as invasive-plant removal, that not only contribute to habitat restoration but also (as in the case of buffelgrass removal) reduce the risk of wildfire. These Tucson Audubon members, as well as the hundreds of thousands of other birdwatchers who visit southeast Arizona every year, have particular interest in preserving the Project area's

globally important biodiversity, its scenic beauty, and its air quality and water resources, all of which would be significantly impacted by the Project. Tucson Audubon brings this action on its own behalf and on behalf of its adversely affected members.

16. The recreational, aesthetic, conservation, educational, and scientific interests of Plaintiffs and their members in the people, wildlife, and ecosystems of southern and central Arizona will be directly and adversely affected by FHWA's approval of the Project. If Defendants had carried out an adequate environmental review and fully complied with NEPA and Section 4(f) before approving the Project, they would likely have either denied the Project, not carried forward the West Option, or selected an alternative that would better protect communities and the environment from the Project's adverse impacts. Proper environmental review would have made it more likely that Plaintiffs and their members would not be displaced from their homes and businesses, would not experience as much air pollution and the resulting health effects, and would have better opportunities to observe and enjoy the species and habitats of the Sonoran Desert and public lands threatened by the Project.

17. Plaintiffs' and Plaintiffs' members' injuries would be redressed by the relief sought.

18. Defendant FEDERAL HIGHWAY ADMINISTRATION is a federal agency of the Department of Transportation responsible for supporting state and local governments in the design, construction, and maintenance of the U.S. highway system. In carrying out its responsibilities, FHWA must comply with the applicable requirements of NEPA, Section 4(f), and the APA. FHWA is responsible for the Project's compliance with NEPA and related statutes, and prepared the EIS with ADOT.

19. Defendant KARLA PETTY is the Arizona Division Administrator for the Federal Highway Administration, and signed the Record of Decision approving the Project on November 15, 2021. She is included in this action in her official capacity.

STATUTORY BACKGROUND

A. National Environmental Policy Act

20. The National Environmental Policy Act is "our basic national charter for protection of the environment." 40 C.F.R. § 1500.1(a). Its twin aims are to facilitate informed agency decision-making and public access to information. By focusing both agency and public attention on the environmental effects of proposed actions, NEPA facilitates informed decision-making by agencies, and fosters public participation.

21. To accomplish these objectives, NEPA requires "responsible [federal] officials" to prepare an environmental impact statement (EIS) to consider the effects of each "major Federal action[ ] significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C)(i).

22. An EIS must provide a detailed statement of: (1) the environmental impact of the proposed action, (2) any adverse environmental effects that cannot be avoided should the proposed action be implemented, (3) alternatives to the proposed action, (4) the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity, and (5) any irreversible and irretrievable commitments of resources that would be involved in the proposed action should it be implemented. 42 U.S.C. § 4332(2)(C).

23. The Council on Environmental Quality ("CEQ") promulgates regulations that implement NEPA and which are binding on all federal agencies. *See* 40 C.F.R. § 1500.1, *et seq.* In addition, the Department of Transportation has promulgated regulations for the implementation of NEPA which are binding on its agencies, including the FHWA. *See* 23 C.F.R. §771.101, *et seq*.

24. An EIS must "inform decision-makers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment." 40 C.F.R. § 1502.1. An EIS must "specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action." *Id.* § 1502.13.

25. The EIS must "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." 42 U.S.C. § 4332(2)(E). This analysis of alternatives is the "heart" of the environmental review process; the EIS must "rigorously explore and objectively evaluate all reasonable alternatives" in order to "provid[e] a clear basis for choice among options by the decisionmaker and the public." 40 C.F.R. § 1502.14(a). Within the alternatives analysis, the agency must assess: (1) a "no action" alternative, (2) other reasonable courses of action not within the jurisdiction of the lead agency, and (3) mitigation measures not already included in the proposed action or alternatives. *Id.* §§ 1502.14(b)-(f). The agency must consider a reasonable range of alternatives, and the exclusion of reasonable alternatives from review within an EIS renders the analysis invalid. The agency must also explain why it decided not to study in detail any alternatives that were considered but eliminated from further analysis. *Id.* § 1502.14(a).

26. The EIS must take a "hard look" at each proposed alternative's impacts, including the significance of effects. NEPA requires federal agencies to analyze the direct, indirect, and cumulative impacts of the proposed action. 40 C.F.R. §§ 1508.7, 1508.8. Such analysis must include all reasonably foreseeable impacts of the proposed action.

27. One of the most important aspects of NEPA is that the agency is required to consider the cumulative effects of its actions, which the CEQ regulations describe as:

> the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

40 C.F.R. § 1508.7.

28. When preparing an EIS, an agency must ensure that high-quality

information is available to the agency and the public before the agency makes any decision or takes any action. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA. 40 C.F.R. § 1500.1(b). The agency is required to identify clearly all of its assumptions, explain any inconsistencies, disclose all methodologies used, rebut all contradictory evidence, eliminate guesswork, make explicit reference to sources relied upon for conclusions, and record in an understandable manner the basis for those conclusions. *Id*. § 1502.24.

29. In responding to public and expert agency comments, the preparing agency is required to disclose and address all "responsible opposing views." 40 C.F.R. § 1502.9(b). Unless the preparing agency substantively explains why a comment does not warrant further response, it must modify or supplement the analysis in its EIS to account for the comment. *Id*. § 1503.4(a).

30. The agency must disclose if information is incomplete or unavailable and explain "the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts." 40 C.F.R. § 1502.22(b)(1).

31. An agency "[s]hall prepare supplements to either draft or final environmental impact statements if . . . [t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts," or "[m]ay also prepare supplements when the agency determines that the purposes of the Act will be furthered by doing so." 40 C.F.R. § 1502.9(c)(1)(ii), (2).

32. Finally, NEPA's regulations allow for "tiered" environmental analysis. Tiering refers to "the coverage of general matters in broader [EISs] . . . with subsequent narrower statements or environmental analyses . . . incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared." 40 C.F.R. § 1508.1.

B. Section 4(f) of the Department of Transportation Act

33. The Department of Transportation Act of 1966 includes a provision—

Section 4(f)—requiring the FHWA to make "special effort . . . to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites." 49 U.S.C. § 303(a); *see also* 23 U.S.C. § 138(a).

34. Section 4(f) allows approval of transportation programs or projects "requiring the use of publicly owned land of a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance, or land of an historic site of national, State, or local significance . . . only if—(1) there is no prudent and feasible alternative to using that land; and (2) the program or project includes all possible planning to minimize harm . . . resulting from the use." 49 U.S.C. § 303(c). Accordingly, the Section 4(f) regulations require the preparation of a "Section 4(f) evaluation," which "shall include sufficient supporting documentation to demonstrate why there is no feasible and prudent avoidance alternative and shall summarize the results of all possible planning to minimize harm to the Section 4(f) property." 23 C.F.R. § 774.7(a).

35. When the FHWA prepares a "first-tier, broad-scale EIS," it "should address the potential impacts that a proposed action will have on a Section 4(f) property and whether those impacts could have a bearing on the decision to be made." 23 C.F.R. § 774.7(e)(1). It may make a preliminary determination whether the project's impacts on the Section 4(f) property are de minimis, or whether there are feasible and prudent avoidance alternatives. *Id*. The preliminary Section 4(f) approval must be incorporated into the first-tier EIS and finalized in the second-tier study. 23 C.F.R. § 774.7(e)(1), (2); *see also* Section 4(f) Policy Paper, 77 Fed. Reg. 42802, 42822-23 (July 20, 2012).

36. Section 4(f) applies to not just the FHWA's direct use of a Section 4(f) property but also the "constructive use" of a nearby Section 4(f) property. 23 C.F.R. § 774.17; 23 C.F.R. § 774.15(b). "A constructive use occurs when the transportation project does not incorporate land from a Section 4(f) property, but the project's proximity impacts are so severe that the protected activities, features, or attributes that qualify the property for protection under Section 4(f) are substantially impaired." *Id*. § 774.15(a).

C. Fish & Wildlife Coordination Act of 1958 and the Tucson Mitigation Corridor Master Management Plan

37. The Fish and Wildlife Coordination Act of 1958 (FWCA) requires that federal projects that impound, divert, or modify a stream or other body of water incorporate measures to "mitigate[e] or compensate[e] for" the project's "damages" to wildlife, and authorizes federal agencies to acquire lands for such mitigation. 16 U.S.C. § 662(b).

38. Accordingly, the FWCA restricts the use of mitigation lands acquired in connection with federal water development projects. *See id*. § 663(a). In relevant part, these restrictions include:

(a) "The use of such waters, land, or interests therein for wildlife conservation purposes shall be in accordance with general plans jointly approved" by the agency administering the project, the Department of Interior, and the state wildlife agency. 16 U.S.C. § 663(b).

(b) "Properties acquired for the purpose of this section shall continue to be used for such purposes, and shall not become the subject of exchange or other transactions if such exchange or other transaction would defeat the initial purpose of their acquisition." *Id*. § 663(d).

39. In 1985, the Bureau of Reclamation ("Reclamation") approved the development of the Tucson Aqueduct-Phase B, Central Arizona Project ("Tucson Aqueduct") in the Avra Valley. Subsequently, pursuant to the FWCA, it acquired 4.25 square miles of land, now referred to as the "Tucson Mitigation Corridor," to partially mitigate the impacts of the Tucson Aqueduct on Avra Valley wildlife.

40. In 1990, the Pima County Board of Supervisors, the Arizona Game and Fish Department, and the Department of Interior executed a Cooperative Agreement for Use of Project Lands for Wildlife and Plant Conservation and Management for the Tucson Mitigation Corridor, Central Arizona Project ("Cooperative Agreement"). The

Cooperative Agreement made available to Pima County the Tucson Mitigation Corridor for administration for the conservation and management of plants and wildlife, but the property remains under Reclamation's ownership.

41. The Cooperative Agreement also approved the general plan for the Tucson Mitigation Corridor, also known as the "Master Management Plan" (MMP). The Master Management Plan sets forth management goals for the Tucson Mitigation Corridor, including to "[c]ompensate for wildlife movement disruptions caused by aqueduct construction by providing an undeveloped wildlife movement corridor between the Tucson Mountains and the [Tohono O'odham] Nation to the west." MMP § I(1)(a).

42. Accordingly, the Master Management Plan "[p]rohibit[s] any future developments within the area other than existing wildlife habitat improvements described above or future wildlife improvements, management, or developments agreed to by Reclamation, Arizona Game and Fish Department [AZGFD], Fish and Wildlife Service (FWS), and Pima County." MMP § I(2)(a). This prohibition "will preserve this fragile desert habitat from urbanization and maintain an open wildlife movement corridor." *Id*.

D. Administrative Procedure Act

43. The Administrative Procedure Act entitles those adversely affected by final agency actions to a right of judicial review. 5 U.S.C. §§ 702, 704.

44. The APA directs reviewing courts to "compel agency action unlawfully withheld or unreasonably delayed" and to "hold unlawful and set aside agency action, findings, and conclusions" that are found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." *Id.* § 706(A).

45. The issuance of the Record of Decision and the approval of the Project is a final agency action subject to judicial review under 5 U.S.C. section 704. Plaintiffs have exhausted all administrative remedies by submitting written comments to the FHWA throughout the environmental review process and participating in public hearings on the

Project. All issues raised in this complaint were raised before by Plaintiffs, other public commenters, or government agencies prior to the Project's approval.

FACTUAL BACKGROUND

A. The Sonoran Desert, Avra Valley, and Public Lands Threatened by the Project

46. The Sonoran Desert is the most biologically diverse desert in the United States. Covering 120,000 square miles of southwestern Arizona, southeastern California, and the Mexican states of Baja and Sonora, its mountains, rivers, and canyons provide habitat for more than 100 reptiles, 2,000 native plants, 60 mammals, and 350 birds. These species are uniquely adapted to the Sonoran Desert's heat, aridity, and intense summer monsoons. The Sonoran Desert contains a variety of habitats, due to variations in elevation, temperature, and rainfall. These habitats include upland areas containing dense groves of cacti and small trees; desert grasslands; thorny scrub-brush desert; and sparsely vegetated regions of the Lower Colorado River Valley.

47. Pristine Sonoran Desert habitat is increasingly rare. Surface-water diversions and groundwater pumping to support suburban development have altered and destroyed vital riparian areas. Roads, pipelines, powerlines, and fences have fragmented the desert, making it increasingly difficult for wildlife to disperse, migrate, and find mates. Mining, overgrazing, and off-road vehicles have also degraded fragile desert resources. And climate change has made the Sonoran Desert hotter and drier and will continue to do so for many years.

48. The Project cuts across large swaths of the Sonoran Desert and threatens public lands and valuable wildlife habitat across southern Arizona's landscape.

i. Southern Section – West Option between Sahuarita and Marana[2]

[2] Many of the same vulnerable species and habitats discussed below ("Southern Section – West Option between Sahuarita and Marana") are found south of Pima County, along and around the Nogales-to-Sahuarita segment of the Project, and would be harmed by the Project.

49. The Altar and Avra valleys are largely undeveloped areas in Pima County, which lie west of Tucson and contain important public and tribal lands and habitats for wildlife. Public and tribal lands in these valleys that would be affected by the Project's West Option include Saguaro National Park, Tucson Mountain District; Ironwood Forest National Monument; Tucson Mountain Park; the Tucson Mitigation Corridor; and Tohono O'odham Nation lands.

50. Ten miles west of Tucson, Saguaro National Park's Tucson Mountain District preserves iconic Sonoran Desert giant-saguaro landscape over an area of 39 square miles. Over half of the Tucson Mountain District is designated Saguaro Wilderness, federally designated wilderness that is part of the National Wilderness Preservation System. The Department of Interior's National Park Service manages Saguaro National Park. The Tucson Mountain District provides habitat to over 125 avian species, including the Gilded Flicker (an Arizona Game & Fish Department Species of Greatest Conservation Need), Elf Owl (a U.S. Fish & Wildlife Service Bird of Conservation Concern), Cactus Ferruginous Pygmy-Owl, Gila Monster, mountain lion, rattlesnake, and various bats. The Tucson Mountain District is managed as part of the Tucson Mountain Wildlife Area, one of the state's original game refuges. The Project's West Option would pass within 0.3 miles of the far western portion of the Tucson Mountain District and within 0.6 miles of Saguaro Wilderness, and would cross the park's main access road, Sandario Road.

51. Created in 2000 by President Bill Clinton, the Ironwood Forest National Monument protects almost 300 square miles of Sonoran Desert habitat, including one of the richest stands of ironwood in the Sonoran Desert and several desert mountain ranges. The Monument extends from the Avra Valley's west side, just west of Saguaro National Park's Tucson Mountain District, and north almost to Casa Grande, Arizona. The Monument is administered by the Department of Interior, Bureau of Land Management

("BLM"). BLM manages areas within the Ironwood Forest National Monument as "Special Management Recreation Areas," which provide opportunities for non-motorized recreation; motorized recreation is prohibited within the national monument. The monument contains the last remaining indigenous population of Desert Bighorn Sheep in southeastern Arizona. The Project's West Option would cross access roads to Ironwood Forest National Monument and completely bisect migration of the bighorn sheep, and other large animals, between the ranges in the Ironwood Forest National Monument and the Tucson range, including Saguaro National Park, along the eastern portion of Avra Valley. The West Option would come within less than a mile of the national monument.

52. South of Saguaro National Park lies Tucson Mountain Park, one of the largest natural resource areas owned and managed by a local government in the U.S. The 30-square-mile county park provides wildlife-viewing opportunities, 62 miles of non-motorized trails, and campgrounds. Pima County manages the park. The Park contains the Arizona-Sonora Desert Museum, a renowned tourist destination for visitors to learn about the Sonoran Desert's rich biological resources. The park contains habitat for mountain lions, bobcats, javelina, mule deer, and at least 175 avian species, including Bendire's Thrasher (an International Union for Conservation of Nature Vulnerable Species), Cactus Ferruginous Pygmy-Owl (an AZGFD Species of Greatest Conservation Need), Desert Purple Martin (an AZGFD Species of Greatest Conservation Need), and Lucy's Warbler (an Audubon Watch List Rare Species and USFWS Bird of Conservation Concern). Tucson Mountain Park is part of the state-managed Tucson Mountain Wildlife Area. The West Option would cross Sandario Road and Mile Wide Road, both of which provide access to the park from the west and the most direct access to the Arizona-Sonora Desert Museum within the park, and would permanently degrade the pristine desert environment surrounding the museum.

53. Tucson Mountain Historic District is a 28,708-acre area spanning the Tucson Mountains, including sections of Saguaro National Park and Tucson Mountain

Park. In 2019, the historic district was nominated to the National Register of Historic Places after the Arizona State Historic Preservation Office confirmed its eligibility as a historic property with state significance. In July 2021, it was listed on the National Register of Historic Places, based on its association with the Civilian Conservation Corps. This district is directly adjacent to the western alignment of I-11, and roughly encompasses the original footprint of Tucson Mountain Park. The West Option would come within 200 feet of the historic district.

54. The Tucson Mitigation Corridor is a 2,514-acre parcel managed by the Bureau of Reclamation, which lies south of the southwest corner of Saguaro National Park and west of Tucson Mountain Park. In 1990, Reclamation purchased the property for $4.4 million and established the Tucson Mitigation Corridor to mitigate the Tucson Aqueduct's impacts on wildlife movement across the Avra Valley. Studies show the corridor provides a linkage between about 45,000 acres of habitat to the east within Tucson Mountain Park and Saguaro National Park, and over 2.5 million acres of open space to the west on the Tohono O'odham Nation, Ironwood Forest National Monument, and Roskruge Mountains. The West Option would directly use 453 acres of the Tucson Mitigation Corridor.

55. The Tohono O'odham Nation, Sif Oidak and Schuk Toak Districts, lies west of Ironwood Forest National Monument. The Nation's San Xavier District lies south of Saguaro National Park and Tucson. The Tohono O'odham have objected to the West Option because it would damage cultural sites, disrupt wildlife movement between the Schuk Toak District and Saguaro National Park and Tucson Mountain Park, would limit access to resource collection in and around Saguaro National Park, would create noise and air pollution, and would harm wildlife and plants important to tribal members, among other reasons. The East Option would avoid these impacts by using the existing I-19 right-of-way through the San Xavier District.

56. The southern section of the Project is also home to the endangered Pima Pineapple Cactus. This cactus is found only in Pima and Santa Cruz counties and fewer than 5,750 are believed to still exist. The Project would not only destroy this species' habitat directly via construction activities, it would significantly contribute to a major threat to this species—the spread of invasive, non-native grasses and the resultant altered fire regimes and increased competition. Moreover, the new highway could be a major new source of human-caused fire ignitions in cactus habitat, thereby causing severe harm to the species. The West Option would cross mitigation lands set aside to conserve Pima Pineapple Cactus.

57. The Tumamoc Globeberry is another rare plant at risk from the Project. This species has undergone serious declines in Pima County and could be harmed due to the West Option's impacts in Avra Valley. Thus far, harm to this species has largely been ignored by FHWA.

58. The East Option, because it co-locates with I-19, would not create the massive impacts to wildlife that the West Option would. Nonetheless, the East Option, in order to avoid serious harm to wildlife, would need to create or upgrade wildlife crossings to provide safe wildlife passage.

ii. Central Section – Casa Grande to Buckeye

59. The Santa Cruz Flats is one of Arizona's few intact riparian areas and currently supports at least 120 avian species, including wintering raptors, migrating shorebirds, and rapidly declining grassland species, as well as breeding populations of Crested Caracara (*Caracara cheriway*), which is imperiled in Arizona. The area is a popular birding location, especially in the winter, due to the presence of wintering birds using the agricultural fields and of rare Mountain Plover wintering areas. The Project would significantly impact this area.

60. The Juan Bautista de Anza National Historic Trail Management Area consists of 510,694 acres in BLM's Lower Sonoran Field Office. The management plan

for this area provides that the management area "will be an exclusion area for . . . new major linear [land-use authorizations]." BLM, Lower Sonoran Record of Decision and Approved Resource Management Plan (Sept. 2012). The I-11 corridor would traverse over 400 acres of this management area.

61. The Sonoran Desert National Monument protects abundant saguaro cactus forests, three sets of mountain ranges, and the valleys in between them over an area of nearly 120 square miles. According to President Bill Clinton's Presidential Proclamation declaring it a national monument, the monument's biological resources include "unique woodland assemblages" in its higher peaks and "one of the most structurally complex examples of palo verde/mixed cactic association in the Sonoran desert" in its lower elevations. BLM manages the monument. The Project would be developed near the monument's northern boundary—as close as 50 feet away—and near its Northern Maricopa Mountains wilderness area. It would also potentially cut off wildlife connectivity between the monument and Buckeye Hills to the north. The Project would also cross Maricopa Road/Highway 238, which is the main thoroughfare through the monument.

62. Buckeye Hills East Trail Special Recreation Management Area is a 25,800-acre area that provides motorized and non-motorized recreation trail opportunities in Maricopa County. Buckeye Hills West Extensive Recreation Management Area is a 22,100-acre area providing dispersed recreation opportunities adjacent to Buckeye Hills Regional Park and Robbins Butte Wildlife Area. BLM manages both recreation areas for off-highway vehicle touring, hiking, sightseeing, wildlife viewing, photography, and hunting. The project would be located within the existing right-of-way for Highway 85, which runs between the two management areas.

63. The Robbins Butte Wildlife Area is a 1,681-acre set of parcels in Maricopa County, seven miles southwest of Buckeye, Arizona. The Wildlife Area encompasses lands administered by the U.S. Fish and Wildlife Service but managed by Arizona Game

and Fish Department (AZGFD) and AZGFD-owned lands. AZGFD manages these areas to maintain wildlife habitat, including for endangered species such as Yuma Clapper Rails and the Western Yellow-billed Cuckoo, and to provide hunting, wildlife viewing, and other wildlife-oriented recreational opportunities. The project would potentially use 329 acres of the Wildlife Area and would be co-located within the existing Highway 85 right-of-way (south of the Gila River), or would be built within the median of the existing highway (north of the Gila River).

64. This section of the Project would also have dire consequences for the remaining population of the imperiled Tucson Shovel-nosed Snake. The highway would bisect some of this snake's last intact habitat.

65. The Project would also cross habitat, including High Value Potential Habitat, for the Sonoran Desert Tortoise. Tortoise movements, especially inter-population migrations and seasonal movements for feeding, would be impeded by the Project, thus significantly harming the ability of this species to persist.

iii. North Section – Buckeye to Wickenburg, Arizona

66. The Northern Section contains the Vulture Mine Recreation Management Zone (VMRMZ), an approximately 70,000-acre BLM-administered area in the Hassayampa Field Office. The Project would bisect the VMRMZ, thereby diminishing wildlife connectivity there.

B. Procedural Background

67. In 2014, ADOT and the Nevada Department of Transportation issued the I-11 and Intermountain West Corridor Study, which envisioned a new transportation corridor that would "provide a vital multimodal connection between the Arizona Sun Corridor and Las Vegas," and potentially beyond towards Canada. Importantly, it envisioned the "effective inclusion" of "multimodal infrastructure elements" in the I-11 and Intermountain West Corridor, such as utilities, freight rail, and passenger rail. FHWA and the Federal Rail Administration, among other entities, participated in the study.

68. Purportedly, to build upon this conceptual study, in May 2016, FHWA and ADOT issued a Notice of Intent to Prepare a Tier 1 Environmental Impact Statement for Interstate 11 Corridor Between Nogales and Wickenburg, Arizona. The notice initiated a 45-day scoping period to solicit agency and public input on the scope of the EIS, including the Project's purpose and need, potential alternatives to be considered, and impacts to be evaluated. During this period, FHWA and ADOT held six public scoping meetings. Materials presented during scoping indicated the potential for either co-locating I-11 with I-19 and I-10 through Tucson, or for developing a new I-11 corridor in the Avra Valley west of Tucson.

69. FHWA received more than 800 written and verbal comments during the scoping period, and 540 community members attended scoping meetings. Public comments, including those submitted by Plaintiffs, requested that FHWA consider a number of issues for analysis in the EIS. For example:

(a) Comments questioned the need for the Project and the reliability of population and economic growth projections justifying the need for the Project, especially in light of dwindling water supplies and climate change.

(b) In keeping with the Intermountain West Corridor Study's vision, members of the public, including Plaintiffs, requested the consideration of alternatives incorporating multimodal transportation options within existing transportation corridors and a "rail only" alternative. For example, the U.S. Environmental Protection Agency recommended consideration of a multimodal alternative incorporating rail, transit, bicycle, renewable energy production and transmission, and/or electric vehicle charging stations, to be developed in already disturbed areas. EPA recommended that FHWA coordinate with the Federal Transit Administration and Federal Rail Administration in the design and analysis of potential transit and rail options for inclusion in the corridor alternatives.

(c) Comments requested that the EIS consider alternatives incorporating the use of other transportation strategies to reduce congestion, such as dedicated truck lanes, tolls and scheduling, and improvements to existing transportation facilities.

(d) Comments stated that the EIS should estimate criteria pollutant emissions from the construction and operation of any proposed "build alternatives" and these emissions' effects on compliance with federal health-protective standards.

(e) Comments raised the need to analyze the Project's greenhouse gas emissions and their effects on climate change and consider the use of less energy-intensive materials, zero-emissions construction equipment, park and ride facilities, and other measures to reduce the Project's climate change effects.

(f) Comments explained that the EIS should estimate the Project's "induced demand" effect and analyze the Project's potential for spurring "induced growth." Induced demand is a phenomenon whereby expansion of highway capacity attracts more drivers on the road, perpetuating congestion instead of alleviating it. Induced growth is a phenomenon whereby previously inaccessible, undeveloped areas are made accessible by road or highway construction, spurring suburban and/or exurban growth.

(g) Comments identified numerous species present in the project area, including the Abert's Towhee, Bell's Vireo, Western Burrowing Owl, Cactus Ferruginous Pygmy-Owl, Western Yellow-billed Cuckoo, Swainson's Hawk, Rufous-winged Sparrow, Giant Spotted Whiptail, Pima Pineapple Cactus, Nichols Turk's Head Cactus, California Leaf-nosed Bat, Mexican Long-tailed Bat, Pale Townsend's Big-eared Bat, Lesser Long-nosed Bat, Merriam's Mouse, Sonoran Desert Tortoise, Tucson Shovel-nosed Snake, Jaguar, and Ocelot. Comments explained how the Project would impact wildlife through a number of mechanisms such as (1) direct loss of habitat from the highway construction, (2) direct fragmentation and loss of connectivity due to the highway bisecting numerous important habitat areas, and (3) indirect loss of habitat such

as via increased introduction of invasive grasses and subsequent increased fire in an area that is not adapted to fire.

(h) With respect to the potential to route the Project through the Avra Valley:

i. Comments urged FHWA and ADOT to analyze adverse effects on several wildlife linkages across the Avra Valley, including the Tucson Mitigation Corridor. For example, the Bureau of Reclamation noted that routing the Project through the Tucson Mitigation Corridor would conflict with the Master Management Plan's prohibition on development in the Tucson Mitigation Corridor and create a barrier to wildlife movement, contrary to the Master Management Plan's goal to maintain a wildlife corridor.

ii. Comments objected that a new highway traversing the Avra Valley would conflict with Pima County's Multi-Species Habitat Conservation Plan and Sonoran Desert Conservation Plan, and Pima County Conservation Lands System, each of which guides development in Pima County to protect biologically important areas; the Draft City of Tucson Habitat Conservation Plan (currently being finalized by U.S. Fish and Wildlife Service); Pima County's and the City of Tucson's land acquisitions in the Avra Valley, which they preserve and manage to offset the impacts of development (e.g., Pima County's Avra Valley Wildlife Corridor, and the City of Tucson's Martin and Simpson farms); and a Habitat Conservation Plan proposed by the Town of Marana for the mitigation of impacts to federally listed species.

iii. Public and agency comments, including from the National Park Service, Bureau of Reclamation, Bureau of Land Management, Arizona Game and Fish Department, and Pima Natural Resource Conservation District, noted that the Project would harm important values of Saguaro National Park, Ironwood Forest National Monument, and Tucson Mountain Park, including wildlife, wilderness, recreation, and scenic views.

70. After the scoping period, ADOT and FHWA developed alternative corridors that would purportedly be consistent with the Project's purpose and need and narrowed them to three alternatives for analysis in the EIS. ADOT and FHWA then prepared a Draft EIS and Section 4(f) evaluation.

71. On April 5, 2019, FHWA and ADOT issued the Draft Tier 1 Environmental Impact Statement and Preliminary Section 4(f) Evaluation for the Project ("Draft EIS" and "Draft Section 4(f) Evaluation," respectively), initiating a 56-day comment period on the Draft EIS and Section 4(f) Evaluation. After releasing additional materials not included in the Draft EIS, ADOT and FHWA extended the comment period 38 days until July 2019. The agencies held six formal public hearings during the Draft EIS comment period, which were attended by more than 1,300 people.

72. The Draft EIS noted that "[t]he decision made at the conclusion of the Tier 1 EIS process will select either: (1) a 2,000-foot-wide Build Corridor Alternative that would advance to further design and Tier 2 NEPA analysis or (2) the No Build Alternative. If a Build Corridor Alternative advanced, the process would require Tier 2 environmental studies to determine the specific alignment of the I-11 Corridor, which would typically require a 400-foot right-of-way.

73. The Draft EIS identified the Project's purpose as "to provide a high priority, high capacity, access-controlled transportation corridor to serve population and employment growth; support regional mobility; connect metropolitan areas and markets; enhance access to support economic vitality; and provide regional route redundancy for emergency and defense purposes."

74. The Draft EIS analyzed three "end-to-end Build Corridor Alternatives" between Nogales and Wickenburg, Arizona, each comprised of a different combination of individual segments. Each Build Corridor Alternative is a 2,000-foot-wide corridor within which a generally 400-foot-wide highway would be located.

75. Two of the three Build Corridor Alternatives (the "Purple" and "Green" alternatives) were comprised of segments mostly creating new corridors throughout the Project study area, including a new corridor that would run north-south through Pima County's Avra Valley, west of Tucson. The third alternative (the "Orange Alternative") would co-locate with I-19, I-10, I-8, and other state and county highways on eight out of nine segments, including highways in Pima County.

76. The Draft EIS also identified a "Recommended Alternative" that FHWA determined would best meet the Project's purpose and need. The Recommended Alternative is a hybrid of the Green and Purple Alternatives and includes the segment traversing the Avra Valley.

77. The Draft EIS eliminated detailed consideration of "modal alternatives," including alternatives incorporating freight and passenger rail, on the grounds that rail facilities and services "already exist within the Study Area and/or have been studied as part of several statewide planning efforts." At the same time, the Draft EIS assumed that these planned projects were not part of the No Build Alternative, or would not have any effects on traffic or highway travel demand under the No Build Alternative.

78. The Draft EIS purported to provide a qualitative analysis of the environmental effects of each Build Corridor Alternative and compare those effects to the "No Build" Alternative's effects. The No Build Alternative represents the existing transportation system, and assumes the existence of committed improvement projects that are programmed for funding in ADOT's construction and funding plans for 2019 – 2024.

79. Among other things, the Draft EIS concluded that even though the Build Corridor Alternatives would increase overall vehicle miles traveled, they would improve regional air quality and reduce greenhouse gas emissions compared to the No Build Alternative, because increasing highway capacity would supposedly reduce congestion and pollution from idling vehicles, whereas purportedly with future population growth and increased economic activity the No Build Alternative would worsen congestion and

create more pollution. This conclusion did not consider emissions from construction and maintenance of the Build Corridor Alternatives or from induced growth and induced demand. The Draft EIS did not quantify emissions from any alternative to support this conclusion. The Draft EIS also found that the No Build Alternative would not meet the Project's purpose and need, because purportedly it would worsen congestion, among other reasons.

80. The Draft EIS addresses biological resources "at a landscape-level" and takes a broad-brushed approach in discussing impacts to biological resources. The Draft EIS identifies "biotic communities" and the amount of acres of each community that would be impacted by each alternative, ESA-listed species that could be harmed, as well as wildlife connectivity impacts, and the potential for the spread of invasive species. Impact analyses were not included, however, such as with respect to imperiled species like the Pima Pineapple Cactus or Tumamoc Globeberry. The Draft EIS found that the Orange Alternative, through co-location, would cause the least harm to biological resources as compared to the Green and Purple alternatives.

81. FHWA and ADOT received over 12,400 written and oral public comment submissions during the Draft EIS comment period. The comments noted the Draft EIS's failure to: (a) consider a reasonable range of alternatives, including multimodal transportation options; (b) justify the Project's need; (c) meaningfully analyze the Project's effects on air quality, climate change, wildlife corridors and other habitat, wildfire risks, and other issues; and (d) failure to disclose and reconcile the Recommended Alternative's conflicts with plans governing the Tucson Mitigation Corridor's Master Management Plan, Pima County's Multi-Species Habitat Conservation Plan and Sonoran Desert Conservation Plan, Pima County Conservation Lands System, Pima County Preserve System, the City of Tucson Draft Habitat Conservation Plan, and other proposed habitat conservation plans to comply with the Endangered Species Act, among other issues.

82. For example, during the public comment period, Pima County submitted extensive, detailed comments regarding the Project's impacts on Pima County resources. The letter criticized the Draft EIS's inadequate analysis of many of the above issues and especially conflicts with local land-use ordinances and conservation plans.

83. Further, on June 18, 2019, City of Tucson passed a resolution (Resolution #23051) opposing the Project's routing through the Avra Valley and submitted the resolution to FHWA in its comments on the Draft EIS. The resolution and comments expressed support for co-locating the Project with existing highways in and around Tucson, and for innovative approaches for reducing traffic, including separating local and through traffic.

84. FHWA also received public and agency comments on the Draft Section 4(f) Evaluation. The Section 4(f) evaluation issued with the Draft EIS determined that neither the Ironwood Forest National Monument nor Sonoran Desert National Monument qualified for Section 4(f) protections, because they were not primarily managed for public recreation. BLM objected to this determination in its comments on the Draft EIS and Section 4(f) Evaluation.

85. The Draft Section 4(f) Evaluation determined that the Tucson Mitigation Corridor qualified for protection under Section 4(f), because it is a significant wildlife refuge, and the Project would result in a direct use of the property.

86. With respect to both Saguaro National Park and Tucson Mountain Park, the Draft Section 4(f) Evaluation determined that each park "is protected by Section 4(f) as a park and a recreation resource." However, the Draft Section 4(f) Evaluation found that the Project would not result in a direct use of either park's lands or a constructive use of either park, because the Project's impacts, after mitigation, "would not substantially impair the activities, features, or attributes that qualify each park for protection by Section 4(f)."

87. FHWA's Section 4(f) Evaluation did not consider the Project's ecological impacts on Saguaro National Park, on the grounds that because it is managed as a "public park and for natural resource preservation," "it is not a wildlife or waterfowl refuge." In letters to FHWA, National Park Service objected to FHWA's analysis with respect to Saguaro National Park.

88. Likewise, FHWA's analysis did not consider the Project's ecological impacts on Tucson Mountain Park, explaining "Tucson Mountain Park is managed for resource conservation and public recreation; it is not a wildlife or waterfowl refuge," even though it is part of the AZGFD-managed Tucson Mountain Wildlife Area. Pima County and Arizona Game and Fish Department objected to the determination with respect to Tucson Mountain Park, because the park is managed as a wildlife refuge, as part of the Tucson Mountain Wildlife Area.

89. In addition, comments pointed out that FHWA should address Tucson Mountain Historic District as a Section 4(f) property because it was eligible for listing on the National Register of Historic Places and qualified as a Section 4(f) "historic site."

90. On July 16, 2021, ADOT and FHWA released the Final Tier 1 EIS and Preliminary Section 4(f) Evaluation for the Project ("Final EIS" and "Preliminary Section 4(f) Evaluation," respectively). The Final EIS identified a "Preferred Alternative" for the Project, which differed from the Recommended Alternative set forth in the Draft EIS. The Preferred Alternative:

- Co-locates the proposed I-11 corridor on the existing I-19 corridor between Nogales and Sahuarita;
- Leaves undecided until Tier 2 whether to create a new corridor through the Avra Valley ("West Option") west of Tucson, or whether to co-locate the Project with I-19 and I-10 in and around Tucson between Sahuarita and southern Pinal County ("East Option");

- Creates a connector between I-10—where the East Option ends, just south of Picacho Peak State Park—and a new corridor that would cut northwest from there.
- The new corridor would begin at the point where the West Option ends and then snake in a northwesterly direction past tribal and recreational public lands—including less than three miles from the eastern side of Ironwood National Park; across the Santa Cruz Flats; within 50 feet to several miles of the northeastern side of Sonoran Desert National Monument; over the Highway 85 crossing at the Gila River, west of Phoenix; through or adjacent to BLM lands that are part of the Lower Sonoran Field Office, including the Juan Bautista de Anza National Historic Trail Management Area, Buckeye Hills East Trail Special Recreation Management Area, and Buckeye Hills West Extensive Recreation Management Area; through the AZGFD-managed Robbins Butte Wildlife Area near Buckeye, in Maricopa County; through BLM Hassayampa Field Office's Vulture Mine Recreation Management Zone, and then end at Wickenburg.

91. The Final EIS did not address the flaws raised by comments on the Draft EIS and did not adequately respond to the public's comments on the Draft EIS and Section 4(f) Evaluation.

92. The release of the Final EIS triggered a 30-day public review period of the Final EIS. FHWA received numerous comments from the public and interested agencies objecting to the Preferred Alternative's potential routing in the Avra Valley and the Final EIS's failure to analyze a number of issues, which echoed many of the same concerns raised by the public, agencies, and local governments in the prior scoping and Draft EIS comment periods.

93. For example, National Park Service, Reclamation, and AZGFD repeated their concerns that the West Option would permanently and severely harm Avra Valley wildlife populations and public lands.

94. During the 30-day review period, on August 16, 2021, the Pima County Board of Supervisors passed a resolution opposing the West Option, on the grounds that it would degrade the Sonoran Desert; sever wildlife corridors; impede washes and sheet-flooding flow ways; promote sprawl, thus encouraging more car and truck travel time; conflict with the Tucson Mitigation Corridor Cooperative Agreement and Master Management Plan and defeat the initial purpose of the Tucson Mitigation Corridor's acquisition; negatively impact public lands and the County's Sonoran Desert Conservation Plan; and cause significant air pollution and greenhouse gas emissions. It also noted their belief that the impacts of the East Option could be adequately mitigated, and that the State of Arizona could reduce traffic congestion and reduce air pollution and greenhouse gas emissions by expanding capacity and developing multi-modal transportation facilities in existing transportation corridors. Pima County provided a copy of the resolution to the FHWA with its comments on the Final EIS.

95. Pima County's support for the West Option, including development of the Tucson Mitigation Corridor, is required for it to be developed. Under the terms of the Master Management Plan, the Tucson Mitigation Corridor cannot be developed without Pima County's consent.

96. On August 10, 2021, City of Tucson passed Resolution #23386 expressing its opposition to the West Option for many of the same reasons. The resolution also expressed concern that the West Option threatened the Central and Southern Avra Valley Storage and Recovery Projects, which supply water to Tucson and Phoenix, among others. The resolution noted the City's support for improving and building on existing public infrastructure and facilities, and providing an interconnected multi-modal transportation system, including expanded passenger and freight multi-modal transportation services. The City submitted a copy of the resolution to FHWA with its comments on the Final EIS.

97. On August 10, 2021, the Town of Sahuarita Council unanimously voted to express that the Town "strongly opposed" the West Option. The Town of Sahuarita submitted a letter to the FHWA noting its opposition.

98. In addition, the Preliminary Section 4(f) Evaluation did not change FHWA's prior determination that Section 4(f)'s protections did not apply to the Ironwood Forest and Sonoran Desert national monuments. Nor did it change its determination that the Project did not result in a constructive use of Tucson Mountain Park or Saguaro National Park, or that neither of these properties are wildlife refuges. It did not address whether Tucson Mountain Historic District is a "historic site" protected by Section 4(f) or consider the Project's impacts on this property. Further, it postponed to Tier 2 the evaluation of whether certain properties owned and managed by Pima County are Section 4(f) properties (e.g., Avra Valley Wildlife Corridor). With respect to the Tucson Mitigation Corridor, the Section 4(f) Evaluation found that no feasible, prudent alternatives for avoiding impacts to this property were available, because the East Option—which could entail widening existing freeways in the Tucson area—would also use Section 4(f) properties, such as city parks. FHWA's analysis, however, did not consider rail or other multimodal transportation options and transportation management strategies to be used in the Tucson area as a potential avoidance alternative.

99. Public comments requested an extension of the 30-day review period for the Draft EIS and Preliminary Section 4(f) Evaluation, given the many changes between the Recommended Alternative and Preferred Alternative, but FHWA denied the extension request.

100. On November 15, 2021, FHWA issued the Record of Decision for the Project. The Record of Decision identifies the Preferred Corridor Alternative analyzed in the Final EIS and Preliminary Section 4(f) Evaluation as the Selected Corridor Alternative for the I-11 Corridor Project and rejected the No Build

Alternative. The Record of Decision also found that the No Build Alternative would not meet the Project's purpose and need.

101. The Record of Decision concluded that the Preferred Alternative was the environmentally preferable alternative despite not having resolved numerous issues with respect to the Project's impacts along either the East or West Option.

CLAIMS FOR RELIEF

FIRST CLAIM

FHWA'S VIOLATION OF NEPA AND APA

102. Plaintiffs incorporate by reference and re-allege all allegations set forth above.

103. FHWA's Record of Decision and approval of the Project violated NEPA and its implementing regulations. These violations include:

a. FHWA failed to identify and reconcile the Project's, including the West Option's, inconsistencies with the Tucson Mitigation Corridor's Master Management Plan; the Fish and Wildlife Coordination Act of 1958; Section 4(f); Pima County's Multi-Species Habitat Conservation Plan and Sonoran Desert Conservation Plan, Conservation Lands System, and Preserve System; the City of Tucson Draft Habitat Conservation Plan; Pima County and the City of Tucson's land acquisitions in the Avra Valley, which they preserve and manage to offset the impacts of development; Town of Marana's proposed Habitat Conservation Plan; and BLM's Lower Sonoran Field Office Resource Management Plan, among other land-use conflicts. FHWA violated NEPA's requirement to disclose "[p]ossible conflicts between the proposed action and the objectives of Federal, regional, state, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned," in violation of 40 C.F.R. section 1502.16; *see also* 40 C.F.R. § 1506.2(d) (EIS "shall discuss any inconsistency of a proposed action with any approved State, Tribal, or local plan or law (whether or not federally sanctioned)").

b. Relatedly, FHWA failed to comply with 40 C.F.R. section 1506.2(d)'s directive that "[w]here an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law." *See also* 23 C.F.R. § 771.125(a)(1) ("The final EIS should also document compliance, to the extent possible, with all applicable environmental laws and executive orders, or provide reasonable assurance that their requirements can be met."); *id*. § 774.9(a) ("The potential use of land from a Section 4(f) property shall be evaluated as early as practicable in the development of the action when alternatives to the proposed action are under study."). FHWA's failure to identify and reconcile land-use conflicts precluded informed decisionmaking as to the feasibility and reasonableness of alternatives and resulted in an uninformed and arbitrary decision to approve the Project, retain the West Option, and reject the No Build Alternative.

c. FHWA failed to adequately demonstrate the need for the Project by disregarding the effects of planned transit, rail, and other transportation improvements in the study area, and by relying on unreliable population, economic, and development growth projections, which overestimated future growth and travel demand. FHWA's failure to consider these relevant factors, and its reliance on unreliable information in defining the Project's purpose and need violates NEPA and the APA. FHWA's failure to adequately document the Project's need resulted in a mischaracterization of future travel demand and of the No Build Alternative's ability to meet future travel demand, and a skewed analysis favoring selection of the Build Corridor Alternatives and disfavoring selection of the No Build Alternative.

d. FHWA failed to consider alternatives other than a highway corridor to meet the Project's purpose and need and arbitrarily excluded from consideration the development of a transportation corridor incorporating multimodal options, such as passenger rail, freight rail, and cycling, and/or transportation management to reduce congestion. FHWA analyzed an improperly narrow range of alternatives, in violation of

42 U.S.C. section 4332(2)(C)(iii) and 40 C.F.R. section 1502.14. FHWA's failure to examine reasonable alternatives precluded a reasoned choice, informed decision-making, and meaningful public participation.

e. FHWA failed to take a "hard look" at the environmental impacts of the Project, in violation of 42 U.S.C. section 4332(2)(C) and 40 C.F.R. section 1502.16. The EIS failed to adequately analyze (1) the cumulative regional and landscape-level effects of developing the entire I-11 corridor; (2) the effects of developing either the West or East Option; and (3) the effects of segments of the corridor outside the West or East Option. These defects include, but are not limited to:

i. FHWA's improper deferral of analysis of various impacts with respect to the Pima County section of the Project. By approving the rest of the corridor first and deferring the analysis and selection of the route through Pima County until Tier 2, FHWA failed to apprise itself and the public of information it needed to understand the entire Project's effects so that it could make a fully informed choice among alternatives, including the No Build Alternative; and deprived itself of the opportunity to shape or modify the Build Corridor Alternatives accordingly before foreclosing its options.

ii. The failure to quantify and analyze cumulative criteria air pollutants and greenhouse gas emissions from: increased traffic that would be spurred by the Project, including traffic resulting from induced demand and induced growth; construction and long-term maintenance of the Project; suburban and/or exurban development that would be spurred by the Project; and an increase in idling trucks at the Mexico border, among other direct, indirect, and cumulative effects of the Project. The failure to quantify emissions and analyze their effects on air quality and climate change resulted in FHWA's making unsupported conclusions about the Project's air quality and climate change effects and precluded informed decision-making.

iii. Inadequate discussion of the Project's direct, indirect, and cumulative fragmentation effects on wildlife habitat, disruptive effects on migration corridors, and impact on the viability of wildlife populations;

iv. The failure to examine the increased risk of wildfire fueled by invasive species spread by the highway and the cumulative effects of the wildfire risk and climate change on the integrity of the Sonoran Desert ecosystem;

v. The failure to take a hard look at various other impacts on air quality, traffic and non-automobile mobility, climate change, communities, environmental justice, noise and other disturbances, land-use, water quality, geology and soil, paleontology, cultural and historic resources, hazardous waste and materials, pollutants and toxic materials, wilderness, wetlands, plants, wildlife species, parks and public lands, farmland, utilities and emergency services, infrastructure, visuals and aesthetics, recreation, hydrology and floodplains, growth inducement, and cumulative and indirect impacts; and

vi. The failure to identify and analyze the availability, feasibility, and effectiveness of mitigation for the Project's adverse effects, and the failure to support its conclusions that the Project's adverse effects could be avoided or mitigated.

f. Significant new circumstances or information raised during the public's review of the Draft and Final EISs, which FHWA determined required further analysis in an EIS before approving the West or East Option, should have triggered FHWA's preparation of a supplemental EIS. FHWA's decision to approve the Project and defer analysis of these issues until after the Project's approval violated 40 C.F.R. section 1502.9(c)(1)(ii), (2).

g. Defendants failed to adequately request and respond to comments during the NEPA process, in violation of, *inter alia*, 40 C.F.R. sections 1503.1 and 1503.4. Defendants improperly requested comments from the public before, during, and

after preparing the EIS, and subsequently failed to adequately respond to comments received regarding the Project's impacts, mitigation, and alternatives.

104. For the above reasons, FHWA's actions violated NEPA, and were arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law in violation of the APA, 5 U.S.C. § 706(2)(A).

SECOND CLAIM

FHWA'S VIOLATION OF SECTION 4(F) AND APA

105. Plaintiffs incorporate by reference and re-allege all allegations set forth above.

106. Section 4(f) regulations require that "[t]he potential use of land from a Section 4(f) property shall be evaluated as early as practicable in the development of the action when alternatives to the proposed action are under study." 23 C.F.R. § 774.9(a). Further, the regulations contemplate that a Section 4(f) evaluation be prepared as part of a Tier 1 EIS analysis. 23 C.F.R. § 774.7(e)(1) ("A Section 4(f) approval may involve different levels of detail where the Section 4(f) involvement is addressed in a tiered EIS. . . . When the first-tier, broad-scale EIS is prepared, the detailed information necessary to complete the Section 4(f) approval may not be available at that stage in the development of the action."). Accordingly, for a Tier 1 approval:

> [T]he documentation should address the potential impacts that a proposed action will have on Section 4(f) property and whether those impacts could have a bearing on the decision to be made. A preliminary Section 4(f) approval may be made at this time as to whether the impacts resulting from the use of a Section 4(f) property are de minimis or whether there are feasible and prudent avoidance alternatives.

Id.

107. FHWA's Section 4(f) documentation failed to address the Project's impacts on Ironwood Forest National Monument and Sonoran Desert National Monument on the unsupported and erroneous grounds that neither of these national monuments are Section

4(f) properties. FHWA's failures to address the Project's impacts on the national monuments or conduct a Section 4(f) evaluation with respect to these properties violated Section 4(f) and its implementing regulations.

108. FHWA's Section 4(f) documentation determined that it need not conduct a Section 4(f) evaluation with respect to Saguaro National Park and Tucson Mountain Park, on the erroneous and unsupported grounds that (1) the Project's impacts on these parks would not result in a "constructive use" of the properties, and (2) it need not consider ecological impacts on these properties, because they are not wildlife refuges under the meaning of Section 4(f). FHWA's determinations violated Section 4(f) and its implementing regulations.

109. Section 4(f) protects significant historic sites, including properties eligible for inclusion or listed on the National Register of Historic Places. 23 C.F.R. § 774.11(e). The Tucson Mountain Historic District qualifies as a significant historic site and Section 4(f) property, but FHWA failed to consider whether it is a Section 4(f) property or the Project's impacts on the property, in violation of Section 4(f) and its implementing regulations.

110. FHWA failed to consider whether lands in the Avra Valley, which are owned by the City of Tucson and/or Pima County and managed as wildlife refuges to mitigate the impacts of development, are Section 4(f) properties, and the Project's impacts on these properties, in violation of Section 4(f) and its implementing regulations..

111. FHWA's failure to adequately consider the Project's impacts on Sonoran Desert National Monument, Ironwood Forest National Monument, Saguaro National Park, Tucson Mountain Park, Tucson Mountain Historic District, and City of Tucson and Pima County lands, and its failure to consider feasible and prudent alternatives to avoid the Tucson Mitigation Corridor precluded informed consideration of feasible and prudent alternatives and "all possible planning" to avoid and minimize impacts on these properties.

112. For the above reasons, FHWA's actions violated Section 4(f) and were arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law in violation of the APA, 5 U.S.C. § 706(2)(A).

THIRD CLAIM

FHWA'S VIOLATION OF FISH AND WILDLIFE COORDINATION ACT

113. Plaintiffs incorporate by reference and re-allege all allegations set forth above.

114. The use of the Tucson Mitigation Corridor for the Project would defeat the initial purpose of its acquisition—to provide a wildlife corridor for the movement of wildlife—in violation of 16 U.S.C. section 663(d).

115. FHWA's decision to carry forward the West Option to Tier 2, including use of the Tucson Mitigation Corridor for the Project, violates the Fish and Wildlife Coordination Act's directive that properties acquired under 16 U.S.C. section 663 for wildlife conservation purposes "shall be in accordance with general plans jointly approved" by the agency administering the project, the Department of Interior, and the state wildlife agency.

116. For the above reasons, FHWA's actions violated the Fish and Wildlife Coordination Act, and were arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law in violation of the APA, 5 U.S.C. § 706(2)(A).

REQUEST FOR RELIEF

Plaintiffs respectfully request that this Court enter judgment in their favor and against Defendants and provide the following relief:

1. Declare that Defendants violated NEPA, Section 4(f), the Fish and Wildlife Coordination Act of 1958, and the APA in approving the Interstate-11 Tier 1 Record of Decision and Final Preliminary Section 4(f) Evaluation, and its associated Final Environmental Impact Statement;

2. Declare unlawful, vacate, and set aside Defendants' Interstate-11 Tier 1 Record of Decision and Final Preliminary Section 4(f) Evaluation, and its associated Final Environmental Impact Statement;

3. Pending the completion of an adequate Record of Decision, Section 4(f) Evaluation, and Final Environmental Impact Statement, enjoin Defendants from proceeding with Tier 2 of the Interstate-11 Project;

4. Grant Plaintiffs such temporary restraining orders or preliminary or permanent injunctions as they may request;

5. Award Plaintiffs costs and reasonable attorneys' fees as authorized by the Equal Access to Justice Act, 28 U.S.C. § 2412(d) and any other statute;

6. Retain jurisdiction of this action to ensure compliance with its decree; and

7. Any other relief as the Court deems just and proper.

DATED: April 21, 2022

Respectfully submitted,

/s/ Justin Augustine

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