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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

OPENING BRIEF OF PETITIONERS THE POST SUSTAINABILITY INSTITUTE, ROSA KOIRE, AND MICHAEL SHAW

Date: October 21, 2014
Time: 1:30 P.M.
Dept: 31
Judge: Hon. Evelio M. Grillo

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INTRODUCTION

Respondents Association of Bay Area Governments (ABAG) and Metropolitan Transportation Commission (MTC), have foisted upon nine counties and 101 cities a "sustainable communities strategy" that will effectively replace local governmental autonomy with regional rule by unelected, unaccountable agencies, thereby upending the core principles of checks and balances upon which our republic is based. ABAG and MTC have latched onto the Legislature's S.B. 375 greenhouse gas reduction directive as a means of imposing a radically aggressive land use ideology on Bay Area citizens

The concept of "sustainable development" (i.e., development that "meets the needs of the present without compromising the ability of future generations to meet their needs") is decades old, with its origin in the 1977 Constitution of the former Soviet Union. AR 039476. The concept has now become the ideology of virtually every planning department in the United States, and the term "sustainable" is used by marketing executives to impart a warm sense of environmental responsibility on the buying public.[1]

Unfortunately, the "sustainable development" outlined in Plan Bay Area can only be accomplished through the usurpation of local land use autonomy, the wrongful and infeasible classification of land into either "priority development areas" (PDAs) or "priority conservation areas" (PCAs), and the confiscation of private property through uncompensated use restrictions. The PDAs described in Plan Bay Area are already admitted by ABAG and MTC to be at full or near full capacity. Yet Plan Bay Area is designed to further impact these areas with denser populations thereby forcing the populace to work and live in these areas, thus driving up already high housing costs to the detriment of low income families. Property owners in PCAs will no longer have a legal right to use their land in order to effectuate the forced migration of the populace from relatively inexpensive low-density housing into pre-defined, highly dense and costly population clusters.

In short, Plan Bay Area eliminates through government fiat a level competitive playing

[1] See AR 039025-039040, and 037499-037501 for more in depth discussion of the origins of sustainable development and the regionalist movement. These are the comment letters of Petitioners Post Sustainability Institute and Michael Shaw.

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field for low and middle income families who need affordable housing, and for businesses who wish to provide employment opportunities in non-PDAs. As non-PDAs comprise 95% of the land area in the nine-county, 101 city "region," the economic effects will be draconian.

Only those local governmental jurisdictions who "toe the line" and adopt Plan Bay Area land use policies will be rewarded with a share of $14.6 billion in federal money, a bribe in common parlance. Only those private property owners who likewise "toe the line" and build in PDAs will be granted preferential "streamlined" treatment under the California Environmental Quality Act (CEQA), an equal protection violation.

Plan Bay Area violates the S.B. 375 feasibility mandate, usurps local land use autonomy in violation of the State Constitution, violates State and Federal Equal Protection guarantees, and utterly ignores the Federal mandate that the economic interest of all metropolitan areas be considered and respected. Indeed, an independent study commissioned by MTC and ABAG acknowledges that Plan Bay Area is infeasible and risky as it relies on redevelopment laws that no longer exist, the extinguishment of a State Constitutional property tax provision, and the creation of new bond measures in order to finance its policies. To make matters worse, it is widely recognized that even if S.B 375's greenhouse reduction targets are met, the effect on the environment will be virtually nil.[2]

As will be shown, ABAG and MTC have failed to proceed in a manner required by law, and key components of Plan Bay Area lack substantial evidence.

FACTUAL AND PROCEDURAL BACKGROUND

A. Regional Transportation Plans

Federal and state law require that MTC, as the designated metropolitan planning organization, prepare and regularly update a regional "transportation plan." *See* 23 U.S.C. § 134(c), (i); 49 U.S.C. § 5303(i); Gov't Code § 65080(a). This 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

[2] AR 039470-039471.

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1 States." 23 U.S.C. § 134(c)(2); Gov't Code § 65080(b)(1). Related thereto, The California Global
2 Warming Solutions Act of 2006 (popularly known as A.B. 32), mandates a reduction of
3 greenhouse gas emissions to 1990 levels by 2020. Health & Safety Code §§ 38550, 38551.
4 To implement A.B. 32's policy, the legislature passed S.B. 375, the Sustainable
5 Communities and Climate Protection Act of 2008. S.B. 375 seeks to ensure that the existing
6 transportation planning process be coordinated with A.B. 32's greenhouse reduction mandate, as
7 well as to be integrated with the existing state-mandated housing planning process.
8 **B. Greenhouse Gas Reduction Targets and Plan Bay Area**
9 S.B. 375 seeks to implement A.B. 32 by requiring metropolitan planning organizations
10 such as MTC to produce a "sustainable communities strategy," which must be integrated with a
11 region's transportation plan. Gov't Code § 65080(b)(2). For the Bay Area, MTC and ABAG have
12 joint responsibility for production of this strategy. Gov't Code § 65080(b)(2)(B). S.B. 375
13 requires that the strategy set forth a feasible method of meeting specific greenhouse gas targets,
14 and identify areas within the Bay Area sufficient to house the region's anticipated population.
15 On July 18, 2013, MTC and ABAG adopted Plan Bay Area, the Regional Transportation
16 Plan and Sustainable Communities Strategy for the San Francisco Bay Area 2013-2040 (Plan
17 Bay Area). Plan Bay Area was adopted by means of Resolution No. 4111 (Resolution). AR
18 000257.
19 Plan Bay Area is a 150-plus page document covering various aspects of transportation,
20 zoning, and property development within nine Bay Area counties, including Alameda County
21 and Sonoma County, California, and 101 cities. However, Gov't Code § 65080(b)(2)(K) provides
22 that "nothing in [Plan Bay Area] shall be interpreted as superseding the exercise of the land use
23 authority of cities and counties within the region." Therefore on paper Plan Bay Area cannot
24 usurp local autonomy. As will be shown that is not the case.
25 A key component of Plan Bay Area is the relationship between A.B. 32, S.B. 375, and
26 federal funding of state and local transportation programs. In July, 2012 a federal law known as
27 MAP-21 (Moving Ahead For Progress in the 21st Century Act), P.L. 112-141, H.R.4348, was
28

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enacted, which provides $105 billion in transportation funding.[3] 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.)

C. Priority Development and Priority Conservation Areas

Plan Bay Area attempts to hit the greenhouse target by reducing vehicular traffic. This in turn is purportedly achieved by concentrating future land development in designated high density PDAs, which are described as "transit oriented, infill development opportunity areas within existing communities that are expected to host the majority of future development." AR 055679. Plan Bay Area anticipates the need for 660,000 housing units to accommodate future growth. AR 055650. Of these units, 509,000 (or 78 percent) are to be contained in PDAs, although PDAs comprise only 5 percent of the Bay Area. AR 055635; 055666.

Certain areas outside of PDAs are referred to as Priority Conservation Areas (PCAs). These are described as "over 100 regionally significant open spaces...which face nearer-term development pressures," although the term "development pressure" is undefined. AR 055660. As will be shown, Plan Bay Area seeks to drastically limit, if not outright ban, any development within PCAs in order to force the populace to work and live in PDAs. Plan Bay Area does not address constitutional just compensation for these property owners, and the restrictions will apply regardless of the date of ownership.

D. One Bay Area Grant Program funds

The primary means by which Plan Bay Area purports to limit future development to PDAs is by coercing constitutionally autonomous governmental entities (cities and counties) into mapping PDAs and PCAs in their general plans and zoning ordinances in order to receive One Bay Area Grant Program (OBAG) funds. OBAG, adopted and implemented by 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. AR 055679. OBAG "rewards jurisdictions that focus housing growth in [PDAs] through their planning and zoning

[3] MAP-21 is available at http://www.gpo.gov/fdsys/pkg/BILLS-112hr4348enr/pdf/BILLS-112hr4348enr.pdf. MAP-21 adopts a number of provision of the United States Code, including provisions in Title 23 and Title 49.

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policies, and actual production of housing units" (AR 055636), and is designed to "support jurisdictions that focus housing growth in Priority Development Areas through their planning and zoning policies, and their production of housing units" (AR 055679).

Gov't Code § 65080(b) 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." This federal statute requires consideration of the economic interest of all urban areas, not simply PDAs. As will be shown, this federal statute has been ignored to the detriment of residents in 95 percent of the Bay Area.

Petitioners timely filed comments to the Draft Plan Bay Area (AR 039453; 039025; 037499), and thereafter commenced this action for writ of mandate, among other relief.

STANDARD OF REVIEW

Code of Civil Procedure § 1094.5(b) provides that the inquiry in mandamus cases shall extend to the question of whether there was prejudicial abuse of discretion, which is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence. The trial court need not defer to the administrative agency, and retains final authority for the interpretation of the law under which an administrative agency acts. *Kaiser Found. Health Plan, Inc. v. Zingale* (2002) 99 Cal.App.4th 1018, 1028. Findings must be supported by substantial evidence, and the question of whether the findings support ultimate agency determinations is one of law for de novo review. *Topanga Ass'n for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515. The question of whether Respondents failed to proceed in a manner required by law is reviewed de novo. *California Teachers Assn. v. Butte Community College Dist.* (1996) 48 Cal.App.4th 1293, 1299.

Petitioners contend that Respondents failed to proceed in a manner required by law as to all arguments. Additionally, as to Sections I, IV, and V, *infra*, Petitioners contend that Plan Bay Area is not supported by the findings, and that the findings are not supported by the evidence.

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ARGUMENT

I. PLAN BAY AREA IS INFEASIBLE, IN VIOLATION OF THE EXPRESS S.B. 375 MANDATE

S.B. 375 mandates the preparation of a sustainable communities strategy by each metropolitan planning organization. Government Code § 65080(b)(2)(B). That section provides in part:

> "The sustainable communities strategy *shall*...(vii) set forth a forecasted development pattern for the region, which, when integrated with the transportation network, and other greenhouse gas emissions from automobiles and light trucks to achieve, *if there is a feasible way to do so,* the greenhouse gas emission reduction targets approved by the state board."

(Emphasis added.) [4] ABAG and MTC are jointly responsible for satisfying this feasibility mandate. *See* Gov't Code § 65080(b)(2)(C).

This Court need not determine what is meant by the term "feasible," as it is defined in Gov't Code § 65080.01(c): "The following definitions apply to terms used in Section 65080:..'Feasible' means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors."

Plan Bay Area's greenhouse gas emissions reduction targets are therefore *required* to be capable of being successfully accomplished within a reasonable period of time. Plan Bay Area concludes that its target has been met:

> Through combinations of denser land use patterns focused in Priority Development Areas, increased investments in the region's public transit infrastructure, and enhanced funding of climate initiatives such as electric vehicle adoption incentives, Plan Bay Area not only meets but exceeds its greenhouse gas (GHG) emissions reduction target.

(AR 55693.)

As will be shown, however, Plan Bay Area is patently infeasible based upon an independently commissioned study, and the document itself does not even address, let alone satisfy, the feasibility mandate of Gov't Code § 65080(b)(2)(B). Thus MTC and ABAG have

[4] The Bay Area's target is a 7 percent per capita reduction by 2020 and a 15 percent per capita reduction by 2035. (AR 055631.)

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1 failed to proceed in a manner required by law, and Plan Bay Area lacks substantial evidence to
2 support the feasibility mandate. Both constitute abuse of discretion and are grounds for granting
3 the petition for writ of mandate.

4 Indeed, Plan Bay Area acknowledges that in order to make "progress" toward land use
5 performance targets, no less than four discrete federal and state legislative changes are needed:
6 1) support of PDA development with "locally controlled funding" (i.e., the need for new
7 legislation to establish redevelopment agencies); 2) the "defiscalization" of land use decision
8 making (i.e., the extinguishment of Proposition 13 as now embodied in the State Constitution);
9 3) stabilization of federal funding levels; and 4) modernization of CEQA. AR 055711-055712.

10 The admitted need for radical legislative changes hardly satisfies S.B. 375's feasibility
11 mandate.

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12 **A. The independent Priority Development Area Development**
13 **Feasibility And Readiness Assessment report admits**
that redevelopment will be needed to achieve development objectives,
14 **yet redevelopment agencies have been abolished in California**

15 In conjunction with Plan Bay Area, ABAG and MTC commissioned the preparation of an
16 independent Priority Development Area Development Feasibility and Readiness Assessment
17 report. (Feasibility Report.) The express purpose of this report is to "provide a deeper
18 understanding *and independent assessment of the readiness and feasibility* of PDA's to
19 accommodate the number of housing units envisioned by Plan Bay Area." AR 035794, emphasis
20 added. This document is referenced as a background document in Plan Bay Area (AR 055716),
21 and the document is located at AR 035790. It was prepared by the Berkeley urban economics
22 consulting firm Economic Planning Systems, Inc. (EPS.) AR 035792. Plan Bay Area otherwise
23 does not mention, reference, or refer to the findings and conclusions of the Feasibility Report—a
24 telling omission and a glaring violation of the mandate of Gov't Code § 65080(b)(2)(B).

25 In the opening page of the Feasibility Report, EPS acknowledges that Plan Bay Area
26 relies upon "legislative changes needed to support the proposed pattern of growth." AR 035794.
27 The Feasibility Report also sets forth its analytical framework:
28

> The new assessment estimates the ability of the PDA's in the sample to accommodate new residential development consistent with Plan Bay Area residential forecasts. The report estimates the amount of housing that can be produced assuming baseline current conditions and the increase in the number of housing units that could be produced if select key barriers to development can be addressed by policy or financial interventions over the 30 year time horizon of Plan Bay Area.

AR at 035794-035795.

EPS outlines a number of constraints rendering Plan Bay Area infeasible: policy, market, infrastructure, site location, financing, and financial feasibility constraints. AR 035797. In its Summary of Findings and Recommendations, EPS found:

> *Substantial development capacity exists in the PDAs given current local land use policy* as applied to identified opportunity sites potential development sites but some upzoning or increase in allowable densities will be required to meet the Plan Bay Area growth allocations... [I]n aggregate the current land use policies for the 20 PDAs in the sample currently represent physical capacity for 92 percent of the housing growth that has been allocated to them in Plan Bay Area.

AR 035795, emphasis added.

The reference to required "upzoning" or "increase in allowable densities" renders Plan Bay Area woefully infeasible. No attention is given to the elephant in the room, namely the feasibility (or lack thereof) of all nine counties and 101 cities adopting the requisite legislation to amend their general plans, specific plans, and zoning ordinances to establish the PDAs and PCAs desired by ABAG and MTC, all within a "reasonable period of time" as mandated by Government Code § 65080.01(c). This assumes in the first instance that all 110 local jurisdictions initiate the process for requisite legislative amendments, a point on which Plan Bay Area is silent.[5] Further, most of these jurisdictions must comply with Government Code provisions regarding requisite procedural requirements for such legislation. (*See* Gov't Code § 65853 et seq.) There must also be requisite consistency between the zoning ordinance, the specific plan, and the general plan of each local jurisdiction, which the Plan fails to address.

[5] The Feasibility Report noted two examples of local policy restraints which directly conflict with Plan Bay Area: the City of Alameda's "Measure A" prohibition of multifamily housing development and San Jose's phasing requirement linking housing development to net new non-residential square footage in North San Jose. AR 035797.

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More specifically, with respect to site location constraints, EPS found that "[w]hile there are some vacant sites in most PDA's much of the development capacity in the PDAs will be derived from redeveloping existing commercial land uses with new multifamily or mixed use development." AR 035797. Elsewhere EPS found that "[i]n most PDA's the majority of the new development envisioned will be built within an existing urban framework including on *existing developed sites that will need to be assembled and redeveloped.*" AR 035830, emphasis added.

Thus it is acknowledged that only through the "redevelopment" of existing commercial land uses can Plan Bay Area achieve its objectives. However, redevelopment agencies in California have been abolished. Echoing the feasibility concern raised by EPS, Plan Bay Area acknowledges the need for a legislative redevelopment solution:

> The Association of Bay Area Governments based its housing production forecast on expected house hold income and demand, past housing production trends, and local plans (including planned zoning changes). *It also assumed the following*:
>
> • Existing policies and programs to produce housing will be retained and enhanced.
>
> • *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.*

AR 055654, emphasis added. However, Plan Bay Area's wild assumption that a "replacement mechanism" will be found hardly satisfies the feasibility requirements of S.B. 375. The plan provides nothing in the way of evidence to support its assumption that somehow, at some indefinite time, the political process will remedy this deficiency. Redevelopment will be crucial if Plan Bay Area is to reach its stated objective of the creation of 509,000 new multi-family housing units in PDAs by 2040. There is no existing redevelopment alternative available to subsidize housing costs, and most PDAs are in redevelopment areas. Thus, there is admittedly no existing, *feasible* substitute for the admitted loss of $1 billion per year in tax-increment financing to support affordable housing projects. Plan Bay Area acknowledges as much:

> Until last year, Bay Area jurisdictions could count on redevelopment programs for over $1 billion per year in tax-increment financing to support affordable housing projects, critical infrastructure improvements, and economic development projects in designated areas of many cities and counties. ***This funding stream was lost in 2012 as a result of the elimination of redevelopment agencies throughout the state.***

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AR 055711, emphasis added. With PDAs already at full or near full capacity (EPS cites an average capacity of 92 percent (AR 035795)), a redevelopment replacement mechanism is not just desirable, it will be essential if Plan Bay Area is to feasibly satisfy the mandate of S.B. 375.

B. Plan Bay Area further relies on the assumption that the political process will extinguish the super majority voting requirement and the property tax components of Proposition 13

In addition to the assumption that a replacement mechanism for redevelopment areas will somehow emerge within a reasonable period of time (with no evidence to support such as assumption), Plan Bay Area further relies on the *assumption* that the political process will extinguish the super voting majority requirement of Proposition 13, which is codified into law as Art. XIII A, Sec. 2(a) of the California Constitution. The Feasibility Report highlights this material flaw in Plan Bay Area, and recognizes that "to achieve the transportation and land use patterns included in Plan Bay Area so that the region can achieve its greenhouse gas emission reductions there are a range of ***state legislative changes, resource allocation changes, and interagency coordination efforts that will be required.***" AR 035835, emphasis added. Among these *required* legislative changes is local government fiscal reform:

> The structure of property taxes in California is a major obstacle to creating a balanced regional growth pattern primarily because new housing is frequently perceived as generating more municipal service costs than municipal revenues... Fiscal reform efforts should support long-term adjustment to commercial or residential tax rates to balance the financial incentives for new development.

Feasibility Report, AR 035836.

Plan Bay Area echoes the necessity of an adjustment to commercial or residential tax rates: "[t]he structure of property taxes in California is a major obstacle to creating a balanced regional growth pattern." AR 055712. Yet the only possible legislative change to residential tax rates is the extinguishment of Proposition 13—the State Constitutional provision which ties property taxes to a percentage of the cash value of a property at the time of purchase, and which establishes a super-majority voting requirement for new taxes. Cal. Const. Art. XIII A, Sec. 2(a).

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In short, Plan Bay Area must rely on the amendment of our State Constitution in order to satisfy the feasibility mandate of Gov't Code section 65080(b)(2)(B).[6]

C. The Feasibility Report recognizes that new infrastructure spending is required in order to implement Plan Bay Area

In addition to the need for a redevelopment agency replacement mechanism and a Constitutional amendment to extinguish Proposition 13, the Feasibility Report further outlined the need for a "new state infrastructure funding program for local governments pursuing SB 375 objectives." AR 035836. This is especially crucial for the feasibility of Plan Bay Area, as elsewhere the Feasibility Report noted that "[m]ost 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."* AR 035828.[7]

As a solution, the Feasibility Report highlighted the possibility of a bond measure to be adopted by California voters as a mechanism to enhance feasibility:

> To support the implementation of S.B. 375 the state could provide new funding for infrastructure required to achieve or promote implementation of the Sustainable Communities Strategies. A bond measure (similar to the special-purpose competitive funding program created by Proposition 40) could be put before the voters. The resulting funding could be administered independently or through the currently unfunded State Infrastructure Bank and further directed as part of the *PDA Investment and Growth Strategies* prepared by the CMA's.

In short, there are simply insufficient funds to finance the broad policy objectives of Plan Bay Area, and the independent Feasibility Report highlights this glaring deficiency by citing the need for major legislative changes and constitutional amendments to satisfy the Plan's greenhouse emissions reduction targets.

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[6] There are three procedures by which the State Constitution can be amended: 1) by legislatively referred amendment (Art. XVIII, sec. 1); 2) through an initiated amended (Art. XVIII, sec. 3; Art. II, sec. 8); and 3) by constitutional convention (Art. XVIII, sec. 2).

[7] Plan Bay Area acknowledges that stabilization of federal funding levels is needed to accomplish its objectives in light of the abolishment of the HOME Investment Partnership Program and the Community Development Block Grant (CDBG) program. AR 055711. Once again, there is no discussion of the effect of this on the plan's feasibility.

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As if to remove any possible doubt that Plan Bay Area is not a sustainable solution to the SB 375 mandate, EPS emphasized the practical and legal impossibility of the greenhouse emissions targets being met when PDA's are already developed to capacity:

> 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 landassembly 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.***

AR 035828, emphasis added.

The Feasibility Plan unequivocally undercuts Plan Bay Area's conclusory assertion that it "meets" the SB 375 greenhouse emissions mandate. Unsurprisingly, Plan Bay Area can only reach this conclusion by ignoring the feasibility component of S.B. 375. There is a dearth of evidence to support the notion that the major state, county, and city legislative changes, bond measures, and constitutional amendments required to effectuate Plan Bay Area can be accomplished at all, let alone accomplished "in a successful manner within a reasonable period of time" as required by Gov't Code § 65080.01(c). A "time consuming, risky, and expensive" process is antithetical to this SB 375 mandate.

D. Plan Bay Area is not feasible even if its assumptions are realized

Even if Plan Bay Area's assumptions are realized, the feasibility requirement cannot be met. EPS analyzed 20 sample PDAs and concluded that only three (Fremont, Hayward, and San Rafael) have either the existing or projected capacity to accommodate Plan Bay Area's housing allocation. This is a mere *15 percent* of the sample PDAs analyzed by EPS. The other seventeen sample PDAs (85 percent) fail miserably in this regard, even if Plan Bay Area's assumptions are realized. AR 035812-035821. EPS analyzed a "base scenario" generally without assumptions, and an amended scenario with the assumptions built in. As an example, EPS determined that the Redwood City Downtown PDA is only capable of accommodating 36 percent of its allocation under the base scenario, and only 58 percent under the amended scenario:

> In the base scenario EPS has estimated that 1,902 new units may be achievable by 2040, which represents *only 36 percent of the Plan Bay Area allocation* to this PDA. *In the amended scenario redevelopment-type authority and financing tools are assumed to be*

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> *re-established* enhancing the viability of new development on smaller and/or currently utilized parcels. The PDA is projected to be able to accommodate 3,059 new units or *58 percent of the Plan Bay Area allocation.*

AR 035814.

The two largest regional PDA centers located in San Francisco and San Jose fall over 20 percent short of the Plan Bay Area housing allocations even with the assumptions having been realized in the amended scenario. AR 035812-035813. In the case of San Francisco, the base scenario already included an EPS "assumption" of a 40 percent "increase in zoning capacity." AR 035812. Even with this base scenario assumption, the San Francisco regional PDA fails to accommodate the Plan Bay Area housing allocation by *35 percent*. *Id.* Other examples include the Oakland/BART and South San Francisco transit town centers, and the Antioch and Walnut Creek suburban centers, which EPS estimates will fall over 40 percent short of the Plan Bay Area housing allocations even with the assumptions built in under the amended scenario.

In sum, EPS determined that under the base scenario (reflecting current conditions without the need for legislative changes, etc.) the 20 sample PDAs are able to accommodate only 62 percent of the growth allocated by Plan Bay Area. AR 35812. Even if all amended scenarios and their wild assumptions are realized, the 20 sample PDAs are able to accommodate only 80 percent of the growth allocated by Plan Bay Area. *Id.* Plan Bay Area utterly fails to acknowledge these findings, and to assess their impact on the feasibility of greenhouse gas emission reduction targets. As such, ABAG and MTC have failed to proceed in a manner required by law, and their conclusory assumption that greenhouse gas emission targets will be met lacks substantial evidence.

II. PLAN BAY AREA IMPERMISSABLY EXEMPTS FAVORED DEVELOPERS FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT IN VIOLATION OF EQUAL PROTECTION

The California Environmental Quality Act (CEQA), as contained in Public Resources Code sections 21000-21189.3, is the overarching legal framework for review of the environmental impact of development projects in the State of California. The legislature has

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declared that "the maintenance of a quality environment for the people of this state now and in the future is a matter of *statewide concern.*" Pub. Res. Code § 21000(a), emphasis added. The legislature has further declared its intention that "that all agencies of the state government which regulate activities of private individuals, corporations, and public agencies which are found to affect the quality of the environment, shall regulate such activities so that major consideration is given to preventing environmental damage, while providing a decent home and satisfying living environment for every Californian." Pub. Res. Code § 21000(g).

Only in limited circumstances may a public agency approve a project with significant environmental effects, based upon a statement of overriding considerations. Pub. Res. Code § 21081(b).

A. S.B. 375 grants MTC and ABAG authority to bestow public benefits by making consistency with the Plan a prerequisite for CEQA streamlining

Under CEQA all proposed development projects must submit to a lengthy and extensive screening process prior to approval in order to determine the environmental impact of the project. This process includes, among other things, the submission of a detailed Environmental Impact Report (EIR) describing the possible environmental effects of the proposed project, as well as hypothetical alternative projects. If, after reviewing these reports, the government deems the project too risky for the environment, or more risky than viable alternatives, the project's permit can be denied.

The fact intensive nature of this process often makes it costly and time consuming. Indeed, even ABAG and MTC note that 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." AR 055711.

Portions of S.B. 375 were adopted in response to this problem. In particular S.B. 375 added Pub. Res. Code §§ 21155-21155.3 and 21159.28. These provisions create a less burdensome "streamlined" CEQA review process for eligible projects and provide the criteria for eligibility for streamlined review.

The benefits of streamlined review are significant. Eligible projects are not required to

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produce EIR evidence of: 1) the growth inducing impacts of the project; 2) the impacts from car and light duty truck trips on global warming or regional transportation network; or 3) the reduced density alternative to proposed project. Pub. Res. Code § 21159.28. By removing these massive requirements, streamlining can save eligible developers hundreds of thousands of dollars and countless hours during the environmental review process.

One requirement for streamlining eligibility is that the proposed project be "consistent" with the regional "sustainable communities strategy," such as Plan Bay Area. Pub. Res. Code § 21159.28. Under this framework, any Plan Bay Area mandate is transformed into a prerequisite for streamlined CEQA review under state law. S.B. 375 thus empowers metropolitan planning agencies, including ABAG and MTC, to establish at least one criteria (i.e., consistency with Plan Bay Area) by which the public benefit of streamlined review is granted.

As discussed below, it is the criteria which Plan Bay Area itself creates for streamlined review, and not the creation of the streamlining process under S.B. 375, which Petitioners allege violates the equal protection clauses of the State and Federal Constitutions.

B. Plan Bay Area's criteria for CEQA streamlining are not rationally related to minimizing environmental impacts

When a law treats 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* (1971) 404 U.S. 71, 75-76. In the land use context, a classification which causes one developer or development to bear a greater regulatory burden than another must further a legitimate purpose of the law. *Cleburne v. Cleburne Living Center, Inc.* (1980) 473 US 432, 446-447.

The purpose of CEQA is to minimize unnecessary environmental impacts caused by new development. Thus, pursuant to the Equal Protection Clause of the United States Constitution, and Article I, Section 7a of the California Constitution, any distinctions drawn between property owners under CEQA must be rationally related to that end.

Plan Bay Area creates prerequisites for CEQA streamlining that fail to meet that test. Property owners whose development plans are consistent with Plan Bay Area, or those who

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choose to develop within a PDA, will be eligible for CEQA streamlining. Those who do not fall into one of these categories will remain subject to traditional CEQA mandates. Yet many of the factors that would allow a person to circumvent CEQA under Plan Bay Area's proposed reforms have nothing to do with minimizing environmental impacts, and may even increase environmental risk.

For example, under Plan Bay Area, development projects aimed at increasing low-income housing are eligible for CEQA streamlining. AR 055668. As discussed in the previous section, streamlined projects are subject to far less scrutiny regarding environmental impacts. Yet whether a building is occupied by low-income families or more affluent individuals has nothing to do with that building's environmental impact. It therefore makes little sense that such projects should be subject to reduced environmental safeguards.

Indeed, the United Supreme Court has rejected laws drawing similarly meaningless classifications in the past. In *Cleburne , supra,* 473 US 432, the Court struck down a zoning ordinance which required group care homes for the mentally disabled to get a special use permit from the city, but allowed other multifamily developments to open without a special permit. The City claimed that the permits were necessary because, among other things, it wanted to limit development in the flood plain. (*Id.* at 449.) Yet, as the Court pointed out, the ordinance did nothing to limit developments in the floodplain per se, but instead based permitting decisions on whether the building would be occupied by the disabled or some other group. (*Id.*) Because a home for the mentally challenged was no more likely to cause a danger to the flood plain than would an apartment or fraternity house of the same size, the Court found that the zoning ordinance and special use permit requirement were irrational in violation of the Equal Protection Clause.

Here the discrimination is not against the disabled but in favor of low income housing. Yet the principle remains the same. Just as the inhabitants of the proposed buildings at issue in *Cleburne* had no relevance to development impacts on the flood plain, there is no coherent argument that construction aimed at low-income families will have less effect on the environment than similar developments created for the more affluent. Thus, granting reduced

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CEQA burdens for low-income housing is irrational and violates the Equal Protection Clause.

Other criteria set forth in Plan Bay Area for CEQA streamlining eligibility are similarly irrational when viewed as a means to reduce environmental impact. For example, those who choose to develop within a PDA will be able to circumvent many of the costly and burdensome procedures that make up the CEQA review process. Those who do not will remain subject to traditional CEQA procedures. This remains true regardless of the proposed project's potential environmental impact. In fact, under Plan Bay Area's proposed rules, an environmentally risky project within a PDA 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 violates the Federal and State Constitutions.

ABAG and MTC cannot reduce environmental oversight for *favored* classes of projects without providing a rational reason for why traditional oversight for those favored projects is less necessary than for other projects. That is precisely what the Plan Bay Area does, and that is why it is unconstitutional.

III. PLAN BAY AREA IMPERMISSABLY USURPS LOCAL LAND USE AUTONOMY

A. Article XI of the California Constitution guarantees home rule

S.B. 375 purports to ensure local autonomy over the use of land use decision making process: "Nothing in a sustainable communities strategy shall be interpreted as superseding the exercise of the land use authority of cities and counties within the region." Gov't Code § 65080(b)(2)(K). Similarly, Resolution 4111 expressly states that Plan Bay Area "***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." AR 00263.

Even in the absence of these admonitions, ABAG and MTC have no authority to interfere with local land use decision making authority. The California Constitution, Article 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

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> municipal affairs, subject only to restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws. City charters adopted pursuant to this Constitution shall supersede any existing charter, and with respect to municipal affairs shall supersede all laws inconsistent therewith.

This provision is commonly called the "home rule" guarantee—*i.e.*, chartered cities are "specifically authorized by our state Constitution to govern themselves, free of state legislative intrusion, as to those matters deemed municipal affairs." *State Building and Construction Trades Council of California* (2012) 54 Cal.4th 547, 555. The provision dates back more than 100 years, and was "enacted upon the principle that the municipality itself knew better what it wanted and needed than the state at large, and to give that municipality the exclusive privilege and right to enact direct legislation which would carry out and satisfy its wants and needs." *Fragley v. Phelan* (1899) 126 Cal. 383, 387; *see also Isaac v. City of Los Angeles* (1998) 66 Cal.App.4th 586, 599 [benefits of home rule are numerous, since cities are familiar with their own local problems and can often act more promptly to address problems than the state legislature].

The California Supreme Court has recognized that the guarantee applies to all local governmental entities, including counties: "The principle of home rule involves, essentially, the ability of local government (technically, chartered cities, counties, and cities and counties) to control and finance local affairs without undue interference by the Legislature." *Amador Valley Joint Union High School Dist. v. State Board of Equalization* (1978) 22 Cal.3d 208, 245.

In determining whether a particular matter is a "municipal affair" or an issue of "statewide concern," courts must evaluate each case on its own merits. That state legislation exists which arguably infringes upon, or conflicts with, a local regulation does not automatically trump the municipality's right for its home rule to prevail:

> The fact, standing alone, that the Legislature has attempted to deal with a particular subject on a statewide basis is not determinative of the issue as between state and municipal affairs, nor does it impair the constitutional authority of a home rule city or county to enact and enforce its own regulations to the exclusion of general laws if the subject is held by the courts to be a municipal affair rather than of statewide concern; stated otherwise, the Legislature is empowered neither

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> to determine what constitutes a municipal affair nor to change such an affair into a matter of statewide concern.

Bishop v. San Jose (1969) 1 Cal.3d 56, 63.

B. Plan Bay Area is replete with coercive mandates

In contravention of the home rule guaranty, Plan Bay Area unequivocally coerces local governments into adopting land use enactments that are consistent with its goals in order to establish a regionalist government of non-elected agencies. Any local entity that fails to comply will lose eligibility for funding through OBAG as well as its eligibility for CEQA streamlining benefits. Plan Bay Area estimates total OBAG funding for local governments at $14.6 billion over the course of the plan, and $320 million over the next four years, from federal surface transportation legislation currently known as MAP-21. AR 055679.

Plan Bay Area is thus replete with coercive language designed to punish local land use authorities who fail to toe the line, including the following:

- "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."

(AR 055636.)

- [OBAG] "rewards jurisdictions that accept housing allocations through the Regional Housing Need Allocation [RHNA] process";
- "Per OBAG requirements, Congestion Management Agencies [CMAs] will develop a PDA Investment and Growth Strategy for their respective counties; this will be used to guide future transportation investments that are supportive of PDA-focused development";
- "The CMAs in larger counties...must direct at least 70 percent of their OBAG investments to the PDAs";
- "In addition to providing funding to support Priority Development Areas, OBAG requires each jurisdiction to adopt policies to support complete streets and planning and zoning policies that are adequate to provide housing at various income levels, as required by the [RHNA] process."

(AR 055679-055680.)

Plan Bay Area also states that the following "requirements" must be met before a jurisdiction is eligible for OBAG funding or CEQA streamlining:

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- "In addition to meeting MTC's 2005 complete streets requirements, a jurisdiction will now need to adopt a complete streets resolution. A jurisdiction can also meet this requirement by having 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.***"
- "A jurisdiction is ***required to have its general plan housing element adopted and certified*** by the State Department of Housing and Community Development [HCD] to be eligible for OBAG funding."
- "In concert with Senate Bill 375, the plan provides some jurisdictions with the opportunity to reduce the scope of environmental analysis required under CEQA for certain projects that are consistent with the plan."

(AR 055680; 055668, emphasis added.)

It is difficult to fathom a more "direct or indirect" obstacle to local governmental autonomy than withholding federal MAP-21 funds unless cities and counties comply with the Plan Bay Area policy mandates, Resolution 4111 notwithstanding. By analogy, suppose a first-year college student is told by her parents that she has complete autonomy to decide what she wants to major in at college, and further that the parents will place no direct or indirect obstacles to the student's chosen pursuit. Suppose further that one month later the parents inform their daughter that unless she chooses to major in pre-medicine, financial support for college will be eliminated. In this scenario, the parents have certainly directly or indirectly placed an obstacle to their daughter's choice of major.

Not only that, federal MAP-21 statutes do not grant MTC or ABAG the authority to withhold funds to cities and counties unless there is compliance with the regional transportation policies. On the contrary, it expressly mandates that the metropolitan planning process support the economic vitality of *all* metropolitan areas, not just PDAs. *See* 49 U.S.C. 5303(h). Plan Bay Area does not even acknowledge, let alone address, this federal MAP-21 mandate, in violation of S.B. 375. (This point is further addressed in Section IV, *infra.*)

Supreme Court authority construing the Spending Clause of the United States Constitution (Art. I, sec. 8) and the Tenth Amendment, is instructive. In *South Dakota v. Dole* (1987) 483 U.S. 203, 211 the Court recognized than in certain circumstances a financial inducement offered by Congress is "so coercive as to pass the point at which pressure turns into

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compulsion." (*See also Steward Machine Co. v. Davis* (1937) 301 U.S. 548, 590 (1937) [courts should scrutinize legislation to ensure that Congress is not using financial inducements to exert a "power akin to undue influence"].)

While the Supreme Court has declined to the "fix the outermost line where persuasion gives way to coercion," its recent decision in *National Federation of Independent Business v. Sebelius* (2012) 132 S.Ct. 2566, is insightful. There the Court struck down a portion of the Affordable Care Act that required states to expand Medicaid coverage to include additional classes of individuals or face a complete withdrawal of federal funding from their Medicaid programs. Likening this requirement to a "gun to the head" proposition, the Supreme Court held that the requirement violated the Tenth Amendment. *Id.* at 2604.

The Supreme Court distinguished the Medicaid expansion from other federal requirements that were approved in previous cases by pointing to the amount of funding at stake. In *Dole*, for example, the amount of funding withheld for refusing to adopt Congress's proposed drinking age amounted to a "loss of less than half of one percent of South Dakota's budget." *Id.* at 2604- 2605. By contrast, a state that opted out of the Affordable Care Act's expansion in health care coverage would stand to lose "not merely 'a relatively small percentage' of its existing Medicaid funding, but *all* of it." *Id.* In most states, that would result in a loss of more than 10 percent of their total state budget. Such draconian measures crossed the line from incentive to coercion.

Plan Bay Area is similarly coercive. Local jurisdictions must adopt land use and zoning laws consistent with the Plan or they will lose *all* OBAG funding. Plan at 75. While the percentage of the city or county budget that is made up of OBAG funds certainly varies, it will be uniformly substantial. As in *Sebelius*, withholding these funds leaves cities with a "prerogative" to reject the Plan's desired policy "merely in theory but [not] in fact." *Sebelius*, 132 S.Ct. at 2604.

Plan Bay Area's coercive attempt to strong arm local governmental entities into adopting its preferred PDA's and PCA's violates the California Constitution's home rule guaranty, as well as the express admonitions of Gov't Code § 65080(b)(2)(K) and Resolution 4111. Local

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jurisdictions must adopt land use and zoning laws consistent with the Plan or they will lose *all* OBAG funding. Plan at 75. While the percentage of the city or county budget that is made up of OBAG funds certainly varies, it will be uniformly substantial. As will be shown below, Plan Bay Area also violates federal statutes designed to ensure that federal transportation MAP-21 funding be distributed to all metropolitan areas, not simply those areas favored by unelected state bureaucracies.

IV. PLAN BAY AREA FAILS TO EVEN ACKNOWLEDGE, LET ALONE ADDRESS, THE MANDATES OF FEDERAL LAW REGARDING METROPOLITAN PLANNING AREAS

A. Respondents failed to consider all factors required by Government Code Section 65080

Elected representatives must enact laws, and cannot delegate that authority to unelected bodies. *See Board of Harbor Comm'rs v. Excelsior Redwood Co.* (1891) 88 Cal. 491, 493 [It is a "cardinal principle" of California law that "the legislature cannot delegate the power to make laws to any other authority or body."] However, some delegation of decision making to administrative bodies is necessary, with constraints. *See Mistretta v. United States* (1989) 488 U.S. 361.

First, it must be clear that the legislature made the "fundamental policy decisions" and merely left "to some other body, public or private, the task of achieving the goals envisioned in the legislation." *People ex rel. Younger v. County of El Dorado* (1971) 5 Cal.3d 480, 507. Second, and more importantly, any delegation of legislative power must be accompanied by safeguards "adequate to prevent an abuse of that power." *State Bd. of Education v. Honig* (1993) 13 Cal.App.4th 720, 750. In addition to articulating the general purpose of the statute, the legislature must also "establish an effective mechanism to assure the proper implementation of its policy decisions." *Kugler v. Yocum* (1968) 69 Cal.2d 371, 377. These safeguards are binding on unelected joint powers agencies like MTC and ABAG—agencies separated by an additional layer of bureaucracy from constituents that can otherwise hold them accountable for their actions.

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Government Code section 65080 is the mechanism by which the legislature ensures that its policy decisions are implemented, and that the safeguards are in place. That section lays out the broad goals of the planning process and provides several explicit factors that Respondents "shall consider" when making planning decisions. Respondents have a constitutional obligation to follow those mandates.

B. Government Code section 65080 mandates promotion of economic development within all urbanized areas, not merely PDAs.

Government Code section 65080(a) provides in part 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."

23 U.S.C. § 134 in turn sets forth the requirements of the metropolitan planning process for metropolitan planning areas. Among other things, this federal law mandates that the process "shall provide for consideration of ... strategies that will support the economic vitality of the metropolitan area ..." (23 U.S.C. § 134(h)(1)(A)), and that it is the federal policy to "foster economic growth and development within ...urbanized areas." 23 U.S.C. § 134(a)(1). Federal law defines urbanized area broadly to include any "area with a population of 50,000 or more designated by the Bureau of the Census, within boundaries to be fixed by responsible State and local officials in cooperation with each other, subject to approval by the Secretary." Such boundaries shall encompass, "at a minimum, the entire urbanized area within a State as designated by the Bureau of the Census." 23 U.S.C. § 134(b)(7).

Surprisingly, Plan Bay Area does not even acknowledge let alone address the mandate to foster economic growth in *all* urbanized areas, nor does it reference the factors contained in section 134 of Title 23. On the contrary Plan Bay Area allocates over two thirds of all regional growth by 2040" into its PDAs, including jobs and housing. AR 055666. These PDAs comprise a mere 5% of the land area in the nine-county, 101 city "region"—an area that Plan Bay Area acknowledges in its "Transportation and Land Uses" chart does not encompass a significant portion of the "urbanized" areas in the region. AR 055626.

Development within the remaining 95% percent of the region, much of which consists of

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1 "urbanized areas," will be subject to greater regulatory burdens than developments within PDAs,
2 as noted above. Plan Bay Area does not, and cannot, explain how channeling development away
3 from significant portions of urbanized areas into arbitrarily defined PDAs serves to promote
4 economic development within *all* urbanized areas and the broader metropolitan area.

5 Given these hard facts, coupled with Plan Bay Area's silence regarding the mandate of
6 Government Code section 65080 and 23 U.S.C. 134, MTC and ABAG have failed to proceed in
7 a manner required by law.

8 **V. GROWTH PATTERN ASSUMPTIONS ARE IMPROPERLY BASED UPON**
9 **RACIAL CLASSIFICATION**

10 A key factual premise of the initial Draft Plan Bay Area was the unsupported assumption
11 that "Increased Racial and Ethnic Diversity Will Increase Demand for Multifamily Housing." AR
12 034741. This assumption was based solely on the proposition that Asian and Hispanic
13 ethnicities have "demonstrated an historic preference for multifamily housing" and that they
14 "rely more on public transit than non-Hispanic whites." AR 034742.

15 The Draft Plan's reliance on assumptions about future housing needs are both unjustified
16 and tinged with racism. According to the Draft Plan, future changes in the Bay Area's
17 demographics—primarily an increase in Hispanic and Asian households in the area—will result
18 in an increased demand for multi-family dwellings in urban centers and a decrease in demand for
19 single family homes in commuter neighborhoods. AR 034741-034742. No empirical data
20 supported this conclusion. Nor could it, as the final Plan Bay Area concedes that single family
21 homes continue to be in demand and constitute the majority of housing production. AR 055654.
22 Instead, the Draft Plan based its claim on the absurd assumption that Hispanics and Asians *prefer*
23 to live in multifamily units (apartments) located in urban centers. AR 034742.

24 While many Hispanics and Asians live in multi-family buildings located in urban centers,
25 this is better explained by income, not some inherent racial attribute which results in a preference
26 for cramped living without a car. It is not surprising that in response to comments on this issue
27 (*see* AR 039463-039465) the final Plan Bay Area deleted language suggesting that Hispanics and
28 Asians prefer to live in multi-family housing.

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Yet Plan Bay Area does not modify its projections for the need for multi-family housing in PDA's as a result of the flawed assumption. Nor does Plan Bay Area explain how the deletion affects the feasibility of meeting the greenhouse reduction target. Indeed, Plan Bay Area still retains language, with no factual support, that ethnic diversity somehow plays a role: "Substantial shifts in housing *preferences* are expected as the Bay Area population ages and *becomes more diverse*." AR 055650, emphasis added. As this is one of three major "demographic" categories that "informed development of the plan," factual support is necessary and none exists. AR 055649-055650.

CONCLUSION

PDAs are developed to capacity, and housing within these areas is already beyond the economic means of the working class. Rather than comply with state and federal law by drafting a feasible plan that seeks to promote economic growth and opportunity for 95 percent of Bay Area residents not located in PDAs, ABAG and MTC have thrown fuel on the fire by forcing the populace to work and live in the same areas that are already at capacity.

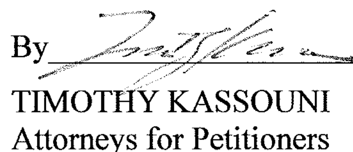
It is an unsolved mystery how this grand experiment in social engineering will accomplish anything other than further increases in housing costs to the detriment of low and middle income families, the slow but sure economic decline of the vast swaths of the Bay Area, and the dramatic reduction of CEQA environmental protection. Our country is founded upon representative government, not rule by an unelected, unaccountable agencies.

For the foregoing reasons, this Court should issue a peremptory writ of mandate directing ABAG and MTC to rescind their approval of Plan Bay Area.

July 15, 2014

Respectfully submitted,

TIMOTHY V. KASSOUNI
KASSOUNI LAW

By 

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I am employed in the County of Sacramento, State of California. I am over the age of 18 years and not a party to the within action. My business address is 555 Capitol Mall, Suite 900, Sacramento, CA 95814.

On July 15, 2014 a true and correct copy of:

OPENING BRIEF OF PETITIONERS THE POST SUSTAINABILITY INSTITUTE, ROSA KOIRE, AND MICHAEL SHAW

was placed in an overnight mail envelope addressed as follows:

Thomas Law
Tina Thomas
Amy Higuera
455 Capitol Mall, Suite 801
Sacramento, CA 95814

Counsel for Defendants and Respondents

which envelope was then processed for overnight mailing pursuant to this business's ordinary practice with which I am readily familiar. On this same day, it is deposited and collected for overnight delivery in Sacramento, California.

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

Executed at Sacramento, California, on July 15, 2014

Timothy V. Kassouni