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IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

COMMUNITIES FOR A BETTER ENVIRONMENT and THE SIERRA CLUB,
non-profit corporations,

Petitioners,

vs.

METROPOLITAN TRANSPORTATION COMMISSION, ASSOCIATION OF BAY AREA GOVERNMENTS,
and DOES 1 through 50, inclusive,

Respondents.

) Case No.:

) **VERIFIED PETITION FOR WRIT OF MANDATE**

) (California Code of Civil Procedure §§ 1085 and 1094.5; California Public Resources Code §§ 21167, 21168, and 21168.5)

1 **INTRODUCTION**

2 1. The Bay Area is experiencing a period of significant growth, and is expected to draw
3 an additional 2 million people into the area over the next thirty years.

4 2. This projected growth will have myriad effects on the region – from increasing the
5 need for transportation and housing services, to increasing the size of other economic sectors, like
6 the “goods movement” sector, which is responsible for shuttling consumer goods around the state
7 and nation through transportation hubs, such as airports, seaports, highways and railways. Growth in
8 goods movement—or freight transport—has the potential to increase diesel emissions and other air
9 pollution from ships, trucks, and trains using these transportation hubs. Though they will affect the
10 entire region, the health impacts resulting from these emissions will particularly harm those who live
11 in communities closest to transportation hubs and corridors, the majority of whom are low-income
12 and people of color.

13 3. Regional growth also has the potential to change the character of historic ethnic
14 neighborhoods, such as West Oakland, the Chinatown neighborhoods in San Francisco and Oakland,
15 and San Francisco’s Mission District, displacing low-income and minority residents, as an influx of
16 white-collar workers drives increasing prices in housing markets. Regional growth has the potential
17 to spur climate change, if the population continues to rely on greenhouse gas emitting cars and
18 trucks for its transportation needs. The Bay Area is uniquely vulnerable to the accelerating pace of
19 climate change, as many of its cities, towns, and transit routes are located in coastal areas vulnerable
20 to sea-level rise.

21 4. Respondents the Metropolitan Transportation Commission (“MTC”) and the
22 Association of Bay Area Governments (“ABAG”) serve as the Bay Area’s regional transportation
23 and land use planning agencies. These agencies are required to create a regional plan (“Plan Bay
24 Area” or “Plan”) that serves the population’s land use and transportation planning needs,
25 accommodates goods-movement, integrates transportation systems for people and freight, and moves
26 the region towards air pollution and greenhouse gas reductions goals. Failure to plan responsibly for
27 the future and establish a solid foundation to facilitate these goals has the potential to cause serious,
28 irreparable harm.

1 5. MTC and ABAG adopted Plan Bay Area on July 19, 2013. They certified the
2 environmental impact report (“EIR”) for the Plan on the same day.

3 6. In certifying the EIR, MTC and ABAG concluded that implementation of the Plan
4 would not have significant environmental effects in many areas, and that the significant effects of the
5 Plan could be mitigated.

6 7. The EIR highlights a number of flaws in the Plan. The Plan does not do enough to
7 reduce reliance on cars and trucks. Instead, it expands highways, and does not ensure enough
8 funding for much needed transportation reforms. Due to its failure to implement sufficient
9 transportation reforms, the Plan also fails to position the region to meet key greenhouse gas
10 reductions goals. Further, the Plan fails to protect the health of vulnerable communities located near
11 transportation corridors, which will see an increase in the volume of goods movement. Finally, the
12 Plan does not ensure access to affordable housing, and creates the risk that low-income residents will
13 be displaced to areas with poor access to public transit.

14 8. The EIR itself violates the California Environmental Quality Act (“CEQA”). The
15 EIR for Plan Bay Area should accurately account for the environmental effects of the Plan, and fails
16 to do so. The EIR masks the fact that the Plan does little to reform the transportation system and
17 consequently fails to make necessary greenhouse gas emissions reductions by 2040. Furthermore,
18 the EIR fails to analyze the effects of freight transport in the region, and the effects of measures
19 taken under the Plan to accommodate projected growth in freight movement in the region. The
20 EIR’s project description omits any mention of goods movement, and as a result, fails to analyze the
21 full scope of the project. Moreover, the EIR fails to adequately analyze the Plan’s contributions to
22 displacement and the environmental effects of displacement.

23 9. Petitioners Communities for a Better Environment (“CBE”) and the Sierra Club
24 (“Petitioners”) file this action to set aside certification of the EIR, produce a new EIR that fully
25 informs the public and decision makers about the true scope and environmental effects of the Plan,
26 and vacate a Plan that fails to implement robust transportation reforms, protect the health of
27 vulnerable communities, and guard against displacement.

1 **JURISDICTION AND VENUE**

2 10. This Court has jurisdiction over this action pursuant to Code of Civil Procedure
3 sections 1085 and 1094.5 and Public Resources Code sections 21167-21168.7.

4 11. Venue is proper in this Court pursuant to Code of Civil Procedure sections 393 and
5 394 because the Metropolitan Transportation Commission and Association of Bay Area
6 Governments are public agencies based in Alameda County.

7 12. Pursuant to Public Resources Code section 21167.5, Petitioners have provided written
8 notice of their intention to file this petition to the public agencies and are including the notice and
9 proof of service as Exhibit A to this petition.

10 13. Pursuant to Public Resources Code section 21167.7 and Code of Civil Procedure
11 section 388, Petitioners have served the Attorney General with a copy of this petition, along with a
12 notice of its filing, and are including the notice and proof of service as Exhibit B to this petition.

13 14. Consistent with Public Resources Code section 21167(b) and (c), Petitioners have
14 timely filed this action.

15 15. Petitioners participated in the administrative processes that culminated in the
16 agencies' decision to approve and certify the EIR for the Project through written and oral comments.
17 CBE commented on its own behalf, and also as a member of the 6 Wins Network, and raised
18 concerns regarding the transportation reforms undertaken by the Plan, the Plan's effects on
19 displacement, the need to consider alternatives such as the "Environment, Equity and Jobs"
20 alternative, and the inadequate analysis of greenhouse gas emissions and goods movement. The
21 Sierra Club commented on its own behalf and raised concerns regarding the transportation reforms
22 undertaken by the Plan – particularly the Plan's investment in highway expansion projects, the
23 feasibility of the Plan's use of priority development areas, the importance of funding priority
24 conservation areas, and the need to consider alternatives.

25 16. Petitioners have exhausted all of their administrative remedies prior to filing this
26 action.

1 20. By this action, CBE seeks to protect the health, welfare, and economic interests of its
2 members and the general public and to enforce a public duty owed to them by ABAG and MTC.

3 21. Petitioner the SIERRA CLUB (“Sierra Club”) is a national nonprofit organization of
4 approximately 600,000 members. The Sierra Club is dedicated to exploring, enjoying, and
5 protecting the wild places of the earth; practicing and promoting the responsible use of the earth’s
6 ecosystems and resources; educating and encouraging humanity to protect and restore the quality of
7 the natural and human environment; and to using all lawful means to carry out these objectives. The
8 Club’s particular interest in this case and the issues which the case concerns stem from the Club’s
9 interest in promoting an energy efficient transportation policy, that reduces reliance on fossil fuels;
10 and protecting the health of vulnerable communities. It has chapters throughout the San Francisco
11 Bay Area, including its San Francisco Bay, Redwood and Loma Prieta chapters. These chapters
12 have been active participants in the administrative proceedings leading to the certification of Plan
13 Bay Area, and have submitted comments in their name and have engaged with the agencies and
14 other stakeholders in the planning process.

15 22. Sierra Club has over 52,000 members in the Bay Area. These members live, work,
16 and recreate in the nine counties that comprise the greater San Francisco Bay Area. They rely on the
17 public transportation and highway infrastructure that serves the area, and are affected by the air
18 quality and environment of the area. They have an interest in their health and well-being, and have
19 conservation, aesthetic, and economic interests in the Bay Area environment. Sierra Club’s
20 members living and working in the Bay Area have a right to, and a beneficial interest in, ABAG and
21 MTC performing its duties under CEQA. These interests have been, and continue to be, threatened
22 by the agencies’ decision to certify the EIR and proceed with the implementation of Plan Bay Area.

23 23. By this action, Sierra Club seeks to protect the health, welfare, and economic interests
24 of its members and the general public and to enforce a public duty owed to them by ABAG and
25 MTC.

26 24. Respondent METROPOLITAN TRANSPORTATION COMMISSION (“MTC”) is
27 the transportation planning, coordinating and financing agency for the nine-county San Francisco
28 Bay Area. It served as the regional transportation planning agency (“RTPA”) under state law, and

1 the metropolitan planning organization (“MPO”) under federal law for the Plan Bay Area. It
2 conducted the environmental review of the Project and certified the Environmental Impact Report.
3 MTC acted as the co-lead agency for the purposes of CEQA.

4 25. Respondent ASSOCIATION OF BAY AREA GOVERNMENTS (“ABAG”) is the
5 comprehensive regional planning agency and Council of Governments for the nine counties and the
6 101 cities and towns of the San Francisco Bay Area. It conducted the regional population and
7 employment projects and regional housing needs allocations for the Plan Bay Area. It conducted the
8 environmental review of the Project and certified the Environmental Impact Report. ABAG acted as
9 the co-lead agency for the purposes of CEQA.

10 26. The true names and capacities, whether individual, corporate, or otherwise, of DOES
11 1 through 50 are unknown to Petitioners. Petitioners will amend this Verified Petition for Writ of
12 Mandate to set forth the true names and capacities of the Doe parties when they have been
13 ascertained. Petitioners allege that each of the Doe parties 1 through 25 has jurisdiction by law over
14 one or more aspects of the project and its approval, and that each of the Doe parties 26 through 50
15 claims an ownership interest in the Project or the property that is the subject of this action or an
16 interest in the actions of the Respondents challenged herein.

17 **BACKGROUND**

18 **I. The Community and Environmental Setting.**

19 27. The greater Bay Area is comprised of nine counties – Alameda, Contra Costa, Marin,
20 Napa, San Francisco, San Mateo, Santa Clara, Solano and Sonoma County. The region is home to a
21 racially and economically diverse population of approximately 7 million individuals. The
22 population is distributed through major cities such as San Francisco, Oakland and San Jose, as well
23 as through a wide range of suburban and rural communities, in counties like Contra Costa, Sonoma
24 and Napa. Many of the cities and towns in the region have historically ethnic neighborhoods, such
25 as West Oakland, San Francisco and Oakland Chinatown, and the Mission district.

26 28. Over the coming years, the region is expected to experience economic growth and
27 expansion, which is projected to result in the growth of freight movement throughout the region, and
28 to attract new people to the region resulting in over 9 million residents by 2040.

1 29. The area is served by various forms of public transportation, including: rail
2 properties such as Bay Area Rapid Transit (“BART”) and CalTrain, bus properties such as the
3 Alameda-Contra Costa Transit District (“AC Transit”), SamTrans and MUNI, and various ferry
4 lines. Still, residents remain heavily reliant on cars and light trucks for transportation to work.

5 30. This reliance on cars and trucks as a mode of daily transportation has significant
6 environmental impacts on the region. Ordinary combustion engines emit “greenhouse gases” such
7 as carbon dioxide, which contribute to global warming, and air pollutants such as nitrogen oxides
8 and volatile organic compounds, all of which have been shown to contribute to serious health effects
9 such as respiratory ailments and cardiovascular disease. Cars and light trucks remain the single
10 largest source of greenhouse gas emissions in the State of California, and in the Bay Area, these
11 sources are responsible for nearly 40% of greenhouse gas emissions in the region.

12 31. Over the past 30 years, there has been an increase in the number of vehicle miles
13 travelled (“VMTs”), and associated greenhouse gas emissions. The Plan does nothing to alter that
14 trajectory, and continues to increase the amount of VMTs. The agencies’ failure to shift
15 transportation patterns in the Plan is a continuation of their long-standing pattern and practice—
16 public transportation ridership has remained relatively flat over the past 20 years, despite regional
17 population increases.

18 32. The Bay Area region houses a number of key transportation hubs, through which
19 large volumes of people and consumer goods transit on a daily basis. It has three major airports –
20 San Francisco International Airport, San Jose International Airport, and Oakland International
21 Airport. It has several major ports, including the Port of Oakland, the fifth-largest port in the United
22 States. The highways that serve the area have high volumes of truck traffic carrying consumer
23 goods – I-880/80 carries the highest volume of truck traffic in the region, and I-580 has the second
24 highest volume of truck traffic in the entire nation. A number of freight railway lines also transit
25 through the region.

26 33. The movement of consumer goods through the region represents a substantial
27 component of the local economy, and is expected to grow significantly in the near future. According
28 to a 2009 goods movement study conducted by MTC, “manufacturing, freight transportation and

1 wholesale trade” constitute nearly 40% of regional output. The same study found that Bay Area
2 businesses spend over \$6.6 billion on transportation services, and goods movement businesses create
3 over 10 percent of regional employment.

4 34. The overall movement of goods nationwide and in the region is expected to increase.
5 The 2009 MTC study forecast an increase in goods movement through airports, seaports and
6 railways of 109% between 2006 and 2009. The Federal Highway Administration projects a
7 nationwide increase of 80% in freight tonnage hauled by trucks and a 73% increase in rail tonnage;
8 air cargo tonnage is expected to quadruple. Activity in California ports is expected to increase by
9 250% between the present and 2020. Due to shifting land use patterns, trucks transiting through the
10 Bay Area are expected to increase the distances travelled to deliver their cargoes. The need for
11 industrial lands is also expected to increase, as more manufacturing and warehouse space will be
12 needed, to accommodate expected increases in goods movement through airports, highways,
13 seaports and rail.

14 35. The movement of freight has serious environmental and public health implications.
15 A significant portion of the greenhouse gas emissions from transportation is due to the movement of
16 freight and goods through California. One quarter of the Bay Area’s particulate matter (PM) 2.5
17 emissions are generated in Alameda County, which hosts Interstate 880 and 80, routes heavily
18 trafficked by the trucks transporting goods from the Port of Oakland. The emissions from freight
19 vehicles like trucks and ships cause a number of adverse health effects, from increased respiratory
20 and cardiovascular ailments, to premature death. There will be a corresponding increase in these
21 emissions loads, as the volume of goods movement increases through the region.

22 36. Goods movement also heavily impacts low-income and minority communities. The
23 infrastructure that facilitates the movement of goods – the airports and seaports, and the highways
24 and railways that connect those facilities to other parts of the state – is by and large situated in low-
25 income and minority communities. These communities are burdened by adverse health effects from
26 these transportation hubs. The projected health outcomes for residents of neighborhoods like West
27 and East Oakland are drastically different from the outcomes for residents of wealthier hillside
28 neighborhoods located further from transportation infrastructure. For example, an African American

1 born in West Oakland is likely to die almost 15 years earlier than a white person born in the Oakland
2 Hills, and is five times more likely to be hospitalized for diabetes, twice as likely to be affected by
3 heart disease, and twice as likely to die of cancer.

4 **II. Statutory Framework Underlying Regional Transportation Plan**

5 37. Pursuant to 23 U.S.C. §§ 134, *et seq.*, metropolitan planning organizations must
6 develop a long-term regional transportation plan (“RTP”) every four years. MTC is the agency
7 responsible for preparing the RTP for the San Francisco Bay Area region. The last RTP for the Bay
8 Area was adopted in 2009.

9 38. The policy underlying the RTP is “to encourage and promote the safe and efficient
10 management, operation, and development of surface transportation systems that will serve the
11 mobility needs of people and freight and foster economic growth and development of surface
12 transportation systems that will serve the mobility needs of people and freight and foster economic
13 growth and development within and between States and urbanized areas, while minimizing
14 transportation-related fuel consumption and air pollution through metropolitan and statewide
15 transportation planning processes.” 23 U.S.C. § 134(a)(1).

16 39. The planning process shall include consideration of projects and strategies that will
17 “increase the accessibility and mobility of people and for freight,” and “enhance the integration and
18 connectivity of the transportation system, across and between modes, for people and freight.” 23
19 U.S.C. § 134(h)(1)(D), (F).

20 40. Federal regulations require an integrated plan which accounts for the transportation of
21 people and goods. They require RTPs to “include both long-range and short-range strategies/actions
22 that lead to the development of an integrated multimodal transportation system to facilitate the safe
23 and efficient movement of people and goods in addressing current and future transportation
24 demand.” 23 C.F.R. § 450.322(b).

25 41. The planning process shall further include projects and strategies that “protect and
26 enhance the environment, promote energy conservation, improve the quality of life, and promote
27 consistency between transportation improvements and State and local planned growth and economic
28 development patterns.” 23 U.S.C. § 134(h)(1)(E).

1 42. California Government Code §§ 65080 *et. seq.* provides the statutory framework
2 under California law for regional transportation plans. The statute directs transportation planning
3 agencies to prepare and adopt a plan “directed at achieving a coordinated and balanced regional
4 transportation system, including, but not limited to mass transportation, highway, railroad, maritime,
5 bicycle, pedestrian, goods movement, and aviation facilities and services.” California Government
6 Code § 65080(a).

7 43. The California Sustainable Communities and Climate Protection Act of 2008,
8 California Senate Bill 375 (“SB 375”), added language to the statute, which also required RTPs to
9 contain a “sustainable communities strategy.” A “sustainable communities strategy” (“SCS”)
10 consists of an integrated land use and transportation plan, which among other things, must enable the
11 region to meet the greenhouse gas emissions reduction targets set by the ARB. California
12 Government Code § 65080(b)(2)(B).

13 44. SB 375 is designed to reduce GHG emissions from cars and light trucks. The
14 legislative history of the statute emphasizes that reductions should be achieved through reducing
15 reliance on automobiles and trucks, and not through consideration of other GHG reduction
16 programs: “[T]his bill provides a mechanism for reducing greenhouse gases from the single largest
17 sector of emissions, cars and light trucks...[a]lthough greenhouse gas emissions can be reduced by
18 producing more fuel efficient cars and using low carbon fuel, reductions in vehicles miles travelled
19 will also be necessary.” Senate Rules Committee, Bill Analysis SB 375 (August 30, 2008).

20 **III. Key Features of Plan Bay Area**

21 45. MTC and ABAG jointly led the development of Plan Bay Area, in collaboration with
22 two other regional agencies, the Bay Area Air Quality Management District (“BAAQMD”) and the
23 Bay Conservation and Development Commission (“BCDC”).

24 46. The Plan is described as follows in the accompanying environmental impact report,
25 “[t]he proposed Plan Bay Area serves as the 2040 Regional Transportation Plan (RTP) for the San
26 Francisco Bay Area region as well as the region’s Sustainable Communities Strategy (SCS) as
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1 required under SB 375.” Draft Environmental Impact Report (“DEIR”) at 1.2-1.¹ The proposed
2 Plan “represents a transportation and land use blueprint of how the Bay Area addresses its
3 transportation mobility and accessibility needs, land development, and greenhouse gas emissions
4 reduction requirements through the year 2040.” *Id.* It is the first Bay Area RTP to incorporate an
5 SCS.

6 47. As stated in the EIR, “[t]he Plan aims to achieve focused growth by building off of
7 locally-identified Priority Development Areas and by emphasizing strategic investments in the
8 region’s transportation network (including a strong emphasis on operating and maintaining the
9 existing system).” DEIR at 1.2-20.

10 48. The Plan seeks to concentrate housing and job growth in areas known as “Priority
11 Development Areas,” which are existing neighborhoods, nominated by local jurisdictions, with
12 access to transit and a pedestrian-friendly environment. This strategy is intended to “enhance[]
13 mobility and economic growth by linking housing and jobs with transit to create a more efficient
14 land use pattern around transit and help achieve a greater return on existing and planned transit
15 investments.” DEIR at 1.2-24-25.

16 49. The transportation investment strategy of the Plan is intended to “support the
17 proposed Plan’s goals by reducing automobile dependency and promoting healthier communities
18 through reduced pollution and cleaner air.” DEIR at 1.2-37. Among the investments proposed by
19 the Plan are regional transit system improvements (including BART and Caltrain extensions), local
20 transit improvements, road pricing improvements, highway system improvements (including the
21 widening of particular highways, and the creation of new interchanges).

22 50. Only a small percentage of the funding of the Plan is directed to innovations in the
23 transportation infrastructure. MTC estimates that approximately \$292 billion in revenue will be
24 available through the year 2040. The majority of these funds are already dedicated to particular uses,

25 ¹ The Draft Environmental Impact Report was released for public comment on April 2, 2013, and
26 contains the project description and overview of Plan Bay Area, as well as the substantive analysis
27 of the environmental impacts of the Plan. The Final Environmental Impact Report (“FEIR”) was
28 released in July 2013 and contains revisions to the DEIR, as well as the public comments and
responses to public comments. Since the bulk of the analysis of environmental impacts is contained
in the DEIR, this Petition will refer to the DEIR, unless otherwise noted.

1 primarily in transportation operations and maintenance. Only \$21 billion, or 7% of total funds, will
2 be used for transportation expansion.

3 51. The Plan continues to expand highways, and agency projections show that daily
4 vehicle trips and miles travelled will increase under the Plan. The Plan includes some 194 projects
5 that increase freeway lane-miles, at a cost of approximately \$5.4 billion. Among the roadway
6 capacity increases proposed under the Plan is the “Regional Express Lanes Network,” which “builds
7 new high-occupancy/toll (HOT) lanes on many of the region’s most congested freeway corridors.”
8 DEIR at 2.1-25. Highway widening projects are responsible for the remainder of the freeway
9 capacity increases. Under the Plan, daily vehicle trips are expected to increase by 22%. Daily
10 vehicle miles travelled are expected to increase by 20%.

11 52. The EIR shows that under the Plan, through 2040, there will be an increase in
12 5,571,000 metric tons of greenhouse gas emissions from the transportation sector. This represents a
13 21% increase from present conditions. Yet the EIR improperly asserts that there will be a decrease
14 in emissions from passenger vehicles over time. It does so by crediting emissions reductions from
15 separate state emissions reduction programs. The EIR factors in emissions reductions from
16 Assembly Bill 1493 (“Pavley”) clean car standards, which set progressive greenhouse gas emissions
17 caps for passenger vehicles and light trucks. The EIR also factors in emissions from Executive
18 Order S-01-07, which established a low-carbon fuel standard (“LCFS”) which set goals to reduce the
19 carbon intensity of transportation fuels.

20 53. The EIR also shows that under the Plan, through 2040, there will be an increase in
21 6,769,000 metric tons of greenhouse gas emissions from various land uses (i.e., residential use, and
22 commercial, office and industrial uses). This represents a 28% increase from present conditions.
23 Only by applying emissions reductions from the Air Resources Board (“ARB”) Climate Change
24 Scoping Plan (“Scoping Plan”) implementing the California Global Warming Solutions Act (“AB
25 32”), are the agencies able to account for reductions as claimed in the EIR. The ARB Scoping Plan
26 measures included in the DEIR’s calculations are: energy efficiency programs (utility energy
27 efficiency programs, building and appliance standards, efficiency and conservation programs), heat
28

1 and combined power use programs, renewables portfolio standards, solar roof programs, solar water
2 heating and landfill methane control.

3 54. The same programs (Pavley, LCFS, and AB 32 Scoping Measures) are taken into
4 consideration when analyzing whether the Plan meets the goals of Executive Order S-3-05 (June 1,
5 2005) and Executive Order B-16-2012 (March 23, 2012). Executive Order S-3-05 recognized the
6 need to reduce greenhouse gas emissions to combat the effects of climate change, and set the
7 following targets for emissions reductions: “by 2010, reduce GHG emissions to 2000 levels; by
8 2020, reduce GHG emissions to 1990 levels; by 2050 to 80 percent below 1990 levels.” Executive
9 Order B-16-2012 recognized the importance of encouraging the development and adoption of zero
10 emissions vehicles, and sets a “California target for 2050 a reduction of greenhouse gas emissions
11 from the transportation sector equaling 80 percent less than 1990 levels.” Without reductions from
12 Pavley, LCFS and AB 32, land use and transportation emissions in the region are expected to
13 increase, and the Plan does not meet the targets set forth in these executive orders. Furthermore,
14 even with these reductions being taken into account, the Plan will fail to adequately contribute to
15 meeting the executive order targets.

16 55. The Plan situates key developments in areas that are subject to sea level rise.
17 According to the EIR, transportation investments, land use developments and residential areas will
18 be subject to sea level rise. The Plan proposes some mitigation measures to address sea level rise,
19 but states that ultimate responsibility for implementing these mitigations rests upon other local
20 agencies.

21 56. Significant concerns remain about the viability of the PDAs proposed by the Plan.
22 The Plan does little to guarantee that transportation services and improvements to serve the PDAs
23 will be adopted, or will be able to continue where they currently exist. For example, some areas
24 designated as PDAs, such as Treasure Island, the Alameda Naval/Air Station, Vallejo and Benicia,
25 do not currently have access to varied and robust forms of public transit, and transit capacity will
26 need to be increased in order to serve these areas. Several PDAs are located in coast-adjacent areas
27 that are vulnerable to sea-level rise, as well as from earthquake hazards. Additionally, several PDAs
28 are located adjacent to important natural resources, and raise concerns that they will affect the health

1 of those resources. For example, the Newark/Dumbarton PDA is located in the planned expansion
2 area for the Don Edwards National Wildlife Refuge. Still other PDAs raise concerns about the
3 feasibility of implementing the housing strategy proposed by the Plan – for example, the PDA in
4 Brisbane is currently only zoned for new industrial development, and the addition of new housing
5 will require a popular vote, raising significant concerns about the implementation of the PDA.

6 57. The Plan also creates the risk of displacement of low-income communities.
7 According to the Equity Analysis conducted by MTC and ABAG, the Plan would increase the risk
8 of displacement to overburdened renters by 36%. A number of the areas identified for development
9 as PDAs – such as Chinatown, Bayview/Hunters Point, the Mission District, and areas identified for
10 development in Richmond and along major corridors in East Oakland – have historically housed
11 renters, and have been home to long-standing, low-income communities of color. The Plan does not
12 ensure that affordable housing will remain accessible to these communities, thereby creating the risk
13 that members of these communities will be displaced to suburban areas which are further from
14 robust public transportation systems. When they do not have ready access to transit, the low-income
15 members of these communities tend to depend on older vehicles, with greater levels of emissions,
16 for their daily transportation needs. This movement will necessarily have environmental impacts.

17 58. There is very little consideration of goods movement in the Plan or EIR, despite
18 MTC’s 2004 and 2009 studies providing extensive information about projected increases in goods
19 movement through the region, the negative health effects of goods movement, and the need for
20 mitigations for the effects of goods movement. This is in marked contrast to the regional plan
21 created by the Southern California Association of Governments, which includes a detailed
22 description of goods movement in the project description, a detailed analysis of goods movement
23 through the region, and proposes a variety of mitigation measures to address the environmental and
24 health effects of goods movement.

25 59. The alternative proposals considered by the agencies perform better than the Plan in a
26 variety of ways. For example, the EIR identifies Alternative 5, the “Environment, Equity and Jobs”
27 alternative as the environmentally superior alternative due in large part to its “overall GHG
28 emissions reductions and estimated reduction in criteria and TAC [toxic air contaminants] emissions.

1 . . .” DEIR at ES-11, 3.1-148. Alternative 3, the “Transit Priority Focus” Alternative, and
2 Alternative 5, both have lower levels of vehicle miles travelled than the Proposed Plan. Alternative
3 5 has the lowest amount of vehicle miles travelled, at 2 percent lower than the proposed Plan.
4 Alternative 5 also has the greatest transportation ridership than any other plan, 6 percent more than
5 the proposed Plan. Alternative 5 is also expected to reduce more transportation and land use
6 greenhouse gases than the proposed Plan – under Alternative 5, GHG emissions are expected to
7 decline by 14 percent between 2010 and 2040, which is a two percent greater decline than the
8 proposed Plan.

9 60. Adopting the “Environment, Equity and Jobs” alternative would dramatically increase
10 transit service levels, and will result in a number of tangible benefits, including: 83,500 fewer cars
11 on the road; 3.5 million fewer miles of auto travel per day; 165,000 more people riding public transit
12 per day; and 1,900 fewer tons of carbon dioxide emissions per day and 568,000 fewer tons of
13 greenhouse gas emissions per year.²

14 **IV. Public Process Leading to Approval of Plan Bay Area**

15 61. ABAG and MTC formally initiated the scoping process for Plan Bay Area on June
16 11, 2012, when the agencies sent a copy of the Notice of Preparation (“NOP”) to the State
17 Clearinghouse within the California Office of Planning and Research.

18 62. During the period leading up to the approval of Plan Bay Area and the certification of
19 its EIR, ABAG and MTC held a number of public workshops and public hearings.

20 63. The Draft EIR for Plan Bay Area was released on April 2, 2013. Despite receiving a
21 number of requests from organizations and individuals to extend the comment period, in order to
22 fully analyze the voluminous EIR, MTC and ABAG refused to extend the comment period beyond
23 the minimum 45-day period required by CEQA.

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27 ² In fact, the actual improvements over the Plan will likely be greater, as these numbers are underestimates because this
28 alternative was modeled differently than the plan.

1 64. ABAG and MTC discussed the EIR during several public hearings. These hearings
2 culminated on July 18, 2013 in a joint ABAG/MTC hearing to approve the Final Plan and the Final
3 EIR.

4 65. Petitioner Communities for a Better Environment submitted written comments to the
5 EIR, and made comments during public hearings on the EIR. It made comments on its own behalf,
6 and also as part of the 6 Wins Network. Among the concerns raised in its comments were: the EIR's
7 analysis of greenhouse gas emissions, concerns about sea-level rise, the EIR's failure to analyze
8 goods movement issues, the EIR's failure to adequately analyze alternative proposals such as the
9 "Environment, Equity and Jobs" alternative, the EIR's compliance with CEQA, transportation
10 funding under the Plan, and the Plan's effects on displacement.

11 66. Petitioner Sierra Club submitted written comments to the EIR. Among the issues
12 raised in its comments were: concerns about the expansion of highway lanes, concerns about the
13 insufficient investment in public transportation, concerns about the viability of Priority Development
14 Areas, concerns about Priority Conservation Areas, and concerns about the EIR's failure to
15 adequately analyze alternative proposals, such as the "Environment, Equity and Jobs" alternative.

16 67. During the written comment period and public hearings on the EIR, Caltrans and
17 various other organizations and individuals commented about the planning agencies' obligation to
18 consider "goods movement" issues as part of the Plan, as well as the public health and other
19 concerns associated with truck traffic and other modes of goods transportation.

20 68. Various groups, such as the Chinatown Community Development Center and Public
21 Advocates on behalf of a coalition of groups also commented on the risks of displacement created by
22 the Plan, as well as the environmental effects of such displacement.

23 69. During a Joint ABAG and MTC meeting on June 14, 2013, the issue of "Goods
24 Movement and Industrial Lands" was raised as an "Additional Initiative" and/or "Priority for Plan
25 Bay Area Implementation." According to the agencies, such implementation measures should be
26 "added to the final Plan Bay Area as key areas for additional work by ABAG and MTC."
27 Specifically, with respect to goods movement and industrial lands issues, the agencies stated: "[t]he
28 movement of freight and the protection of production and distribution facilities has important

1 environmental, economic and equity implications for the region. Building on MTC's *Regional*
2 *Goods Movement Study* and related land use analysis, MTC/ABAG will evaluate the needs related to
3 development, storage and movement of goods through our region and identify essential industrial
4 areas to support the region's economic vitality."

5 70. During a June 20, 2013 ABAG Executive Committee Meeting, the committee voted
6 to include goods movement and industrial lands issues as a measure that would be part of the Plan
7 Bay Area.

8 71. The language added to the Plan acknowledges that "the movement of freight, and the
9 protection of production and distribution businesses have important environmental, economic and
10 equity implications for the region." Summary of Major Revisions and Corrections to the Draft Plan
11 Bay Area, pp. 28-29 (July 2013). Yet, the Plan appears to take few practical measures to deal with
12 the expected increases in goods movement and deal with the effects of these increases, other than to
13 state that the agencies will work with local businesses and jurisdictions, and other agencies, to
14 identify funding, update study information and develop best practices. Despite this inclusion of
15 goods movement language in the Plan, the EIR contains no discussion in its project description of
16 projected increases in the volume of goods movement through local transportation hubs, no
17 meaningful analysis of goods movement trends, and no analysis of how goods movement measures
18 might interact with other aspects of the Plan. Furthermore, despite having had the benefit of the
19 goods movement studies previously prepared by MTC, the EIR does not contain any of the findings
20 from those studies regarding goods movement trends, the environmental impacts of goods
21 movement, or mitigation measures that were explored in those studies.

22 72. The Final EIR was released in July 2013, prior to the final public hearing on the Plan
23 and EIR.

24 73. On Thursday, July 18, 2013, ABAG and MTC held a joint hearing to approve the
25 Final Plan and the Final EIR. The hearing was over seven hours long, and in the early hours of July
26 19, 2013, the agencies agreed to adopt the Plan and certify the EIR.

27 74. The Notice of Determination for Plan Bay Area was filed on Friday, July 19, 2013.
28

1 action” .) Additionally, “information scattered here and there in EIR appendices or a report buried in
2 an appendix is not a substitute for a good faith reasoned analysis.” (*Vineyard*, 40 Cal. 4th at 442.)

3 79. The EIR for the Project fails to properly inform the public and decision makers of the
4 basis for its conclusions. These failures include, but are not limited to, the following:

- 5 a) A failure to provide adequate information regarding funding and
6 implementation for the transportation reforms that are proposed under the
7 Plan, including transportation reforms intended to serve the Priority
8 Development Areas.
- 9 b) A failure to provide information regarding the feasibility of, and
10 implementation of, mitigation measures to combat the effects of development
11 in areas subject to sea-level rise.
- 12 c) A failure to properly analyze the environmental impacts of the miles of new
13 freeway lanes added in the Plan.
- 14 d) A failure to analyze the environmental effects of goods movement measures
15 and their integration into the RTP.
- 16 e) A failure to include, consider and analyze the information on goods movement
17 in MTC’s 2004 and 2009 reports on goods movement.
- 18 f) The EIR fails to present in an adequately informative manner the assumptions
19 upon which its land use and emissions modeling is based. Instead of clearly
20 and coherently explaining the assumptions contained in land use and
21 emissions models such as EMFAC and UrbanSim—with respect to issues
22 such as modeling for aspects of goods movement—or modeling emissions
23 reductions achieved from LCFS and Pavley, the EIR leaves the public
24 scrambling between the DEIR, the FEIR and responses to comments, various
25 appendices, and explanations separate and apart from the One Bay Area
26 website to understand the basis for the modeling done to analyze the
27 environmental impacts of the Plan.

1 g) The EIR contains misleading and unsupported conclusions that there will be
2 no environmental significance from the Plan's effects on greenhouse gas
3 emissions in the transportation sector. When analyzing the Plan's effects on
4 greenhouse gas emissions trajectories, the EIR looks at emissions from
5 various vehicle classes (i.e., passenger vehicles, trucks, buses), and then
6 subtracts emissions reductions that will be achieved from measures
7 implemented separately from the Plan, such as the Low Carbon Fuel Standard
8 and Pavley Clean Car standards. It is only these reductions from other
9 programs that result in a finding that transportation greenhouse gas emissions
10 will decline by 2040. However, the EIR makes it appear that the reduction in
11 greenhouse gas emissions is due to the Plan itself.

12 h) Likewise, the EIR contains misleading conclusions that there will be no
13 environmental significance from the Plan's effects in its analysis of
14 greenhouse gas emissions in the land use sector. When analyzing the Plan's
15 effects on greenhouse gas emissions trajectories, the EIR looks at emissions
16 from households, commercial, office and industrial land uses, and then
17 subtracts emissions that will be achieved through AB 32 Scoping Plan
18 reductions. It is only these reductions from other programs that result in a
19 finding that land use greenhouse gas emissions will decline by 2040.
20 However, the EIR makes it appear that the reduction in greenhouse gas
21 emissions is due to the Plan itself.

22 i) The EIR also contains misleading conclusions regarding the effects of the
23 Plan on displacement of low-income and minority communities, and also
24 contains misleading conclusions regarding the alternatives' ability to mitigate
25 displacement risks.

26 80. These failures precluded informed decision-making, including the informed
27 comparison of reasonable alternatives to the Project.
28

- 1 a) The project description of the EIR is not “accurate, stable and finite” – in the
2 EIR and responses to comments, the agencies have failed to consistently refer
3 to the Plan as an RTP or an SCS. The analysis changes between analyzing the
4 SCS as a distinct project and analyzing the RTP.
- 5 b) Despite the eventual approval of goods movement language in the final Plan,
6 and federal requirements that RTPs integrate goods movement measures, the
7 project description of the EIR fails to contain any discussion of goods
8 movement.

9 86. In responding to CBE’s comment raising its concerns with the treatment of goods
10 movement issues under the Plan, ABAG and MTC contend that the Plan includes “specific Trade
11 Corridor Improvement Fund (TCIF) projects,” that were identified through MTC’s 2004 and 2009
12 goods movement analyses. However, none of these projects are discussed in the project description.

13 87. The agencies also contend that the proposed Plan already includes “numerous
14 projects that provide benefits to goods movement,” such as “grade separations, investments at the
15 Oakland Army Base, dredging in Contra Costa County serving the Port of Stockton, highway
16 improvements such as truck lanes and projects that improve freeway operations.” Yet none of these
17 measures are addressed individually or collectively in the project description.

18 88. The failure to describe the Project accurately prevented the EIR from including,
19 among other things, an accurate analysis and discussion of the environmental impacts from the
20 proposal, appropriate mitigation measures, and consideration of a reasonable range of alternatives to
21 the Project.

22 89. These omissions prevent the EIR from meeting CEQA’s goals of providing an
23 “accurate, stable and finite project description,” and prevent the public from being fully appraised of
24 the environmental impacts of the proposed Plan.

25 90. The agencies’ action certifying the EIR without an adequate project description
26 constitutes a prejudicial abuse of discretion, since they failed to proceed in the manner required by
27 CEQA.

1 **THIRD CAUSE OF ACTION**

2 **Violation of CEQA (Public Resources Code Sections 21000 et seq.**
3 **and the CEQA Guidelines, Cal. Code of Regs., Tit. 14, Sections 15000 et seq.**

4 **ABAG and MTC Failed to Evaluate Environmental Effects of Proposed Project**

5 91. Petitioners re-allege, as if fully set forth herein, each and every allegation contained
6 in the preceding paragraphs.

7 92. An EIR is intended to “inform other governmental agencies and the public generally
8 of the environmental impact of a proposed project.” (Cal. Code Regs. tit. 14, §15003(c)). The
9 obligation to consider the impacts of a particular “project” are reinforced in the guidelines governing
10 evaluation of the significance of impacts from greenhouse gas emissions. (Cal. Code Regs. tit. 14,
11 §15064.4(b)).

12 93. The EIR approved by MTC and ABAG fails to evaluate the environmental effects of
13 the project, Plan Bay Area, in violation of CEQA. For example:

- 14 a) The EIR fails to focus its analysis on the Plan’s effects on greenhouse gas
15 emissions in the transportation sector. When analyzing the Plan’s effects on
16 greenhouse gas emissions trajectories, the EIR looks at emissions from
17 various vehicle classes (i.e., passenger vehicles, trucks, buses), and then
18 subtracts emissions reductions that will be achieved from measures
19 implemented separately from the Plan, such as the Low Carbon Fuel Standard
20 and Pavley Clean Car standards. It is only these reductions from other
21 programs that result in a finding that transportation greenhouse gas emissions
22 will decline by 2040. However, the EIR makes it appear that the reduction in
23 greenhouse gas emissions is due to the Plan itself.
- 24 b) The EIR fails to focus its analysis on the Plan’s effects in its analysis of
25 greenhouse gas emissions in the land use sector. When analyzing the Plan’s
26 effects on greenhouse gas emissions trajectories, the EIR looks at emissions
27 from households, commercial, office and industrial land uses, and then
28 subtracts emissions that will be achieved through AB 32 Scoping Plan

1 reductions. It is only these reductions from other programs that result in a
2 finding that land use greenhouse gas emissions will decline by 2040.
3 However, the EIR makes it appear that the reduction in greenhouse gas
4 emissions is due to the Plan itself.

- 5 c) The EIR misinforms the public by stating that the trajectory of the plans
6 greenhouse gases emissions complies with Executive Order S-3-05 and
7 Executive Order B-16-2012; and other laws and policies aimed at attaining
8 greenhouse gas emissions reductions.

9 94. These failures precluded informed decision-making regarding the effects of the Plan,
10 including the informed comparison of reasonable alternatives to the Project.

11 95. The agencies' action certifying the Project's EIR without providing proper
12 information to support their conclusions constitutes a prejudicial abuse of discretion, since they
13 failed to proceed in the manner required by CEQA.

14 **FOURTH CAUSE OF ACTION**

15 **Violation of CEQA - Public Resources Code Sections 21000 et seq. 16 and the CEQA Guidelines, Cal. Code of Regs., Tit. 14, Sections 15000 et seq.**

17 **ABAG and MTC Provided an Improper Description of the Baseline Conditions.**

18 96. Petitioners re-allege, as if fully set forth herein, each and every allegation contained
19 in the preceding paragraphs.

20 97. The baseline is the starting point from which to measure whether an impact may be
21 environmentally significant. To this end, CEQA and its implementing guidelines require that an EIR
22 "include a description of the physical environmental conditions in the vicinity of the project, as they
23 exist at the time the notice of preparation is published, or, if no notice of preparation is published, at
24 the time environmental analysis is commenced, from both a local and regional perspective. This
25 environmental setting will normally constitute the baseline physical conditions by which a lead
26 agency determines whether an impact is significant." (Cal. Code Regs. tit. 14, § 15125(a).) "The
27 EIR must demonstrate that the significant environmental impacts of the proposed project were
28

1 adequately investigated and discussed and it must permit the significant effects of the project to be
2 considered in the full environmental context.” (*Id.* § 15125(c).)

3 98. ABAG and MTC failed to properly describe the baseline physical conditions in the
4 EIR, and, as a result, the Project’s impacts could not be properly understood. In particular, the flaws
5 in the EIR’s baseline description include, but are not limited to:

- 6 a) A failure to describe the baseline for goods movement currently occurring in
7 the Bay Area. The EIR fails to provide any information on the volume of
8 goods currently moving through the Bay Area region, and therefore, interferes
9 with understanding the environmental impacts that would result from the
10 goods movement measures that have been adopted as part of the plan.

11 99. The failure to properly describe the baseline prevented the EIR from adequately
12 investigating and discussing the significant environmental impacts of the proposed Project, or from
13 making a determination that these effects are not significant and/or will be mitigated to less than
14 significant levels.

15 100. The agencies’ action certifying the Project’s EIR without an adequate description of
16 the baseline constitutes a prejudicial abuse of discretion, since they failed to proceed in the manner
17 required by CEQA.

18 **FIFTH CAUSE OF ACTION**

19 **Violation of CEQA (Public Resources Code Sections 21000 et seq. 20 and the CEQA Guidelines, Cal. Code of Regs., Tit. 14, Sections 15000 et seq.)**

21 **ABAG and MTC Failed to Evaluate the Significant Environmental Effects of the Project**

22 101. Petitioners re-allege, as if fully set forth herein, each and every allegation contained
23 in the preceding paragraphs.

24 102. An EIR must clearly identify and fully analyze the proposed project’s significant
25 environmental effects, including direct and indirect significant effects, giving due consideration to
26 both short- and long-term effects. (Pub. Res. Code §§ 21100(b), 21002.1; Cal. Code Regs. tit. 14, §
27 15126.2(a)). “Significant effect on the environment” is defined as “a substantial, or potentially
28 substantial, adverse change in any of the physical conditions within the area affected by the project

1 including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic
2 significance.” (Cal. Code Regs. tit. 14, § 15382.)

3 103. The discussion of significant environmental impacts should include:

4 [R]elevant specifics of the area, the resources involved, physical changes, alterations
5 to ecological systems, and changes induced in population distribution, population
6 concentration, the human use of the land (including commercial and residential
7 development), health and safety problems caused by the physical changes, and other
8 aspects of the resource base such as water, historical resources, scenic quality, and
9 public services. The EIR shall also analyze any significant environmental effects the
project might cause by bringing development and people into the area affected.
Similarly, the EIR should evaluate any potentially significant impacts of locating
development in other areas susceptible to hazardous conditions (e.g., floodplains,
coastlines, wildfire risk areas) as identified in authoritative hazard maps, risk
assessments or in land use plans addressing such hazards areas.

10 (Cal. Code Regs. tit. 14, § 15126.2(a).)

11 104. An EIR must contain “a sufficient degree of analysis to provide decision-makers with
12 information which enables them to make a decision which intelligently takes account of
13 environmental consequences.” (Cal. Code Regs. tit. 14, § 15151). Absent a statement of overriding
14 considerations supported by substantial evidence in the record, public agencies must refrain from
15 approving projects with significant environmental effects if there are feasible alternatives or
16 mitigation measures that can substantially lessen or avoid those effects. (Cal. Code Regs. tit. 14 §§
17 15091, 15092). Failure to adequately identify and analyze all significant impacts impedes the lead
18 agencies’ ability to identify and analyze all feasible mitigation measures and alternatives.

19 105. The EIR for the Project fails to adequately disclose or evaluate a variety of significant
20 environmental impacts including, but not limited to:

- 21 a) The EIR fails to adequately disclose the significant effects from the Plan’s
22 effects on transportation greenhouse gas emissions through 2040. It is only by
23 subtracting emissions reductions that will be achieved from measures
24 implemented separately from the Plan, such as the Low Carbon Fuel Standard
25 and Pavley Clean Car standards, that the EIR concludes that there will be no
26 significant effects from transportation greenhouse gas emissions. Without
27 these reductions, the Plan will result in an increase of 5,571,000 metric tons of
28 greenhouse gas emissions from the transportation sector. However, the EIR

1 fails to analyze and/or accurately present the impacts of the Plan alone on
2 transportation greenhouse gas emissions.

3 b) The EIR fails to adequately disclose the significant effects from the Plan's
4 effects on land use greenhouse gas emissions through 2040. It is only by
5 subtracting emissions that will be achieved through AB 32 Scoping Plan
6 reductions, that the EIR concludes that there will be no significant effects
7 from land use greenhouse gas emissions. It is only these reductions from
8 other programs that result in a finding that land use greenhouse gas emissions
9 will decline by 2040. Without these reductions, the Plan will result in an
10 increase in 6,769,000 metric tons of greenhouse gas emissions from various
11 land uses (i.e., residential use, and commercial, office and industrial uses).
12 However, the EIR fails to analyze and/or accurately present the impacts of the
13 Plan alone on land use greenhouse gas emissions.

14 c) The same programs (Pavley, LCFS, and AB 32 Scoping Measures) are taken
15 into consideration when analyzing whether the Plan meets the goals of
16 Executive Order S-3-05 and Executive Order B-16-2012. Without reductions
17 from Pavley, LCFS and AB 32, land use and transportation emissions in the
18 region are expected to increase, and the Plan does not meet the targets set
19 forth in these executive orders. The EIR fails to disclose this significant
20 effect. Even assuming, these reductions can be taken, the EIR still fails to
21 disclose that the plan does not create a trajectory to allow the state to meet the
22 goals of Executive Order S-3-05 and Executive Order B-16-2012.

23 d) The EIR improperly fails to conclude that there will be significant impacts
24 under Significance Criteria 2.5-2, 2.5-3 and 2.5-4, which evaluate aggregate
25 greenhouse gas emissions trends and compliance with other emissions
26 reductions laws.

- 1 e) The EIR fails to disclose the significant impacts on greenhouse gas emissions
2 and air quality, on a local and regional level, from the expected increase in the
3 volume of goods movement in the region.
- 4 f) The EIR fails to disclose the significant impact on the transportation
5 infrastructure and land-use allocations from the expected increase in the
6 volume of goods movement in the region.
- 7 g) The EIR fails to disclose the health impacts on low-income and minority
8 communities situated in the vicinity of key goods movement hubs, such as
9 airport, seaports, highways and railways.
- 10 h) The EIR fails to disclose the environmental and health effects caused by
11 displacement, despite MTC and ABAG’s Equity Analysis, concluding that
12 there will be a greater risk of displacement under the Plan.
- 13 i) The EIR fails to properly disclose the impacts of the miles of new freeway
14 lanes proposed in the Plan.

15 106. The agencies’ action certifying the Project’s EIR without fully analyzing the Project’s
16 significant environmental impacts constitutes a prejudicial abuse of discretion, since they failed to
17 proceed in the manner required by CEQA.

18 SIXTH CAUSE OF ACTION

19 Violation of CEQA - Public Resources Code Sections 21000 et seq. 20 and the CEQA Guidelines, Cal. Code of Regs., Tit. 14, Sections 15000 et seq.

21 ABAG and MTC Failed to Consider and Discuss the Plan’s Cumulative Impacts

22 107. Petitioners re-allege, as if fully set forth herein, each and every allegation contained
23 in the preceding paragraphs.

24 108. CEQA has specific requirements that must be satisfied in any cumulative impacts
25 analysis. An EIR must discuss the “cumulative impacts” of a project when the project’s incremental
26 effects are “cumulatively considerable.” (Pub. Res. Code § 21083(b)(2); Cal. Code Regs. tit. 14, §
27 15130(a).) A “cumulative impact” is “an impact which is created as a result of the combination of
28 the project evaluated in the EIR together with other projects causing related impacts.” (Cal. Code

1 Regs. tit. 14, § 15130(a)). “Cumulatively considerable” means that “the incremental effects of an
2 individual project are significant when viewed in connection with the effects of past projects, the
3 effects of other current projects, and the effects of probable future projects.” (Pub. Res. Code §
4 21083(b)(2); Cal. Code Regs. tit. 14, § 15065(a)(3).)

5 109. A “cumulative impacts” analysis must include “[a] list of past, present and probable
6 future projects producing related or cumulative impacts, including, if necessary, those projects
7 outside the control of the agency,” or “[a] summary of projections contained in an adopted local,
8 regional or statewide plan, or related planning document, that describes or evaluates conditions
9 contributing to the cumulative effect.” (Cal. Code Regs. tit. 14, § 15130(b)(1)).

10 110. The EIR at issue in this case fails to consider or discuss properly the Project’s
11 cumulative impacts. Among many shortcomings:

- 12 a) The agencies contentions that they have satisfied CEQA’s mandate to
13 consider the “cumulative impacts” of the Plan by folding a cumulative
14 impacts analysis throughout the EIR, and that the plan is a “cumulative Plan
15 by definition,” do not meet the specific requirements of CEQA. The EIR fails
16 to set forth a cumulative impacts analysis which discusses the cumulative
17 impacts of the various aspects of the Plan as it will be implemented.
- 18 b) The EIR specifically fails to evaluate the cumulative impacts from goods
19 movements measures that are included in the Plan. This failure is especially
20 problematic, given that the land use and transportation planning decisions
21 related to goods movement will necessarily affect other aspects of the Plan,
22 such as the land use and transportation planning decisions made under other
23 aspects of the Plan, as well as the air quality, greenhouse gas emissions and
24 other analyses conducted in the EIR.
- 25 c) The EIR fails to comply with CEQA’s requirement that a cumulative impacts
26 analysis include either “[a] list of past, present and probable future projects
27 producing related or cumulative impacts, including, if necessary, those
28 projects outside the control of the agency,” or “[a] summary of projections

1 contained in an adopted local, regional or statewide plan, or related planning
2 document, that describes or evaluates conditions contributing to the
3 cumulative effect.” (Cal. Code Regs. tit. 14, § 15130(b)(1)). The agencies’
4 statement that the cumulative impacts analysis is folded in throughout the EIR
5 fails to satisfy the requirements of CEQA, and the EIR fails to provide either
6 the required list of projects or summary of projections.

- 7 d) The EIR fails to consider the cumulative socioeconomic impacts from the
8 Project and other proposed developments in the Project area on the existing
9 working-class communities of color in the neighborhoods that are affected by
10 goods movement measures.
- 11 e) The EIR fails to consider the cumulative impacts from displacement occurring
12 under the Plan.
- 13 f) The EIR fails to consider the cumulative impacts of the miles of new freeway
14 lanes proposed in the Plan.

15 111. The agencies’ action certifying the Project’s EIR without fully analyzing the
16 cumulative impacts constitutes a prejudicial abuse of discretion, since they failed to proceed in the
17 manner required by CEQA.

18 SEVENTH CAUSE OF ACTION

19 Violation of CEQA - Public Resources Code Sections 21000 et seq. 20 and the CEQA Guidelines, Cal. Code of Regs., Tit. 14, Sections 15000 et seq.

21 ABAG and MTC Failed to Consider, Discuss, and Adopt Feasible Mitigation Measures 22 to Minimize Significant Environmental Effects

23 112. Petitioners re-allege, as if fully set forth herein, each and every allegation contained
24 in the preceding paragraphs.

25 113. A fundamental purpose of CEQA is to “[p]revent significant, avoidable damage to the
26 environment by requiring changes in projects through the use of alternatives or mitigation
27 measures.” (Cal. Code Regs. tit. 14, § 15002(a)(3).) Consequently, an EIR must identify feasible
28 mitigation measures in order to substantially lessen or avoid otherwise significant environmental
effects. (Pub. Res. Code §§ 21002, 21081(a); Cal. Code Regs. tit. 14, § 15126.4(a).) “Formulation

1 of mitigation measures should not be deferred until some future time.” (Cal. Code Regs. tit. 14, §
2 15126.4(a)(1)(B).)

3 114. Public agencies should not approve projects as proposed if there are feasible
4 alternatives or mitigation measures available to substantially lessen the significant environmental
5 impacts of the project. (Pub. Res. Code §§ 21002, 21081(a).) If the project is changed to
6 incorporate mitigation to reduce or avoid significant effects on the environment, the public agency
7 shall adopt a reporting or monitoring program for the mitigation adopted. (Pub. Res. Code §
8 21081.6(a).)

9 115. The EIR fails to identify or consider adequate, feasible mitigation measures to reduce
10 the Project’s significant environmental impacts with respect to measures taken to address the
11 movement of goods through the region. Despite identifying various measures that are being taken to
12 address goods movement issues under the Plan, the EIR fails to discuss how such measures will
13 mitigate the projected effects of goods movement through the region.

14 116. Additionally, the agencies have stated that the Plan will continue to study the effects
15 of goods movement and will identify future recommendations for addressing goods movement.
16 Given that certain goods movement measures are already being undertaken under the Plan, and
17 given the projected increases in goods movement through the region, the EIR impermissibly defers
18 formulation of mitigation measures for goods movement until a later time.

19 117. The EIR was improperly certified, as it elects to proceed with implementation of the
20 proposed Plan, even though other alternatives outperform the Plan with respect to certain criteria.
21 For example, the “Environment, Equity and Jobs” alternative will result in the lowest amount of
22 Vehicle Miles Travelled (“VMT”) when compared to the Plan and other alternatives. Draft EIR at
23 3.1-22. This alternative will also result in the greatest transit ridership out of any plan (5% more
24 than the proposed Plan). This alternative is expected to have the greatest reduction in on-the-road
25 transportation GHG emissions from 2010 to 2040. It is also expected to have the greatest reduction
26 in greenhouse gas emissions between 2010 and 2040.

27 118. Furthermore, despite concluding that “significant and unavoidable” impacts would
28 result due to the Plan’s increase in transportation investments, population, and land-use

1 developments in areas subject to sea-level rise, the EIR also fails to propose enforceable mitigation
2 measures to address these impacts. Instead, the ABAG and MTC defer to local agencies to adopt
3 proposed mitigation measures.

4 119. The EIR also fails to identify and consider adequate, feasible mitigation measures to
5 protect against displacement.

6 120. The agencies' action certifying the Project's EIR without proper mitigation measures
7 constitutes a prejudicial abuse of discretion, since they failed to proceed in the manner required by
8 CEQA.

9 **EIGHTH CAUSE OF ACTION**

10 **Violation of CEQA (Public Resources Code Sections 21000 et seq. 11 and the CEQA Guidelines, Cal. Code of Regs., Tit. 14, Sections 15000 et seq.**

12 **ABAG and MTC Improperly Piecemealed the Analysis For The Project**

13 121. Petitioners re-allege, as if fully set forth herein, each and every allegation contained
14 in the preceding paragraphs.

15 122. CEQA defines "Project" as "the whole of an action, which has a potential for
16 resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect
17 physical change in the environment." (Cal. Code Regs. tit. 14, § 15378(a); Pub. Res. Code § 21065).
18 "'Project' is given a broad interpretation in order to maximize protection of the environment."
19 (*McQueen v. Board of Directors of the Mid-Peninsula Regional Open Space District* (1988) 202 Cal.
20 App. 3d 1136, 1143.)

21 123. CEQA forbids segmenting a project into separate actions in order to avoid
22 environmental review of the "whole of the action." Furthermore, CEQA requires the lead agency to
23 consider the entire project at the earliest possible stage, including all reasonably foreseeable phases
24 of the project. (*Laurel Heights*, 47 Cal. 3d at 396.)

25 124. By deferring study of goods movement issues, and failing to address the goods
26 movement measures to be undertaken or the mitigation measures to be applied to alleviate the effects
27 of goods movement in the EIR, ABAG and MTC have engaged in an improper "piecemeal" analysis
28 in the EIR.

1 improvements and State and local planned growth and economic development patterns.” (23 U.S.C.
2 § 134(h)(1)(E).)

3 130. Despite projections of economic and population growth and studies—including by
4 MTC—detailing the importance of goods movement to the region, the RTP fails to include any
5 meaningful discussion of or plan for moving freight throughout the region, and mitigation measures
6 for this movement. As a result, the RTP also fails to include any discussion of or plan for an
7 integrated, coordinated, connected, and balanced regional intermodal system to “facilitate the safe
8 and efficient movement of people and goods” into the future.

9 131. The agencies’ approval of a Plan that fails to integrate goods movement in violation
10 of the California Government Code constitutes an abuse of discretion.

11 **REQUEST FOR RELIEF**

12 Wherefore, Petitioners respectfully request relief as follows:

13 1. A writ of mandate or peremptory writ ordering the agencies to:
14 vacate and set aside their approval and certification of the EIR for the Plan Bay Area and the
15 approval of Plan Bay Area; and refrain from granting any further approvals for the Plan Bay Area
16 unless and until the agencies fully comply with the requirements of CEQA; and

17 2. A permanent injunction enjoining the agencies from implementing the Plan Bay Area
18 until a lawful approval has been obtained and that the requirements of CEQA have been fulfilled;
19 and

20 3. A declaratory judgment that the agencies violated CEQA in approving the Plan Bay
21 Area; and

22 4. For fees and costs incurred herein, including reasonable attorney’s fees as authorized
23 by Code of Civil Procedure section 1021.5; and

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1 5. All such other equitable or legal relief that the Court considers just and proper.

2 Respectfully submitted,

3 DATED: August 19, 2013

4 

5 WILLIAM ROSTOV
6 IRENE V. GUTIERREZ

7 *Attorneys for Petitioners Sierra Club and*
8 *Communities for a Better Environment*

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12 *Environment*

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1 **VERIFICATION**

2 I, Nile Malloy, hereby declare:

3 I am the Northern California Program Director of Communities for a Better Environment.

4 The facts alleged in the above petition for writ of mandate are made on information and belief, and
5 are true to my personal knowledge.

6 I declare under penalty of perjury under the laws of the State of California that the above is
7 true and correct and that this verification is executed on this 15th day of August 2013 at
8 Oakland, California.

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10 
11 Nile Malloy

EXHIBIT A



August 16, 2013

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Mr. Mark Luce, President
Association of Bay Area Governments
101 Eighth Street
Oakland, CA 94607

Re: Notice of Intent to File CEQA Petition

Dear Mr. Luce:

PLEASE TAKE NOTICE, under Public Resources Code section 21167.5, Communities for a Better Environment and the Sierra Club, intend to file a verified petition for writ of mandate against Association of Bay Area Governments ("ABAG"), and the Metropolitan Transportation Commission ("MTC"), in Alameda County Superior Court on August 19, 2013.

The petition will allege that Respondents violated the California Environmental Quality Act ("CEQA") in connection with the environmental impact report ("EIR") for Plan Bay Area. The petition will seek writ relief to: (a) to vacate and set aside agencies' approval and certification of the EIR for the Plan Bay Area and their approval of Plan Bay Area; and (b) to refrain from granting any further approvals for the Plan Bay Area Project unless and until the agencies fully comply with the requirements of CEQA. It will also seek declaratory and injunctive relief, as well as costs and all other equitable or legal relief deemed proper.

Sincerely,

Irene Gutierrez
Will Rostov
*Counsel for Communities for a Better Environment
and Sierra Club*

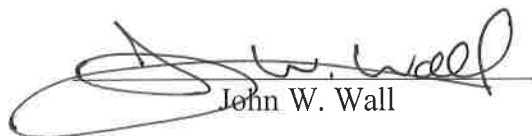
1 **PROOF OF SERVICE**

2 I am a citizen of the United States of America and a resident of the City and County of San
3 Francisco; I am over the age of 18 years and not a party to the within entitled action; my business
4 address is 50 California Street, Suite 500, San Francisco, California.

5 I hereby certify that on August 16, 2013, I served by via Certified Mail/Return Receipt
6 Requested one true copy of the document herein on the person listed below:

7 Mr. Mark Luce, President
8 Association of Bay Area Governments
9 101 Eighth Street
Oakland, CA 94607

10 I certify under penalty of perjury that the foregoing is true and correct. Executed on
11 August 16, 2013 in San Francisco, California.

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August 16, 2013

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Mr. Steve Heminger, Executive Director
Metropolitan Transportation Commission
101 Eighth Street
Oakland, CA 94607

Re: Notice of Intent to File CEQA Petition

Dear Mr. Heminger:

PLEASE TAKE NOTICE, under Public Resources Code section 21167.5, Communities for a Better Environment and the Sierra Club, intend to file a verified petition for writ of mandate against Association of Bay Area Governments ("ABAG"), and the Metropolitan Transportation Commission ("MTC"), in Alameda County Superior Court on August 19, 2013.

The petition will allege that Respondents violated the California Environmental Quality Act ("CEQA") in connection with the environmental impact report ("EIR") for Plan Bay Area. The petition will seek writ relief to: (a) to vacate and set aside agencies' approval and certification of the EIR for the Plan Bay Area and their approval of Plan Bay Area; and (b) to refrain from granting any further approvals for the Plan Bay Area Project unless and until the agencies fully comply with the requirements of CEQA. It will also seek declaratory and injunctive relief, as well as costs and all other equitable or legal relief deemed proper.

Sincerely,

Irene Gutierrez
Will Rostov
*Counsel for Communities for a Better Environment
and Sierra Club*

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5 I hereby certify that on August 16, 2013, I served by via Certified Mail/Return Receipt
6 Requested one true copy of the document herein on the person listed below:

7 Mr. Steve Heminger, Executive Director
8 Metropolitan Transportation Commission
9 101 Eighth Street
Oakland, CA 94607

10 I certify under penalty of perjury that the foregoing is true and correct. Executed on
11 August 16, 2013 in San Francisco, California.

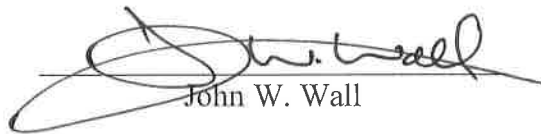
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EXHIBIT B



August 19, 2013

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Hon. Kamala Harris
Office of the Attorney General
1300 "I" Street
Sacramento, CA 95814-2919

Re: Notice of Intent to File CEQA Petition

Dear Attorney General Harris:

PLEASE TAKE NOTICE, under Public Resources Code § 21167.7 and Code of Civil Procedure § 388, that on August 19, 2013, Communities for a Better Environment ("CBE"), and The Sierra Club, collectively ("Petitioners"), filed a verified petition for writ of mandate and complaint against Association of Bay Area Governments ("ABAG"), and the Metropolitan Transportation Commission ("MTC"), collectively ("Respondents"), in Alameda County Superior Court.

The petition alleges that Respondents violated the California Environmental Quality Act ("CEQA") in connection with the environmental impact report ("EIR") for Plan Bay Area. A copy of the petition and complaint is attached to this notice.

Sincerely,

Irene Gutierrez
Will Rostov
*Counsel for Communities for a Better Environment
and Sierra Club*

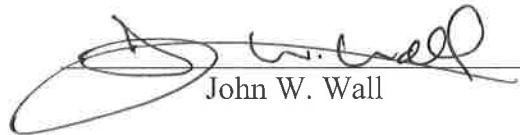
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4 address is 50 California Street, Suite 500, San Francisco, California.

5 I hereby certify that on August 19, 2013, I served by via Certified Mail/Return Receipt
6 Requested one true copy of the document herein on the person listed below:

7 Hon. Kamala Harris
8 Office of the Attorney General
9 1300 "I" Street
10 Sacramento, CA 95814-2919

11 I certify under penalty of perjury that the foregoing is true and correct. Executed on
12 August 19, 2013 in San Francisco, California.

13 
14 John W. Wall