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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Protecting Arizona's Resources and
Children, et al., and Gila River Indian
Community,

Plaintiffs,

v.

Federal Highway Administration, et al.,

Defendants.

No. CV-15-00893-PHX-DJH
No. CV-15-01219-PHX-DJH

ORDER

This matter is before the Court on the Motion for Summary Judgment (Doc. 95) and Amended Statement of Facts (Doc. 101) filed by Plaintiffs Protecting Arizona’s Resources and Children, et al. (the “PARC Plaintiffs”)¹; the Motion for Summary Judgment (Doc. 97) and Statement of Facts (Doc. 98) filed by Plaintiff Gila River Indian Community (“GRIC”)²; the Cross-Motion for Summary Judgment (Doc. 102), Statement of Facts (Doc. 103), Response to Plaintiffs’ Motions for Summary Judgment (Doc. 104) and Controverting Statements of Facts (Docs. 105, 106) filed by Defendants Federal

¹ The PARC Plaintiffs include The Foothills Community Association; The Foothills Club West Community Association; The Calabrea Homeowners Association; The Lakewood Community Association; The Sierra Club; The Phoenix Mountains Preservation Council; Don’t Waste Arizona; and the Gila River Alliance for a Clean Environment.

² On June 30, 2015 in CV 15-1219-PHX-DJH, GRIC filed a Complaint for Declaratory and Injunctive Relief against the same Defendants. (Doc.1). Thereafter, GRIC filed a Motion to Consolidate that case with the PARC Plaintiffs’ case pursuant to Fed.R.Civ.P. Rule 42 and the Court granted that motion, in part, on July 29, 2015. (Doc. 71).

1 Highway Administration (“FHWA”) and Karla Petty, Arizona Division Administrator for
2 FHWA (collectively, “Federal Defendants”); and the Cross-Motion for Summary
3 Judgment (Doc. 107), Statement of Facts (Doc. 108), Memorandum of Points and
4 Authorities (Doc. 109), and Joinder in Federal Defendants’ Controverting Statements of
5 Facts (Doc. 110) filed by Defendants Arizona Department of Transportation (“ADOT”)
6 and its Director, John S. Halikowski (collectively, “State Defendants”). The PARC
7 Plaintiffs and GRIC each filed a Reply in Support of Their Motion for Summary
8 Judgment and Response in Opposition to Defendants’ Cross-Motions (Docs. 113, 115),
9 along with additional Statements of Fact (Docs. 114, 116, and 117). Finally, the Federal
10 Defendants and the State Defendants each filed a Reply (Docs. 120, 121) in support of
11 their Cross-Motions for Summary Judgment.

12 The Federal Defendants, as directed, filed a Notice of Lodging of Administrative
13 Record (Doc. 90) on November 16, 2015.³ On December 29, 2015, the Federal
14 Defendants filed a Notice of Lodging Additional Administrative Record Documents
15 (Doc. 92), and on May 24, 2016, they filed a Second Notice of Lodging Additional
16 Administrative Record Documents (Doc. 126). That voluminous record is more than
17 70,000 pages and contains numerous analytical summaries and reports.

18 The Court heard more than four hours of oral argument on May 11, 2016. The
19 Court took the matter under advisement and now issues its written order.

20 **I. Introduction**⁴

21 The Plaintiffs in this consolidated action, PARC and other community
22 organizations, and GRIC, a federally recognized Indian tribe, are challenging
23 Defendants’ evaluation and approval of the Loop 202 South Mountain Freeway project
24 (the “Freeway Project”), which would complete the Loop 202 Freeway from the I-10

25
26 ³ A corrected version of the Cultural Resources Administrative Record, a portion
27 of the overall administrative record, was submitted the next day on November 17, 2015.
(Doc. 91).

28 ⁴ Unless otherwise indicated, the following facts are not in dispute and are an
amalgamation of, and taken nearly verbatim from, the parties’ separate supporting and
controverting statements of fact. (Docs. 98, 101, 103, 105, 106, 108, 114, 116 and 117)

1 Maricopa Freeway to the I-10 Papago Freeway. The proposed eight-lane, approximately
2 22-mile long freeway would consist of an Eastern Section and a Western Section. The
3 Eastern Section is proposed to begin at the existing I-10 and Santan Freeway interchange
4 and extend westward along Pecos Road in Ahwatukee. The freeway would run just north
5 of and adjacent to the exterior boundary of the GRIC land which lies just south of Pecos
6 Road. The Western Section is proposed to connect with the Eastern Section near 59th
7 Avenue and Elliot Road and extend north before linking to the I-10 Papago Freeway near
8 59th Avenue. In order to connect with the I-10 Papago Freeway, the freeway would cut
9 through approximately 31.3 acres of the Phoenix South Mountain Park Preserve
10 (“SMPP”). The freeway would cut through three ridgelines of the South Mountains, two
11 of which are within SMPP, which is one of the largest municipally-operated parks in the
12 world. The SMPP and surrounding areas are considered sacred to the GRIC as they
13 contain sacred and natural resources and cultural properties which are still used by GRIC
14 religious practitioners today.

15 Plaintiffs contend that Defendants violated their obligations under the National
16 Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321-4370h, and Section 4(f) of the
17 Department of Transportation Act (“Section 4(f)”), 49 U.S.C. § 303(c), “to carefully,
18 objectively, and thoroughly identify issues, assess alternatives, and minimize adverse
19 impacts.” (Doc. 97 at 8).⁵ They argue that critical flaws in Defendants’ evaluation and
20 decision-making process have resulted in a decision to approve the Freeway Project that
21 was arbitrary, capricious and an abuse of discretion. Among other arguments, the PARC
22 Plaintiffs assert that the Defendants’ NEPA process was designed to rationalize a
23 preordained decision and that they did not adequately consider the potential health effects
24 to children who live and attend school near the propose freeway. Similarly, GRIC asserts
25 that the Defendants relied on incomplete data and did not evaluate the unique impacts of
26 the project on their community, its members or the affected animal and plant life in the

27 ⁵ Unless otherwise indicated, the Court’s citations to filed documents reflect the
28 docket number(s) and page number(s) generated by CMECF, the Court electronic filing
and case management system. The Court’s citations to documents filed by the parties do
not refer to pre-printed page numbers on such documents.

1 SMPP. Plaintiffs therefore request that the Court grant summary judgment in their favor
2 and enjoin all construction and other action being taken in furtherance of the Freeway
3 Project until Defendants comply with all applicable laws and regulations.

4 Defendants respond that they have strictly adhered to the procedures required by
5 federal law. They claim that the Freeway Project “reflects a considered policy choice by
6 *all* state and federal transportation and planning agencies regarding solutions to the
7 severe congestion in the I-10 corridor, and the mobility challenges attendant to a growing
8 economy and population.” (Doc. 109 at 14). They contend that Plaintiffs’ disagreement
9 with this policy choice is not a sufficient basis to invalidate Defendants’ approval of the
10 Freeway Project. Defendants argue that Plaintiffs have not met their burden to show
11 Defendants’ approval of the Freeway Project was “arbitrary, capricious, an abuse of
12 discretion, or otherwise not in accordance with law.” (Doc. 102 at 2) (quoting 5 U.S.C.
13 § 706(2)(A)).

14 Defendants further explain that their evaluation and analysis included an extensive
15 NEPA scoping process that involved forming a Citizens Advisory Team, in which
16 Plaintiffs were represented, that met approximately 60 times over a twelve-year period to
17 provide input into the process. (Doc. 109 at 18). In addition, Defendants assert that they
18 have conducted government-to-government consultation with GRIC on their specific
19 concerns. (*Id.* at 20). Defendants therefore contend that on the record as a whole, they
20 are entitled to summary judgment.

21 **II. Standard of Review**

22 Judicial review of the FHWA’s and ADOT’s (the “Agencies”) actions under
23 NEPA and Section 4(f) is governed by the Administrative Procedures Act (“APA”).
24 *Earth Island Inst. v. U.S. Forest Service*, 697 F.3d 1010, 1013 (9th Cir. 2012); *Oregon*
25 *Natural Desert Ass’n v. Bureau of Land Management*, 625 F.3d 1092, 1109 (9th Cir.
26 2008). The APA provides in pertinent part that a reviewing court must “hold unlawful
27 and set aside agency action, findings, and conclusions found to be – (A) arbitrary,
28 capricious, an abuse of discretion, or otherwise not in accordance with law . . .” or “(D)
without observance of procedure required by law.” 5 U.S.C. § 706(2)(A), (D). “Review

1 under the arbitrary and capricious standard is narrow, and we do not substitute our
2 judgment for that of the agency.” *Earth Island Inst.*, 697 F.3d at 1013 (internal
3 quotations and citations omitted). This highly deferential standard mandates that an
4 agency’s decision be set aside “only if the agency relied on factors Congress did not
5 intend it to consider, entirely failed to consider an important aspect of the problem, or
6 offered an explanation that runs counter to the evidence before [it] or is so implausible
7 that it could not be ascribed to a difference in view or the product of agency expertise.”
8 *The Lands Council v. McNair*, 537 F.3d 981, 987 (9th Cir. 2008) (en banc) (citations and
9 internal quotations omitted) (*overruled on other grounds by American Trucking Ass’n*
10 *Inc. v City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009)). Therefore, “[t]he APA
11 does not allow the court to overturn an agency decision because it disagrees with the
12 decision or with the agency’s conclusions about environmental impacts.” *River Runners*
13 *for Wilderness v. Martin*, 593 F.3d 1064, 1070 (9th Cir. 2010) (citations omitted). The
14 agency action “need be only a reasonable, not the best or most reasonable, decision.”
15 *National Wildlife Federation v. Burford*, 871 F.2d 849, 855 (9th Cir. 1989).

16 **III. Discussion of Alleged NEPA Violations**

17 NEPA “requires federal agencies to prepare an Environmental Impact Statement
18 (“EIS”) discussing, among other things, the environmental impact of a proposed action,
19 and adverse environmental effects which cannot be avoided, and alternatives to the
20 proposed action.” *National Parks & Conservation Association v. Bureau of Land*
21 *Management*, 606 F.3d 1058, 1069 (9th Cir. 2009) (citing 42 U.S.C. § 4332(2)(C)).
22 “Publication of an EIS, both in draft and final form . . . gives the public the assurance that
23 the agency has indeed considered environmental concerns in its decision making process
24 . . . and, perhaps more significantly, provides a springboard for public comment.”
25 *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989) (internal
26 quotations and citations omitted). NEPA’s “action-forcing” procedures require that
27 agencies take a “hard look at environmental consequences” of their planned action. *Id.*
28 (citing *Kleppe v. Sierra Club*, 427 U.S. 390, 410, n. 21 (1976)).

Plaintiffs raise multiple challenges to the Agencies’ actions under NEPA. The

1 Court will address each in turn to determine whether Plaintiffs have met their burden to
2 show the Agencies acted arbitrarily or capriciously.

3 **A. Purpose and Need**

4 An EIS “shall briefly specify the underlying purpose and need to which the agency
5 is responding in proposing the alternatives including the proposed action.” 40 C.F.R. §
6 1502.13. “Agencies enjoy ‘considerable discretion’ to define the purpose and need of a
7 project.” *National Parks & Conservation Association*, 606 F.3d at 1070 (citing *Friends*
8 *of Southeast’s Future v. Morrison*, 153 F.3d 1059, 1066 (9th Cir. 1998)). An agency,
9 however, “cannot define its objectives in unreasonably narrow terms.” *City of Carmel-*
10 *By-The-Sea v. U.S. Dept. of Transportation*, 123 F.3d 1142, 1155 (9th Cir. 1997). “A
11 purpose and need statement will fail if it unreasonably narrows the agency’s
12 consideration of alternatives so that the outcome is preordained.” *Alaska Survival v.*
13 *Surface Transp. Bd.*, 705 F.3d 1073, 1084 (9th Cir. 2013). Courts review a purpose and
14 need statement for reasonableness. *Id.*

15 Here, the Court finds that the Agencies’ discussion of purpose and need in the
16 Final EIS (“FEIS”) was reasonable and did not create a preordained outcome. Plaintiffs
17 argue that the Agencies limited the stated purpose and need to include only a major
18 transportation facility (a freeway) within the defined Study Area, thus predetermining the
19 desired outcome. Plaintiffs further argue that the Agencies used the transportation
20 planning process to circumvent the NEPA process, which is prohibited. They claim that
21 the NEPA process was nothing more than a way to rationalize a decision that had already
22 been made – to build the Loop 202 freeway. The Court disagrees.

23 As the Federal Defendants argue, even though the Freeway Project has been
24 included in the Maricopa County Association of Governments (“MAG”)⁶ long range
25 transportation plan since the 1980’s, that in and of itself does not establish that the

26
27 ⁶ The Maricopa Association of Governments “is the state-federal metropolitan
28 planning organization (“MPO”) responsible for transportation planning in the Phoenix
Metropolitan Area, and was responsible for generating the Long-Range Transportation
Plan (“RTP”)” for the area. (Doc. 108 at 4). Although not a county government, GRIC
is an “active member of the [MAG] Regional Council . . .” (Doc. 108 at 8).

1 outcome of the Agencies' NEPA analysis was predetermined. Plaintiffs' argument seems
2 to suggest that the Agencies should have disregarded the thirty-plus years of work done
3 by MAG and began anew a comprehensive analysis of the area's transportation needs
4 before completing the EIS. That, however, is not what the law requires and Plaintiffs
5 have not demonstrated otherwise. To the contrary, federal law requires states to develop
6 long-range transportation plans from which federally-funded highway and transit projects
7 must flow.

8 "For 40 years, the Congress has directed that federally funded highway and transit
9 projects must flow from metropolitan and statewide transportation planning processes
10 (pursuant to 23 U.S.C. 134-135 and 49 U.S.C. 5303-5306)." 23 C.F.R. Pt. 450, App. A
11 ("Linking the Transportation Planning and NEPA Processes"). "When the NEPA and
12 transportation planning processes are not well coordinated, the NEPA process may lead
13 to the development of information that is more appropriately developed in the planning
14 process, resulting in duplication of work and delays in transportation improvements." *Id.*
15 The purpose of the referenced Appendix is to change the culture of non-cooperation and
16 insufficient coordination "by supporting congressional intent that statewide and
17 metropolitan planning should be the foundation for highway and transit project
18 decisions." *Id.* The Appendix contains a comprehensive discussion of the importance of
19 utilizing the transportation planning process to inform the NEPA process. *See id.* The
20 Appendix specifically addresses how transportation planning can be used to shape a
21 project's purpose and need in the NEPA process and explains that "[a] sound
22 transportation planning process is the primary source of the project purpose and need."
23 23 C.F.R. Pt. 450, App. A at II-8. The Court therefore finds that the Agencies' use of
24 MAG's Regional Transportation Plan ("RTP") to develop the purpose and need of the
25 proposed action (the Freeway Project) in the FEIS was not improper, was consistent with,
26 and indeed mandated by, federal law.

27 The purpose and need discussion in Chapter 1 of the FEIS explains that the
28 Freeway Project has been included in MAG's past and current regional transportation
planning efforts. In light of that fact, the Agencies, as part of the EIS process,

1 reexamined whether there was still a need for the Freeway Project. The chapter includes
2 a lengthy and elaborate discussion of the need for the proposed freeway based on (1)
3 socioeconomic factors, including significant increases in population, housing units and
4 employment between 2010 and 2035; and (2) regional transportation demand and
5 existing and projected transportation system capacity deficiencies. The purpose of the
6 proposed action is, therefore, to meet these identified needs. Based on their analysis of
7 these socioeconomic and transportation conditions, the Agencies concluded that the need
8 for the Freeway Project still exists and that without this project, the region's
9 transportation network will suffer and congestion will worsen.

10 After review of the Agencies' purpose and need discussion, the Court finds that it
11 was not impermissibly narrow such that it led to a predetermined outcome. The Agencies
12 state that their use of the transportation process to inform the NEPA analysis was not
13 improper and the Court agrees. The Agencies properly relied on information from the
14 RTP to inform their discussion of the purpose and need in the FEIS. The Agencies'
15 comprehensive discussion of socioeconomic and transportation demand factors supports
16 their determination that a need for the proposed action still exists and demonstrates that
17 their decision was not arbitrary. The purpose and need discussion is sufficiently broad to
18 permit consideration of a reasonable range of alternatives, which are discussed below.
19 Plaintiffs have therefore not met their burden to show that the purpose and need
20 discussion was arbitrary and capricious and failed to comply with NEPA. For these
21 reasons, the Court finds Defendants are entitled to summary judgment on this issue.

22 **B. Consideration of Reasonable Alternatives**

23 Plaintiffs further argue that the Agencies failed to consider a reasonable range of
24 alternatives to the proposed action. NEPA requires agencies to include in an EIS, among
25 other things, a discussion of alternatives to the proposed action. 42 U.S.C. § 4332(C)(iii);
26 *HonoluluTraffic.com v. Federal Transit Administration*, 742 F.3d 1222, 1231 (9th Cir.
27 2014) (citing 42 U.S.C. § 4332). Consideration of alternatives "is the heart of the
28 environmental impact statement." 40 C.F.R. § 1502.14. "The 'rule of reason' guides
both the choice of alternatives as well as the extent to which the Environmental Impact

1 Statement must discuss each alternative.” *City of Carmel-By-The-Sea*, 123 F.3d at 1155
2 (citations omitted). “The Environmental Impact Statement need not consider an infinite
3 range of alternatives, only reasonable or feasible ones.” *Id.* (citing 40 C.F.R. §
4 1502.14(a)-(c). “An agency is under no obligation to consider every possible alternative
5 to a proposed action, nor must it consider alternatives that are unlikely to be implemented
6 or those inconsistent with its basic policy objectives.” *Seattle Audubon Society v.*
7 *Moseley*, 80 F.3d 1401, 1404 (9th Cir. 1996). Project alternatives derive from the purpose
8 and need section of the EIS. *City of Carmel-By-The-Sea*, 123 F.3d at 1155.

9 Additionally, the Ninth Circuit has held “that an agency does not violate NEPA by
10 refusing to discuss alternatives already rejected in prior state studies.”
11 *HonoluluTraffic.com*, 742 F.3d at 1231 (citing *Laguna Greenbelt, Inc. v. Dept. of*
12 *Transportation*, 42 F.3d 517, 524, n. 6 (9th Cir. 1994)). “Under applicable federal
13 regulations, a state-prepared [Alternatives Analysis (“AA”)] may be used as part of the
14 NEPA process as long as it meets certain requirements, including that (1) the federal lead
15 agency furnished guidance in the AA’s preparation and independently evaluation the
16 document, 23 U.S.C. § 139(c)(3), and (2) the AA was conducted with public review and a
17 reasonable opportunity to comment, 23 C.F.R. § 450.318(b)(2)(ii)-(iii).”
18 *HonoluluTraffic.com*, 742 F.3d at 1231.

19 The Agencies state that as part of the NEPA process they established a Citizens
20 Advisory Team (“SMCAT”), which included some of the PARC Plaintiffs, to provide
21 input on the scope and content of the EIS. (Doc. 109 at 18). Plaintiffs claim they and
22 others “submitted a significant number of reasonable alternatives for consideration during
23 the NEPA process that should have been considered in the FEIS – none of which were
24 studied in detail by Defendants.” (Doc. 95 at 22). Plaintiffs argue that several reasonable
25 alternatives were improperly rejected or inadequately considered. Among the
26 alternatives that Plaintiffs claim should have been more closely considered were various
27 hybrid alternatives, routes through GRIC land including Riggs Road and Queen Creek
28 Road alternatives, a depressed freeway alternative, and the Interstate 8 – State Route 85
alternative. (Doc. 101-4 at 23-27).

1 Chapter 3 of the FEIS, entitled “Alternatives,” is a 70-page discussion of the
2 alternatives development and screening process, the post-screening alternatives that were
3 studied in detail, and the identification of a preferred alternative. The alternatives chapter
4 reiterates the significance of the purpose and need analysis from Chapter 1 and its
5 relationship to the development of alternatives. It explains that in 2013, MAG approved
6 new socioeconomic projections for Maricopa County regarding population, employment
7 and housing, and corresponding projections related to regional traffic demands. Because
8 much of the projected growth is expected to occur in areas that would be served by a
9 freeway in the Study Area, the Agencies determined that the new projections, along with
10 current deficiencies in transportation system capacity, continue to demonstrate a need for
11 the proposed action.

12 Based on the identified needs, the Agencies used a process to develop a range of
13 alternatives, screen the alternatives, and identify the ones to be studied in detail in the
14 EIS. Chapter 3 describes at length the development of alternatives and the screening
15 process. Here, the alternatives considered included numerous non-freeway alternatives to
16 improve transportation conditions in the Study Area, including 1) maximizing the
17 efficiency of existing freeways, 2) reducing demand on existing freeways, 3) transit
18 alternatives including light rail, commuter rail and bus routes, 4) arterial street expansion,
19 and 5) land use alternatives such as increasing residential densities and redistributing
20 employment centers. Other freeway alternatives were also considered in the screening
21 process.

22 Through a multi-step screening process, the Agencies evaluated the various
23 alternatives, eliminating some from further consideration while carrying others forward
24 to the next step. Throughout the screening process, the Agencies considered whether the
25 alternatives would satisfy the purpose and need of the proposed action. After the
26 screening process was completed, five alternatives for the Western Section, one for the
27 Eastern Section, and a No-Action alternative remained and were evaluated in detail in the
28 DEIS and FEIS.

The Agencies explain that at the urging of the SMCAT, they pursued an

1 alternative alignment on GRIC land. (Doc. 109 at 18). As part of this process, the
2 Agencies engaged GRIC in discussions about the possibility of studying an alternative to
3 build on GRIC land. (FAR00001241-44; FAR00001243-44). Ultimately, in 2000, the
4 GRIC Council ratified a resolution opposing any alignment on GRIC land and that
5 decision was reaffirmed in 2005. (Doc. 109 at 20). As a result, the Agencies were not
6 permitted to study alternatives on GRIC land. (FAR00000046-47; FAR00001247-48).
7 Thus, the Agencies no longer considered this SMCAT proposal as a viable alternative.

8 Upon close review of the Agencies' alternatives evaluation process and analysis,
9 the Court finds that Plaintiffs have failed to demonstrate that the Agencies' consideration
10 of alternatives was arbitrary and capricious. To the contrary, the discussion in Chapter 3
11 of the Agencies' analysis of alternatives demonstrates that extensive work was performed
12 to develop reasonable alternatives, thoroughly screen the alternatives, and more fully
13 study those that survived the screening process. The discussion further reflects that the
14 numerous alternatives evaluated were derived from the identified socioeconomic factors
15 and resulting transportation needs addressed in the purpose and need chapter. The Court
16 agrees with the Federal Defendants' assertion that "[t]he Agencies undertook a
17 systematic, interdisciplinary approach to ensure integrated and balanced consideration of
18 a diverse set of factors, including ability to meet the need for the project, design and
19 operational parameters, impacts on the natural and human environments, conceptual level
20 cost comparisons, and public and political acceptability." (Doc. 109 at 32-33). Thus, the
21 Court finds little support for Plaintiffs' argument that the range of alternatives considered
22 was insufficient due to a narrowly stated purpose and need. Nor is the Court persuaded
23 that any other alleged deficiencies in the alternatives analysis asserted by Plaintiffs rise to
24 the level of being arbitrary and capricious. For these reasons, the Court finds Defendants
25 are entitled to summary judgment on this issue.

26 **C. No Build Alternative**

27 Plaintiffs contend that the Agencies' analysis of the no-build alternative violated
28 NEPA because the Agencies failed "to use non-build data when evaluating the no build
alternative." (Doc. 97 at 38). They claim the Agencies "utilized a

1 socioeconomic/demographic model to analyze the impacts of the No Action Alternative
2 that assumed construction of the Freeway.” (Doc. 95 at 23). Plaintiffs claim that by
3 assuming the same employment and population growth would occur in the Study Area
4 with or without the Freeway Project, the Agencies’ comparison of the no-build
5 alternative with the preferred alternative (the Freeway Project) was flawed. Plaintiffs
6 further point out that the Environmental Protection Agency identified this alleged
7 deficiency in its comments to the DEIS and FEIS.

8 The Agencies, however, argue that it was reasonable to rely on the same MAG-
9 approved socioeconomic projections to evaluate both the no-build alternative and the
10 preferred alternative. The Agencies disagree with Plaintiffs’ assumption that the level of
11 growth in the area of the Freeway Project will be less if the freeway is not built, noting
12 that Plaintiffs cite no evidence to support their assumption. (Doc. 109 at 35; Doc. 104 at
13 25). The Agencies claim they “reasonably assumed that the socioeconomic projections
14 provided by MAG reflecting the continued conversion of undeveloped and agricultural
15 land to developed uses would continue consistent with the recent trends” whether or not
16 the freeway is built. (Doc. 104 at 25).

17 The Agencies rely on the Ninth Circuit’s decision in *Laguna Greenbelt, Inc. v.*
18 *U.S. Dept. of Transportation*, 42 F.3d 517 (9th Cir. 1994) to support their position. In that
19 case, the Court held that the Federal Highway Administration’s evaluation of the no-build
20 alternative did not violate NEPA even though it relied on socioeconomic projections that
21 assumed the proposed toll road would be built. *Laguna Greenbelt*, 42 F.3d at 526-527.
22 The Court found that the EIS provided support for its conclusion that growth in the area
23 served by the toll road would be the same regardless of whether the toll road was built
24 because “98.5% of all land in the project’s ‘area of benefit’ is already accounted for by
25 either existing or committed land uses not contingent on construction of the corridor.” *Id.*
26 at 525. The Court further explained that “[t]he need for the corridor is based on existing
27 as well as future traffic congestion . . . and the county’s population probably will grow in
28 the coming years even without the corridor.” *Id.* at 526-527.

The Court agrees with Defendants that *Laguna Greenbelt* is applicable here and,

1 as it must, will apply it as precedent. As in *Laguna Greenbelt*, the need for the Freeway
2 Project, as set forth in Chapter 1 of the FEIS, is to alleviate existing congestion in
3 addition to future congestion resulting from projected growth. As the Agencies found in
4 their 2012 assessment of traffic conditions, the regional transportation system current
5 capacity is meeting only 84 percent of existing travel demand. (Doc. 104 at 25).

6 Additionally, growth in the Study Area is expected to continue with or without the
7 Freeway Project. As the Federal Defendants point out, “[f]rom 2000-2010, the
8 population in the Study Area census blocks increased by more than 72 percent.” (Doc.
9 104 at 26). Despite projected growth at a lower rate than in the past, the Agencies
10 reasonably concluded for purposes of evaluating the no-build alternative that such growth
11 and development activities would occur in accordance with recent trends even in the
12 absence of the Freeway Project.

13 Though less developed than the area at issue in *Laguna Greenbelt*, the Study Area
14 here, except certain areas of GRIC, is highly developed. The Study Area is therefore not
15 dependent on the Freeway Project to induce growth. To the contrary, the administrative
16 record shows that significant rates of growth up to this point have occurred without the
17 Freeway Project and there is nothing in that record to show that projected growth and
18 further development would not occur in the absence of the Freeway Project. For these
19 reasons, the Court finds that the Agencies’ reliance on the same socioeconomic
20 projections to evaluate the no-build alternative that were used to evaluate the preferred
21 alternative was not arbitrary and capricious. The Agencies’ use of the projections was
22 reasonable under the circumstances here. Defendants are therefore entitled to summary
23 judgment on this issue.

24 **D. Analysis of Impacts**

25 NEPA’s procedures are in place to ensure “that agencies take a hard look at
26 environmental consequences” before deciding whether to proceed with a proposed action.
27 *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989) (internal
28 quotations and citations omitted). NEPA “does not mandate particular results, but simply
prescribes the necessary process.” *Id.* “NEPA regulations and case law require

1 disclosure of all foreseeable direct and indirect impacts.” *Idaho Sporting Congress, Inc.*
2 *v. Rittenhouse*, 305 F.3d 957, 963 (9th Cir. 2002) (citing 40 C.F.R. § 1502.16 and *City of*
3 *Davis v. Coleman*, 521 F.2d 661, 676 (9th Cir. 1975)).

4 Plaintiffs contend that the Agencies failed to consider numerous significant
5 impacts associated with the Freeway Project. Plaintiff GRIC argues that the Agencies
6 failed to adequately analyze specific impacts on the Community and its members. The
7 PARC Plaintiffs claim that the Agencies failed to adequately consider three significant
8 impacts: 1) the impacts on children’s health, 2) the impacts of mobile source air toxic
9 (MSAT) emissions and trucks, and 3) the impacts associated with the transportation of
10 hazardous materials on the freeway.

11 **1. Impacts on GRIC**

12 GRIC argues that the Agencies were required to analyze impacts of the Freeway
13 Project specifically affecting the Community and its members, separate and apart from
14 the impacts to the Study Area generally. GRIC claims that by failing to separately
15 address the impacts to the Community, the EIS is insufficient. GRIC identifies several
16 impacts to the Community that it alleges the Agencies failed to properly consider.

17 With respect to the impacts to the entire Study Area regarding air quality and
18 transportation of hazardous materials that GRIC claims should have been analyzed
19 separately, GRIC has failed to demonstrate how the Agencies’ analysis of these
20 environmental impacts does not equally apply to the Community and its members. GRIC
21 has not shown that these impacts are unique to, or disproportionately affect, the
22 Community such that they require separate consideration and analysis in the EIS. As the
23 Federal Defendants explain, “[t]he Agencies evaluated the Project’s potential impacts
24 within, and in some cases beyond, the Study Area, which specifically includes abutting
25 Community land.” (Doc. 104 at 39). The evaluation did not differentiate between
26 populations in the Study Area, and it is Plaintiffs’ burden to show how and why the
27 analysis of these impacts should have differentiated between GRIC members and the
28 population in general in the Study Area. GRIC has not done so. Thus, with respect to the
Agencies’ discussion of impacts regarding air quality and transportation of hazardous

1 materials, the Court finds nothing deficient about their inclusion of GRIC lands in that
2 discussion.

3 With regard to other impacts raised by GRIC, on this record, the Court cannot find
4 that “the Agencies overlooked the harm to the Community and brushed aside its concerns
5 in approving the project.” (Doc. 97 at 33). The Agencies explain, for example, that
6 between 2001 and 2009 they conducted over 100 meetings with GRIC and that they
7 considered multiple concerns regarding the Freeway Project on and off of GRIC land.
8 (Doc. 109 at 20). The Court has reviewed the chapters in the EIS that discuss the
9 project’s impacts and the Court agrees with the Agencies that they did in fact evaluate the
10 environmental impacts on GRIC. As the Federal Defendants explain, the Agencies
11 evaluated impacts to GRIC in the FEIS with respect to social conditions, environmental
12 justice, displacement and relocations, air quality and noise among other several other
13 impacts. (Doc. 103 at 12).

14 Moreover, GRIC’s argument on the Agencies’ alleged failures to evaluate impacts
15 on the Community and its members is comprised of one conclusory sentence for each
16 alleged “improper action.” (Doc. 97 at 33-34). For example, GRIC argues that the
17 Agencies limited their consideration of impacts on neighborhoods to the area
18 immediately north of Pecos Road and failed to consider such impacts on Community land
19 south of Pecos Road. (Doc. 97 at 33). The Court, however, agrees with the Federal
20 Defendants that GRIC took this isolated statement out of context. The statement comes
21 from Chapter 3 of the FEIS in which exclusion of alternatives is being discussed, not
22 evaluation of impacts. The Agencies were explaining that other Eastern Section
23 alternatives, such as Ray Road and Chandler Blvd., were eliminated because of the
24 substantial impacts on existing residences and disruption to community character and
25 cohesion in the areas where these alternative routes were located, which are north of
26 Pecos Road. (FAR00006547). By contrast, the Agencies found that the preferred
27 Eastern Section alternative would not cause the same level of disruption to that area.
28 Thus, the purpose of the discussion was not to identify impacts of the preferred
alternative north of Pecos Road to the exclusion of impacts south of Pecos Road, as

1 GRIC contends. Rather, the Agencies' intended to explain how the impact on residential
2 neighborhoods would be reduced with the preferred alternative route (along Pecos Road).

3 Additionally, in their evaluation of Impacts on Community Character and
4 Cohesion in Chapter 4 of the FEIS, the Agencies noted that while established residential
5 communities exist north of Pecos Road, GRIC land to the south of Pecos Road is
6 primarily vacant or used for agriculture. It is therefore reasonable that the Agencies'
7 evaluation of impacts on neighborhoods would be focused on the sections of the Study
8 Area where residential neighborhoods exist.

9 After review of GRIC's arguments about the Agencies' alleged failures to
10 consider the impacts of the Freeway Project on the Community and its members, and the
11 Agencies' responses showing in the record how they, in fact, did consider and discuss
12 impacts to the Community, the Court finds in favor of the Agencies on this issue. GRIC
13 has not demonstrated that the Agencies acted in an arbitrary and manner in how they
14 addressed the impacts of the Freeway Project on the Community.

15 **2. Impacts on Children's Health**

16 Plaintiffs next contend that the Agencies failed to adequately consider impacts on
17 children's health. Plaintiffs argue that this failure violates the Agencies' obligations
18 under NEPA and is contrary to Executive Order 13045 on Children's Health and Safety.
19 Plaintiffs further explain that the EPA, in its comments on the FEIS, expressed criticism
20 of the Agencies' conclusion that children are inherently accounted for in the analysis
21 conducted for the population as a whole.

22 In response, the Agencies assert that they "specifically considered and addressed
23 the potential air quality impacts of the highway, including the potential for impacts on
24 children." (Doc. 104 at 31). They explain that they performed the conformity analyses
25 called for by the Clean Air Act, 42 U.S.C. § 7506(c), which requires the FHWA to
26 demonstrate that a given transportation project satisfies the State's implementation plan
27 for achieving compliance with the National Ambient Air Quality Standards ("NAAQS")
28 for various pollutants. They also analyzed mobile source air toxics ("MSATs"), which
are specific toxic pollutants associated with vehicle emissions, even though the EPA has

1 not set NAAQS for MSATs. Defendants explain that these analyses “demonstrated that
2 the highway would not cause any violations or delay in attainment of the NAAQS, and
3 that exposure to MSATs would not only significantly decrease in the Study Area during
4 the life of the Project, but would not be significantly different between the No-Build and
5 build alternatives.” (Doc. 104 at 31).

6 The Agencies further explain that the NAAQS are set at levels designed to protect
7 sensitive populations, including children. The areas where the analyses were conducted
8 are areas where both children and adults are located, including areas with schools, day
9 care centers, homes and businesses. Thus, according to the Agencies, their analyses
10 show that, by complying with the NAAQS, the Freeway Project will not
11 disproportionately affect children’s health.

12 Plaintiffs do not dispute the results of the Agencies’ air quality testing. Nor do
13 they dispute that the EPA-established NAAQS are designed to protect sensitive
14 populations, including children. The Court therefore finds that the Agencies did not act
15 arbitrarily or capriciously by conducting their analyses of the potential air quality impacts
16 of the Freeway Project on all populations, including children.

17 Even though the EPA in its comments to the FEIS claims that the Agencies’
18 inclusion of children in the overall analyses does not meet the intent of Executive Order
19 13045 regarding children’s health, nothing presented by Plaintiffs establishes a violation
20 of NEPA. Plaintiffs’ reliance on the Executive Order is unavailing given that it does not
21 create substantive or procedural enforceable rights at law or equity. *See* Exec. Order No.
22 13045 Sec. 7 (1997). Moreover, tellingly, where Plaintiffs assert that the Agencies’
23 failure to adequately address potential health impacts on children is a violation of NEPA,
24 they cite no legal authority. (Doc. 95 at 31; Doc. 113 at 33). The Federal Defendants, on
25 the other hand, cite two circuit court decisions and one district court decision, albeit
26 outside of this circuit, for the proposition that NEPA’s requirements are per se satisfied
27 by showing compliance with NAAQS. (Doc. 104 at 32). Given the Ninth Circuit’s
28 reliance on the Third Circuit case, *Tinicum Township, Pa. v. U.S. Dept. of Transp.*, 685

1 F.3d 288, 294 (3d Cir. 2012)⁷, this Court is persuaded. These cases indicate that agency
2 compliance with lead agency regulations, such as the NAAQS, is reasonable. For the
3 foregoing reasons, the Court finds in favor of Defendants on this issue.

4 **3. Impacts of MSATs and Trucks**

5 Plaintiffs next claim that the FEIS failed to adequately consider the impacts of
6 MSATs and trucks. Regarding MSATs, Plaintiffs argue that the Agencies failed to
7 analyze near-roadway MSAT emissions and instead estimated the value of such
8 emissions in the broader Study Area. Plaintiffs contend this violated NEPA. In addition,
9 Plaintiffs argue that the Agencies violated NEPA by failing to provide a proper estimate
10 of truck traffic, thus making it impossible to accurately assess the level of pollutants
11 emitted by trucks.

12 In response, the Agencies explain that they relied on EPA's latest model for
13 estimating MSAT emissions. That analysis showed that emissions in the Study Area
14 overall would be significantly reduced whether a build alternative or the No-Action
15 alternative was selected. The analysis presented in the FEIS showed that an 84 percent
16 reduction of MSAT emissions would occur in the Study Area even if a build alternative
17 was selected, and only a slightly larger reduction would occur under the No-Action
18 alternative. The Agencies explain that, as noted above, the EPA has not provided MSAT
19 emission thresholds for MSATs that indicate what levels are safe or unsafe. As a result,
20 even if the Agencies had conducted a corridor analysis as suggested by the EPA, they
21 would have no emission thresholds against which to compare their results.

22 The Agencies also take issue with GRIC's contention that they must have had, but
23 did not provide, data regarding near-roadway MSAT emissions in order to calculate the
24 total emissions from the Study Area. The Agencies assert that "[t]he model used to
25 conduct the MSAT analysis uses distributions of vehicle travel across the entire roadway
26 network of an area to model emissions for the roadway network as a whole; therefore, it
27 is not possible to identify emission levels from one particular road within the entire

28 ⁷ See *California ex rel. Imperial County Air Pollution Control Dist. v. U.S. Dept. of the Interior*, 767 F.3d 781, 799 (9th Cir. 2014).

1 network.” (Doc. 104 at 35). GRIC does not challenge this explanation in its Reply.

2 Based on the Court’s review of the Agencies’ analysis of the impact of MSATs,
3 the Court finds no support to show they acted arbitrarily and capriciously. In response to
4 EPA’s concerns, the Agencies provided reasonable grounds for their determination that
5 an MSAT health risk assessment along the corridor was unnecessary here. (*See* Doc. 105
6 at ¶¶ 81-83). The absence of any emission thresholds and the projected significant
7 reduction in MSAT emissions over the life of the project are among those grounds.
8 Plaintiffs have not shown that the Agencies’ analysis of this issue violated NEPA.

9 Similarly, with respect to Plaintiffs’ challenge to the Agencies’ truck traffic
10 estimates, the Court finds no violation of NEPA. The Agencies explain that the average
11 estimate of ten percent represents the entire corridor “and is in alignment with the ten
12 percent average on other freeways, and the national average of seven percent.” (Doc. 104
13 at 35). The Agencies further explain that comparing “the traffic on Interstate 10 near the
14 proposed action, trucks comprise approximately eight percent of the traffic during the
15 peak hours and fifteen percent in the off hours.” (*Id.*). The ten percent approximation
16 “was further verified by comparing the Interstate-10 percentages derived in the MAG
17 Heavy Truck studies with actual truck counts for Interstate-10.” (*Id.*). Plaintiffs have
18 failed to demonstrate how the Agencies’ approximation of truck traffic is a violation of
19 NEPA. The Court therefore finds in favor of the Agencies on the MSAT and truck traffic
20 issues.

21 **4. Impacts Associated with Hazardous Materials Transportation**

22 The final impact-related issue raised by Plaintiffs is that the Agencies failed to
23 consider impacts associated with the transportation of hazardous materials. Plaintiffs
24 argue that given the number of trucks that would use the new freeway, and the likelihood
25 that some may be carrying hazardous materials, an analysis of the impact of trucks
26 carrying hazardous materials should have been completed in the EIS.

27 The Agencies respond by asserting that they did in fact consider the issue of
28 transporting hazardous materials on the freeway, but concluded that an environmental
analysis was not required in light of the speculative nature of a hazardous materials

1 incident. They explain that any vehicle carrying cargo must comply with U.S.
2 Department of Transportation regulations, and that ADOT can designate restrictions
3 regarding transportation of hazardous materials based on emergency response factors or
4 roadway design limitations for specific segments of the freeway. In addition, they
5 explain the process that occurs if a hazardous materials incident occurs on a state or
6 federal highway. (Doc. 103 at 11).

7 The Agencies argue that they are required only to “examine the ‘reasonably
8 foreseeable’ environmental effects of their proposed actions when conducting
9 environmental review.” *Ground Zero Center for Non-Violent Action v. U.S. Dept. of*
10 *Navy*, 383 F.3d 1082, 1089 (9th Cir. 2004) (citing 40 C.F.R. §§ 1502.16, 1508.8(b)). The
11 Ninth Circuit has “rejected the notion that every conceivable environmental impact must
12 be discussed in an EIS.” *Id.* (citation and internal quotations omitted).

13 The Court finds that Plaintiffs have not shown the Agencies’ determination
14 regarding this issue to be arbitrary and capricious. It was reasonable for the Agencies to
15 conclude that the releases of hazardous chemicals resulting from a transportation incident
16 are not reasonably foreseeable and, consequently, a discussion of the potential impacts
17 was not required. The reasonableness of the Agencies’ conclusion is bolstered by the fact
18 that there are no requirements in the relevant provisions of the CFR or the FHWA’s
19 advisory guidelines “to address releases of hazardous chemicals resulting from a
20 transportation incident in [NEPA] documents for transportation projects such as the
21 South Mountain Freeway.” (Doc. 103 at 12). The Court therefore finds in favor of the
22 Agencies on this issue.

23 **E. Mitigation Measures**

24 Plaintiffs argue that the Agencies failed to adequately discuss mitigation measures.
25 Plaintiffs contend that the Agencies did not provide a reasoned discussion of mitigation
26 measures and mostly provided a mere listing of such measures. Plaintiffs further claim
27 that the Agencies’ failure to adequately address mitigation is likely a result of an
28 insufficient level of freeway design during the NEPA process. In addition, Plaintiffs
specifically claim the Agencies failed to discuss mitigation measures for cumulative and

1 secondary impacts, and for wildlife corridors and connectivity.

2 The Agencies respond that their discussion of mitigation measures in the DEIS,
3 FEIS and Record of Decision (“ROD”) is sufficient. The Agencies argue that Plaintiffs
4 cite to a table of the Freeway Project’s mitigation commitments, which is a summary, but
5 fail to acknowledge that in Chapter 4 of the FEIS, “mitigation measures were discussed
6 in the context of every resource that was evaluated.” (Doc. 104 at 37). With respect to
7 the alleged insufficient level of design, the Agencies contend that the 15% level reflected
8 in the FEIS and DEIS “is the result of federal law, which prohibits FHWA from
9 conducting detailed project design plans prior to approval of the FEIS.” (Doc. 109 at 39)
10 (citing 23 U.S.C. § 112). The Agencies further argue that mitigation measures for
11 secondary and cumulative impacts, as well as for potential impacts on wildlife habitats
12 are sufficiently addressed.

13 “[O]ne important ingredient of an EIS is the discussion of steps that can be taken
14 to mitigate adverse environmental consequences.” *Robertson*, 490 U.S. at 351; *see also*
15 40 C.F.R. §§ 1502.14(f), 1502.16(h). Exclusion of “a reasonably complete discussion of
16 possible mitigation measures would undermine the ‘action-forcing’ function of NEPA.”
17 *Id.* at 352. “A mere listing of mitigation measures is insufficient to qualify as the
18 reasoned discussion required by NEPA.” *Neighbors of Cuddy Mountain v. U.S. Forest*
19 *Service*, 137 F.3d 1372, 1380 (9th Cir. 1998) (internal quotations and citations omitted).
20 “There is a fundamental distinction, however, between a requirement that mitigation be
21 discussed in sufficient detail to ensure that environmental consequences have been fairly
22 evaluated on the one hand, and a substantive requirement that a complete mitigation plan
23 be actually formulated and adopted, on the other.” *Robertson*, 490 U.S. at 352. “NEPA
24 does not require a fully developed plan that will mitigate all environmental harm before
25 an agency can act; NEPA requires only that mitigation be discussed in sufficient detail to
26 ensure that environmental consequences have been fully evaluated.” *Laguna Greenbelt*,
27 42 F.3d at 528.

28 First, as noted, Plaintiffs claim the Agencies failed to provide a sufficient level of
project design during the NEPA process which affected their ability to adequately address

1 mitigation. Plaintiffs argue that assuming the Freeway Project was “designed to a 15%
2 level during the NEPA process, this would not allow for development of the mitigation
3 required by law – as is evident from the EIS/ROD.” (Doc. 95 at 37). At oral argument,
4 counsel for the PARC Plaintiffs urged the Court that:

5 You need a greater level of design than 15 percent. Whatever
6 that number is, I don’t know, but I can guarantee you that it
7 would be at least 50, 60 percent design level if you’re going
8 to be able to fully analyze mitigation measures and if, as
9 required by law, you’re conducting all possible planning to
10 minimize harm.

11 (Doc. 129 at 29).⁸ Counsel cited no authority for his assertion that at least a 50 to 60
12 percent design level is required to properly analyze mitigation measures.

13 The Agencies contend that pursuant to 23 U.S.C. § 112, they are prohibited from
14 conducting detailed project design plans before complying with NEPA. Indeed, the
15 referenced statute provides that “[a] contracting agency shall not proceed . . . with final
16 design or construction until completion of” the NEPA process. 23 U.S.C. §
17 112(b)(C)(iii). Prior to the completion of the NEPA process, a contracting agency is
18 limited to proceeding with a “preliminary design and any work related to preliminary
19 design” 23 U.S.C. § 112(b)(C)(i)(III).

20 At oral argument, counsel for the Federal Defendants explained that “the 15
21 percent plan doesn’t mean that we’ve only designed 15 percent of a freeway.” (Doc. 129
22 at 99). Counsel presented slides from the administrative record showing the level of
23 detail in the 15 percent plan, asserting that “these engineering plans are quite a bit more
24 detailed than 15 percent sort of to a layperson might suggest.” (*Id.*). Counsel further
25 asserted that although a 15 percent design plan may not sound like much to a layperson,
26 “to an engineer, this provides more than enough information to make the determinations
27 that are required under NEPA.” (Doc. 129 at 100).

28 ⁸ Although the PARC Plaintiffs’ counsel referenced Section 4(f) before making
this specific comment, in the prior paragraph he challenged the low level of design to
criticize the Agencies’ mitigation analysis under NEPA. (Doc. 129 at 29). The parties’
discussion of the level of design is relevant to both the NEPA and Section 4(f) analyses.

1 While the Court does not consider counsel's statements as evidence, the Court
2 finds that Plaintiffs have not demonstrated that the 15% design level utilized for
3 completing the NEPA process was per se deficient as they argue. Although the PARC
4 Plaintiffs' counsel insisted to the Court that at least a 50 to 60 percent level of design is
5 required for the mitigation analysis to have any real meaning, he cited no authority for his
6 claim. Nor did Plaintiffs cite any authority in their papers for their contention that a 15%
7 design plan is insufficient. Moreover, as the law requires, this Court will not second-
8 guess the Agencies' decision so long as there is adequate support in the record for that
9 decision. *See Lands Council*, 537 F.3d at 993 (citations omitted). Plaintiffs have
10 therefore not shown that the Agencies' use of 15% design plan for conducting its
11 mitigation analysis was arbitrary and capricious.

12 Second, Plaintiffs argue that the Agencies' mitigation analysis overall was
13 insufficient because it consists of a mere listing of mitigation measures that are proposed
14 to occur in the future. They contend, therefore, that the Agencies failed to meet NEPA
15 standards for discussion of mitigation measures.

16 As noted, Defendants respond that the listing Plaintiffs are referring to is a ten-
17 page summary table in the ROD entitled "Commitments and Mitigation Measures."
18 (FAR00000048-00000057). They contend that Plaintiffs ignore the discussion in Chapter
19 4 of the FEIS where "mitigation measures were discussed in the context of every resource
20 that was evaluated." (Doc. 104 at 37). The Agencies claim that these discussions fulfill
21 their obligations under NEPA.

22 The Court has reviewed Chapter 4 of the FEIS, entitled "Affected Environment,
23 Environmental Consequences, and Mitigation," and finds that Plaintiffs have not shown
24 the Agencies failed to include a reasonably complete discussion of possible mitigation
25 measures. The Agencies' discussions in Chapter 4 of various environmental
26 consequences of the proposed action include sufficient discussions of mitigation
27 measures. Similarly, Chapter 5, entitled "Section 4(f) Evaluation," includes several
28 detailed discussions of "Measures to Minimize Harm."

 For example, one of the environmental consequences discussed in Chapter 4 that

1 would result from construction of the new freeway is displacement of households,
2 businesses, and public facilities. (FAR00001365-00001373). The Agencies' discussion
3 of displacement includes an examination of mitigation measures, such as land acquisition
4 and relocation assistance in accordance with the Uniform Relocation Act, 42 U.S.C. §§
5 4601, *et seq.*, advisory services for displaced residents and business owners, rental
6 assistance for eligible individuals, and replacement housing, among other measures.
7 (FAR00001370-00001373). Likewise in Chapter 5, the Agencies include a substantial
8 discussion of measures intended to minimized harm to SMPP from the proposed action,
9 as required by Section 4(f). (FAR00001534-1541). Although these examples represent
10 only a very small portion of the mitigation measures discussed in Chapters 4 and 5, they
11 undermine Plaintiffs' argument that the Agencies' discussion of mitigation measures is
12 limited to a listing of proposed prospective mitigation measures. *See Robertson*, 490
13 U.S. at 352 (explaining that there is no substantive requirement that a complete
14 mitigation plan be actually formulated and adopted).

15 Other than Plaintiffs' specific identification of mitigation measures for cumulative
16 and secondary impacts and for wildlife corridors, which the Court considers below,
17 Plaintiffs urge the Court to find that the Agencies' discussion of mitigation measures was
18 generally deficient. Plaintiffs' argument lacks sufficient detail. They broadly argue that
19 the Agencies' discussions of mitigation measures fail to satisfy NEPA standards. Based
20 on the Court's review of those discussions the Court finds Plaintiffs have not made the
21 requisite showing of non-compliance with NEPA's mitigation requirements.

22 Third, regarding Plaintiffs' specific challenge to the Agencies' secondary and
23 cumulative impacts, Plaintiffs reference a statement in the FEIS that "[d]isclosure of
24 secondary and cumulative impacts does not require ADOT to propose and implement
25 mitigation measures to address such impacts. . ." (Doc. 95 at 37). Plaintiffs contend that
26 this assertion is directly contrary to the Agencies' obligation to consider mitigation of
27 environmental impacts.

28 In response, however, the Agencies argue that "the FEIS went on to explain that
[p]roject-specific mitigation measures as proposed to address direct impacts inherently

1 address reductions in such overall impacts as well.” (Doc. 104 at 37). They explain that
2 by developing extensive mitigation measures intended to reduce the direct impacts of the
3 Freeway Project, the indirect and cumulative impacts are also necessarily reduced. They
4 point out that Plaintiffs cite no legal authority “requiring the Agencies to incorporate
5 separate mitigation measures for indirect and cumulative effects.” (Doc. 104 at 37-38).
6 They claim that Plaintiffs are conflating NEPA’s requirement to evaluate indirect and
7 cumulative impacts with the requirement to develop mitigation measures, which is
8 unsupported by law.

9 Plaintiffs did not directly address this issue in the discussion of mitigation
10 measures in their Reply. (Doc. 113 at 35-39). Nor did Plaintiffs’ counsel raise the issue
11 of mitigation measures directed at secondary and cumulative impacts during oral
12 argument. Absent legal authority demonstrating that the Agencies were required to
13 separately develop mitigation measures for indirect and cumulative impacts associated
14 with the Freeway Project, the Court finds Plaintiffs have not shown the Agencies failed to
15 comply with NEPA on this issue.

16 For their fourth and final challenge to the Agencies’ discussion of mitigation
17 measures, Plaintiffs argue that the Agencies failed to adequately discuss mitigation
18 measures for wildlife connectivity. Plaintiffs contend that the Agencies “improperly
19 defer any substantive discussion of mitigation of wildlife corridors/connectivity for some
20 later date. . .” (Doc. 95 at 39). Plaintiffs cited criticism from the EPA and the Arizona
21 Game and Fish Department with regard to the Agencies’ response to wildlife connectivity
22 issues.

23 The Agencies counter that “the FEIS identifies appropriate mitigation measures
24 related to wildlife connectivity and corridor impacts, and includes a reasonable level of
25 discussion about those mitigation measures within the context of the impacts they
26 address.” (Doc. 109 at 43). They further argue that they have disclosed the potential
27 impacts associated with wildlife movement and have proposed mitigation measures to
28 minimize those impacts, which is all that NEPA requires.

Chapter 4 of the FEIS contains a lengthy discussion of the project’s impact on

1 biological resources, including wildlife. (FAR00001444-00001458). The Agencies
2 recognize that the Freeway Project will affect wildlife and cause habitat fragmentation.
3 The FEIS provides an inventory of wildlife in the project area that was developed by
4 Defendants in conjunction with federal and state agencies, among others. The Biological
5 Evaluation for the proposed area was also revised to note GRIC's particular concerns for
6 wetlands, plant and animal species. Moreover, the FEIS discusses, in detail, the potential
7 impact on particular species in Western and Eastern study areas, including the Sonoran
8 desert tortoise and the Tucson shovel-nosed snake.⁹ In discussing mitigation of the
9 fragmenting effect on these and other wildlife, the Agencies explain that the project will
10 be designed to protect and maintain opportunities for wildlife connectivity between the
11 South Mountains, GRIC land and the Sierra Estrella by enhancing bridges and drainage
12 structures. (Doc. 104 at 38). The FEIS identifies several mitigation measures to be
13 implemented during the design phase to protect wildlife habitats and facilitate wildlife
14 movement. (FAR00001457).

15 Based on the Court's review of the Agencies' discussion of impacts to wildlife,
16 and specifically to wildlife connectivity, and the Agencies' discussion of mitigation
17 measures to reduce those impacts, the Court finds Plaintiffs have not demonstrated that
18 the Agencies failed to comply with NEPA. The Court therefore finds that none of
19 Plaintiffs' challenges to the Agencies' discussion of mitigation measures establish that
20 the Agencies acted in an arbitrary and capricious manner. As a result, The Court finds
21 the Agencies are entitled to summary judgment on this issue.

22 **IV. Discussion of Alleged Rule 4(f) Violations**

23 Unlike NEPA, which sets forth procedural requirements, Section 4(f) of the
24 Department of Transportation Act imposes a substantive mandate on an agency's actions.
25 *North Idaho Community Action Network v. U.S. Dept. of Transp.*, 545 F.3d 1147, 1158
26 (9th Cir. 2008). Section 4(f) allows a transportation project "requiring the use of publicly

27
28 ⁹ The FEIS also incorporates reference to State and Federal laws protecting certain
affected species, such as the Bald and Golden eagle, and notes that compliance with such
laws offers additional protections for those species.

1 owned land of a public park, recreation area, or wildlife and waterfowl refuge of national,
2 State, or local significance, or land of an historic site of national, State, or local
3 significance . . . only if – (1) there is no prudent and feasible alternative to using that
4 land; and (2) the program or project includes all possible planning to minimize harm to
5 the park, recreation area, wildlife and waterfowl refuge, or historical site resulting from
6 the use.” 49 U.S.C. § 303(c). These conditions reinforce “the policy of the United States
7 Government that special effort should be made to preserve the natural beauty of the
8 countryside and public park and recreation lands, wildlife and waterfowl refuges, and
9 historic sites.” 49 U.S.C. § 303(a).

10 “An alternative is not feasible if it cannot be built as a matter of sound engineering
11 judgment.” 23 C.F.R. § 774.17. “An alternative is not prudent if, among other things, it
12 ‘compromises the project to a degree that it is unreasonable to proceed with the project in
13 light of its stated purpose and need.’” *HonoluluTraffic.com*, 742 F.3d at 1232 (quoting
14 23 C.F.R. § 774.17). An agency’s Section 4(f) evaluation “shall include sufficient
15 supporting documentation to demonstrate why there is no feasible and prudent avoidance
16 alternative and shall summarize the results of all possible planning to minimize harm to
17 the Section 4(f) property.” 23 C.F.R. § 774.7(a).

18 As referenced above, upon review, the Court considers whether the Agencies’
19 decision to use Section 4(f) property was “‘arbitrary, capricious, an abuse of discretion,
20 or otherwise not in accordance with law.’” *Citizens to Protect Overton Park, Inc. v.*
21 *Volpe*, 401 U.S. 402, 416 (1971) (quoting 5 U.S.C. § 706(2)(A)). In doing so, the Court
22 examines whether the Agencies could have reasonably believed that there were no
23 feasible and prudent alternatives to using Section 4(f) property. *Overton Park*, 401 U.S.
24 at 416. In addition, the Court must decide “whether the Secretary acted within the scope
25 of his [or her] authority” and “whether the Secretary’s action followed the necessary
26 procedural requirements.” *Id.* at 415, 417.

27 Plaintiffs argue that the Agencies’ Section 4(f) analysis on the impacts to South
28 Mountain was inadequate as a matter of law. Plaintiffs claim the Agencies failed to
consider feasible and prudent alternatives that could have avoided SMPP, and that they

1 failed to conduct all possible planning to minimize harm to SMPP.

2 The Agencies argue, on the other hand, that they complied with Section 4(f).
3 They contend that in Chapter 5 of the FEIS “and in the extensive supporting
4 documentation in the Administrative Record, the Agencies identified the Section 4(f)
5 properties in the Project area, re-designed alternatives to avoid the Section 4(f) properties
6 in every instance but one (SMPP), found that the avoidance alternatives to using SMPP
7 were not prudent and feasible, adopted a variety of measures to minimize harm to SMPP,
8 and provided an opportunity for public, agency, and tribal review of the evaluation.”
9 (Doc. 104 at 41).

10 **A. Feasible and Prudent Alternatives**

11 Plaintiffs argue that Defendants failed to consider feasible and prudent alternatives
12 that could have avoided SMPP. Plaintiffs contend there are a number of such
13 alternatives, including some that are not on GRIC land, that Defendants failed to properly
14 consider. According to Plaintiffs, those alternatives are: “(i) the no-action alternative; (ii)
15 all action alternatives north of South Mountain; (iii) all action alternatives south of
16 Community land; (iv) the U.S. 60 Extension alternative; (v) the Riggs Road alternative;
17 (vi) the SR 85/I-8 alternative; and (vii) rail options, bus routes and arterial street
18 improvement.” (Doc. 97 at 32).

19 Chapter 5 of the FEIS, entitled “Section 4(f) Evaluation,” contains a
20 comprehensive discussion of how the Freeway Project would affect SMPP, the avoidance
21 alternatives considered, and measures to minimize harm to SMPP. The Agencies assert
22 therein that “[a]lternatives to avoid use of SMPP were evaluated and determined to be not
23 prudent and feasible.” (FAR00001537). Contrary to Plaintiffs’ contention, the Agencies
24 considered the alternatives identified above.

25 With regard to the No-Action alternative, the Agencies determined it would not
26 meet the project’s purpose and need and, as a result, it was not prudent. The Court finds
27 no error in the Agencies’ rejection of the No-Action alternative based on its failure to
28 meet the project’s purpose and need. The Court previously rejected Plaintiffs’ argument
that the project’s “purpose and need” discussion was unduly restrictive and caused a

1 preordained outcome. Without fully repeating that discussion here, the Court explained
2 that the Agencies found a need for the proposed freeway based on (1) socioeconomic
3 factors, including significant increases in population, housing units and employment
4 between 2010 and 2035; and (2) regional transportation demand and existing and
5 projected transportation system capacity deficiencies, and that the purpose of the
6 proposed action was to meet these needs. Thus, although the No-Action alternative
7 would avoid SMPP, it would not accommodate the socioeconomic factors or the current
8 and projected transportation system deficiencies. Plaintiffs have not shown that the
9 Agencies' rejection of the No-Action alternative as imprudent under Section 4(f) was
10 arbitrary and capricious.

11 Nor have Plaintiffs met their burden with regard to the other alternatives that they
12 claim the Agencies failed to properly consider. The Agencies rejected the Riggs Road
13 alternative because nearly two-thirds of it would be on GRIC land which, as noted above,
14 GRIC would not allow. In addition, the Agencies determined the Riggs Road alternative
15 would not be feasible and prudent because it would not meet the proposed action's
16 purpose and need. Thus, although an alternative freeway alignment on GRIC land may
17 have avoided SMPP, the Agencies determined it was not feasible in light of the
18 Community's decision to prohibit such an alignment. Plaintiffs have not demonstrated
19 that determination was arbitrary and capricious.

20 With regard to all action alternatives south of GRIC land, including the SR 85/I-8
21 alternative, Plaintiffs have not shown these to be feasible and prudent alternatives. The
22 Agencies determined that the distance from downtown Phoenix of the SR85/I-8
23 alternative renders it not feasible and prudent. That alternative route would begin
24 approximately 32 miles west of downtown Phoenix and would reconnect to I-10 at Casa
25 Grande, approximately 56 miles south of downtown Phoenix. (FAR00001529). Thus,
26 this alternative would likely have little impact on the current and projected future
27 transportation system deficiencies in the Study Area. Other alternatives south of GRIC
28 land would have similar shortcomings. Plaintiffs have not demonstrated that the
Agencies' determination with respect to these alternatives was arbitrary and capricious.

1 Likewise, with regard to alternatives north of South Mountain, including US 60
2 extension to I-10, US 60 extension to I-17, and I-10 spur, the Agencies determined that
3 these alternatives would not meet the project's purpose and need. In addition, the
4 Agencies determined that the alternatives north of South Mountain would have
5 significant adverse impacts on portions of I-10, US 60 and SR 101L, and would cause
6 underuse of SR 202L. (FAR00001529). Further, alternatives north of South Mountain
7 would cause extensive residential and business displacements without addressing
8 regional travel demand and current and projected system deficiencies. (*Id.*). Plaintiffs
9 have not demonstrated to this Court that the Agencies acted arbitrarily and capriciously in
10 concluding that alternatives north of South Mountain are not feasible and prudent under
11 Section 4(f).

12 Finally, with regard to rail options, bus routes and arterial street improvement,
13 although not specifically addressed in Chapter 5, the Agencies considered these
14 alternatives in Chapter 3 and concluded they do not satisfy the project's purpose and
15 need. Plaintiffs have not demonstrated that these are feasible and prudent alternatives
16 under Section 4(f). Based on its review, the Court finds the Agencies acted reasonably in
17 their determination that no feasible and prudent alternatives exist that would avoid
18 impacts to SMPP. Here, Plaintiffs have not met the high burden of showing that the
19 Agencies' determination was arbitrary and capricious.

20 **B. All Possible Planning to Minimize Harm**

21 The Agencies contend that they have conducted all possible planning to minimize
22 harm, as required by Section 4(f). Plaintiffs argue that what the Agencies have done is
23 inadequate in that they have "largely put off planning to minimize harm until some future
24 date." (Doc. 95 at 44). Plaintiffs claim that the promise of future planning does not meet
25 the agency's statutory obligation. Additionally, they reiterate their argument that a 15%
26 level of design was insufficient for the Agencies to conduct all possible planning to
27 minimize harm. The Court, however, will not revisit that issue here. Just as Plaintiffs
28 failed to show that a 15% level of design was a per se violation of NEPA's requirement
to discuss mitigation measures, they have also not shown that without a greater level of

1 design, the Agencies could not conduct all possible planning to minimize harm.

2 The Court has reviewed the Agencies' discussion of measures to minimize harm to
3 SMPP and to the South Mountains as a traditional cultural property. The discussion in
4 Chapter 5 of the FEIS identifies many measures, some of which have already been
5 undertaken and some of which will be taken as the project moves forward, to minimize
6 harm to SMPP. For example, although an earlier proposal of the Freeway Project would
7 have resulted in a direct use of over 40 acres of SMPP, the current design, as planned in
8 the FEIS, would use approximately 31.3 acres of the 16,600-acre park, almost nine acres
9 less than previously proposed. (FAR00001534). In addition, ADOT purchased
10 additional land adjacent to SMPP, some of which was turned over to the City of Phoenix
11 to replace parkland that would be converted to freeway use. (*Id.*). The Agencies plan to
12 consult directly with the City of Phoenix Manager's Office during the design phase to
13 consider further design measures that could reduce the land needed for the Freeway
14 Project. (*Id.*).

15 In addition, the Agencies' discussion addresses measures to minimize the
16 alteration of the SMPP landscape, including the implementation of design measures "to
17 blend the appearance of the [ridgeline] cuts with the surrounding natural environment, as
18 feasible." (FAR00001535). They further address measures to minimize intrusion on
19 SMPP, including mitigation of noise impacts through the use of barriers, and visual
20 intrusions through various landscaping methods. (*Id.*). Finally, the Agencies address
21 measures to reduce impacts on SMPP access and habitat connectivity such as including in
22 the design multifunctional crossings to provide access to SMPP for GRIC members; for
23 hiking, equestrian, and bicycling uses; and for wildlife movement. (FAR00001536).

24 **C. Cultural Resource and Cultural Property Impacts**

25 GRIC explains that the Freeway Project will destroy portions of South Mountain
26 known to GRIC as *Muhadagi Doag*, a sacred natural resource central to GRIC culture
27 and religious practices. (Doc. 97 at 7). GRIC states that the Freeway Project in the SMPP
28 area would destroy or interfere with trails, shrines and archeological sites of great
importance to them. In the hearing, the Agencies acknowledged these concerns and

1 argued that they spent an extraordinary amount of time addressing these issues. In their
2 motions, the Agencies also note that an entire chapter of analysis addresses GRIC's
3 cultural property concerns. The Agencies state that pursuant to the National Historic
4 Preservation Act (NHPA") and section 4(f), they entered into a Programmatic Agreement
5 ("PA") with the State Historic Preservation Office (SHPO"), affected Indian tribal
6 governments, federal agencies and others. (Doc. 109 at 21). That PA documents the
7 Agencies' "legally binding commitments to the proper treatment and management of
8 cultural Section 4(f) resources and by Section 106" of NHPA. (Doc. 108 at ¶ 10);
9 (FAR00001477-78; FAR0001540-41; FAR00000069-71). See *HonoluluTraffic.com*, 742
10 F.3d at 1234 (citing 73 Fed.Reg. 13368-01, 13379-80 (2008) (recommending such
11 agreement as "appropriate and desirable")). The FHWA also acknowledged that SMPP
12 is eligible to be on the National Register of Historic Places and recommended mitigation
13 measures to minimize harm, including to traditional cultural properties, to which the
14 SHPO and GRIC Tribal Preservation Officer concurred. (FAR00001359; FAR00001861-
15 2124; FAR00058135-36). The Agencies also note that the Department of the Interior
16 provided its concurrence of their Section 4(f) process. (Doc. 104 at 43).

17 In that Section 4(f) process, the Agencies developed several measures to minimize
18 harm, some of which have already been undertaken. For example, the Agencies will
19 consult directly with GRIC during the design phase to consider further design measures
20 that could reduce the land needed for the Freeway Project. (FAR 00001538). The
21 FHWA also explained that it located alignment on a portion of the SMPP to provide
22 access to and from the Community and fencing sensitive sacred or cultural areas to limit
23 access to others. (FAR00000045-46). In addition, the Agencies will provide funds for an
24 expanded study, in which GRIC has expressed interest, of the archeological and historical
25 sites within the South Mountains. (FAR00001538). Measures to minimize the alteration
26 to the landscape, to minimize intrusion on the South Mountains as a traditional cultural
27 property, and to reduce impacts on access and habitat connectivity would be the same as
28 the measures referenced above with respect to SMPP, and would involve input from
GRIC. (*Id.*).

1 Plaintiffs argue that the Agencies failed to provide a meaningful discussion of
2 measures to minimize harm, though Plaintiffs themselves fail to propose any specific
3 measures that they believe the Agencies should have addressed but did not. The crux of
4 Plaintiffs' argument is that the level of design for the freeway was insufficient, thus
5 precluding the Agencies from conducting a meaningful analysis of measures to minimize
6 harm. Applying the deferential standard, the Court is not persuaded. As discussed
7 above, Plaintiffs simply have not demonstrated that the law requires a more complete
8 level of design for purposes of addressing measures to minimize harm. Indeed as the
9 Agencies argue, "Section 4(f) approval and the NEPA process must be complete *before*
10 final design occurs." (Doc. 104 at 48) (citing 23 C.F.R. § 771.113(a)) (emphasis in
11 original). Upon reviewing the Agencies' discussion of measures to minimize harm to
12 SMPP and the South Mountains as a traditional cultural property, as summarized above,
13 the Court finds no basis to conclude that it was arbitrary and capricious or otherwise in
14 violation of Section 4(f). What is more, the Agencies acknowledge that their "measures
15 to minimize harm are not empty promises; they are conditions of the federal-aid funding
16 that are included as affirmative commitments in the ROD. (*Id.* at 43) (*citing* 23 C.F.R. §
17 635.309(j)). Thus, in evaluating the Agencies' compliance with Section 4(f) overall, the
18 Court cannot find that the Agencies' decision to approve the use of Section 4(f) property
19 was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with
20 law." *See Overton Park*, 401 U.S. at 416 (internal quotations and citation omitted).

21 **V. Discussion of GRIC Wells**

22 Lastly, GRIC contends that three of its wells are located in the direct path of the
23 preferred alternative route for the freeway. GRIC claims that documents disclosed by
24 ADOT, entitled "GRIC Well avoidance engineering schematics," instead of showing
25 avoidance of the wells, actually show the freeway running directly over the wells and
26 easements. GRIC argues that these wells cannot be taken or infringed upon by the
27 construction of the Freeway Project. GRIC further argues that the Agencies' failure to
28 consider a freeway design that avoids the GRIC wells, as the proposed freeway must, is a
violation of NEPA.

1 In response, the Federal Defendants argue that, in compliance with NEPA, they
2 have considered the impacts to the GRIC wells, and as many as 118 other groundwater
3 wells potentially affected by the Freeway Project. The Federal Defendants contend that
4 the GRIC wells, despite being held in trust by the Bureau of Indian Affairs, are not
5 afforded “any greater rights than they would have under NEPA and its implementing
6 regulations.” (Doc. 104 at 49). However, both the Federal Defendants and the State
7 Defendants explain that a binding requirement in the design and construction contract
8 requires the freeway design to “avoid and preserve the GRIC well properties, GRIC’s
9 legal access to well properties, and the water wells, pipes, and ditches located therein.”
10 (Doc. 104 at 50; Doc. 109 at 53). The State Defendants emphatically assert that the
11 Freeway Project “*will not take any GRIC property or otherwise impact GRIC wells.*”
12 (Doc. 109 at 53) (emphasis in original). The Agencies argue therefore that because the
13 design and construction contract legally binds the contractors from infringing on the
14 GRIC wells, this issue is essentially moot.

15 At oral argument, the State Defendants further explained that if any change in the
16 design to avoid infringing on the GRIC wells results in some shifting of the freeway
17 alignment, the FHWA “is required to go through a reevaluation process to determine
18 whether the change in the project design will – has the potential to result in any new
19 significant impacts.” (Doc. 129 at 130). “[I]f the agency determines that there will be a
20 potential for significant impact, a supplemental Environmental Impact Statement is
21 required.” (*Id.*). Thus, the State Defendants contend that if it is discovered that design
22 changes to the project (in this instance to avoid GRIC wells) may have impacts that were
23 not sufficiently disclosed, there is a well-established process in the law to address such
24 developments.

25 The Court finds no violation of NEPA with respect to the GRIC wells. The
26 Agencies demonstrated that they did consider the impact to the GRIC wells, along with
27 up to 118 other wells, in compliance with NEPA. The fact that GRIC has chosen to
28 retain control of and access to the three wells, which it has the right to do, does not alter
the Court’s conclusion. Given GRIC’s decision to hold on to the three wells, the

1 Agencies imposed a contractual obligation with respect to the design and construction of
2 the Freeway Project to avoid the wells. Further, as argued by the State Defendants, and
3 as established in 23 C.F.R. §§ 771.129 and 771.130, there is a mechanism in place for the
4 Agencies to conduct a re-evaluation and, if necessary, prepare a supplemental EIS if any
5 alterations to the freeway alignment due to avoidance of the wells would result in
6 significant environmental impacts that were not previously evaluated. Thus, depending
7 on what types of alterations are necessary to avoid any impact to the GRIC wells, the
8 Agencies may or may not be required to re-evaluate and issue a supplemental EIS.
9 Because the Agencies are legally bound to comply with that process if the circumstances
10 require it, the Court finds no basis to find that the Agencies' current actions constitute a
11 violation of NEPA.

12 **VI. Conclusion**

13 For the foregoing reasons, the Court finds that Plaintiffs have not established that
14 the Agencies' analysis and approval of the Freeway Project violated NEPA or Section
15 4(f). Plaintiffs have not met their burden to show the Agencies' actions were "arbitrary,
16 capricious, an abuse of discretion, or otherwise not in accordance with law . . ." or
17 "without observance of procedure required by law." *See* 5 U.S.C. § 706(2)(A), (D).

18 Accordingly,

19 **IT IS ORDERED** that the Cross-Motions for Summary Judgment filed by the
20 Federal Defendants (Doc. 102) and the State Defendants (Doc. 107) are **GRANTED** and
21 that the Motions for Summary Judgment filed by the PARC Plaintiffs (Doc. 95) and
22 GRIC (Doc. 97) are **DENIED**. The Clerk of Court shall enter judgment accordingly.

23 **Dated** this 19th day of August, 2016.

24 
25 _____
26 Honorable Diane J. Humetewa
27 United States District Judge
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