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**EXEMPT FROM FEES  
PURSUANT TO GOVERNMENT  
CODE SECTION 6103**

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF HUMBOLDT

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13  
14 **Citizens for a Better Eureka,**  
15  
16 **Petitioner,**  
17  
18 **v.**  
19 **City of Eureka, City of Eureka City**  
20 **Council,**  
21 **Respondents.**

Case No. CV2300565

**EX PARTE APPLICATION FOR LEAVE  
TO FILE AMICUS CURIAE BRIEFS IN  
SUPPORT OF RESPONDENTS;  
MEMORANDUM IN SUPPORT**

Ex Parte: February 2, 2024  
Time: 1:30 p.m.  
Dept: 4  
Judge: Hon. Timothy Canning

Action Filed: April 5, 2023

22 The People of the State of California, ex rel. Attorney General Rob Bonta (People), request  
23 leave to file amicus curiae briefs in support of the Respondents in the above-captioned action. A  
24 copy of the People’s amicus brief in support of Respondents’ opposition to Petitioner’s motion  
25 for preliminary injunction is attached as Exhibit A. The People further request leave to file  
26 amicus curiae briefs on any future motion and on the merits in this action.  
27  
28

1 **EX PARTE LEAVE SOUGHT**

2 The People submit this *ex parte* application to request that the Court grant the People leave  
3 to:

- 4 1. file the amicus curiae brief, attached as Exhibit A, in support of the Respondents’
- 5 opposition to Petitioner’s motion for preliminary injunction;
- 6 2. file additional amicus curiae briefs on any future motion and on the merits during the
- 7 pendency of this action; and
- 8 3. appear as amicus curiae.

9 **IDENTIFICATION OF COUNSEL**

10 Pursuant to California Rule of Court 3.1202, subparagraph (a), the People provide the  
11 contact information for known attorneys of any party:

<p>12 EVERVIEW LTD. 13 Bradley B. Johnson (SBN 257220) 14 James I. Anderson (SBN 316729) 15 9655 Granite Ridge Drive, Suite 200 16 San Diego, CA 92123 17 Tel: (916) 704-6393 18 Fax: (916) 250-0103 19 <a href="mailto:bjohnson@everviewlaw.com">bjohnson@everviewlaw.com</a> <a href="mailto:janderson@everviewlaw.com">janderson@everviewlaw.com</a> Attorneys for Petitioner CITIZENS FOR A BETTER EUREKA</p>	<p>LEGAL SERVICES OF NORTHERN CALIFORNIA  Rebecca M. Smith (SBN 333727) Rebecca A. Buckley-Stein (SBN 310366) 123 3rd Street Eureka, CA 95501 Telephone: (707) 407-4140 <a href="mailto:rsmith@lsnc.net">rsmith@lsnc.net</a> <a href="mailto:rbuckley-stein@lsnc.net">rbuckley-stein@lsnc.net</a></p>
<p>20 Autumn E. Luna (SBN 288506) 21 City Attorney 22 City of Eureka 23 531 K Street 24 Eureka, CA 95501 25 Email: <a href="mailto:aluna@eurekaca.gov">aluna@eurekaca.gov</a> 26 Attorney for Respondents CITY OF EUREKA, CITY OF EUREKA CITY COUNCIL</p>	<p>Sarah J. Steinheimer (SBN 267552) Alysa E. Meyer (SBN 173655) Karen E. Kontz (SBN 300918) 517 12th Street Sacramento, CA 95814 Telephone: (916) 551-2130 <a href="mailto:ssteinheimer@lsnc.net">ssteinheimer@lsnc.net</a> <a href="mailto:ameyer@lsnc.net">ameyer@lsnc.net</a> <a href="mailto:kkontz@lsnc.net">kkontz@lsnc.net</a> Attorneys for Respondent-Intervenors PATRICIA ZITO, COALITION FOR RESPONSIBLE TRANSPORTATION PRIORITIES</p>

27 Notice of the February 2, 2024, ex parte hearing was provided to the counsels listed above.  
28 (Contreiras Declaration, ¶1.)



1 Dated: February 1, 2024

Respectfully submitted,

2

ROB BONTA  
Attorney General of California

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CHRISTINA BULL ARNDT  
Supervising Deputy Attorney General

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ANDREW R. CONTREIRAS  
Deputy Attorney General  
*Attorneys for Amicus Curiae*  
*People of the State of California, ex rel.*  
*Rob Bonta, Attorney General of California*

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# EXHIBIT A

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF HUMBOLDT

14 **Citizens for a Better Eureka,**

Petitioner,

16 v.

18 **City of Eureka, City of Eureka City  
Council,**

Respondents.

Case No. CV2300565

**AMICUS CURIAE BRIEF OF THE  
PEOPLE OF THE STATE OF  
CALIFORNIA, BY AND THROUGH  
ATTORNEY GENERAL ROB BONTA,  
IN SUPPORT OF RESPONDENTS**

Date: February 9, 2024

Time: 10:30 a.m.

Dept: 4

Judge: Hon. Timothy Canning

Action Filed: April 5, 2023

23 In accordance with the Attorney General's special role overseeing and enforcing CEQA and  
24 Housing Element Law (see Gov. Code, §§ 12606, 65585.01; Code Civ. Proc., § 387; Pub.  
25 Resources Code, § 21167.7), the People of the State of California, by and through Attorney  
26 General Rob Bonta, submit this amicus brief in support of Respondent City of Eureka and in  
27 opposition to petitioner's motion for preliminary injunction.  
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1 **DISCUSSION**

2 CEQA is a landmark statute that embodies the important principle that projects should not  
3 be approved until the relevant public agencies have considered the project’s environmental effects  
4 and, where feasible, adopted mitigation measures. But the Legislature envisioned CEQA review  
5 of land use plans to reduce repetition and redundancy in environmental reviews. (Pub. Resources  
6 Code, § 21093.) Generally, the adoption of a general plan requires the local agency to prepare and  
7 certify an environmental impact report (EIR) to analyze and disclose the potential impacts of plan  
8 implementation. (Pub. Resources Code, § 21151.) Once an EIR is certified, “CEQA provides  
9 unusually short statutes of limitations” after which the adequacy of the EIR is no longer subject to  
10 challenge. (Cal. Code Regs., tit. 14, § 15112.) When future changes to a project or plan  
11 necessitate revisions to the certified EIR, the agency must prepare an Addendum to the EIR or, in  
12 some situations, a subsequent or supplemental EIR. (*Id.* § 15164.) But “[n]o subsequent or  
13 supplemental [EIR] shall be required” unless “substantial changes” or “new information,” which  
14 was not known and could not have been known at the time the EIR was certified, “will require  
15 major revisions of the previous EIR” due to “new significant environmental effects or a  
16 substantial increase in the severity of previously identified significant effects. (Pub. Resources  
17 Code, § 21166; Cal. Code Regs., tit. 14, § 15162.)

18 **I. THE CITY USED THE PROPER METRIC TO EVALUATE TRAFFIC IMPACTS.**

19 Until 2020, traffic impacts were typically evaluated in CEQA documents using Levels of  
20 Service (LOS), a metric for measuring and analyzing automobile delay times at roadways and  
21 intersections. (See Pub. Resources Code, § 21099, subd. (b)(2); Cal. Code Regs., tit. 14, §  
22 15064.3.) Under an LOS analysis, an intersection or road segment is given a letter grade from A  
23 to F based on the traffic delay times, where A represents little to no congestion and F represents  
24 significant congestion and traffic delays. Under the prior standard, a project’s traffic impacts  
25 would generally be significant under CEQA if a project resulted in a specified letter-grade LOS  
26 change at a given intersection or road segment, such as from an LOS C to an LOS D. A project’s  
27 impacts were studied by observing the current traffic delay and inputting into computer models  
28



1 the number of project-related vehicles estimated to travel through each intersection or road  
2 segment. Thus, an LOS analysis is concerned with the experience of vehicle traffic congestion.

3 In 2013, the Legislature enacted Senate Bill 743 directing the Office of Planning and  
4 Research (OPR) and California Natural Resources Agency (CNRA) to adopt revisions to the  
5 CEQA Guidelines to change the criteria for traffic impacts from LOS to Vehicle Miles Traveled  
6 (VMT). The Legislature declared that, once those revisions are adopted, “automobile delay, as  
7 described solely by [LOS] or similar measures of vehicular capacity or traffic congestion, shall  
8 not be considered a significant impact on the environment[.]” (Pub. Resources Code, § 21099,  
9 subd. (b)(2).)

10 VMT is a measurement of the total number of miles vehicles will travel as a result of the  
11 project, regardless of location. (Cal. Code Regs., tit. 14, § 15064.3, subd. (a).) Traffic impacts are  
12 significant, for CEQA purposes, based on the difference between a project’s VMT per capita and  
13 the region’s existing VMT per capita. Thus, VMT is concerned with the total amount of driving  
14 that will occur because of the project.

15 In 2018, the CEQA Guidelines were updated to implement this shift from LOS to VMT.  
16 (CNRA, *Final Statement of Reasons for Regulatory Action: Amendments to the State CEQA*  
17 *Guidelines*, OAL Notice File No. Z-2018-0116-12, Nov. 2018.)<sup>1</sup> The change became mandatory  
18 effective July 1, 2020. (*Id.* at p. 81; Cal. Code Regs., tit. 14, § 15064.4, subd. (c).) The CEQA  
19 Guidelines are clear: an evaluation of automobile delay, or LOS, is never required and “shall not  
20 constitute a significant environmental impact.” (Cal. Code Regs., tit. 14, § 15064.4, subd. (a).)

21 The shift from LOS to VMT has a wide range of environmental benefits. (OPR, *Frequently*  
22 *Asked Questions Regarding the Proposed Updates to CEQA Guidelines*, Nov. 2017, p. 2.)<sup>2</sup> First,  
23 it is aimed at reducing greenhouse gas emissions. Vehicle emissions account for a substantial  
24 share of greenhouse gas emissions, such that VMT was already used in CEQA to study  
25 greenhouse gas impacts. (*Id.* at p. 3.) It also “aligns transportation analysis under CEQA with a

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27 <sup>1</sup> Available at [https://resources.ca.gov/CNRALegacyFiles/ceqa/docs/  
2018\\_CEQA\\_Final\\_Statement\\_of%20Reasons\\_111218.pdf](https://resources.ca.gov/CNRALegacyFiles/ceqa/docs/2018_CEQA_Final_Statement_of%20Reasons_111218.pdf).

28 <sup>2</sup> Available at [https://opr.ca.gov/docs/20171127\\_FAQs\\_Nov\\_2017.pdf](https://opr.ca.gov/docs/20171127_FAQs_Nov_2017.pdf)

1 number of state goals for planning, environmental protection, and improvement of human health.”  
2 (*Ibid.*, citing Fang, K., et al., Cutting Greenhouse Gas Emissions Is Only the Beginning: A  
3 Literature Review of the Co-Benefits of Reducing Vehicle Miles Traveled, March 2017.)<sup>3</sup> The  
4 change also simplifies CEQA’s transportation analysis, and allows greater local discretion in  
5 planning traffic circulation systems. Finally—and as highlighted in this case—“it aligns with,  
6 rather than inhibits, California’s prioritization of infill development.” (*Ibid.*)

7 If an agency has a certified EIR that used the LOS method before the VMT mandate, and  
8 then prepares an addendum to that EIR after the VMT mandate, the agency can choose to use the  
9 old LOS method rather than the new VMT method to compare the environmental impacts. (*Olden*  
10 *Properties Corp. v. City of Newport Beach* (2023) 93 Cal.App.5th 270, 280–281.) Otherwise, the  
11 agency would be required to conduct a new traffic analysis from scratch, or compare “LOS apples  
12 to VMT oranges,” instead of relying upon the analysis in the original EIR. (*Ibid.*) But LOS is no  
13 longer ever required. An agency should shift exclusively to a VMT analysis in environmental  
14 documents when possible including, as here, when the prior EIR analysis used both methods. (See  
15 OPR, Technical Advisory on Evaluating Transportation Impacts in CEQA, Dec. 2018, p. 18–19.)<sup>4</sup>

16 Here, the City appropriately shifted to using the VMT method in furtherance of CEQA and  
17 state policy. But petitioner’s case is based fundamentally on the City’s failure to fully analyze  
18 LOS impacts. Not only was the City under no obligation to do so, the better and more analysis  
19 employs the VMT standard, which the City used. Petitioner asks the Court to judge the City by a  
20 standard that simply does not apply and is not appropriate.

21 Even more, the amendments only change *which* downtown in-fill sites are planned for  
22 future housing development. Petitioner’s concern about the traffic from “introducing potentially  
23 hundreds of new vehicles into the downtown area in particular belonging to the residents of the  
24 more than 300 new affordable housing units” (Pet. MPI, p. 7:22–24) is precisely the type of  
25 concern that typically no longer supports an environmental impact under the VMT rules and  
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27 <sup>3</sup> Available at <https://ncst.ucdavis.edu/white-paper/cuttinggreenhouse-gas-emissions-is-only-the-beginning-a-literature-review-of-the-co-benefits-of-reducingvehicle-miles-traveled>

28 <sup>4</sup> Available at [https://opr.ca.gov/docs/20190122-743\\_Technical\\_Advisory.pdf](https://opr.ca.gov/docs/20190122-743_Technical_Advisory.pdf)

1 guidance. In fact, the opposite is true: OPR’s technical advisory informs agencies that two factors  
2 may support a presumption of a less-than-significant traffic impact: a “high percentage of  
3 affordable housing” and an infill location. (OPR, Technical Advisory on Evaluating  
4 Transportation Impacts in CEQA, Dec. 2018, p. 14–15.)<sup>5</sup> Thus, petitioner’s CEQA action, and its  
5 motion, seek extraordinary relief based on applying an outdated traffic metric to precisely the  
6 land use that can be reasonably presumed to cause no significant impact.

7 **II. THE CITY’S ACTIONS ARE CONSISTENT WITH STATE HOUSING AND**  
8 **ENVIRONMENTAL POLICY**

9 CEQA’s shift from LOS to VMT represents one example of the State’s efforts to facilitate  
10 infill housing development and acknowledge its comparative environmental benefits. In other  
11 instances, the Legislature has specifically exempted some, and streamlined other, infill housing  
12 projects under CEQA. (See Stats. 2023, Ch. 761, Sec. 1 (AB 1449) [adding Pub. Resources Code,  
13 § 21080.40, which includes a new statutory exemption for infill affordable housing projects and  
14 any rezoning or plan amendments required to allow for such projects]; Pub. Resources Code, §§  
15 21094.5 [streamlining for infill projects], 21159.24 [infill housing exemption].) The CEQA  
16 Guidelines also reflect these exemptions. (Cal. Code Regs., tit. 14, §§ 15183.2 [streamlining for  
17 infill projects], 15195 [residential infill exemption], 15332 [categorical exemption for certain  
18 infill development projects].)

19 The general plan is a city’s long-range planning document and, among other elements, must  
20 include a housing element. (Gov. Code, § 65583.) Housing Element Law mandates that local  
21 governments plan for an adequate number of housing units, including affordable housing, to  
22 satisfy its regional housing needs allocation (RHNA). (Gov. Code, §§ 65583, subd. (c)(1),  
23 65584.09.) Planning policies also facilitate infill housing development. The first statewide  
24 priority in long-range planning is to “promote infill development and rehabilitation and utilization  
25 of existing infrastructure[.]” pp. 4, 13.) (OPR, General Plan Guidelines, 2017, pp. 4, 13<sup>6</sup>; see  
26 Gov. Code, § 65041.1.) In addition, the State has mandated ministerial local review of affordable

27 <sup>5</sup> Available at [https://opr.ca.gov/docs/20190122-743\\_Technical\\_Advisory.pdf](https://opr.ca.gov/docs/20190122-743_Technical_Advisory.pdf).

28 <sup>6</sup> Available at [https://opr.ca.gov/docs/OPR\\_COMPLETE\\_7.31.17.pdf](https://opr.ca.gov/docs/OPR_COMPLETE_7.31.17.pdf).

1 housing projects in infill locations where cities have not met their housing production goals and  
2 specifically allowed for infill affordable housing along commercial corridors. (Gov. Code, §§  
3 65913.4, 65912.100 et seq.)

4 These State efforts, which are critical to address the California’s housing crisis, seek to  
5 encourage new development patterns from high-impact sprawl—which destroys open space and  
6 wildlife habitat, and forces residents to drive to their jobs, shopping, and entertainment—to low-  
7 impact infill development, which places residents near their necessities. California’s housing  
8 crisis is felt acutely in the City of Eureka, which contains several areas with high housing burden,  
9 where a high percentage of households are highly burdened by housing costs. (Office of  
10 Environmental Health Hazard Assessment, CalEnviroScreen 4.0 Housing Burden Map.)<sup>7</sup> Like  
11 many other parts of California, Eureka needs housing like the type petitioner challenges.

12 The housing element is the first critical step in answering *where* a jurisdiction’s housing  
13 will be developed. In furtherance of state environmental and housing laws, the City has identified  
14 specific undeveloped infill sites near existing amenities and transit. Even more, while local  
15 agencies often cannot control whether housing will actually be developed on planned housing  
16 sites, the City has sensibly chosen City-owned lots where it can facilitate future housing and  
17 ensure that a high percentage of affordable housing is included. The City’s amendments to its  
18 housing element are a commendable example of a plan that offers the full range of benefits  
19 associated with planned infill housing development.

## 20 CONCLUSION

21 The People respectfully urge the Court to deny the motion for preliminary injunction.  
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28 <sup>7</sup> Available at <https://oehha.ca.gov/calenviroscreen/indicator/housing-burden>.

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Dated: February 1, 2024

Respectfully submitted,  
  
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*People of the State of California, ex rel.*  
*Attorney General Rob Bonta*

SD2024300218

**DECLARATION OF SERVICE BY E-MAIL**

Case Name: **Citizens for a Better Eureka v. City of Eureka**  
No.: **CV2300565**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 600 West Broadway, Suite 1800, P.O. Box 85266, San Diego, CA 92186-5266.

On **February 1, 2024**, I served the attached **EX PARTE APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEFS IN SUPPORT OF RESPONDENTS; MEMORANDUM IN SUPPORT** by transmitting a true copy *via electronic mail* addressed as follows:

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*Attorneys for Respondent-Intervenors*

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on **February 1, 2024**, at San Diego, California.

Celia Valdivia



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Declarant

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Signature