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11 SUPERIOR COURT OF CALIFORNIA
12 COUNTY OF ALAMEDA
13

14 BAY AREA CITIZENS, a non-profit corporation,)

15 Petitioner,)

16 v.)

17 ASSOCIATION OF BAY AREA GOVERNMENTS, a)
joint powers agency; METROPOLITAN)
18 TRANSPORTATION COMMISSION, a local area)
planning agency; and DOES 1 through 50,)

19 Respondents.)
20

No. _____

**VERIFIED PETITION FOR
WRIT OF MANDATE
(Code of Civil Procedure § 1085)
(California Environmental Quality
Act, Pub. Res. Code § 21168.5)**

INTRODUCTION

1. Petitioner Bay Area Citizens ("Citizens"), a non-profit public interest corporation, brings this lawsuit, pursuant to the California Environmental Quality Act (CEQA), Pub. Res. Code §§ 21100-21177, on behalf of its members and the general public to challenge the adoption of Plan Bay Area by Respondents Association of Bay Area Governments ("ABAG") and Metropolitan Transportation Commission ("MTC"). State law requires that these agencies produce a sustainable communities strategy ("the Plan") for the Bay Area that, if implemented, will result in the per capita reduction of passenger vehicle greenhouse gas emissions by 7% by year 2020 and by 15% by year 2035. To achieve the targeted reduction, ABAG and MTC propose a draconian, high-density land-use regime that will require nearly 80% of new housing and over 60% of new jobs in the Bay Area to be located within just 5% of the region's surface area. The agencies admit that their Plan will cause dozens of significant yet unavoidable environmental effects, but the CEQA analysis accompanying the Plan remains gravely flawed. Based on projected improvements in vehicle efficiency and fuel composition, the Bay Area can handily exceed the required greenhouse gas reductions without reliance on ABAG's and MTC's high-density land-use vision. Remarkably, though, the Plan's environmental impact report does not convey this basic information. Rather, the report assumes "hypothetical" numbers, thereby giving the public the false impression that the agencies' high-density approach (or something very close to it) is necessary to achieve the required greenhouse gas reductions. Thus, the Plan's CEQA analysis undercuts that law's purposes of informing the public and decision-makers of the environmental consequences of, and alternatives to, discretionary government action. The people of the Bay Area deserve better.

2. The Citizens have exhausted all applicable administrative remedies and bring this Petition to challenge final agency action.

3. The Citizens have provided notice of their intent to commence this action against Respondents, pursuant to Public Resources Code section 21167.5. *See* Exh. 1.

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4. Although ABAG and MTC have adopted a Final Plan and Environmental Impact Report, the agencies have not published, at the time of the filing of this Petition, versions of these documents that incorporate all amendments. Therefore, in this Petition, the Citizens will cite the draft versions of the Plan and Report unless the citation is specifically to an amendment or response added after the publication of the Draft Plan and Report. In other words, a discussion of a “final” document that cites a “draft” document means that that portion of the draft document was adopted without change as final.

PARTIES

Petitioner

5. The Citizens are a non-profit California corporation organized to support and protect the interests of the citizens of California in matters including land-use regulation, property rights, local community control, and the environment. The Citizens and its members, residents of the Bay Area, have commented during all stages of the development of the Plan and its CEQA documentation. The Citizens and their experts have submitted extensive comments on the Plan's draft and final environmental impact reports.

6. The Citizens have a significant interest in the Plan's implementation. They believe that the Plan's high-density vision is wrongheaded and unnecessary, and that it will have a substantial direct and negative effect on the Citizens' property and aesthetic values. The Citizens also have brought this action on behalf of the public interest, to vindicate the public's interest in the informed decision-making process that CEQA promotes. The Plan will have a significant adverse effect on Bay Area residents, by limiting where and how they can live, as well as their ability to make decisions about their local communities. As set forth herein, ABAG and MTC have violated their important public duty to faithfully assess under CEQA the environmental impact of, and alternatives to, the Plan. Without the Citizens' action, other persons beneficially interested in the Plan's conformity to CEQA would be unable to vindicate that interest, because of their inability to comment adequately on the Plan, as well as the burden of litigation's time and cost. The Citizens are ably positioned to represent the public interest in this action, given their long-standing

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1 objections to the Plan and its development. Finally, the Citizens' action will confer a broad and
2 important benefit on the public and will inure to the public interest.

3
4 ***Respondents***

5 7. ABAG is a council of governments, a type of joint powers agency, Gov't Code
6 § 6500, and is the comprehensive regional planning agency for the Bay Area's nine counties, as
7 well as their cities and towns. ABAG is a lead agency for the Plan's environmental impact report.
8 *See* Pub. Res. Code § 21165(a); Cal. Code Regs. tit. 14, § 15367.

9 8. MTC is a local area planning and transportation agency covering the Bay Area's
10 nine counties. Gov't Code § 66502. MTC has been designated as the Bay Area's metropolitan
11 planning organization for purposes of federal law, and is a lead agency for the Plan's environmental
12 impact report. *See* Pub. Res. Code § 21165(a); Cal. Code Regs. tit. 14, § 15367.

13 9. Does 1 through 50 are persons or entities unknown to the Citizens at this time who
14 may be necessary parties to this suit. The Citizens will amend this Petition specifically to identify
15 each such person or entity as a respondent and/or real party in interest, if and when their identities
16 become known.

17 **VENUE**

18 10. Venue is proper in this Court pursuant to Code of Civil Procedure section 393(b),
19 because the cause of action arose in part in this County.

20 **LEGAL BACKGROUND**

21 ***Transportation Planning for the Bay Area***

22 11. Federal and state law require that MTC, as the designated metropolitan planning
23 organization, prepare and regularly update a regional "transportation plan." 23 U.S.C. § 134(c),
24 (i); 49 U.S.C. § 5303(i); Gov't Code § 65080(a). Such a plan "provide[s] for the development and
25 integrated management and operation of transportation systems and facilities" that "will function
26 as an intermodal transportation system for the metropolitan planning area" as well as "an integral
27 part of an intermodal transportation system for the State and the United States." 23 U.S.C.
28 § 134(c)(2). *See* 23 C.F.R. § 450.322(b); Gov't Code § 65080(b)(1).

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12. The transportation plan includes an identification of transportation facilities functioning as an integrated system, various environmental mitigation measures, a financial plan demonstrating how the plan can be implemented, as well as operational, management, and investment strategies. 23 U.S.C. § 134(i)(2); 23 C.F.R. § 450.322(f). The document must address a minimum 20-year planning horizon. 23 C.F.R. § 450.322(a).

13. Producing a legally adequate transportation plan is important for a community, because the plan makes the area eligible for considerable federal highway and transportation funding. *See* 23 C.F.R. § 450.308.

14. Federal law places various constraints on how metropolitan planning organizations such as MTC produce their transportation plans. For example, MTC must use “the latest available estimates and assumptions for population, land use, travel, employment, congestion, and economic activity.” 23 C.F.R. § 450.322(e). For MTC’s transportation plan, ABAG provides these estimates and assumptions.

Greenhouse Gas Reduction Constraints On Transportation Planning

15. State law also provides important constraints on the transportation planning process. The most significant of these derives from the Legislature’s passage of the California Global Warming Solutions Act of 2006 (popularly known as A.B. 32), which requires that California reduce its greenhouse gas emissions to 1990 levels by 2020. Health & Safety Code §§ 38550, 38551.

16. To help implement A.B. 32’s goal, the Legislature passed S.B. 375, which is designed to ensure that the existing transportation planning process be coordinated with A.B. 32’s greenhouse reduction mandate, as well as to be integrated with the existing state-mandated housing planning process. *See* S.B. 375, § 1(e), (i).

17. S.B. 375 seeks to implement A.B. 32 by requiring metropolitan planning organizations such as MTC to produce a “sustainable communities strategy,” which must be integrated with a region’s transportation plan. Gov’t Code § 65080(b)(2). For the Bay Area, MTC and ABAG have joint responsibility for the strategy’s production. *Id.* § 65080(b)(2)(B).

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18. The basic objective of the strategy is to set forth a course whereby the region will achieve, through integrated development and transportation planning, the regional greenhouse gas reduction targets that the California Air Resources Board ("CARB") has established for the region. *See id.* § 65080(b)(2)(A).

19. These S.B. 375 regional targets must "take into account greenhouse gas emission reductions that will be achieved by improved vehicle emission standards, changes in fuel composition, and other measures it has approved that will reduce greenhouse gas emissions in the affected regions." *Id.* § 65080(b)(2)(A)(iii). The most prominent of these statewide greenhouse gas reduction measures are:

(a) The Low Carbon Fuel Standard, Cal. Code Regs. tit. 17, §§ 95480-95490 ("LCFS"). In 2009, CARB enacted the LCFS as an early enforcement measure under A.B. 32. The LCFS reduces the "carbon intensity" of vehicle fuel sold within California. CARB has estimated that the LCFS will reduce the carbon intensity of fuel used within California by an average of 10% by 2020. Cal. EPA, California's Low Carbon Fuel Standard Final Statement of Reasons at 5 (Dec. 2009), *available at* <http://www.arb.ca.gov/regact/2009/lcfs09/lcfsfsor.pdf> (last visited Aug. 2, 2013).

(b) The California Clean Cars Standards (commonly known as "Pavley I," after the sponsor of the authorizing legislation). These CARB regulations, promulgated in 2009, require significant improvements in the average miles per gallon for the California fleet of passenger vehicles for model years 2009 through 2016 and beyond. CARB has estimated that Pavley I will reduce greenhouse gas emissions from the California passenger vehicle fleet by 30% by 2016. *See* <http://www.arb.ca.gov/cc/ccms/ccms.htm> (last visited Aug. 2, 2013). The Citizens have demonstrated that the LCFS and Pavley I alone will lead to a 37% reduction in greenhouse gas emissions per vehicle miles traveled ("VMT") (and 32% after accounting for added VMT from new residents) by the end of the Plan. Metro.

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Transp. Comm'n and Ass'n of Bay Area Governments, Plan Bay Area Final Environmental Impact Report (FEIR) at 3.6-812.

(c) The California Advanced Clean Cars Standards (commonly known as "Pavley II," after the sponsor of the authorizing legislation). In January, 2012, CARB, building on Pavley I, adopted emission reduction standards for model years 2017 through 2025. *See* <http://www.arb.ca.gov/regact/2012/cfo2012/res12-11.pdf> (last visited Aug. 2, 2013). In December, 2012, CARB amended these standards so that vehicles in compliance with the Environmental Protection Agency's federal greenhouse gas emission standards will be deemed compliant with Pavley II. The difference in emission reduction between Pavley II and the federal standards is minimal. *See* <http://www.arb.ca.gov/regact/2012/leviuidtc12/dtcisor.pdf> (last visited Aug. 2, 2013), at 7. CARB has estimated that Pavley II, from a 2016 baseline, will reduce gross greenhouse gas emissions for the California passenger car and light-truck fleet 12% by 2025, 27% by 2035, and 33% by 2050. *See id.* at 19.

(d) The Citizens have estimated the total greenhouse gas emission reductions from passenger vehicles due to the LCFS, Pavley I, and Pavley II to be 60% per vehicle miles traveled; in other words, passenger vehicles in 2040—the last year of the Plan—will produce only 40% of the greenhouse gas emissions that passenger vehicles produced in 2010. FEIR 3.6-815.

20. The S.B. 375 targets must be updated every eight years. CARB may revise the targets every four years based on changes in vehicle emission standards, fuel composition, and related factors. Gov't Code § 65080(b)(2)(A)(iv).

21. CARB's targets for the Bay Area are 7% by 2020 and 15% by 2035. These targets are expressed "as [a] percent change in per capita greenhouse gas emissions relative to 2005." *See* http://www.arb.ca.gov/cc/sb375/final_targets.pdf (last visited Aug. 2, 2013).

22. With reference to these targets, a sustainable communities strategy must, inter alia, "identify areas within the region sufficient to house all the population of the region" as well as "an eight-year projection of the regional housing need," and "set forth a forecasted development pattern

1 for the region, which, when integrated with the transportation network, and other transportation
2 measures and policies, will reduce the greenhouse gas emissions from automobiles and light trucks
3 to achieve . . . the greenhouse gas emission reduction targets approved by the state board.” Gov’t
4 Code § 65080(b)(2)(B)(ii), (iii), (vii).

5 23. If there is no feasible way to meet the greenhouse gas reduction targets, MTC and
6 ABAG must prepare an “alternative planning strategy,” which is not incorporated into the
7 transportation plan. Gov’t Code § 65080(b)(2)(I).

8 24. Once the strategy is completed, MTC must submit it to CARB for the latter to
9 determine whether the strategy will achieve the region’s greenhouse gas reduction targets. Gov’t
10 Code § 65080(b)(2)(J)(ii). If CARB determines that the strategy will not achieve the targets, MTC
11 must revise the strategy or adopt an alternative. *Id.* § 65080(b)(2)(J)(iii).

12 ***Environmental Impact Assessment Under the California Environmental Quality Act***

13 25. Although it does not itself regulate the use of land, Gov’t Code § 65080(b)(2)(K),
14 a sustainable communities strategy nevertheless provides powerful tools to coerce a local
15 government to comply with the strategy’s land-use prescriptions, even over the wishes of local
16 residents, taxpayers, and their elected representatives. Therefore, the strategy has a significant
17 impact on the region’s environment, for at least two reasons. First, the strategy is incorporated into
18 the region’s transportation plan, which largely dictates which transportation projects will be funded
19 and built. *Cf.* 23 C.F.R. § 450.308. Second, the region’s housing need allocation (formulated by
20 the Department of Housing and Community Development in conjunction with ABAG pursuant to
21 the Planning and Zoning Law), to which local governments must conform their general plans, must
22 be consistent with the strategy. *See* Gov’t Code § 65584.4(i). Because of these impacts, the
23 promulgation of a strategy triggers CEQA.

24 26. CEQA’s principal purpose is to ensure that “major consideration is given to
25 preventing environmental damage, while providing a decent home and satisfying living
26 environment for every Californian.” Pub. Res. Code § 21000(g). *See id.* § 21001(d); Cal. Code
27 Regs. tit. 14, § 15021(d).

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27. Under the Act, an agency must analyze the environmental impact of any discretionary project that will cause a direct physical change to the environment, or a reasonably foreseeable indirect physical change to the environment. *See* Pub. Res. Code §§ 21065(a), 21080(a); Cal. Code Regs. tit. 14, §§ 15378(a)(1), 15357, 15358. Where the project may have a significant impact on the environment, the lead agency must prepare an environmental impact report. Pub. Res. Code § 21080(d).

28. For documents like the Plan, the Act authorizes the issuance of “programmatic” environmental impact reports. *See* Pub. Res. Code §§ 21093-21094. A programmatic report analyzes a plan’s impacts at a general level, and leaves to subsequent reports the analysis of project-specific impacts. *See id.* § 21068.5; Cal. Code Regs. tit. 14, §§ 15152, 15168.

29. Whether or not programmatic, an environmental impact report must “identify the significant effects on the environment of a project, . . . identify alternatives to the project, and . . . indicate the manner in which those significant effects can be mitigated or avoided.” Pub. Res. Code § 21002.1(a). *See id.* § 21061.

30. The report must include a “detailed statement” discussing, inter alia, the project’s significant effects, any unavoidable significant effect, any irreversible significant effect, mitigation measures, alternatives to the project, and the reasons various effects on the environment have been determined to be insignificant. Pub. Res. Code § 21100.

31. The report’s analysis must be based on the environmental setting, which “constitute[s] the baseline physical conditions by which a lead agency determines whether an impact is significant.” Cal. Code Regs. tit. 14, § 15125(a).

32. A determination of whether a project’s impact is significant must be based on substantial evidence in light of the whole record before the agency. Cal. Code Regs. tit. 14, § 15064(a), (f)(1). Substantial evidence means “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.” *Id.* § 15384.

33. In addition to identifying and discussing all of the project’s significant environmental effects, the report must also identify and discuss the project’s significant

1 | unavoidable environmental effects, significant irreversible environmental changes, and
2 | growth-inducing impacts. Cal. Code Regs. tit. 14, § 15126.2.

3 | 34. The report must discuss feasible mitigation measures. Cal. Code Regs. tit. 14,
4 | § 15126.4(a).

5 | 35. The report must “describe a range of reasonable alternatives to the project . . . which
6 | would feasibly attain most of the basic objectives of the project but would avoid or substantially
7 | lessen any of the significant effects of the project, and evaluate the comparative merits of the
8 | alternatives.” Cal. Code Regs. tit. 14, § 15126.6(a).

9 | 36. The report must also consider a “no project” alternative. *Id.* § 15126.6(e). Where
10 | the project is a land-use or regulatory plan, such as here, the “no project” alternative is the
11 | continuation of whatever land-use or regulatory plan was in place when the new plan was
12 | developed. *Id.* § 15126.6(e)(3). Once the “no project” alternative is identified, the lead agency
13 | must analyze its impacts by projecting what would reasonably be expected to occur in the
14 | foreseeable future if the project were not approved. *Id.* § 15126.6(e)(3)(C). The purpose of the “no
15 | project” alternative is to allow decision-makers to compare the impacts of approving the proposed
16 | project with the impacts of not approving the proposed project. *Id.* § 15126.6(e)(1).

17 | 37. The project’s and its alternatives’ effects must be assessed in light of their
18 | cumulative impacts. Cal. Code Regs. tit. 14, § 15130.

19 | 38. Following the preparation of the draft environmental impact report, the lead agency
20 | must make the report available for public comment. Pub. Res. Code §§ 21091, 21092; Cal. Code
21 | Regs. tit. 14, §§ 15087, 15105(a).

22 | 39. A lead agency must “consider” and “evaluate” every comment submitted on a draft
23 | environmental impact report and prepare a written response describing the disposition of each
24 | significant environmental issue raised therein. Pub. Res. Code § 21091(d)(1)-(2); Cal. Code Regs.
25 | tit. 14, § 15088(c).

26 | 40. If significant new information is added to the report following the public comment
27 | period, the agency must circulate the revised report. Pub. Res. Code § 21092.1; Cal. Code Regs.
28 | tit. 14, § 15088.5.

48. Priority development areas are “[l]ocations within existing communities that present infill development opportunities, and are easily accessible to transit, jobs, shopping and services.” Draft Environmental Impact Report (DEIR) Appendix (App.) A at G-10. To date, Bay Area local governments have established approximately 200 such areas, Draft Plan at 43, comprising only about 5% of the region’s surface area.

49. The Plan also seeks to reduce vehicle miles traveled by increasing mass transit ridership, principally through the construction and extension of light and heavy rail. *See* Plan Bay Area—Final Adoption, Attachment A, at 19.

9 50. On April 2, 2013, ABAG and MTC released the Plan's draft environmental impact
0 report ("Draft Report").

51. The Draft Report anticipates that the Plan will have 39 significant environmental impacts. See FEIR 3.7-21; DEIR ES-13 to ES-75. Among these are:

- (a) substantial net increase in construction-related emission pollution, DEIR ES-14;
- (b) increase in large particulate matter pollution, DEIR ES-17;
- (c) worsening of toxic air contaminant and small particulate matter pollution for some Bay Area communities, DEIR ES-20; in particular, the creation of health hazards for what the Draft Report terms “sensitive receptors” (*i.e.*, the young and the old) as a result of the Plan’s high-density housing prescriptions, DEIR 2.2-79 to 2.2-83;

1 (d) disruption or displacement of substantial numbers of individuals and businesses,
2 DEIR ES-21; and

3 (e) permanent neighborhood alternations that will restrict access or will eliminate
4 community amenities, DEIR ES-22.

5 52. The Draft Report discusses five alternatives. Alternative 1 is "no project."
6 Alternative 2 is the proposed Plan. Alternative 3, "Transit Priority Focus," calls for higher
7 densities than those found in the Plan. Alternative 4, "Enhanced Network of Communities," calls
8 for somewhat less denser development than the Plan. Finally, Alternative 5, "Environment, Equity
9 and Jobs," seeks to maximize affordable housing. DEIR ES-7 to ES-8.

10 53. The Draft Report and Plan conclude that the proposed Plan and Alternatives 3
11 through 5 meet both mandatory goals, whereas the "no project" alternative does not meet the
12 greenhouse gas reduction targets under S.B. 375. Draft Plan at 116.

13 *The Citizens' Comments on the Draft Plan and Environmental Impact Report*

14 54. Throughout the process leading up to its adoption, many citizen groups, including
15 the Bay Area Citizens and their experts, expressed strong opposition to the Plan. Their comments
16 highlighted serious legal and policy shortcomings to the Draft Plan, Report, and related documents.
17 For example:

18 (a) In estimating the environmental impacts of the Plan and its alternatives, the Draft
19 Report confusingly uses inconsistent figures for projected miles-per-gallon of
20 vehicles. For example, the Draft Report ignores the greenhouse-gas-reduction
21 impacts of the LCFS, Pavley I, and Pavley II when determining whether the Plan
22 and its alternatives will achieve CARB's S.B. 375 targets. But the Draft Report
23 *does* make use of the emission-reduction benefits of the LCFS and Pavley I when
24 assessing the environmental impact of emissions *other than* greenhouse gases. *See*
25 FEIR 3.6-751 to 3.6-770, 3.6-779 to 3.6-783, 3.6-786 to 3.6-787, 3.6-812 to 3.6-
26 813, 3.6-819. The Draft Report conveniently relies on the LCFS and Pavley I in
27 this manner to reduce the negative environmental consequences of the Plan's
28 high-density development mandates. *See* FEIR 3.6-819.

1 (b) By ignoring the LCFS, Pavley I, and Pavley II when measuring the
2 greenhouse-gas-emission impacts of the Plan and its alternatives, the Plan creates
3 a false need for its draconian high-density development prescriptions. If the Plan
4 were consistently to take the LCFS, Pavley I, and Pavley II into account, it would
5 be clear to the public that the S.B. 375 targets can be reached without the Plan's
6 drastic land-use changes. In fact, ABAG's and MTC's own models show that the
7 difference by year 2035 between the Plan and the "no project" alternative—taking
8 only the LCFS and Pavley I into account—will be approximately 2,000 tons per day
9 of greenhouse gas (less than a 3% difference), well within any reasonable margin
10 of error. And that difference is dwarfed by the models' own conclusion that the
11 LCFS and Pavley I will lead to 14 times more greenhouse gas emission reductions
12 than those strictly attributable to the Plan. FEIR 3.6-787 to 3.6-794, 3.6-811 to
13 3.6-812. Moreover, the approximately 3% difference between the Plan and the "no
14 project" alternative includes Plan emission reductions attributable to MTC's
15 Climate Initiatives Program, which has nothing to do with the Plan's high-density
16 housing and transportation policies. The difference attributable to these latter
17 policies, by year 2040, amounts to only 1,000 tons per day of additional greenhouse
18 emission reductions over the "no project" alternative, about a 1% difference. FEIR
19 2-103.

20 (c) The Plan arbitrarily assumes unprecedented amounts of gasoline tax revenue to
21 fund the Plan. FEIR E-321 to E-323. Based on ABAG's and MTC's own models,
22 and ignoring the impact of Pavley II, gallons of gasoline used by passenger vehicles
23 in 2035 in the Bay Area will be 32% less than in 2010, even after accounting for the
24 Plan's assumed 15% increase in vehicle miles traveled. FEIR 3.6-757. Adding the
25 incremental impact of Pavley II will likely lead to a 50% drop in gallons of gasoline
26 used in the Bay Area. FEIR 3.6-765 - 3.6-767. Remarkably yet conveniently, the
27 Plan appears to have mitigated whatever revenue loss from reduced gasoline
28 consumption by assuming that retail gasoline prices will increase vastly in excess

1 of the rate of inflation for the Plan's life, as well as ignoring much of the reduction
2 in gasoline use owing to Pavley I and Pavley II. FEIR 3.6-758 to 3.6-759. Notably,
3 the Plan's gasoline price forecast for 2030 is 39% higher than the California Energy
4 Commission's *low-price* forecast for that year, and even 7% higher than the
5 Commission's high-price forecast for that year. FEIR 3.6-760 to 3.6-761. Cf.
6 FEIR 3.7-140.

- 7 (d) The Plan's high-density housing mandates and mass transit elements will actually
8 increase greenhouse gas emissions. FEIR 3.6-775 to 3.6-776. The Plan's emphasis
9 on low-performing rail will lead to increased greenhouse gases, because rail
10 construction produces significant greenhouse gas emissions that are not recouped
11 over the life of the rail project. FEIR 3.6-557 to 3.6-558; 3.6-1069 to 3.6-1071. If
12 transit has any emission efficiencies over passenger vehicles, it is by encouraging
13 those individuals who own high-polluting vehicles to leave them at home. FEIR
14 3.6-1018 to 3.6-1019. As the Citizens' expert Tom Rubin explained, "the only way
15 for transit to make a positive contribution to reductions in energy usage and
16 emissions is for transit to do what it does best, serve first the transit disadvantaged,
17 those whose alternative to transit is a very dirty car." FEIR E-294. Yet the Plan
18 makes little provision for improving transit service for those poorer communities
19 where jalopy ownership is highest. Thus, the Plan will lead to high-polluting
20 vehicles remaining in service. The Plan's emphasis on forcing the lion's share of
21 new development into urban priority development areas will increase traffic
22 congestion and, consequently, emissions. FEIR 3.6-559. People who work in the
23 Bay Area but who do not want to live in high-density developments will move
24 outside the area, thus increasing their commute and emissions. Further,
25 high-density urban developments are climatological sinks, in that they require more
26 energy to cool and to heat than dispersed single-family residences. FEIR 3.6-62 to
27 3.6-63. The increased energy requirements of these developments in turn lead to
28 increased emissions.

- 1 (e) The Plan will fail to increase transit ridership because of its wrongheaded emphasis
2 on new low-performing rail construction. The Plan continues the region's transit
3 program of the past several decades, yet inexplicably predicts that the continuation
4 of the same generally unsuccessful approach will now prove significantly more
5 successful in increasing ridership. FEIR 3.6-1028 to 3.6-1041, 3.6-1069 to 3.6-
6 1071; FEIR E-307 to E-319. Indeed, the Plan fails to acknowledge that public
7 transit is not cost-effective. FEIR 3.6-663 to 3.6-673. The Plan allocates over 60%
8 of future transportation resources to increase its capacity by 27%, while roads,
9 which more than 80% of commuters use, receive only a 3% improvement in
10 capacity. FEIR 3.6-673. Moreover, the Plan is not financially constrained. Even
11 if its exaggerated revenue predictions prove accurate, MTC has a long history of
12 project cost overruns. FEIR 3.6-1072 to 3.6-1092; FEIR E-324 to E-335.
- 13 (f) The Plan's goals are not realistic. FEIR 3.6-1042 to 3.6-1059. Portland, Oregon,
14 has the *most* ambitious mass transit program in the country, because of the more
15 stringent "smart growth" laws in Oregon, and because the Oregon legislature has
16 granted the Portland-area transit authority extraordinary regulatory power. FEIR
17 3.6-1045 to 3.6-1046. Notwithstanding its "advanced" transit program, Portland
18 still has an annual average growth rate of vehicle miles traveled of 2.18%, while the
19 Plan inexplicably predicts that it will be able to reduce the growth rate of vehicle
20 miles traveled to 0.62%. FEIR 3.6-1046.
- 21 (g) The Plan's models are not capable of reliably predicting transit use and
22 development decades into the future, as the Plan otherwise contends, for several
23 reasons. First, the models are based on the "false hypothesis that the development
24 of [priority development areas] with good transit access generates economic
25 development." FEIR 3.6-600. Second, they suppose, in the "no project"
26 alternative, that no change in zoning will occur over the multi-decade life of the
27 Plan, FEIR 3.6-662, even while assuming unlimited upzoning for the Plan and its
28 alternatives. Third, they assume that technology and human behavior will not

1 change over the Plan's several decades. *Id.* Fourth, indeed, the Plan's models have
2 a 1.55% error rate *in predicting the past*, yet the Plan makes no account of any error
3 rate, much less a comparable error rate, in predicting the future. *See* FEIR 3.6-
4 1062.

- 5 (h) Compounding the Plan's modeling problems is that the Plan's assumptions
6 regarding population and job growth are inaccurate. The Plan's assumptions were
7 developed in mid-2011, almost two years before the release of the Draft Report.
8 Since that time, the state of California (among others) has released updated
9 predictions that are substantially less ambitious than the outdated Plan numbers.
10 FEIR E-943, E-947. These erroneous projections lead to a significant
11 over-projection in emissions, and thus feed into the false impression that the Plan's
12 draconian land-use policies are needed. FEIR 3.6-644 to 3.6-648.

13 ***The Final Plan and Environmental Impact Report***

14 55. In the wee hours of the morning of July 19, 2013, ABAG and MTC certified the
15 Plan's environmental impact report ("Final Report") and adopted the Plan. Prior to the
16 certification, the Citizens and their experts submitted several comments on the persisting defects
17 in the Plan and the Final Report.

18 56. The Final Report purports to assess the environmental impact of the Plan, as well
19 as the impact of an array of supposed reasonable alternatives to the Plan. The Final Report
20 comprises the Draft Report, along with amendments made after the comment period, comments
21 submitted, and responses thereto.

22 57. As shown below, none of the Final Report's changes to the Draft Plan or Report
23 remedies the Citizens' criticisms. *Cf.* FEIR 2-4.

24 ***The Final Report's Discussion of the "No Project" Alternative***

25 58. The Final Report concludes that the "no project" alternative would result in the
26 region missing its greenhouse gas reduction targets. FEIR 2-110; DEIR 3.1-127. In reaching that
27 conclusion, the Final Report makes a number of arbitrary and contrary-to-fact assumptions
28 regarding vehicle efficiency and fuel composition.

59. The Final Report continues the Draft Report's failure to give a realistic description of the "no project" alternative: its estimate of the amount of greenhouse gas emissions that the Bay Area's cars and trucks will produce over the Plan's life is significantly overstated. The Final Report projects future emissions based on emissions from 1993 through 2005, DEIR 2.5-6, and concludes that emissions must be reduced by 25% to 35% from today's levels to meet the S.B. 375 targets, *id.* at 2.5-24. But the Final Report takes no account that current greenhouse gas emission levels nationwide are already at or about 1990 levels. *See* DEIR App. B at 491-92. Further, the Final Report's data include emissions from sectors that S.B. 375 does not cover; properly narrowing the scope of analysis reveals that the transportation sector's emissions have basically leveled off since 1990. FEIR 3.6-43 to 3.6-45. Hence, the Final Report's expectation that, in the "no project" scenario, greenhouse gas emissions will continue to trend upwards indefinitely is without evidentiary support.

60. Compounding the errors in assessing the "no project" alternative is the Final Report's assumption that vehicle miles-per-gallon efficiency and gasoline carbon content will remain constant over the life of the Plan. *See* FEIR 3.1-16 to 3.1-18. That conclusion is contrary to fact. Nevertheless, the Final Report—just as the Draft Report—selectively relies on these vehicle and fuel improvements, otherwise disclaimed in the "no project" analysis, both to give the impression that the Plan's draconian land-use prescriptions are needed, and to lessen on paper the Plan's environmental impact. For example, just as with its "no project" alternative analysis, the Final Report does not take fully into account the greenhouse gas reductions that the region's transportation system will achieve "naturally" simply due to the implementation of the LCFS, Pavley I, and Pavley II. *Id.* *See also* FEIR 3.7-137 (the Final Report "estimate[s] carbon dioxide emissions assuming a hypothetical future in which new vehicle technologies and the increased use of low carbon fuel are not present"). Yet, the Final Report does take into account these emission improvements when estimating future particulate matter and other air pollutants. FEIR 3.7-138. There is no legitimate reason for the Final Report to use these numbers selectively and opportunistically.

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61. In its response to the Citizens' criticisms, the Final Report states that a bifurcated approach in assessing the Plan's environmental impacts is required. FEIR 3.7-137 to 3.7-138. The Final Report agrees with the Citizens that the LCFS and Pavley I should be taken into account when predicting the environmental effects of the Plan other than those relating to greenhouse gases. But, for these latter effects, the Final Report asserts that S.B. 375 forbids taking into account statewide emission programs such as the LCFS, Pavley I, and Pavley II. The Final Report explains that to rely on the undeniable benefits of these programs would be impermissible "double counting." The Final Report asserts that CARB's A.B. 32 Scoping Plan, as well as CARB staff's initial review of the Plan, support the Final Report's position that CARB's Bay Area greenhouse gas reduction targets are meant to exclude any reductions attributable to these statewide programs. FEIR 3.1-16 to 3.1-18. The Final Report also asserts that it cannot take into account Pavley II for any purpose, notwithstanding that Pavley II was formally adopted in January, 2012, seven months before the environmental impact report process began, and went into effect in its current form in December, 2012, months before the Draft Report was released. The Final Report reasons that the Plan's computer modeling software—EMFAC 2011—was developed before the adoption of Pavley II, and that there was insufficient time to develop a software update that would predict the impact of Pavley II. FEIR 3.7-141, 143.

62. The Final Report's analysis is contrary to law, for several reasons. *See* FEIR 3.6-748 to 3.6-764. First, rather than requiring that the Plan ignore the LCFS, Pavley I, and Pavley II, S.B. 375 expressly requires that the targets, which the Plan is supposed to meet, must take into account greenhouse gas reductions achieved through advances in vehicle efficiency and fuel cleanliness. Gov't Code § 65080(b)(2)(A)(iii). Second, the Final Report's interpretation of S.B. 375 is inconsistent with S.B. 375's authorization for CARB to update the targets based on ongoing advances in vehicle efficiency and fuel cleanliness. *Id.* § 65080(b)(2)(A)(iv). The Legislature would have had no reason to give CARB this power if it believed, as the Final Report does, that these factors must be ignored. Finally, S.B. 375 only regulates the Plan, not its environmental impact report. Thus, even if the Plan were required to ignore emission savings from the implementation of the LCFS, Pavley I, and Pavley II when determining whether the targets have

1 | been met, that would not mean that the Final Report's CEQA analysis should also be subject to the
2 | same fictitious assumptions.

3 | *The Final Report's Rejection of the Citizens' Proposed Alternative*

4 | 63. In their comments, the Citizens underscored that environmentally sensitive
5 | alternatives to the Plan exist that would achieve the Plan's basic objectives of greenhouse gas
6 | reduction and housing development, without the Plan's acknowledged significant and unavoidable
7 | impacts. "The Bay Area Citizens Transportation and Housing Alternative," FEIR 3.6-797 to 3.6-
8 | 800, FEIR 3.6-1014 to 3.6-1015, recommends that the region's sustainable community strategy:

- 9 | (a) Expand and improve the existing transit system;
- 10 | (b) Significantly reduce fares to encourage individuals to abandon their high-emission
- 11 | vehicles and thereby support the mobility needs of lower-income residents;
- 12 | (c) De-emphasize the expansion of high-carbon-footprint and low-cost-effective rail
- 13 | transit and ferry service;
- 14 | (d) Study how casual carpooling by real-time matching through portable electronic
- 15 | devices can reduce vehicle miles traveled;
- 16 | (e) Encourage flexibility in local zoning to facilitate achievement of regional housing
- 17 | needs;
- 18 | (f) Advocate for housing type and location consistent with local preferences;
- 19 | (g) Encourage expanded use of telecommuting;
- 20 | (h) Insist that local communities be informed of the public subsidy costs of affordable
- 21 | housing before the assignment of regional housing needs assessment allocations;
- 22 | (i) Insist that local communities be informed of the unfunded mandates involved with
- 23 | the obligation to provide affordable housing before that obligation is accepted;
- 24 | (j) Advocate for flexibility in transportation funding;
- 25 | (k) Advocate for reform of California housing laws; and
- 26 | (l) Focus on measurable outputs, such as transit ridership and satisfaction, rather than
- 27 | the cost of inputs.

28 | ///

64. The Citizens' alternative reasonably relies on the anticipated substantial greenhouse gas reductions that will occur over the planning horizon owing to the LCFS, Pavley I, and Pavley II. *See* FEIR 3.6-794 (noting that the greenhouse gas reductions attributable to these measures are more than 16 times the reductions that allegedly will occur as a result of the Plan's housing mandates and transit subsidies). *See also* FEIR 3.6-1014 to 3.6-1015.

65. The Citizens' alternative also relies on increasing and improving transit lines further to reduce greenhouse gases. FEIR 3.6-797. This approach is both feasible and reasonable. It requires substantially less money than the Plan or any of its alternatives in the Final Report. FEIR 3.6-798. It will have a substantially smaller impact on the environment by foregoing the construction of large rail projects, *id.*, and avoiding the externalities of high-density development. It will likely reduce greenhouse gases significantly more than the Plan, because it does not rely on mandating high-density housing development requiring massive new public subsidies (owing to the lack of market demand), or to expensive new low-performance rail systems, both of which are large sources of greenhouse gas emissions.

66. Finally, the Citizens' alternative can easily achieve the housing goals for the region, because it is not limited by the Plan's draconian high-density housing mandate. FEIR 3.6-798 to 3.6-799.

67. Notwithstanding the Citizens' proposal, which would achieve the Plan's main objectives, would be legally and financially feasible, and could be implemented without the Plan's significant environmental impacts, the Final Report fails to give the Citizens' alternative any consideration in its response. FEIR 3.7-144. Instead, the Final Report states that it is not required to consider every possible alternative, and that existing alternatives adequately incorporate the main parts of the Citizens' alternative. Yet the Final Report does not explain how the existing alternatives are adequate, given that they all ignore the greenhouse-gas-reduction benefits of the LCFS, Pavley I, and Pavley II. In other words, the Final Report's ignoring of the Citizens' alternative is based entirely on its faulty interpretation of S.B. 375 as requiring that the Plan ignore greenhouse-gas-reduction reality when determining whether the Plan will meet the regional targets.

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Statement of Overriding Considerations

68. In adopting the Plan and Final Report, ABAG and MTC also approved a Statement of Overriding Considerations, given the Final Report's conclusion that the Plan will have dozens of significant and unavoidable environmental impacts. *See* CEQA Findings and Facts in Support of Findings and Statement of Overriding Considerations at 114-117, *available at* http://apps.mtc.ca.gov/meeting_packet_documents/agenda_2089/3b_Plan_Bay_Area_Final_Environmental_Impact_Report_Final_Certification.pdf (last visited Aug. 5, 2013). The Statement asserts that overriding considerations—among them meeting the S.B. 375 targets and housing all the projected population—merit adoption of the Plan, notwithstanding its significant environmental impacts. *See* Statement at 132-136.

69. The Statement acknowledges that the “no project” alternative “will lessen some of the proposed Plan’s potentially significant and unavoidable impacts.” Statement at 121. But the Statement goes on to reject the “no project” alternative on three grounds: (a) it is not the “environmentally superior” alternative (neither, of course, is the Plan); (b) it will not meet the S.B. 375 targets; and (c) it is otherwise legally infeasible. Statement at 122. The Statement does not discuss the Citizens’ alternative.

70. On July 19, ABAG and MTC filed their Notice of Determination that they had certified the Final Report and adopted the Final Plan and Statement of Overriding Considerations.

FIRST CAUSE OF ACTION FOR WRIT OF MANDATE

Failure Adequately To Identify the Project’s Basic Objectives

(Pub. Res. Code § 21100; Cal. Code Regs. tit. 14, §§ 15126.6, 15093)

71. The allegations of the preceding paragraphs are fully incorporated herein by reference.

72. CEQA’s alternatives requirement mandates that the lead agency accurately identify the basic objectives of the proposed project. *See* Cal. Code Regs. tit. 14, § 15126.6(a) (environmental impact report must consider a reasonable range of alternatives that would “feasibly attain most of the basic objectives of the project”). This requirement is critical to an environmental impact report’s alternatives analysis, as well as to the lead agency’s decision whether to proceed

1 with a project that will have significant yet unavoidable impacts. To determine whether an
2 alternative should be considered in the report, the lead agency must look to the project's "basic
3 objectives." Cal. Code Regs. tit. 14, § 15126.6(c). Similarly, because a determination of
4 overriding considerations depends on a project's supposed benefits, Pub. Res. Code § 21081(b),
5 Cal. Code Regs. tit. 14, § 15093(a), *cf.* Statement at 133-136, understanding the project's true basic
6 objectives is essential to determining the statement's accuracy, *Woodward Park Homeowners*
7 *Ass'n, Inc. v. City of Fresno*, 150 Cal. App. 4th 683, 718 (2007) (observing that a statement of
8 overriding considerations "must make a good-faith effort to inform the public," which would be
9 "undermined if . . . it misleads the reader about the relative magnitude of the impacts and benefits
10 the agency has considered").

11 73. The Plan's Final Report fails adequately to describe the Plan's "basic objective" of
12 meeting the greenhouse gas reduction requirements of S.B. 375. *Cf.* Draft Plan at 96-97; DEIR 3.1-
13 146. Contrary to the Final Report's position, FEIR 3.1-16 to 3.1-18, S.B. 375 does not require that
14 the Plan ignore the greenhouse gas reductions attributable to non-Plan activities, such as the LCFS,
15 Pavley I, and Pavley II. S.B. 375 and the targets established thereunder place no constraints on
16 what greenhouse gas reduction measures can be taken into account. Rather, S.B. 375 simply directs
17 that a region's transportation planning and development not frustrate the ability of the state to meet
18 the greenhouse gas reduction goal of A.B. 32. *Cf.* S.B. 375, § 1(b), (c).

19 74. The Final Report's fear of "double counting," FEIR 3.1-16, is unfounded. The Bay
20 Area exists within California, and its emissions are part of the state's total emissions. Thus, given
21 that S.B. 375 is meant to facilitate the achievement of the statewide emission reduction goals of
22 A.B. 32, it is to be expected that S.B. 375 goals would take account of and incorporate greenhouse
23 gas reductions that will be achieved by virtue of statewide measures. In other words, S.B. 375
24 ultimately is not about the "how" of greenhouse gas reduction, *i.e.*, through vehicle efficiency and
25 fuel improvements, or denser development. Rather, S.B. 375 is about the "whether" of greenhouse
26 gas reduction, *i.e.*, ensuring that the Bay Area's transportation sector will meet the *targets*. Gov't
27 Code § 65080(b)(2)(B)(vii). Notably, the regional targets are based on reducing greenhouse gas
28 emissions generally, *not* through any particular methods such as reducing vehicle miles traveled.

1 See http://www.arb.ca.gov/cc/sb375/final_targets.pdf (last visited Aug. 2, 2013). Further, S.B. 375
2 expressly requires that the targets take account of greenhouse gas reductions for the transportation
3 sector that are achieved by improvements in vehicle and fuel technology. Gov't Code
4 § 65080(b)(2)(A)(iii), (iv). The Plan must operate based on predictions of the transportation
5 sector, and that assessment naturally includes taking into account changes in vehicle efficiency and
6 fuel content over the Plan's life.

7 75. The Final Report's assessment of the Plan's basic objectives, *see* FEIR 3.1-16 to
8 3.1-18, and adoption of that assessment by the Statement of Overriding Considerations, Statement
9 at 117-118, 122, are based on a misinterpretation of S.B. 375, and therefore constitute a prejudicial
10 abuse of discretion.

11 76. In certifying the Final Report and adopting the Statement of Overriding
12 Considerations, Respondents have failed to proceed in a manner required by law and have acted
13 without substantial evidence. Pub. Res. Code § 21168.5.

14 SECOND CAUSE OF ACTION FOR WRIT OF MANDATE

15 Failure Adequately To Assess the "No Project" Alternative

16 (Pub. Res. Code § 21100; Cal. Code Regs. tit. 14, § 15126.6(e))

17 77. The allegations of the preceding paragraphs are fully incorporated herein by
18 reference.

19 78. CEQA requires that every environmental impact report contain an alternatives
20 analysis that includes a "no project" alternative. Cal. Code Regs. tit. 14, § 15126.6(e).

21 79. The purpose of the "no project" alternative is to give the lead agency and the public
22 an accurate understanding of the impacts of the proposed project. *See id.* § 15126.6(e)(1).
23 Knowing what the world would look like without the project going forward makes possible an
24 understanding of what the impacts of the proposed project would be. *See Planning & Conservation*
25 *League v. Dep't of Water Resources*, 83 Cal. App. 4th 892, 917-18 (2000) (analysis of the "no
26 project" alternative "is a factually based forecast of the environmental impacts of preserving the
27 status quo" that "provides the decision makers with a base line against which they can measure the
28 environmental advantages and disadvantages of the project and alternatives to the project"). Thus,

1 faithfully assessing the “no project” alternative is critical to serving the environmental impact
2 report’s role as an informational document. *Cf.* Pub. Res. Code § 21061.

3 80. The Plan’s Final Report fails meaningfully to assess the “no project” alternative
4 because it ignores the greenhouse-gas-reduction effects of the LCFS, Pavley I, and Pavley II.
5 Taking these measures into account is critical to understanding the Plan’s impacts, as well as the
6 Plan’s utility. One of the Plan’s “basic objectives” is to meet the region’s S.B. 375 goals. *Cf.* Draft
7 Plan at 96-97; DEIR 3.1-146. The Final Report acknowledges that the “no project” alternative can
8 meet this objective if the LCFS and Pavley I are taken into account. *See* FEIR 3.1-17 (observing
9 that, had statewide greenhouse gas reduction policies been taken into account, the Plan “could have
10 simply stated that the Bay Area meets its emissions reduction targets solely through statewide clean
11 technology initiatives”). *See also* FEIR 3.7-141 (noting that greenhouse gas reductions would be
12 even greater were Pavley II taken into account). The Final Report also acknowledges that its
13 greenhouse gas reduction regime will have significant yet unavoidable impacts. *See* DEIR ES-13
14 to ES-75. *Cf.* Statement at 114-117. Thus, had the Final Report correctly assessed the “no project”
15 alternative, ABAG and MTC as well as the public would have known that the Plan’s significant
16 and unavoidable impacts are unnecessary to achieving the Plan’s basic objective of meeting the
17 S.B. 375 targets. *Cf. County of Inyo v. City of Los Angeles*, 124 Cal. App. 3d 1, 9 (1981) (analysis
18 of “no project” alternative helps the decision-maker to determine whether the project should be
19 terminated).

20 81. Contrary to the Final Report’s position, S.B. 375 does not require that the Plan
21 ignore the greenhouse-gas-reducing impact of the LCFS, Pavley I, and Pavley II. But, even
22 assuming *arguendo* that the Final Report’s interpretation is correct, CEQA’s informational
23 purposes still mandate that the Plan’s Final Report assess the real-world consequences of the “no
24 project” alternative, rather than, as here, a legal fiction. *Cf. Planning & Conservation League*, 83
25 Cal. App. 4th at 917 (“no project” alternative is a “*factually* based forecast”) (emphasis added).

26 82. CEQA requires that lead agencies avoid or mitigate significant impacts unless
27 overriding considerations dictate that these impacts be allowed to occur. Pub. Res. Code § 21081;

28 ///

1 Cal. Code Regs. tit. 14, § 15091(a). ABAB and MTC, however, have never considered whether
2 overriding considerations support selection of the Plan notwithstanding that the “no project”
3 alternative can achieve the Plan’s basic objective of meeting the S.B. 375 targets. *Cf.* Statement
4 at 122.

5 83. The Final Report’s assessment of the “no project” alternative, and adoption of that
6 assessment by the Statement of Overriding Considerations, are based on a misinterpretation of S.B.
7 375, and constitute a prejudicial abuse of discretion.

8 84. Therefore, in certifying the Final Report and adopting the Statement of Overriding
9 Considerations, Respondents have failed to proceed in a manner required by law and have acted
10 without substantial evidence. Pub. Res. Code § 21168.5.

11 **THIRD CAUSE OF ACTION FOR WRIT OF MANDATE**

12 **Failure Adequately To Assess the “No Project” Alternative**

13 **(Pub. Res. Code § 21100; Cal. Code Regs. tit. 14, § 15126.6(e))**

14 85. The allegations of the preceding paragraphs are fully incorporated herein by
15 reference.

16 86. As noted above, CEQA requires that every environmental impact report contain an
17 alternatives analysis that includes a “no project” alternative. Cal. Code Regs. tit. 14, § 15126.6(e).
18 The assessment of the “no project” alternative must be factually based, in order to give the
19 decision-makers an accurate understanding of the status quo, as well as of the project’s real-world
20 effects. *See Planning & Conservation League*, 83 Cal. App. 4th at 917-18.

21 87. The Final Report’s assessment of the “no project” alternative, however, fails to
22 meet this standard of a factually accurate forecast. The Final Report arbitrarily selects a baseline
23 of greenhouse gas emissions that is far greater than reality. In other words, the Final Report’s
24 estimation of the current rate of greenhouse gas emissions, extrapolated to the end of the Plan’s
25 horizon, is vastly overstated, *even ignoring* the LCFS, Pavley I, and Pavley II. *See supra* ¶ 59. The
26 upshot of the Final Report’s use of a higher-than-actual greenhouse gas baseline is to create the
27 false impression that especially draconian land-use measures are needed to meet the region’s S.B.
28 375 targets. Thus, the Final Report’s approach is irreconcilable with CEQA’s requirement that the

1 environmental baseline normally constitute existing physical conditions, not a hypothetical
2 condition or legal fiction. *See* Cal. Code Regs. tit. 14, § 15125(a). *See also* *Communities for a*
3 *Better Env't v. S. Coast Air Quality Mgmt. Dist.*, 48 Cal. 4th 310, 321 (2010) (“[T]he impacts of
4 a proposed project are ordinarily to be compared to the actual environmental conditions existing
5 at the time of CEQA analysis, rather than to allowable conditions defined by a plan or regulatory
6 framework.”).

7 88. In relying on an obviously outdated baseline, Respondents acted without substantial
8 evidence and failed to proceed in a manner required by law. *Cf.* Cal. Code Regs. tit. 14, § 15384.

9 89. Therefore, in certifying the Final Report and adopting the Statement of Overriding
10 Considerations, Respondents have prejudicially abused their discretion. Pub. Res. Code § 21168.5.

11 **FOURTH CAUSE OF ACTION FOR WRIT OF MANDATE**

12 **Failure To Include Reasonable and Feasible Alternative**

13 **(Pub. Res. Code § 21100(b)(4); Cal. Code Regs. tit. 14, § 12126.6)**

14 90. The allegations of the preceding paragraphs are incorporated herein by reference.

15 91. CEQA requires that the lead agency consider a reasonable range of feasible
16 alternatives to the proposed project. Cal. Code Regs. tit. 14, § 15126.6(a).

17 92. During the comment process, the Citizens proposed an alternative to the Plan that
18 would achieve the S.B. 375 greenhouse gas reduction targets without the many significant and
19 unavoidable impacts of the Plan, *viz.*, “The Bay Area Citizens Transportation and Housing
20 Alternative.” FEIR 3.6-797 to 3.6-800. This alternative would achieve the S.B. 375 greenhouse
21 gas reduction targets, one of the Plan’s “basic objectives,” by relying in part on the projected
22 improvements, over the life of the Plan, in the transportation sector’s efficiency and fuel
23 composition. FEIR 3.6-797. *Cf.* FEIR 3.1-17. The alternative would also secure additional
24 greenhouse gas reductions by supporting expanded and improved bus service. FEIR 3.7-797. It
25 would avoid all the significant adverse environmental impacts, as well as additional costs and
26 limitations on citizens’ housing preferences, associated with the Plan’s unnecessary adherence to
27 a high-density development and rail-heavy transit vision. Thus, the Final Report was required to

28 ///

1 include the Citizens' alternative in its alternatives analysis. *See* Cal. Code Regs. tit. 14,
2 § 15126.6(c), (f).

3 93. Nevertheless, the Final Report rejects the Citizens' alternative. FEIR 3.7-144. It
4 contends that the Citizens should have proposed their alternative before the Draft Report comment
5 process. Yet CEQA does not require that proposed alternatives be submitted prior to the
6 circulation of the draft environmental impact report. *See Cal. Native Plant Soc'y v. City of Santa*
7 *Cruz*, 177 Cal. App. 4th 957, 987-95 (2009) (considering whether a final report's alternatives
8 analysis was defective because it did not include a reasonable range of alternatives and whether the
9 response to another alternative proposed in a comment letter on the draft report was sufficient).

10 94. The Final Report also asserts that existing alternatives already incorporate important
11 aspects of the Citizens' alternative. FEIR 3.7-144. But this too is untrue: neither the Plan nor the
12 existing alternatives correctly interpret S.B. 375 and the meaning of its greenhouse gas reduction
13 targets. *See supra* ¶ 67. They all adopt development plans of significantly higher density than the
14 status quo and the Citizens' alternative, and they all sharply limit how and where Bay Area
15 residents can live—regardless of the their preferences.

16 95. Accordingly, consideration of the Citizens' alternatives would serve CEQA's
17 informational purpose and improve Respondents' decision making, because Respondents would
18 have before them an alternative that would achieve the Plan's basic objectives without the Plan's
19 significant environmental cost. *Cf.* Cal. Code Regs. tit. 14, § 15126.6(f) ("The range of alternatives
20 required . . . is governed by a 'rule of reason' that requires . . . those alternatives necessary to permit
21 a reasoned choice."); *Mann v. Cmty. Redevelopment Agency*, 233 Cal. App. 3d 1143, 1150 (1991)
22 ("The key issue is whether the selection and discussion of alternatives fosters informed
23 decisionmaking and informed public participation.").

24 96. Therefore, the Final Report's rejection of the Citizens' alternative, and Respondents'
25 failure to consider the alternative, constitute a prejudicial abuse of discretion, because Respondents
26 have failed to proceed in a manner required by law and have acted without substantial evidence.
27 Pub. Res. Code § 21168.5.

28 ///

FIFTH CAUSE OF ACTION FOR WRIT OF MANDATE

Failure to Respond to Comments

(Pub. Res. Code §§ 21091, 21092; Cal. Code Regs. tit. 14, § 15088)

97. The allegations of the preceding paragraphs are incorporated herein by reference.

98. CEQA requires that the lead agency respond to comments submitted on the draft environmental impact report. The lead agency must address major environmental issues raised in recommendations and objections contained in comment letters that are at variance with the lead agency's position. Cal. Code Regs tit. 14, § 15088(c). The response must give reasons why specific comments and suggestions were not accepted, using good-faith, reasoned analysis. *Id.* Conclusory statements that are not supported by factual information will not suffice. *Id.*

99. The purpose behind the detailed written response requirement is to ensure that the lead agency fully consider the environmental consequences of a decision before it is made, that the decision be well informed and open to public scrutiny, and that public participation in the environmental review process be meaningful. *See City of Long Beach v. Los Angeles Unified Sch. Dist.*, 176 Cal. App. 4th 889, 904 (2009).

100. The Final Report violates the CEQA respond-to-comment obligation by failing to address the Citizens' alternative. As noted above, the Final Report rejects the Citizens' alternative on two grounds: it was not submitted prior to the circulation of the Draft Report, and existing alternatives incorporate various aspects of the alternative. *See supra* ¶¶ 93-94. But, again as noted above, CEQA does not require that additional alternatives be proposed prior to the Draft Report's circulation. Moreover, all the other alternatives assume the same erroneous interpretation of S.B. 375, and therefore all erroneously adopt some variation of the Plan's high-density prescription. Finally, the Citizens' alternative would achieve the Plan's basic objectives without the significant impacts of the Plan or its other alternatives derived from their high-density development reliance. Hence, the Final Report fails to meaningfully evaluate the Citizens' alternative and explain why it should not be considered.

101. Therefore, Respondents' failure to respond adequately to the Citizens' alternative in the Final Report constitutes a prejudicial abuse of discretion, because Respondents have failed

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1 to proceed in a manner required by law and have acted without substantial evidence. Pub. Res.
2 Code § 21168.5.

3 **PRAYER FOR RELIEF**

4 Wherefore, the Citizens pray:

5 1. For a peremptory writ of mandate directing that Respondents vacate the certification
6 of the Final Report, adoption of the Statement of Overriding Considerations, and Approval of the
7 Plan;

8 2. For peremptory writ of mandate directing Respondents to produce a new Final
9 Report consistent with CEQA, and prohibiting Respondents to give any legal effect to the Plan
10 until they have complied with the Court's writ;

11 3. For an award of Petitioner's reasonable fees and costs, pursuant to Code of Civil
12 Procedure section 1021.5, or other applicable authority; and

13 4. For any other relief that the Court deems just and proper.

14 DATED: August 5, 2013.

15 Respectfully submitted,

16 DAMIEN M. SCHIFF
17 JONATHAN WOOD
Pacific Legal Foundation

18 MICHAEL E. DELEHUNT
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20 By


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VERIFICATION

I, Peter Singleton, am the Chairman of Petitioner BAY AREA CITIZENS, in the above-entitled proceeding. I have the authority to sign this document on behalf of BAY AREA CITIZENS. I have read the foregoing Verified Petition for Writ of Mandate (Code of Civil Procedure § 1085) (California Environmental Quality Act, Pub. Res. Code § 21168.5) and know the contents thereof. The same is true of my own knowledge except as to those matters which are therein alleged on information and belief, and as to those matters I believe them to be true.

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

DATED: August 5, 2013.

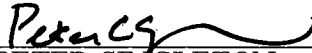
By 
PETER SINGLETON
CHAIRMAN
BAY AREA CITIZENS

EXHIBIT 1

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11 SUPERIOR COURT OF CALIFORNIA

12 COUNTY OF ALAMEDA

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14 BAY AREA CITIZENS, a non-profit corporation,

15 Petitioner,

16 v.

17 ASSOCIATION OF BAY AREA GOVERNMENTS,
a joint powers agency; METROPOLITAN
18 TRANSPORTATION COMMISSION, a local area
planning agency; and DOES 1 through 50,

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Respondents.

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22 PLEASE TAKE NOTICE, under Public Resources Code section 21167.5, that Petitioner
23 Bay Area Citizens intends to file a petition under the provisions of the California Environmental
24 Quality Act (CEQA) against Respondents Association of Bay Area Governments and Metropolitan
25 Transportation Commission, challenging their certification of the Final Environmental Impact
26 Report and Statement of Overriding Considerations for, as well as their approval of, Plan Bay Area.

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No. _____

**NOTICE OF INTENT
TO FILE PETITION UNDER
THE CALIFORNIA
ENVIRONMENTAL
QUALITY ACT**

PACIFIC LEGAL FOUNDATION
930 G Street
Sacramento, CA 95814
(916) 419-7111 FAX (916) 419-7747

1 The petition will seek the vacatur of the Final Report's certification and Statement of
2 Overriding Considerations, as well as rescission of the Plan's approval, with the direction that the
3 Final Report be redone consistent with the requirements of CEQA, as set forth in the Citizens'
4 petition.

5 DATED: August 2, 2013.

6 Respectfully submitted,

7 DAMIEN M. SCHIFF
8 JONATHAN WOOD
9 MICHAEL E. DELEHUNT

10 By


DAMIEN M. SCHIFF

11 Attorneys for Petitioner
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DECLARATION OF SERVICE BY MAIL

I, Tawnda Elling, declare as follows:

I am a resident of the State of California, residing or employed in Sacramento, California.

I am over the age of 18 years and am not a party to the above-entitled action.

My business address is 930 G Street, Sacramento, California 95814.

On August 2, 2013, true copies of NOTICE OF INTENT TO FILE PETITION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT were placed in envelopes addressed to:

Association of Bay Area Governments
101 Eighth Street
Oakland, CA 94607

Metropolitan Transportation Commission
101 Eighth Street
Oakland, CA 94607

which envelopes, with postage thereon fully prepaid, were then sealed and deposited in a mailbox regularly maintained by the United States Postal Service in Sacramento, California.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 2nd day of August, 2013, at Sacramento, California.


TAWNDA ELLING