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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

THE POST SUSTAINABILITY INSTITUTE; ROSA KOIRE; MICHAEL SHAW, Plaintiffs and Petitioners, v. ASSOCIATION OF BAY AREA GOVERNMENTS; METROPOLITAN TRANSPORTATION COMMISSION; and DOES 1 to 25, Defendants and Respondents.	Case No: RG13699215 FIRST AMENDED VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF [Code Civ. Proc. Sections 1060; 526; 526a; 1085; 1094.5]

Plaintiffs and Petitioners The Post Sustainability Institute, Rosa Koire, and Michael Shaw (collectively Plaintiffs and Petitioners) allege as follows:

1. Plaintiffs and Petitioners bring this action against Defendants and Respondents the Association of Bay Area Governments (ABAG) and the Metropolitan Transportation Commission (MTC) for declaratory and injunctive relief under Code of Civil Procedure sections 1060, 526, and 526a, and a writ of mandate under Code of Civil Procedure sections 1085 and 1094.5. Plaintiffs and Petitioners allege herein violations of the California Constitution, Art. I and Art. XI, Sec. 5; the United States Constitution, Art. IV, Sec. 4; the Equal Protection and Just

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Compensation Clauses of the Fourteenth and Fifth Amendments to the United States Constitution, and State just compensation and Equal Protection clauses; and the mandates of SB 375 (Government Code Section 65080, *et seq.*). These violations relate to Defendants' and Respondents' adoption of a Sustainable Communities Strategy, or Plan Bay Area (Plan) on July 18, 2013.

PARTIES

2. Plaintiff and Petitioner Rosa Koire is a citizen and taxpayer of Santa Rosa, California. Ms. Koire has resided within the boundaries of Sonoma County and has paid real property taxes and income taxes to the state of California and the County of Sonoma within one year of time of the commencement of this action. At all times relevant to this action Ms. Koire has been a registered voter in the county of Sonoma and is eligible to vote in any election amending the California Constitution. As a Bay Area resident, Ms. Koire will be affected by the broad reaching provisions of Plan Bay Area (the Plan), which encompasses Sonoma County and the City of Santa Rosa. Ms. Koire has a beneficial interest in ensuring that public funds are not unlawfully wasted on statutes, plans, agreements, or programs that are in violation of rights held under the U.S. or California Constitutions.

3. Plaintiff and Petitioner Michael Shaw owns a business in Alameda County, Lockaway Storage. Mr. Shaw's business and has paid property taxes and income taxes to the state of California and the County of Alameda within one year of time of the commencement of this action. Mr. Shaw' business will be affected by the broad reaching provisions of the Plan, which encompasses Alameda County, California. Mr. Shaw has a beneficial interest in ensuring that public funds are not unlawfully wasted on statutes, plans, agreements, or programs that are in violation of rights held under the U.S. or California Constitutions.

4. Plaintiff and Petitioner The Post Sustainability Institute (Institute) is a non-profit California corporation headquartered in Sonoma County and 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 Institute, located in the Bay Area, has commented during all stages of the development of the Plan and submitted extensive comments

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on the Plan's draft consistent with the allegations contained herein.

5. The Institute has a beneficial interest in ensuring that public funds are not unlawfully wasted on statutes, plans, agreements, or programs that are in violation of rights held under the United States or California Constitutions. The Institute has also brought this action on behalf of the public interest; to vindicate the public's interest in land-use planning that is coherent and consistent with the California and United States Constitutions. The Institute is ably positioned to represent the public interest in this action, given its involvement in land use issues as well as its repeated participation and objections to the Plan throughout the Plan's development. Finally, the Institute's action will confer a broad and important benefit on the public and will inure to the public interest.

6. ABAG is a council of governments, a type of joint powers agency, Gov't Code § 6500, and is the comprehensive regional planning agency for the Bay Area's nine counties, as well as their cities and towns. Along with MTC, ABAG is responsible for drafting and implementing the Plan.

7. MTC is a local area planning and transportation agency covering the Bay Area's nine counties. (Govt. Code Section 66502). MTC has been designated as the Bay Area's metropolitan planning organization for purposes of federal law, and is a lead agency for the Plan's environmental impact report. (*See* Pub. Res. Code Section 21165(a)). Along with ABAG, MTC is responsible for drafting and implementing the Plan.

8. Both ABAG and MTC are government agencies created by and operating under the laws of the State of California. As instrumentalities of state government, Defendants and Respondents have a duty to act in accordance with both the United States Constitution and the California Constitution. Defendants will spend staff time, money, and other resources to implement the portions of the Plan challenged below.

9. Does 1 through 25 are persons or entities unknown to the Plaintiffs at this time who may be necessary parties to this suit. Plaintiffs will amend this Petition and Complaint specifically to identify each such person or entity as a respondent and/ or real party in interest, if and when their identities become known.

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VENUE

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

GENERAL ALLEGATIONS

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

12. State law provides important constraints on this transportation planning process. The most significant of these constraints is 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 Sections 38550, 38551).

13. To help implement A.B. 32's goal, the Legislature passed S.B. 375, the Sustainable Communities and Climate Protection Act of 2008. S.B. 375 purports 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, Section 1(e), (i)).

14. 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. (Govt. Code Section 65080(b)(2)). For the Bay Area, MTC and ABAG have joint responsibility for the strategy's production. (Govt. Code

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Section 65080(b)(2)(B)).

15. Pursuant to these mandates, on July 18, 2013, MTC and ABAG adopted the Plan (the 2040 Regional Transportation Plan (RTP)), including the 2013 Sustainable Communities Strategy for the San Francisco Bay Area, via Resolution No. 4111 (Resolution).

16. The Plan is a 150-plus page document covering various aspects of transportation, zoning, and property development within nine Bay Area counties, including Alameda County and Sonoma County, California. However, Gov. Code Section 65080 (b)(2)(K) provides that "nothing in [the Plan] shall be interpreted as superseding the exercise of the land use authority of cities and counties within the region."

17. A key component of the Plan is the relationship between A.B. 32, S.B. 375, and federal funding of state and local transportation programs. In July, 2012 a federal law known as MAP-21 (Moving Ahead For Progress in the 21st Century Act, P.L. 112-141) was enacted, which provides $105 billion is transportation funding. These funds are allocated to the MTC, which functions as the Bay Area's state regional transportation planning agency, as well as the Bay Area's federal Metropolitan Planning Organization (MPO.)

The One Bay Area Grant Program

18. The One Bay Area Grant Program (OBAG), adopted and implemented by the MTC, is the state program by which certain federal transportation funds are allocated to local governments in the Bay Area, estimated to be $14.6 billion over the life of the Plan. (Plan at 73.) The OBAG program "rewards jurisdictions that focus housing growth in Priority Development Areas (PDAs) through their planning and zoning policies, and actual production of housing units." (Plan at 13.) Elsewhere the Plan describes OBAG as being designed to "support jurisdictions that focus housing growth in Priority Development Areas through their planning and zoning policies, and their production of housing units. Specifically the program rewards jurisdictions that accept housing allocations through the Regional Housing Need Allocation (RHNA) process." (Plan at 73.) Additional OBAG funds are directed to support the region's Priority Conservation Areas (PCA's.) (Plan at 73.)

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Priority Development Areas

19. PDA's are described as "transit oriented, infill development opportunity areas within existing communities that are expected to host the majority of future development." (Plan at 73.) Roughly 200 PDA's are identified and purportedly mapped in the Plan, although it is entirely unclear what the exact geographical boundaries are. The overarching goal of PDA's is to focus future growth in pedestrian-friendly environments served by transit. (Plan at 43.)

20. PCA's are described as "over 100 regionally significant open spaces...which face nearer-term development pressures." (Plan at 43.) Although the phrase "development pressure" is a lynchpin of a PCA, the Plan fails to proffer a definition.

21. Contrary to the express admonition in Gov. Code Section 65080 (b)(2)(K), the Plan "requires each [local] jurisdiction to adopt policies to support complete streets and planning and zoning policies that are adequate to provide housing at various income levels...These requirements must be met before a [local] jurisdiction is eligible for OBAG funding." (Plan at 75.) The complete streets mandate can be met if a local jurisdiction enacts a "general plan that complies with the California Complete Streets Act of 2008. All jurisdictions seeking future rounds of OBAG funding will be required to have the updated general plan language adopted." (*Id.*.) This despite the express language in Resolution 4111 that the Plan "is not intended to create direct or indirect obstacles to a local government's decision to approve development projects that are not included in, or consistent with, PDA's identified in the Plan."

CEQA Streamlining

22. The Plan on its face also discriminates against property owners outside of PDA's with respect to the California Environmental Quality Act (CEQA). The Plan contains multiple provisions aimed at reforming and streamlining the CEQA process. Reforms to CEQA are greatly needed. As the Plan points out, current CEQA rules are inefficient, hinder needed development, and are "commonly used as a tool by project opponents who are more interested in halting a project than minimizing its harm to the environment." (Plan at 130.)

23. However, the Plan's proposed reforms are discriminatory on their face, in violation of Federal and State equal protection guarantees. The Plan's proposed CEQA streamlining

provisions undermine the credibility of CEQA by gutting its provisions for development within the Bay Area and by offering reduced environmental restrictions for favored developers.

24. The Plan's CEQA streamlining provisions provide for reduced CEQA oversight of development projects within PDAs, including but not limited to watered-down requirements for environmental impact reports. (Plan at 58.) Because the Plan calls for limiting the vast majority of new development to PDA's, this would in turn eliminate traditional CEQA requirements for the vast majority of new development projects over the next thirty years. (*See* Plan at 55 ("over two thirds of all regional growth by 2040 is allocated within [PDA's]").

25. In doing so, the Plan calls the continuing necessity and validity of those state mandated requirements into question for all projects across the state. If, as we have been told for the past several decades, current CEQA requirements are necessary to protect the environment, then the Plan's elimination of these procedures for the vast majority of new developments is facially discriminatory and preempted by state law.

26. Other criteria set forth in the Plan for CEQA streamlining eligibility are similarly irrational when viewed as a means to protect the environment. For example, under the Plan, those who choose to develop within a preferred area will be able to circumvent many of the costly and burdensome procedures that make up the CEQA review process. (Plan at 3.) Those who do not will remain subject to traditional CEQA procedures. This remains true regardless of the proposed projects potential environmental impact. The plan makes clear that development in preferred areas will be eligible for CEQA streamlining. It does not state that there will be any eligibility determination based the environmental risk of the project. Nor could it, as the environmental risk of a project is only determined after CEQA review.

27. Under the Plan's proposed rules, an environmentally risky project within a preferred area could be subject to less CEQA oversight than a low risk project only a few hundred yards away simply because the latter project happens to fall outside of a preferred area. Such arbitrary line-drawing does nothing to protect the environment, and violates the Federal and State equal protection constitutional guarantees.

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28. If these CEQA procedures are not necessary to protect the environment, and are detrimental to a "more economically vibrant state" then one must wonder why they should not be eliminated for all new development and not merely the Plan's favored projects. (*See* Plan at 130.) The answer is quite clear: allow streamlining as a carrot-incentive for the "favored" developers and local governmental jurisdictions who buy into the Plan and wish to obtain OBAG funds. Subjecting an isolated class of property owners to additional burdens not imposed on property owners within PDA's has no rational justification and is in direct conflict with state CEQA statutes, and the equal protection guarantees of the state and federal constitutions.

29. It is also unclear just how the "streamlining" will be effectuated, and which portions of CEQA will be gutted. Because consistency with the Plan is necessary to be eligible for streamlining, inconsistency with any portion of the Plan is sufficient to deny eligibility for streamlining. One statutorily mandated goal of the Plan is to ensure that new developments provide sufficient low-income housing. (Plan at 4-5). The dearth of information in the Plan renders it hopelessly defective as a policy instrument.

30. This preferential treatment for low-income developments is not substantially or rationally related to the purpose of CEQA, the protection of the environment, or the protection of the public health and safety.

Violation of Federal Law Mandates

31. S.B. 375 expressly mandates that the regional transportation plan (of which the sustainable communities strategy is a component) "shall consider factors specified in section 134 of Title 23 of the United States Code." Government Code Section 65080(b) further provides that the regional transportation plan shall be an "internally consistent document."

32. 23 U.S.C. Section 134 in turn sets forth the requirements of the metropolitan planning process for metropolitan planning areas. Among other things, federal law under this section mandates that the process "shall provide for consideration of ... strategies that will...support the economic vitality of the metropolitan area..." and that it is the federal policy to "foster economic growth and development within...urbanized areas." Contrary to the artificially created PDA's in the Plan, 23 U.S.C. Section 134 does not define urbanized areas so narrowly.

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Indeed, the Plan acknowledges in its "Transportation and Land Uses" chart that "urbanized areas" are vastly greater that the scant areas containing PDA's. Yet there is not even an acknowledgment of the federal and state mandate to consider and promote economic growth in *all* urbanized areas. The draconian restriction on development within non-PDA urbanized areas is directly at odds with the state and federal mandate.

33. The Plan's own statistics reveal that roughly one-third of the projected 1.1 million new jobs created by the year 2040 (approximately 363,000 jobs) will be located within non-PDA's. (Plan at 50.) Yet the Plan impermissibly ignores the housing, transportation, and infrastructure needs of this massive demographic by 1) severely restricting if not outright prohibiting commercial development; 2) severely restricting if not outright prohibiting residential development, whether single family or multi-family; and 3) for those few developers willing and able to provide necessary commercial and residential development within non PDA's, impose further punishment by subjecting them to the full array of CEQA red tape, which by the Plan's own admission is "commonly used as a tool by project opponents who are more interested in halting a project than minimizing its harm to the environment." (Plan at 130.)

34. It is especially ironic that the Plan devotes special care and attention to "communities of concern," which comprise roughly one-fifth of the total Bay Area population (Plan at 111), while ignoring the effect on this demographic as a result of the economic stagnation in non-PDA's, and further ignoring the needs of 360,000 future workers in non-PDA's. The graphic illustrating the location of "communities of concern" (*Id.*), indicates that they are substantially larger in geographic area than PDA's. The solution for these people is the promotion of economic development and job growth, not the stifling of economic development and job growth which will be the result under the Plan's PDA oriented focus.

35. Similar concerns regarding non-compliance with federal law are related to the mandate in SB 375 that "[e]ach metropolitan planning organization shall prepare a sustainable communities strategy, subject to the requirements of Part 450 of Title 23 of, and Part 93 of Title 40 of, the Code of Federal Regulations, including the requirement to utilize the most recent planning assumptions considering local general plans and other factors." (Government Code

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section 65080(a)(b)(1)(B). The Plan utterly fails to provide this requisite information, and there is nothing at all referencing general plans and the economic impacts on all areas within the Bay Area as mandated by federal law.

36. The Plan admits at p. 37 that Bay Area homebuyers will continue to struggle due to high housing costs. It is also admitted that surrounding regions provide more affordable housing. (Plan at 97.) However, rather than promote economic development, industry, and multi-family construction in surrounding regions where workers can afford to live, and as mandated by federal law, the plan exacerbates the problem of high housing costs by effectively leaving these surrounding regions "no-build" zones, thus eliminating any incentive for development, industry, job growth, and continued housing construction in these areas. Developers and businesses will avoid non-PDA's in light of the added CEQA burdens, which will be streamlined in PDA's to reward those who toe the line. Workers will then be *forced* into PDA's for employment opportunities, and the Plan has absolutely no funding mechanism for ensuring that new housing within PDA's for low-income workers will be affordable. Indeed, land within PDA's is fully developed or near full development capacity and simply cannot sustain the creation 521,000 new multi-family housing units by 2040. Most PDA's are within areas formerly designated as redevelopment areas, and many are currently indebted with existing redevelopment bond debt for 20-40 years. There is no redevelopment alternative available to subsidize housing costs. Thus there is no concrete substitute for the admitted loss of $1 billion per year in tax-increment financing to support affordable housing projects. (Plan at 129.)

S.B. 375 Mandates a Plan that is Feasible; The Plan Adopted is Admittedly Not Feasible

37. The Plan attempts to sidestep its admission that there is no redevelopment alternative by making the wild assumption that the political process will gut Proposition 13's super-majority voting requirement for new taxes. This should be rejected outright as infeasible, and lacks substantial evidence. (Plan at 131-132.) Reliance on the political process to materially modify federal MAP-21 legislation to obtain requisite funding is likewise wildly speculative, and lacks substantial evidence. (*Id.*) The federal policy is to "foster" economic growth in *all* urbanized areas. (*See* 23 U.S.C. 134.)

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38. The Plan's entire "housing production forecast" is premised on the assumption that "a replacement mechanism will be found to fund and implement many of the functions that were performed by California Redevelopment agencies before Gov. Jerry Brown signed legislation abolishing those agencies in June 2011." (Plan at 37.) Indeed the March 29, 2013 Priority Development Area and Feasibility and Readiness Assessment appendix report (Readiness Report) repeatedly cites the speculative nature of potential funding, that some form of fiscal reform is necessary, and that the infrastructure is currently inadequate. The Plan does not demonstrate that there is sufficient vacant land within PDA's to accommodate projected population increases for 28 years in accordance with the 80% development allocation. Further, the Plan will require infrastructure to accommodate increased development, at great undisclosed cost

39. New bond measures are proposed, as well as a "long terms adjustment to commercial or residential tax rates to balance the financial incentives for new development." (I.e., gutting Proposition 13.) Of the 20 PDAs examined and analyzed for readiness in the Appendix, only 3 (15%) met or exceeded the target number of units required (by 2040) to satisfy Plan Bay Area. The other 17 PDAs are projected to fail by 3 to 54%. Majority fail by at least 35%. (Readiness Assessment at pp. 19-28.)

40. Absent such a replacement plan, redevelopment-style land restrictions will be imposed without essential protections for property owners, including oversight boards, requisite blight findings, relocation procedures, and assurance that displaced business owners and tenants will be made whole.

41. The Plan's infeasibility is highlighted at length in the Readiness Report, an appendix document. Among other things, the Readiness Report labels the Plan "aggressive" and contains the following admissions of infeasibility at p. 35:

> While most PDAs in the sample analysis have land use plans and regulations consistent with *Plan Bay Area,* there is a need for continued innovation in all PDAs – new policies and forms of development regulation that achieve desired public purposes in ways that simultaneously improve incentives for, and reduce the risks of, private investment.

> Most of the PDAs will require substantial new investment in infrastructure. In some instances, funding capacity from the local government or supportable amounts from housing developers is simply not adequate to pay for this infrastructure, thus regional, state or federal funding will be required to support desired PDA development. In all cases, care will need to be taken to assure that related financial burdens placed on the private sector through local development impact fees, inclusionary housing policies, special taxes, and other development-related charges do not render desired PDA development financially infeasible.
>
> Most of the PDAs are largely developed and also exhibit a fragmented pattern of small parcels in independent ownership. Parcel assembly and redevelopment will be needed to achieve development objectives in virtually all PDAs. This land assembly process is time consuming, risky, and expensive and will thus represent one of the largest obstacles to achieving Plan Bay Area and local planning objectives.

42. The Readiness Report also concedes the necessity of a new TIF in the form of bond measures as a potential funding source, and that up-zoning will be required. (Plan at 35-43.)

43. Further, as more and more workers are herded into PDA's as the only source of employment, an artificially created higher cost of housing will be the result. Demand will far outstrip supply, as is already the case in PDA's, and which is the obvious reason why housing in PDA's is and will continue to be far higher than in surrounding regions. Commutes will be shorter and there will be no need to rely on public transit if economic growth and industry is encouraged, rather than demonized, in non-PDA's. The Plan simply eliminates through government fiat a level competitive playing field for businesses who wish to expand growth and employment opportunities in non-PDA's. As non-PDA's comprise 95% of the land area in the nine-county, 101 city "region," the economic effects will be draconian.

44. The restriction and outright prohibition of commercial and residential development in non-PDA's will result in deceased property tax revenues, which are essential sources of revenue for local jurisdictions, including the payment of essential services such as roads, police, schools, etc. The Plan has no remedy whatsoever for offsetting this loss, and indeed appears to be encouraging such a result in order to force more and more people into PDA's, willingly or not. The net result will be economic stagnation of PDA's, with lower tax revenues. It would not be surprising if this is the desired result, allowing the government to create depressed values and blight conditions for cheap acquisition. Under the Health and Safety Code, lack of new

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investment is a criteria for a blight finding. By blocking new investment in areas both inside and outside PDA's, blight conditions are inevitable. Indeed, the Plan states that land will be acquired with allocated funds. Government Code section 65913.1 also mandates cities to zone vacant land for residential use to meet the housing needs of all income categories. This mandate will be upended under the Plan.

45. SB 375 mandates submission of a Bay Area Plan that is "feasible," and if it is not than an alternative plan must be proposed. The Plan is woefully inadequate in this regard. No attention is given to the "elephant in the room," namely the feasibility (or lack thereof) of nine counties and 101 cities adopting the requisite legislation to amend their general plans, specific plans, and zoning ordinances to establish the PDA's and PCA's desired by ABAG and MTC. This assumes in the first instance that these 110 local jurisdictions all agree to initiate the process for such legislative amendments. Further, most of these jurisdictions must comply with Government Code provisions regarding requisite procedural requirements for such legislation. (*See* Government Code section 65853 et seq.) There must also be requisite consistency between the zoning ordinance, the specific plan, and the general plan of each local jurisdiction.

46. With this framework in mind, it is alarming that the Plan fails to address the paramount issue of just how many local jurisdictions already have the PDA's and PCA's in place consistent with the chart in the Plan (located in the page after the Table of Contents). The Plan is actually imprecise on the exact boundaries of the PDA's and PCA's, and thus lacks substantial evidence to support their designations. With respect to the PCA's, they are simply dots on a map. With respect to the PDA's, there is nothing indicating the source of PDA boundaries. If all or some of the PDA's and PCA's are proposed by MTC and ABAG, but not yet enacted into law, then the Plan must clearly articulate this fact to provide full disclosure. Its failure to do so is telling, particularly in light of the fact that SB 375 mandates greenhouse reductions within a certain timeframe.

47. Further, there is no discussion whatsoever of the timeframe and cost of such legislative enactments. The Plan misleadingly implies that massive legislative process is already in place, and that a mere vote to adopt the Bay Area Plan will magically result in all of its desired

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PDA's and PCA's. That is simply not the case, as many local jurisdictions have land use laws which cannot be amended without voter approval, and the PDA's violate voter approved urban growth boundary laws. (Alameda County Measure D is but one example.)

Improper Delegation of Legislative Functions to a Non-Elected Entity, with Resulting Impact on Republican Form of Government as Well as Violation of State Constitutional Home Rule Guaranty

48. Article IV, Sec. 4 of the U.S. Constitution provides that "Congress shall guarantee to every state in this union a republican form of government." A "republican government," has three distinct characteristics: popular rule, the lack of a monarchy, and the rule of law. It is presumed, for judicial purposes, that all of the existing state governments at the time of the Constitution's ratification met these three criteria. (*In re Pfahler*, 150 Cal. 71, 78 (1906).)

49. It is a "cardinal principle" of California law that "the legislature cannot delegate the power to make laws to any other authority or body." *Board of Harbor Comm'rs v. Excelsior Redwood Co.*, 88 Cal. 491,493 (1891); *see also, Davidson v. County of San Diego*, 49 Cal. App. 4th 639, 648 (1996) ("A governmental entity may not, through contract or legislation, abdicate its police power.") Any delegation of legislative power must be accompanied by safeguards "adequate to prevent an abuse of that power." *State Bd. of Education v. Honig,* 13 Cal.App.4th 720, 750 (1993).

50. The Cal. Const. Art. XI, Section 5(a) provides: "It shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters." It provides further that "charters adopted pursuant to this Constitution shall supersede any existing charter, and with respect to municipal affairs shall supersede all laws inconsistent therewith." (Cal. Const. Art. XI, Section 5(a).) Because land use and zoning decisions are generally considered municipal affairs under home rule, it is apparent that the drafters of section 5 intended it to insulate local land use decisions from state extortion. Indeed, it is the legislature's intent to "provide only a minimum of limitation in order that counties and cities may exercise the maximum degree of control over local zoning matters." Cal. Gov. Code.

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§ 65800.

51. Notwithstanding this clear command, the Plan deliberately coerces local governments into adopting zoning ordinances, general plans, and other legislative land use enactments that are consistent with the goals of the Plan. Any local entity that fails to adopt land use and zoning plans consistent with the Plan's recommendations will lose eligibility for funding through OBAG as well as its eligibility for CEQA streamlining benefits provided for under the Plan. (Plan at 13, 73,74,75 (OBAG funding)); *Id.* at 58 (CEQA relief).) The Plan estimates total OBAG funding for local governments over the course of the plan at over $14 billion. (*Id.* at 73). The Plan thus establishes a philosophy of regionalism which, through coercive withholding of funds, attempts to force all housing and businesses into smaller and smaller jurisdictions (in this case PDA's), in violation of local autonomy, and in violation of federal law.

52. Far from complying with its narrow mandate to reduce greenhouse emissions, the Plan upends the entire local land use process. This is improper legislation by unelected, unaccountable entities.

Racial And Age Demographics

53. The Plan also relies upon a purported "increase" in "racial and ethnic diversity" to support its conclusions. (Plan at 7-8.) Yet, there is no evidence at all, let alone substantial evidence, to explain why and how racial and ethnic diversity creates a need for PDA's. The rise in percentage of populations of Latino and Asian ethnicities has no connection with the need for PDA's and none is proffered.

The Plan's Greenhouse Emissions Objective Will Cripple A Vast Segment of California's Economy With No Environmental Benefit

54. The Plan sets the lofty goal of reducing man-made climate change by reducing local greenhouse gas emissions. The Plan fails to do this at even the most basic level. The stated goal of the Plan is a 15% reduction in local greenhouse gas emissions by the year 2035. The general justification for this goal is that reducing emissions to such a degree would do something substantial to reduce the likelihood of man-made climate change. Yet, even if the Plan were to hit that target, it would only reduce global greenhouse gas emissions by less than one-half of one

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percent. In 2007 the Environmental Protection Agency estimated total global greenhouse emissions at approximately 32 billion tons per year. (*See* http://www. epa.gov/ climatechange/ ghgemissions/global.html). That same year, the California government estimated Bay Area greenhouse emissions at approximately 95.8 million tons. (*See* http:// www.mtc.ca.gov/planning/ climate/Bay_Area_Greenhouse_Gas_Emissions_2-10.pdf.) A 15 percent reduction in that amount would amount to a reduction of 14.4 million tons per year, or .045 percent reduction in global emissions.

55. A miniscule drop in global emissions would do nothing to affect man-made climate change, even assuming humanity is the cause, which is a hotly debated subject. Indeed, some climate scientists argue that anything short of a 50 percent reduction in emissions throughout the industrialized world would be ineffective in preventing catastrophic climate change. Such miniscule gains simply cannot justify the concrete costs of the Plan, estimated at $292 billion. (Plan at 62.)

The Plan On Its Face Violates the Fifth Amendment

56. The Draft Plan is a social engineering manifesto which grafts upon SB 375's narrow emissions objective as an excuse for nothing short of the complete overhaul of the Bay Area's land use process, and with it the autonomy of local governmental jurisdictions. All undertaken by two unelected, unaccountable entities. The Plan's vague and malleable reference to "equities" is nowhere mandated by SB 375. Even it did, equity calls for the establishment of low income housing in all areas of the Bay Area. PDA's are located in the most expensive, and most highly compacted and developed areas. Nothing in SB 375 mandates the creation of PDA's or PCA's, nor could it as it would violate local land use autonomy.

57. Tellingly, there is not one reference to the Constitutional ramifications of the plan. The Constitution is an essential safeguard of individual liberty against government encroachment.

58. The Fifth Amendment of the United States Constitution mandates just compensation for a taking of private property for public use. The Plan imposes a draconian requirement that *all* non-agricultural development be crammed into the "existing urban footprint." (P. 101.) Of this,

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it appears that 80% of all non-nonagricultural development must be crammed into PDA's. (P.43.) The Plan does not demonstrate that there is sufficient vacant land within PDA's to accommodate projected population increases for 28 years in accordance with the 80% development allocation. Further, the Plan will require infrastructure to accommodate increased development, at great undisclosed cost. This results in a de facto taking of the economically viable use and the reasonable investment backed expectations of property owners in areas both inside and outside of the urban growth boundary areas. In particular, the Plan only allows "working farms" in agricultural areas, yet existing zoning allows for rural residential and residential subdivisions. As noted above, these areas are an important source of affordable housing for workers, as opposed to the exorbitant housing costs in PDA's. There is likewise no provision for just compensation to the owners of land subject to PCA's, for the severe if not complete deprivation of economically viable use and investment backed expectations.

59. The government has no authority to restrict such economic use without the payment of just compensation. Appeal to the "natural beauty of the Bay Area" (Plan at 101) is hardly a substitute for the payment of just compensation. If MTC and ABAG desire the property of landowners to advance its social engineering philosophy (which as shown above will *not* remotely advance job growth, affordable housing, or the environment), they should ensure that the government pays for the privilege. As stated 50 years ago by the United States Supreme Court in *Armstrong v. United States* (1960) 364 U.S. 40, 49, constitutional protections for property rights exist "to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." The Plan also runs afoul of the substantive due process rights of landowners under the state and federal Constitutions.

60. Further, the Draft Plan fails to acknowledge the massive expense of eminent domain proceedings to convert existing PDA's to multi-family residential zones. Neither MTC nor ABAG have the power of eminent domain. The Draft Plan fails to address precisely how fully developed PDA' s will house 80% of future residential development 66% of future commercial development over the next 28 years.

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FIRST CAUSE OF ACTION
(Writ of Mandate)

61. Petitioners hereby reallege and incorporate by reference paragraphs 1 through 60 and 70 through 99 as if fully set forth herein.

62. Pursuant to Code of Civ. Proc. Sections 1085 and 1094.5, Petitioners seek issuance of a writ of mandamus compelling Respondents to set aside and rescind all MTC and ABAG Resolutions approving the Plan, including but not limited to Resolution 4111.

63. The Plan is manifestly inconsistent on its face with CEQA by granting "streamlining" to favored developers in PDA's, in violation of state and federal equal protections guarantees.

64. The Plan violates the directive in S.B. 375 mandating compliance with federal statutory law (23 U.S.C. Section 134) and federal regulations, and in so doing fails to acknowledge or consider impacts on growth in all urbanized areas, not simply PDA's and PCA's.

65. The Plan impermissibly interferes with, and directly and indirectly affects, local jurisdictional autonomy over the land use process, in violation of the California and Federal Constitutions. This is accomplished by withholding funds from local jurisdictions which do not fall in line with the Plan's PDA and PCA land use mandates.

66. The Plan is infeasible on its face in violation of S.B. 375 as it does not identify funding sources for its mandates. It instead assumes, without substantial evidence, that legislative changes in the redevelopment process, coupled with legislative modifications to Proposition 13, will somehow be effectuated at some point in the future to provide necessary funding.

67. The Plan relies on an increase of racial "diversity" without any evidence proffered that such an increase will contribute to a purported need for low multi-family housing in PDA's.

68. There is no substantial evidence that the Plan, even if adopted, will have any effect on climate change.

69. The Plan on its face violates the Fifth Amendment of the United States Constitution.

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SECOND CAUSE OF ACTION
(Declaratory Relief)

70. Petitioners hereby reallege and incorporate by reference paragraphs 1 through 69 and 79 through 99 as if fully set forth herein.

71. The Plan is manifestly inconsistent on its face with CEQA by granting "streamlining" to favored developers in PDA's, in violation of state and federal equal protection guarantees.

72. The Plan violates the directive in S.B. 375 mandating compliance with federal statutory law (23 U.S.C. Section 134) and federal regulations, and in so doing fails to acknowledge or consider impacts on growth in all urbanized areas, not simply PDA's and PCA's.

73. The Plan impermissibly interferes with, and directly and indirectly affects, local jurisdictional autonomy over the land use process, in violation of the California and Federal Constitutions. This is accomplished by withholding funds from local jurisdictions which do not fall in line with the Plan's PDA and PCA land use mandates.

74. The Plan is infeasible on its face in violation of S.B. 375 as it does not identify funding sources for its mandates. It instead assumes, without substantial evidence, that legislative changes in the redevelopment process, coupled with legislative modifications to Proposition 13, will somehow be effectuated at some point in the future to provide necessary funding.

75. The Plan relies on an increase of racial "diversity" without any evidence proffered that such an increase will contribute to a purported need for low multi-family housing in PDA's.

76. There is no substantial evidence that the Plan, even if adopted, will have any effect on climate change.

77. The Plan on its face violates the Fifth Amendment of the United States Constitution.

78. An actual and justiciable controversy exists between the parties concerning the Plan's failure to proceed in a manner required by law regarding the foregoing deficiencies. A judicial determination of rights and responsibilities arising from this actual controversy is necessary and

appropriate at this time.

THIRD CAUSE OF ACTION
(Taxpayer Injunctive Relief)

79. Plaintiffs Rosa Koire and Michael Shaw hereby reallege and incorporate by reference paragraphs 1 through 78 and 86 through 99 as if fully set forth herein.

80. Code of Civil Procedure section 526a is one of the most liberally construed code sections. As interpreted by the courts, this section provides a taxpayer the right to obtain a judgment preventing any illegal activity or expenditures by a public agency.

81. Section 526a provides in part as follows:

> An action to obtain a judgment, restraining and preventing any illegal expenditure of, waste of, or injury to, the estate, funds, or other property of a county, town, city or city and county of the state, may be maintained against any officer thereof, or any agent, or other person, acting in its behalf, either by a citizen resident therein, or by a corporation, who is assessed for and is liable to pay, or, within one year before the commencement of the action, has paid, a tax therein. . . .

82. California courts have held that the primary purpose of the statute enacted in 1909 is to "enable a large body of the citizenry to challenge governmental action which would otherwise go unchallenged in the courts because of the standing requirement . . . California courts have consistently construed Section 526a liberally to achieve this remedial purpose" and have held it applicable to all California public entities, including Defendants and Respondents.

83. Defendants and Respondents through the enactment of the Plan have violated Code of Civil Procedure section 526a through the unlawful conduct described above.

84. Plaintiffs Rosa Koire and Michael Shaw bring this action in part under Code of Civil Procedure section 526a as individual taxpayers and on behalf of others who are similarly situated or affected by defendants' conduct. Plaintiffs have been assessed and paid taxes in defendants' jurisdiction within one year before the commencement of this action.

85. The actions of Defendants and Respondents, and each of them, are unlawful and have caused and will continue to cause plaintiffs irreparable harm, damage, and injury.

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FOURTH CAUSE OF ACTION
(Equal Protection)

86. Petitioners and Plaintiffs hereby reallege and incorporate by reference paragraphs 1 through 85 as if fully set forth herein.

87. The Equal Protection Clause provides that "no state shall deny any person within its jurisdiction the equal protection of law." When a government crafts laws which treat individuals differently who appear to be similarly situated, it must provide a reason for the disparate treatment that is rationally related to the protection of the public, and consistent with the general purpose of the law. *Reed v. Reed,* 404 U. S. 71, 75-76 (1971).

88. Plaintiffs and Petitioners allege that the Plan's CEQA streamlining provisions grant preferential treatment to those seeking development permits for low-income housing construction and for those seeking permits for construction within PDA's.

89. Plaintiffs and Petitioners further allege that this disparate treatment violates the Equal Protection Clause because it is not substantially or rationally related to the protection of the public health or safety, or to CEQA's stated purpose of environmental protection.

Preference for low income housing

90. Under CEQA all development projects must submit to a lengthy and extensive screening process prior to approval in order to determine the environmental impact of the project.

91. SB 375 provides that projects that are consistent with the Plan may be eligible for a reduced or "streamlined" review process. (Plan at 58). In other words, projects that are consistent with the Plan are permitted to circumvent some of the environmental review requirements of CEQA. Projects that are inconsistent with the Plan are not eligible for this "streamlined" review. One statutorily mandated goal of the Plan is to ensure that new developments provide sufficient low-income housing. (Plan at 4-5)

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92. Accordingly, Plaintiffs and Petitioners allege that consistency with minimum low-income housing density goals is necessary for CEQA streamlining, and that this creates a soft quota for low-income developments within any given area.

93. This preferential treatment for low-income developments is not substantially or rationally related to the purpose of CEQA, the protection of the environment, or the protection of the public health and safety.

94. Upon information and belief, Plaintiffs allege that public funds are used to administer or enforce this discriminatory policy.

Preference for development within PDA's

95. Like the low income housing developments mentioned above, proposed construction within PDA's is eligible for CEQA streamlining under the Plan. (Plan at 58).

96. Because the Plan calls for limiting the vast majority of new development to PDAs, this would eliminate traditional CEQA requirements for the vast majority of new development projects over the next thirty years. (*See* Plan p. 55 ["over two thirds of all regional growth by 2040 is allocated within [PDA's]"].)

97. Eligibility for streamlining under the Plan is triggered by the location of the project within a PDA and not by the project's possible environmental impact. Accordingly, under the Plan a proposed development within a PDA that poses substantial environmental risks could be subject to less CEQA oversight than a proposed development just outside of a PDA that poses a substantially lower environmental risk.

98. Plaintiffs and Petitioners allege that this arbitrary line drawing violates the Equal Protection Clause because it is not substantially or rationally related to the protection of the public health or safety.

99. Upon information and belief, Plaintiffs and Petitioners allege that public funds are used to administer or enforce this discriminatory policy.

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PRAYER FOR RELIEF

Wherefore, Plaintiffs and Petitioners pray for judgment against Respondents and Defendants as follows:

1) Issuance of an alternative and peremptory writ of mandate directing Respondents and Defendants to set aside, vacate, and rescind all MTC and ABAG resolutions relating to the approval of the Plan, including Resolution 4111.

2) A preliminary and permanent injunction and/or stay enjoining Respondents and Defendants, their agents, servants, employees, and volunteers, and all persons acting under, in concert with, or for them, from enforcing the Plan (including all associated approvals).

3) A declaration consistent with Plaintiffs and Petitioner's claims for declaratory relief that establishes the rights and obligations of the Defendants and Respondents with respect to SB 375 and state and federal constitutional mandates, and avoids a multiplicity of suits and waste of funds based on uncertainty regarding these provisions, including but not limited to, a declaration consistent with Plaintiff and Petitioner's claims for declaratory relief.

4) An award to Petitioner and Plaintiffs of their costs and reasonable attorneys' fees as permitted by law, including without limitation Code of Civil Procedure section 1021.5.

5) Such other and further relief as the Court may deem just and proper.

DATED: 3-6-14

KASSOUNI LAW

By: _____
TIMOTHY V. KASSOUNI,
Attorneys for Plaintiffs and Petitioners

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VERIFICATION

I, Timothy V. Kassouni, declare that I am an attorney at law admitted to practice before all courts in the State of California and have my office in Sacramento County, California. I am the attorney of record for Plaintiffs and Petitioners in this action. Plaintiffs and Petitioners are absent from the County of Sacramento, and for that reason I make this verification on their behalf. I have read the foregoing First Amended Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief, and know the contents thereof. The same is true of my own knowledge except as to those matters which are 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: 3-6-14

KASSOUNI LAW

By: _____
TIMOTHY V. KASSOUNI,
Attorneys for Plaintiffs and Petitioners