

LAW OFFICES OF JASON A. BEZIS
California State Bar No. 225641
3661-B Mosswood Drive
Lafayette, CA 94549-3509
(925) 708-7073 Jason@Bezislaw.com
Attorney for Plaintiffs and Petitioners

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA**

ALAMEDA COUNTY TAXPAYERS'
ASSOCIATION, INC., a California non-
profit corporation; MARCUS CRAWLEY;
MONTCLAIR VILLAGE HARDWARE;
and TRANSPORTATION SOLUTIONS
DEFENSE AND EDUCATION FUND, a
California nonprofit corporation;

Plaintiffs and Petitioners,

vs.

TRI-VALLEY-SAN JOAQUIN VALLEY
REGIONAL RAIL AUTHORITY
(AUTHORITY), a public entity; BOARD
OF DIRECTORS OF AUTHORITY, its
governing board; KEVIN SHERIDAN, in
his official capacity as Executive Director of
AUTHORITY; MICHAEL TREE, in his
official capacity as former Executive Direc-
tor of AUTHORITY; ALAMEDA COUN-
TY TRANSPORTATION COMMISSION
(ALAMEDA CTC), a joint powers agency;
COMMISSION OF ALAMEDA CTC, its
governing board; TESS LENGYEL, in her
official capacity as Executive Director of
ALAMEDA CTC; METROPOLITAN
TRANSPORTATION COMMISSION
(MTC), a local area planning agency;
COMMISSION OF MTC, its governing
board; BAY AREA TOLL AUTHORITY
(BATA), a public instrumentality;
THERESE W. McMILLAN, in her official
capacity as Executive Director of MTC and
BATA; and DOES 1 through 100, inclusive;

Defendants and Respondents.

Case No.: RG21110126

ASSIGNED FOR ALL PURPOSES TO
JUDGE Michael M. Markman
DEPARTMENT 1

**PLAINTIFFS' OPENING BRIEF IN
SUPPORT OF FIRST AMENDED VERIFIED
TAXPAYER COMPLAINT AND PETITION
FOR WRIT OF MANDATE
(EIGHTH, NINTH, AND TENTH CAUSES
OF ACTION)**

(Calendar Preference per Code Civ. Proc.
§ 526a(c))

Action filed: August 10, 2021

Merits hearing date: December 15, 2026

Merits hearing time: 10:00 a.m.

TABLE OF CONTENTS

TABLE OF CONTENTS	2
TABLE OF AUTHORITIES	5
INTRODUCTION.....	8
STATEMENT OF FACTS.....	8
STANDARDS OF REVIEW	13
A. Declaratory Relief.	13
B. Relief Pursuant to Code of Civil Procedure Sections 526a and 527 and Common Law Taxpayer Actions.	14
C. Mandatory Relief.	16
I. MTC PARTIES’ FUNDING ALLOCATIONS TO THE VALLEY LINK PROJECT ARE INCONSISTENT WITH STATUTES AND THE CALIFORNIA CONSTITUTION. 18	
A. The Valley Link Project Is Inconsistent With Public Utilities Code Section 132652.18	
B. BATA Never Made AB 1171 Funds “Available” For Funding Projects Consistent with Sts. &Hy. Code §§ 30914(c)(32) and 31010(b), Including the Valley Link Project.	19
C. The Valley Link Project Is Inconsistent with Streets & Highways Code § 30914(c)(32). 21	
1. <i>The RAIL AUTHORITY is not an eligible “project sponsor” under §30914(c)(32).</i> 21	
2. <i>The Valley Link Project exceeds the scope of the project authorized under §30914(c)(32).</i>	22
D. The Valley Link Project Is Inconsistent with the Voter-Approved “Legal Text of Regional Measure 2” (RM2).	24
E. The Valley Link Project Is Inconsistent with Streets & Highways Code Section 30914(e) (“The Project Sponsor Shall Submit an Initial Project Report ... Before July 1, 2004”)	25
F. The MTC PARTIES Made an Unconstitutional Gift of AB 1171 Bridge Toll Revenues to the Rail Authority Parties in Violation of Cal. Constitution, Article XVI, Section 6...25	

II. THE MTC PARTIES' AB 1171 FUNDING ALLOCATIONS TO THE RAIL AUTHORITY PARTIES IN 2018 AND 2020 ARE INCONSISTENT WITH MTC RESOLUTION No. 3636. 26

A. The Valley Link Project Is Inconsistent with the MTC and SJCOG Regional Transportation Plans (RTPs) Then in Effect at the Time of the MTC Funding Allocations in 2018 and 2020.....27

B. The Valley Link Project Is Inconsistent with the Congestion Management Plans (CMPs) or Capital Improvement Programs (CIPs) of Alameda and San Joaquin Counties in Effect at the Time of MTC Commission's Allocation Decisions. 28

C. The Valley Link Project Is Inconsistent with the Air Quality Conformity and Transportation Improvement Programs (TIP) in Effect at the Time of the MTC Commission's Allocation Decisions in 2018 and 2020. 29

D. The Valley Link Project Environmental Studies, Preliminary Engineering, and Design Costs in the 2018 and 2020 Funding Allocations Are Not "Eligible Expenses." They Are "Beyond the Project Scope and Intent as Outlined in S&HC 30914(c)." 30

E. MTC's 2018 Funding Allocation to the Valley Link Project Violated Resolution No. 3636 Because the RAIL AUTHORITY BOARD Did Not Adopt the IPR Prior to MTC's September 26, 2018 Approval of the IPR and Allocation of Funds. 31

F. The Valley Link Project's Initial Operating Segment (IOS) Terminating at Southfront Station or Mountain House Station Alternative Violates Resolution No. 3636 Because It Would Not "Mak[e] Available to the Public a Useable or Operable Segment." 31

III. MTC's 2018 AND 2020 FUNDING ALLOCATIONS TO THE VALLEY LINK PROJECT ARE INCONSISTENT WITH MTC RESOLUTION No. 3434 (AND RELATED RESOLUTION No. 3357) 32

A. The Scope of the Valley Link Project Is Not Consistent with the Scope of the "Tri-Valley Transit Access Improvements to/from BART" in MTC Resolution No. 3434.....32

B. The MTC Parties Did Not Evaluate Valley Link Project "Cost-Effectiveness" Consistent with MTC Resolutions Nos. 3357 AND 3434.....32

IV. MTC PARTIES' 2020 FUNDING ALLOCATIONS TO THE VALLEY LINK PROJECT ARE INCONSISTENT WITH MTC RESOLUTION No. 4399. 33

V. AFTER FINDING VIOLATIONS IN THE EIGHTH, NINTH, AND TENTH CAUSES OF ACTION, THIS COURT SHOULD ORDER THE FOLLOWING REMEDIES. 34

A. Declaratory Relief. 34

B. Relief Pursuant to Code of Civil Procedure Sections 526a and 527 and Common Law Taxpayer Action.....36

C. Mandatory Relief.	37
CONCLUSION	37
PROOF OF SERVICE	39

TABLE OF AUTHORITIES

Cases

<i>Action Apartment Assn., Inc. v. City of Santa Monica</i> (2007) 41 Cal.4th 1232	13
<i>American Coatings Assn. v. South Coast Air Quality Management Dist.</i> (2012) 54 Cal.4th 446.....	17
<i>Bess v. Park</i> (1955) 132 Cal.App.2d 49.....	13
<i>Blair v. Pitchess</i> (1971) 5 Cal.3d 258, 267-268.....	14
<i>Cal. Hotel & Motel Ass'n v. Indus. Welfare Comm'n</i> (1979) 25 Cal.3d 200	17, 37
<i>Cal. Toll Bridge Authority v. Kuchel</i> (1952) 40 Cal.2d 43.....	14
<i>California Public Records Research, Inc. v. County of Alameda</i> (2019) 37 Cal.App.5th 800	18
<i>California Public Records Research, Inc. v. County of Stanislaus</i> (2016) 246 Cal.App.4th 1432	17
<i>Carrancho v. California Air Resources Board</i> (2003) 111 Cal.App.4th 1255.....	17
<i>Ceres v. Modesto</i> (1969) 274 Cal.App.2d 545.....	15
<i>Citizens to Preserve Overton Park, Inc. v. Volpe</i> (1971) 401 U.S. 402	16
<i>City of Cotati v. Cashman</i> (2002) 29 Cal.4th 69.....	13
<i>City of Gilroy v. Superior Court</i> (2026) 19 Cal.5th 38.....	13
<i>Collins v. Thurmond</i> (2019) 41 Cal.App.5th 879, 910	14
<i>CV Amalgamated LLC v. City of Chula Vista</i> (2022) 82 Cal.App.5th 265	13, 17
<i>Davis v. Fresno Unified School Dist.</i> (2020) 57 Cal.App.5th 911	16, 37
<i>Farley v. Cory</i> (1978) 78 Cal.App.3d 583, 589	15
<i>Gogerty v. Coachella Valley Junior College Dist.</i> (1962) 57 Cal.2d 727, 730	14
<i>Golden Door Properties, LLC v. County of San Diego</i> (2020) 50 Cal.App.5th 467, 540.....	27
<i>Golden Gate Bridge & Highway Dist. v. Luehring</i> (1970) 4 Cal.App.3d 204, 213	25, 26, 35
<i>Harman v. City and County of San Francisco</i> (1972) 7 Cal.3d 150.....	14, 36
<i>Hayward Area Planning Assn. v. Alameda County Transportation Authority</i> (1999) 72 Cal.App.4th 95, 107.....	24
<i>Houge v. Ford</i> (1955) 44 Cal.2d 706, 712.....	22
<i>Humane Society of the United States v. State Bd. of Equalization</i> (2007) 152 Cal.App.4th 349, 361	14
<i>In re Jesusa V.</i> (2004) 32 Cal.4th 588, 622-623	22

1	<i>Land Waste Management v. Contra Costa County Board of Supervisors</i> (1990) 222 Cal.App.3d 950, 958	
2		18
3	<i>Maguire v. Hibernia S. & L. Soc.</i> (1944) 23 Cal.2d 719	13
4	<i>Martis Camp Community Assn. v. County of Placer</i> (2020) 53 Cal.App.5th 569	17
5	<i>Mock v. Santa Rosa</i> (1899) 126 Cal. 330.....	15, 37
6	<i>Neighborhood Action Group v. County of Calaveras</i> (1984) 156 Cal.App.3d 1176.....	18
7	<i>People ex rel. Harris v. Rizzo</i> (2013) 214 Cal. App. 4th 921, 943	16
8	<i>Phelps v. Stostad</i> (1997) 16 Cal.4th 23, 32.....	22
9	<i>Ponte v. County of Calaveras</i> (2017) 14 Cal.App.5th 551, 556	15
10	<i>Rathbun v. City of Salinas</i> (1973) 30 Cal.App.3d 199.....	15, 36
11	<i>Regus v. City of Baldwin Park</i> (1977) 70 Cal.App.3d 968, 983	15
12	<i>San Bernardino County v. Superior Court</i> (2015) 239 Cal.App.4th 679, 686	14
13	<i>Stanson v. Mott</i> (1976) 17 Cal.3d 206, 226–227	16
14	<i>Stevens v. Geduldig</i> (1986) 42 Cal.3d 24, 32.....	15, 37
15	<i>Tooker v. San Francisco Bay Area Rapid Transit Dist.</i> (1972) 22 Cal.App.3d 643, 649	24
16	<i>Vasquez v. State of California</i> (2003) 105 Cal.App.4th 849, 856	15, 36
17	<i>Western States Petroleum Assn. v. Superior Court</i> (1995) 9 Cal.4th 559	17
18	Statutes	
19	5 U.S.C. § 706(2)(A).....	16
20	Code of Civil Procedure Section 1060.....	13
21	Code of Civil Procedure Section 1061.....	13
22	Government Code Section 65080 et seq.....	27
23	Government Code Section 66502	33
24	Public Utilities Code Section 132652	18, 19, 31, 36
25	Streets & Highways Code Section 188.5.....	19, 20
26	Streets & Highways Code Section 30914(c)(32).....	passim
27	Streets & Highways Code Section 30914(g)	10
28	Streets & Highways Code Section 30950	19

Streets & Highways Code Section 30950.3..... 10

Streets & Highways Code Section 31010..... passim

Regulations

BATA Resolution No. 72 10, 23

BATA Resolution No. 82 20

BATA Resolution No. 90 20

MTC Resolution No. 3357..... 32, 33, 34, 36

MTC Resolution No. 3434..... passim

MTC Resolution No. 3636..... passim

MTC Resolution No. 3664..... 10, 11, 23

MTC Resolution No. 3833..... 11

MTC Resolution No. 3914..... 12, 18, 26, 33

Legislation

AB 1171 (2001) passim

Proposition 139 15

Regional Measure 2 (2004)..... passim

SB 916 (2003) 22

1 Plaintiffs and Petitioners ALAMEDA COUNTY TAXPAYERS’ ASSOCIATION, INC.; MAR-
2 CUS CRAWLEY; MONTCLAIR VILLAGE HARDWARE; and TRANSPORTATION SOLUTIONS
3 DEFENSE AND EDUCATION FUND, a California nonprofit corporation (“Plaintiffs”); hereby submit
4 this Opening Brief containing points and authorities in support of their First Amended Verified
5 Taxpayer Complaint and Petition for Writ of Mandate, Eighth, Ninth, and Tenth Causes of Action.

6 INTRODUCTION

7 AB 1171 (2001) is a toll bridge seismic retrofit program established by the California Legislature. This
8 lawsuit phase challenges AB 1171 funding allocations by Defendants and Respondents METROPOLI-
9 TAN TRANSPORTATION COMMISSION (“MTC”); COMMISSION OF MTC, its governing board;
10 BAY AREA TOLL AUTHORITY (“BATA”), and THERESE W. McMILLAN, in her official capacity
11 as Executive Director of MTC (collectively “MTC Parties”); to the Valley Link Project, which is located
12 far from toll bridges, does not relate to seismic retrofit, and includes a county outside of the Bay Area. In
13 September 2018, March 2020, and June 2020, the COMMISSION OF MTC allocated a total of nearly
14 \$60 million of AB 1171 funds to Valley Link Project environmental, engineering, and design work. This
15 lawsuit phase also challenges MTC’s making AB 1171 funds available for the Valley Link Project with-
16 out authority from BATA, which already had defined the project as highway improvements for buses.

17 Defendants and Respondents TRI-VALLEY-SAN JOAQUIN VALLEY REGIONAL RAIL
18 AUTHORITY (AUTHORITY), a public entity; BOARD OF DIRECTORS OF AUTHORITY, its
19 governing board; KEVIN SHERIDAN, in his official capacity as Executive Director of AUTHORITY;
20 and MICHAEL TREE, in his official capacity as former Executive Director of AUTHORITY
21 (collectively the “RAIL AUTHORITY Parties”) requested the AB 1171 funding allocations from the
22 MTC Parties in violation of statutory, constitutional, and local regulatory legal standards.

23 STATEMENT OF FACTS

24 The Dublin/Pleasanton BART station opened for revenue service in 1997. Altamont Commuter
25 Express (later re-designated “Altamont Corridor Express” or “ACE”) train service began connecting San
26 Joaquin County and Santa Clara County via Alameda County in 1998. San Francisco Bay Area transpor-
27 tation planners soon began planning for how to close the “gap” between the ACE and BART systems.
28

1 In 2001, MTC approved Resolution No. 3434 to define its “Regional Transit Expansion Program
2 of Projects.” In the early 2000s decade, transportation planners considered how to use the median strip
3 of Interstate Highway 580 (“I-580”) easterly of the Dublin/Pleasanton BART station through the
4 Livermore/Amador Valley (Dublin, Pleasanton, Livermore) to Greenville Road in eastern Livermore.
5 Under one plan, rail service (in the form of conventional BART or “t-BART” diesel or electric multiple
6 unit trains) would be extended easterly to Livermore in the I-580 median. Under another plan, express
7 buses would provide transit service to the Dublin/Pleasanton BART station, using high-occupancy
8 vehicle (HOV) lanes that would be constructed in the I-580 median instead of a rail extension.

9 In 2003, the Legislature enacted SB 916, a bill that authorized Defendant BATA to place
10 Regional Measure 2 (“RM2”) on the March 2004 ballot. SB 916 designated an RM2 project titled “I-
11 580 (Tri Valley) Rapid Transit Corridor Improvements” (“Project #32”) that later served as the basis for
12 BATA and MTC funding of the Valley Link Project:

13 (c) If the voters approve a toll increase in 2004 pursuant to Section 30921, the
14 authority shall, consistent with the provisions of subdivisions (d) and (f), fund the
15 projects described in this subdivision and in subdivision (d) that shall collectively
16 be known as the Regional Traffic Relief Plan by bonding or transfers to the
17 Metropolitan Transportation Commission. These projects have been determined
18 to reduce congestion or to make improvements to travel in the toll bridge
19 corridors, from toll revenues of all bridges: ... (32) I-580 (Tri Valley) Rapid
20 Transit Corridor Improvements. Provide rail or High-Occupancy Vehicle lane
21 direct connector to Dublin BART and other improvements on I-580 in Alameda
22 County for use by express buses. Sixty-five million dollars (\$65,000,000). The
23 project sponsor is Alameda County Congestion Management Agency. (Sts. & Hy.
24 Code, § 30914.)¹

25 In March 2004, voters in seven San Francisco Bay Area counties approved RM2. (1AR386.)²
26 Later in 2004, the Alameda County Congestion Management Agency (“ACCMA”) requested RM2
27 “Project #32” funds to develop I-580 HOV lanes. (MTC_AR34-117.)

28 The Initial Project Report (IPR) for Project #32 by ACCMA dated September 23, 2004 included
this “Detailed Project Description”: “The proposed project would add eastbound and westbound high

1 In 2010, the Legislature amended Section (c)(32) to designate “Alameda County Transportation
Commission” as the “project sponsor.” (2010 Cal Stats., ch. 491 (SB 1318).)

² Citations to the Administrative Record for Causes of Action 3-4 are presented in this format: “[volume
no.]AR[page no.]” The Citations to the Administrative Record for Causes of Action 8-10 are presented
in a related format: “MTC_AR[page no.]”

1 occupancy vehicles (HOV) lanes in the corridor from Greenville Road to I-680. The purpose of adding
2 HOV lanes is to reduce congestion and delay, encourage carpooling and express bus service. The project
3 would provide a bus connection to the existing BART station.” (MTC_AR0043-44.)

4 In MTC Resolution No. 3664 dated October 27, 2004, the “Project Purpose and Description” for
5 “RM2 Project Number: 32.1” stated in part:

6 Adding HOV lanes will reduce congestion and delay and encourage carpooling
7 and express bus service. The proposed project would add eastbound high
8 occupancy toll lanes in the corridor extending from Vasco Road westerly to the
9 Dublin/Pleasanton BART station and WB HOV lanes from Vasco Road to I-680.
The project would provide a bus connection to the existing BART station.
(MTC_AR0061; emphasis added.)

10 Circa 2006, the “TRI-VALLEY TRANSIT ACCESS IMPROVEMENTS TO BART” project
11 was described as an “Express Bus” project with “feeder bus service to the BART station via eastbound
12 and westbound HOV lanes on I-580 through the Tri-Valley Corridor”:

13 **Project Description:** Extend transit service in Alameda County from the
14 Dublin/Pleasanton BART station through downtown. Livermore, to the Vasco
15 Road ACE station with a terminus at the Altamont Pass. The service will also
16 consist of feeder bus service to the BART station via eastbound and westbound
HOV lanes on I-580 through the Tri-Valley Corridor.

17 **Mode:** High Occupancy Vehicle - Bus Rapid Transit - Express Bus
(MTC_AR0083; emphasis added)

18 Relating to RM2, “[T]he authority shall within 24 months of the election date include the pro-
19 jects in a long-range plan ...” (Sts. & Hy. Code, § 30914(g).) “The authority shall prepare, adopt, and
20 from time to time revise, a long-range bridge toll plan for the completion of all projects within its juris-
21 diction, including those of the Regional Traffic Relief Plan described in subdivision (c) of Section
22 30914 ...” (Sts. & Hy., § 30950.3.) In December 2006, MTC’s alter ego, BATA (“the authority”),
adopted BATA Resolution No. 72, the BATA Long-Range Plan. BATA defined Project #32 as follows:

23 RM2 Capital Project 32 I-580 Tri-Valley Rapid Transit Corridor Improvement ...
24 Project Description This project will improve express bus service on I-580 in the
25 Tri-Valley area of Alameda County. The project will construct traffic
26 management plan elements ..., an interim eastbound HOV lane from Hacienda to
27 Greenville, and a soundwall to mitigate HOV lane construction. The project also
will study a direct HOV lane connector from I-580 to the Dublin/Pleasanton
BART station, the westbound HOV lane, and modifications to the I-580/I-680
interchange. (MTC_AR0166; emphasis added.)

28 In 2004 through 2008, MTC made tens of millions of dollars of allocations of RM2 Project #32

1 funds to the I-580 HOV lanes projects through Resolution No. 3664. (MTC_AR2655, 2665, 2669.)

2 In 2010, MTC COMMISSION adopted the operative MTC Resolution No. 3636, Revised,
3 “Policy and Procedures for Implementation of the Regional Traffic Relief Plan of Regional Measure 2
4 (RM 2).” (MTC_AR0501-788.) It states in part:

5 Some of the projects identified in the Regional Traffic Relief Plan (RM2 projects)
6 include complementary bridge toll funds (specifically RM1, AB 1171) to
7 complete their project funding plan. The administration of the bridge toll funds in
8 these cases will also be governed by this resolution, unless otherwise stated in the
9 allocating resolution. (MTC_AR0508; emphasis in original.)

10 In 2013, ALAMEDA CTC “closed out” Project Nos. 32.1a, 32.1b, and 32.1c and requested that
11 MTC re-allocate RM2 funds to “I-580 Express Lane Project - RM2 Project #32.1f.” (MTC_AR0818-
12 821b.) MTC “allocate[d] \$4 million in RM2 funds for the construction phase of Project 32.1f, I-580
13 HOV Improvements for High-Occupancy Toll accommodation on the corridor.” (MTC_AR2658.)

14 In September 2016, through Resolution No. 3833, Revised, MTC allocated \$660,000 to the
15 Livermore Amador Valley Transit Authority “for coordination of environmental work in the Tri-Valley
16 to include rail projects east of Isabel Interchange (I-580) focusing on ACE Train connectivity.” (MTC_-
17 AR1089.) This action was controversial (MTC_AR1035-40). A map shows that the “Focus of LAVTA
18 rail planning for Tri-Valley” for the BART-ACE connection was the Livermore area. (MTC_AR1131.)

19 In August 2018, RAIL AUTHORITY staff (without BOARD approval) requested an AB 1171
20 funds allocation for Valley Link Project environmental and design work (3AR6125).

21 On September 12, 2018, an MTC staff report stated about the Valley Link Project, “While a
22 majority of the proposed Phase 1 project is in Alameda County, both track mile-wise (approx. 60%) and
23 cost-wise (approx. 80%) according to preliminary project scoping and cost estimates, a substantial
24 portion of the ridership is expected to be residents of San Joaquin County.” (3AR6019.)

25 On September 26, 2018, MTC COMMISSION adopted Resolution 3914, Revised, which
26 allocated \$10.12 million of AB 1171 funds to RAIL AUTHORITY. The “Allocation Conditions”
27 stated: “TVSJVRRRA agrees to comply with the provisions of MTC Resolution No. 3636, Revised and
28 that any AB 1171 Bridge Toll Funds received under this allocation shall be subject to MTC Resolution
No. 3636, Revised.” (3AR6062.) MTC COMMISSION required development of an Interregional
Project Policy by July 2019:

Revised with an amendment to direct staff to prepare an MTC policy on funding interregional projects for Commission consideration, no later than July 31, 2019 addressing both expectations for funding partnerships between regions, and expectations for how MTC project requirements apply to projects outside the region's boundaries. (3AR6106.)

On October 10, 2018, the RAIL AUTHORITY BOARD approved Resolution No. R07-2018 requesting AB 1171 funding (\$10.12 million) from MTC. (3AR6166.) The AUTHORITY expressly agreed to comply with Resolution No. 3636. (3AR6167.)

In December 2019, MTC COMMISSION approved an Interregional Project Funding and Coordination Policy as Resolution No. 4399 (but not an Interregional agreement). (5AR09912.)

On March 25, 2020, MTC COMMISSION revised Resolution No. 3914 to allocate another \$3.0 million of AB 1171 funds to AUTHORITY for Environmental/Preliminary Design work for the Project, with the same “Allocation Conditions” concerning compliance with Resolution No. 3636. (5AR10040.)

On May 13, 2020, the RAIL AUTHORITY BOARD approved another AB 1171 funds allocation request to MTC (\$46.791 million). The IPR includes a “Project Description” “with potential San Joaquin County stations at Mountain House, Tracy, River Islands and North Lathrop,” an “Initial Operating segment” “scenario” terminating at “Mountain House Station (in San Joaquin County),” and “inclusion of Valley Link track system within the I-580 median between the BART Dublin/Pleasanton Station and the Greenville Road off-ramp in Livermore.” (5AR10272-73.)

On June 24, 2020, MTC COMMISSION further revised Resolution No. 3914 to allocate \$46.791 million of AB 1171 “excess” seismic toll bridge funds to AUTHORITY. (MTC_AR2543.) According to the June 24, 2020 MTC COMMISSION meeting agenda packet, the “Scope of Work” stated, in part: This allocation funds completion of 30% design; completion of federal environmental review documents (NEPA); preparation of technical reports associated with Caltrans PA&ED...TVSJVRRRA agrees to comply with the provisions of MTC Resolution No. 3636, Revised and that any AB 1171 Bridge Toll Funds received under this allocation shall be subject to MTC Resolution No. 3636, Revised. (*Id.*)

At that time, Alameda County Supervisor Scott Haggerty was simultaneously MTC Chair (5AR10287) and AUTHORITY BOARD Chair (5AR10513).

To the present date, MTC Parties have an ongoing and continuing practice of using AB 1171 funds to finance RM2 projects, including the Valley Link project. (See, e.g., PRJN Exhs. 20, 21.)

STANDARDS OF REVIEW

A. Declaratory Relief.

The construction or validity of a statute or ordinance is a proper subject for declaratory relief. (*Action Apartment Assn., Inc. v. City of Santa Monica* (2007) 41 Cal.4th 1232, 1250, n.5; “[P]arties may seek declaratory relief with respect to the interpretation and application of local ordinances.”) “A public entity has a ministerial duty to comply with its own rules and regulations where they are valid and unambiguous.” (*CV Amalgamated LLC v. City of Chula Vista* (2022) 82 Cal.App.5th 265, 283, 279 (CV).

In *City of Gilroy v. Superior Court* (2026) 19 Cal.5th 38 (*Gilroy*), the California Supreme Court recently affirmed that “past conduct” can be a basis for issuance of declaratory relief:

[D]eclaratory relief is available under Code of Civil Procedure sections 1060 and 1061 to resolve uncertainties regarding legal duties and past conduct that might be perpetuated absent a judicial declaration. (See, e.g., *City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 79 [124 Cal.Rptr.2d 519, 52 P.3d 695] (*City of Cotati*) [a plaintiff can generally seek “declaratory relief ... when the parties ... dispute whether a public entity has engaged in conduct or established policies in violation of applicable law”]; *Bess v. Park* (1955) 132 Cal.App.2d 49, 52 [281 P.2d 556] [declaratory relief is available “to liquidate doubts with respect to uncertainties or controversies which might otherwise result in subsequent litigation”]; *Maguire v. Hibernia S. & L. Soc.* (1944) 23 Cal.2d 719, 729 [146 P.2d 673] [“The purpose of a declaratory judgment is ‘to serve some practical end in quieting or stabilizing an uncertain or disputed jural relation’”].) (*Gilroy* at p. 55; emphasis added.)

Our Supreme Court concluded, “Declaratory relief was appropriate to provide guidance to the parties and resolve their ongoing disputes.” (*Gilroy* at p. 56.) While *Gilroy* interpreted the California Public Records Act (CPRA), *Gilroy*’s principles may be broadly applied to other disputes, especially to interpretation of statutes and agency resolutions. The Court held, “[W]e conclude that, at a minimum, declaratory relief is appropriate in situations in which an agency is reasonably likely to repeat past conduct that allegedly violates the CPRA in response to future records requests ... declaratory relief is appropriate in these circumstances to help guide the parties’ future conduct and inform their rights and responsibilities.” (*Id.* at p. 46; emphasis added.)

In the instant case, MTC Parties and RAIL AUTHORITY Parties are “reasonably likely to repeat past conduct” that violates the legal authorities set forth in this brief. (PRJN Exhs. 20, 21.) Therefore, Plaintiffs request judicial declarations as to the alleged violations of Streets and Highways Code sections 31010 and 30914, the California Constitution, and MTC Resolution Nos. 3434, 3636, and 4399.

1 **B. Relief Pursuant to Code of Civil Procedure Sections 526a and 527 and Common Law**
2 **Taxpayer Actions.**

3 Our Supreme Court has held that agencies may be enjoined from spending bridge toll revenues
4 on projects that lack legislative authority. (*Cal. Toll Bridge Authority v. Kuchel* (1952) 40 Cal.2d 43.)

5 A taxpayer action seeks “a judgment, restraining and preventing any illegal expenditure of, waste
6 of, or injury to, the estate, funds, or other property of a local agency.” (Code Civ. Proc., § 526a.) It
7 includes “[a]n action ... to enjoin a public improvement project.” (Code Civ. Proc., § 526a(c).) The
8 common law allows a taxpayer to sue “in his [or her] representative capacity ... only in cases involving
9 fraud, collusion, ultra vires, or a failure on the part of the governmental body to perform a duty
10 specifically enjoined.” (*San Bernardino County v. Superior Court* (2015) 239 Cal.App.4th 679, 686.)

11 A “taxpayer action must involve an actual or threatened expenditure of public funds” (*Collins v.*
12 *Thurmond* (2019) 41 Cal.App.5th 879, 910.) “[S]ection 526a is properly used where ‘some illegal
13 expenditure or injury to the public fisc is occurring or will occur.’” (*Humane Society of the United States*
14 *v. State Bd. of Equalization* (2007) 152 Cal.App.4th 349, 361.)

15 The purpose of taxpayer actions is to “enable a large body of the citizenry to challenge
16 governmental action which would otherwise go unchallenged in the courts because of the standing
17 requirement ... California courts have consistently construed section 526a liberally to achieve this
18 remedial purpose.” (*Blair v. Pitchess* (1971) 5 Cal.3d 258, 267-268)

19 In *Harman v. City and County of San Francisco* (1972) 7 Cal.3d 150, 160-161 (*Harman*), the
20 California Supreme Court held:

21 "A taxpayer may sue a governmental body in a representative capacity in cases
22 involving fraud, collusion, ultra vires, or failure on the part of the governmental
23 body to perform a duty specifically enjoined." (*Gogerty v. Coachella Valley*
24 *Junior College Dist.* (1962) 57 Cal.2d 727, 730 [*Gogerty*]) This well-established
25 rule ensures that the California courts, by entertaining only those taxpayers' suits
26 that seek to measure governmental performance against a legal standard, do not
27 trespass into the domain of legislative or executive discretion ... [T]he courts
28 cannot formulate decrees that involve the exercise of indefinable discretion; their
decrees can only restrict conduct that can be tested against legal standards. (*Id.*)

In *Harman*, the legal standard was “the statutory restrictions binding the city in its sales of vacated city
streets.” (*Id.* at p. 161.) In the instant case, the legal standards include statutes and regulations.

Our Supreme Court’s *Gogerty* decision is instructive. In *Gogerty*, defendant college district

1 acquired a school site and proceeded into construction while plaintiff challenged conformance of those
2 actions with the State Education Code. The Court ruled that the issues were not moot as a result of the
3 district's purchase and improvement of the property because it was aware that the taxpayer was
4 questioning its right to proceed with the construction. It had proceeded at its peril by continuing
5 construction of buildings before the courts had determined whether it had a right to do so. (*Id.* at p. 732.)

6 In *Rathbun v. City of Salinas* (1973) 30 Cal.App.3d 199, the court concluded that a city council's
7 action was ultra vires. "[I]n measuring the transaction against a legal standard, the court, we take it, may
8 consider the transaction as a whole." (*Id.* at pp. 202-203.) *Farley v. Cory* (1978) 78 Cal.App.3d 583,
9 589 held, "Underlying California's affirmative response to the question of taxpayers' standing is the
10 confidence expressed in decisional law that governmental performance, commanded by statute, is
11 measureable and thus amenable to judicial redress." In *Vasquez v. State of California* (2003) 105
12 Cal.App.4th 849, 856 (*Vasquez*), the court held, "The State's conduct can be tested against legal
13 standards, and the court may render an effective decree to obtain its compliance with Proposition 139."
14 The *Vasquez* court noted, "We are not expanding the scope of section 526a; we follow precedent in
15 requiring the State to comply with its legally measurable duties." (*Id.* at p. 856, fn. 5.) Here, too, in the
16 instant case, this Court may render an effective decree to obtain compliance by Defendants with legal
17 standards in statutes, the State Constitution, and in local agency regulations.

18 A "contract entered into by a local government without legal authority is 'wholly void,' ultra
19 vires, and unenforceable." (*Ponte v. County of Calaveras* (2017) 14 Cal.App.5th 551, 556.)

20 In *Regus v. City of Baldwin Park* (1977) 70 Cal.App.3d 968, 983, pursuant to Section 526a,
21 taxpayers alleged illegal use of public funds in a city redevelopment project. The Second Appellate
22 District agreed, concluding, "the record at bench contains no substantial evidence to show that Project
23 area is a blighted area and hence eligible for redevelopment." *Ceres v. Modesto* (1969) 274 Cal.App.2d
24 545 is a 526a action in which the court found wasteful "unnecessary duplication" in a public project.

25 *Vasquez* held, "A taxpayer action under section 526a may be brought against the government or
26 'any officer thereof.'" (*Id.* at p. 857.) A public official may be personally liable in a taxpayer's action,
27 based on the official's failure to exercise due care in authorizing the expenditure of public funds.
28 (*Stevens v. Geduldig* (1986) 42 Cal.3d 24, 32 (*Stevens*).) In *Mock v. Santa Rosa* (1899) 126 Cal. 330,

city officials were properly named in the complaint in their official capacity and held liable in their personal capacities for mismanagement of municipal bonds issued to finance municipal waterworks.

[I]f the official does not use due care or reasonable diligence in authorizing the expenditure of public funds, the official may be subject to personal liability for the improper expenditure. ([*Stanson v. Mott* (1976) 17 Cal.3d 206] at pp. 226–227.) It must be remembered that this is a standard for determining when a public official is liable for restitution for an ultra vires act. It does not mean that every public expenditure which was not made with due care or reasonable diligence is a violation of duty; it simply means that when an expenditure of public funds is wholly unauthorized, the public official who authorized the expenditure can be liable for restitution if he or she acted unreasonably. (*People ex rel. Harris v. Rizzo* (2013) 214 Cal. App. 4th 921, 943 (*Rizzo*).)

In *Davis v. Fresno Unified School Dist.* (2020) 57 Cal.App.5th 911 (*Davis II*), the court held that “restitution of public funds paid for unlawful purposes [i]s a remedy available in a taxpayer action ...” (*Davis II* at pp. 937-938). “Disgorgement is an in personam remedy available in a section 526a taxpayer's action ...” (*Id.* at p. 917.) “[T]he fact that [the taxpayer] could have enjoined the illegal expenditure does not prevent [him] seeking to recover on behalf of the [local agency] monies illegally expended.” (*Id.* at p. 930.)

C. Mandatory Relief.

The American judiciary has a long tradition of invalidating major transportation projects due to abuse of discretion by approving agencies in applying statutory requirements. This is perhaps best exemplified by the 1971 United States Supreme Court decision, *Citizens to Preserve Overton Park, Inc. v. Volpe* (1971) 401 U.S. 402 (“*Overton Park*”), which ruled that the U.S. Secretary of Transportation abused his discretion in authorizing expenditure of federal funds to construct an interstate highway (I-40) through Overton Park in Memphis, Tennessee because a federal statute required review of “feasible and prudent” alternative routes. (*Id.* at p. 405.) In *Overton Park* at pp. 415-16, the Supreme Court held:

The court is first required to decide whether the Secretary acted within the scope of his authority. [Citation omitted.] This determination naturally begins with a delineation of the scope of the Secretary's authority and discretion. ... Scrutiny of the facts does not end, however, with the determination that the Secretary has acted within the scope of his statutory authority. Section 706 (2)(A) requires a finding that the actual choice made was not “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A)(1964 ed., Supp. V). To make this finding the court must consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment. [Citations omitted.] Although this inquiry into the facts is to be

1 searching and careful, the ultimate standard of review is a narrow one. The court
2 is not empowered to substitute its judgment for that of the agency. (Emp. added.)
3 The California Supreme Court approvingly discussed *Overton Park*’s abuse of discretion standards in
4 the context of review of quasi-legislative decisions in *Western States Petroleum Assn. v. Superior Court*
(1995) 9 Cal.4th 559, 577.

5 “[A] court may issue a writ when a public agency has abused its discretion in
6 carrying out a *discretionary* function. ‘Although traditional mandamus will not lie
7 to compel the exercise of discretion in a particular manner, it is a proper remedy
8 to challenge agency discretionary action as an abuse of discretion.’ ... [T]he
9 judicial inquiry ... addresses whether the public entity’s action was arbitrary,
capricious or entirely without evidentiary support, and whether it failed to
conform to procedures required by law.’” (*Alameda Health System v. Alameda*
County Employees’ Retirement Assn. (2024) 100 Cal. App. 5th 1159, 1177.)

10 “A court must ensure that an agency has adequately considered all relevant factors, and has de-
11 monstrated a rational connection between those factors, the choice made, and the purposes of the enab-
12 ling statute.” (*Cal. Hotel & Motel Ass’n v. Indus. Welfare Comm’n* (1979) 25 Cal.3d 200, 212.) (“*Cal.*
13 *Hotel.*”)³ The court engages in *de novo* or independent review of agency enabling acts and other sta-
14 tutes. “We use the arbitrary and capricious standard to review quasi-legislative decisions resulting from
15 an agency’s exercise of its statutorily delegated policymaking discretion. ... Nevertheless, the proper
16 interpretation of a statute is ultimately the court’s responsibility.” (*American Coatings Assn. v. South*
17 *Coast Air Quality Management Dist.* (2012) 54 Cal.4th 446, 461–462.) “Under the arbitrary and caprici-
18 ous standard, the question is whether the agency’s action has a reasonable basis in law and a substantial
19 basis in fact.” (*Martis Camp Community Assn. v. County of Placer* (2020) 53 Cal.App.5th 569, 595.)

20 A public entity’s failure to follow its own procedures provides the basis for the issuance of a
21 traditional writ of mandate. (*CV Amalgamated* at pp. 283, 298.) “We can ... direct an agency to follow
22 its own rules when it has a ministerial duty to do so.” (*Id.*) Hence, this Court is empowered to direct
23 MTC and BATA to follow their own procedures and rules in their adopted resolutions.

24 In *California Public Records Research, Inc. v. County of Stanislaus* (2016) 246 Cal.App.4th

25
26
27 ³ For an application of this test, see *Carrancho v. California Air Resources Board* (2003) 111
28 Cal.App.4th 1255, 1274 (*Carrancho*). The *Carrancho* court considered the “relevant factors,” decision
made, purposes of the enabling act, and related “supporting evidence.” The court emphasized that it was
to “exercise deferential, but not perfunctory, review.” (*Id.*)

1 1432, the court directly critiqued the adequacy of the evidence. The court held:

2 We conclude that the record lacks evidence, substantial or otherwise, that the cost
3 to County of providing copies of the second and subsequent pages of an official
4 record is \$2 per page. In other words, that portion of the fee schedule is “entirely
5 without evidentiary support” for purposes of the abuse of discretion standard of
6 review. [Citation omitted.] Accordingly, County's board of supervisors abused its
7 discretion when it approved a fee schedule that charged \$2 per page for
8 subsequent pages. (*Id.* at p. 1449; emphasis added.)

9 As stated in *California Public Records Research, Inc. v. County of Alameda* (2019) 37
10 Cal.App.5th 800, 808, the court's fundamental task is to ascertain the intent of the lawmakers so as to
11 effectuate the purpose of the statute. The court first examines the statutory language, giving it a plain
12 and commonsense meaning. If the statutory language permits more than one reasonable interpretation,
13 courts may consider other aids, such as the statute's purpose, legislative history, and public policy. When
14 a statute is capable of more than one construction, the court must give the provision a reasonable and
15 commonsense interpretation consistent with the apparent purpose and intention of the lawmakers.

16 A writ of mandate may be issued to invalidate project approval actions as ultra vires. “Issuance
17 of a permit inconsistent with zoning ordinances or the general plan may be set aside and invalidated as
18 ultra vires.” (*Land Waste Management v. Contra Costa County Board of Supervisors* (1990) 222
19 Cal.App.3d 950, 958.) When a county's general plan did not conform to statutory criteria, issuance of a
20 conditional use permit was ultra vires. (*Neighborhood Action Group v. County of Calaveras* (1984) 156
21 Cal.App.3d 1176, 1179.)

22 **I. MTC PARTIES’ FUNDING ALLOCATIONS TO THE VALLEY LINK PROJECT ARE**
23 **INCONSISTENT WITH STATUTES AND THE CALIFORNIA CONSTITUTION.**

24 The MTC Parties’ funding allocations to the AUTHORITY Parties for the Valley Link Project in
25 MTC Resolution No. 3914 in September 2018, March 2020, and June 2020 are inconsistent with Public
26 Utilities Code section 132652, Streets and Highways Code section 31010, Streets and Highways Code
27 section 30914, subdivisions (c)(32) and (e), the Legal Text of Regional Measure 2 (RM2) on the March
28 2004 ballot in seven San Francisco Bay Area counties, and the California Constitution.

A. The Valley Link Project Is Inconsistent With Public Utilities Code Section 132652.

The MTC Parties’ 2018 and 2020 funding allocations to the RAIL AUTHORITY Parties
violated Public Utilities Code section 132652. The most serious violation is that the AUTHORITY-

1 approved Valley Link Project Initial Operating Segments would not provide “transit connectivity,
2 between BART's rapid transit system and the Altamont Corridor Express commuter rail service” in
3 accordance with Section 132652. Plaintiffs acknowledge that the Court interpreted Section 132652
4 differently in its May 2025 order. Plaintiffs assert the Section 132652 violation issues in this brief in
5 order to preserve them for any appeal.

6 **B. BATA Never Made AB 1171 Funds “Available” For Funding Projects Consistent with**
7 **Sts. & Hy. Code §§ 30914(c)(32) and 31010(b), Including the Valley Link Project.**

8 Defendant BATA is “a separate entity from the Metropolitan Transportation Commission” (Sts.
9 & Hy. Code, § 30950). Official analyses of SB 916 underscore this point. (PRJN522, 549, 563, 565.)

10 The RAIL AUTHORITY BOARD’s resolutions requesting the 2018 and 2020 funding
11 allocations from MTC stated, in part: “pursuant to Streets and Highways Code (SHC) Section 31010(b),
12 funds generated in excess of those needed to meet the toll commitments as specified by paragraph (4) of
13 subdivision (b) of Section 188.5 of the SHC shall be available to BATA for funding projects consistent
14 with SHC Sections 30913 and 30914.” (5AR10304.) However, BATA never exercised its discretion to
15 make AB 1171 funds “available” for funding projects consistent with Streets and Highways Code
16 section 30914(c)(32), including the Valley Link Project.

17 Streets and Highways Code Section 31010 states in part:

18 (a) There is hereby imposed a seismic retrofit surcharge equal to one dollar (\$1)
19 per vehicle for passage on the Bay Area state-owned toll bridges, except for
20 vehicles that are authorized toll-free passage on these bridges.

21 (b) Funds generated pursuant to subdivision (a) that are in excess of those needed
22 to meet the toll commitment as specified by paragraph (4) of subdivision (b) of
23 Section 188.5 shall be available to the authority for funding, consistent with
24 Sections 30913 and 30914, the purposes and projects described in those sections.⁴
(Emphasis added.)

25 ⁴ The toll commitment is identified in Streets and Highways Code section 188.5 as:

26 (b) It is the intent of the Legislature that the following amounts from the
27 following funds shall be allocated until expended, for the seismic retrofit or
28 replacement of state-owned toll bridges:

... (4) The funds necessary to meet both of the following: (A) A principal
obligation of two billion two hundred eighty-two million dollars (\$2,282,000,000)
from the seismic retrofit surcharge, including any interest therefrom, imposed
pursuant to Section 31010, subject to the limitation set forth in subdivision (c) and
subdivision (b) of Section 31010. (B) All costs of financing, including
capitalized interest, reserves, costs of issuance, costs of credit enhancements and

1 MTC’s source of AB 1171 funds for the Valley Link Project is the authorization in Section
2 31010(b) to use “excess” bridge tolls on RM2 projects, which are listed in Section 30914. (See Section
3 *C infra*.) Without BATA’s authorization under Section 31010(b), there is no way to access “excess”
4 bridge toll funds to build RM2 projects.

5 The MTC Parties and RAIL AUTHORITY Parties have not demonstrated funds generated
6 pursuant to Section 31010(a) are actually in excess of those needed to meet the toll commitment, defined
7 in Section 188.5(b)(4) as “including any interest therefrom” and “[a]ll costs of financing.” The MTC
8 Parties further violated Section 31010(b) in the 2018 and 2020 funding allocations to the Project because
9 BATA has not made a determination that the toll commitment had been met in those years, thus leaving
10 “excess” funds available to BATA for funding the purposes and projects described in § 30914(c)(32).

11 In discovery, the MTC Parties produced a single BATA resolution relating to Section 31010(b):
12 BATA Resolution No. 82, approved November 26, 2008. BATA concluded, “RESOLVED, that BATA
13 certifies that \$80 million in funds under Streets and Highways Code sections 30913 and 31010(b) are
14 available to fund the Doyle Drive project;” (MTC_AR0416.) That resolution did not identify the avail-
15 ability of AB 1171 funds for any other projects. No similar BATA resolution exists in which BATA has
16 certified that AB 1171 funds under Section 31010(b) are available to fund the Valley Link Project.

17 On January 27, 2010, BATA adopted Resolution No. 90, a one-dollar bridge toll increase in
18 perpetuity “to fund the seismic retrofit of the Antioch and Dumbarton Bridges ... and ... to fund
19 increased costs of our debt financings.” (MTC_AR0447.) Recitals stated that “higher-than-projected
20 debt and operating cost increases for the Bridge System” are addressed by “increases in toll rates in
21 order to meet the Authority's above-described obligations” (MTC_AR0491.) BATA’s adoption of
22 Resolution No. 90 in January 2010 is an admission that “excess” AB 1171 funds were not available as of
23 that date, due to the emergence of “other costs related to financing” of “seismic retrofit or replacement
24 of state-owned toll bridges.” (Sts. & Hy. Code, § 188.5(b).) Thus, any assertion of the existence of
25 excess seismic retrofit funds after January 2010 is questionable.⁵

26 _____
27 any other financial products necessary or desirable in connection therewith, and
28 any other costs related to financing. (Sts. & Hy. Code, § 188.5; emphasis added.)

⁵ BATA raised bridge tolls yet again in 2024. An October 23, 2024 BATA report stated, “Additional funding needed for bridge preservation and operations.” (PRJN578; Exh. 19, p. 4.)

1 On April 7, 2010, the BATA Executive Director wrote to the BATA Oversight Committee,
2 “[T]he AB 1171 commitments to highway and transit capital projects will continue to be funded directly
3 by BATA.” This constitutes an admission that BATA (not MTC) must exercise discretion before transit
4 capital projects like Valley Link can receive “excess” AB 1171 funds. (MTC_AR0500.)

5 No evidence exists that BATA (“the authority”) exercised its discretion to provide AB 1171
6 funds to Project #32 or Valley Link. In requesting AB 1171 funds from MTC in May 2020, the RAIL
7 AUTHORITY asserted, “WHEREAS, MTC adopted Resolution No. 3434, Revised, which establishes
8 commitments of AB 1171 bridge toll funds to specific projects and corridors, including \$95 million for
9 Tri-Valley Transit Access Improvements to/from BART ...” (5AR10228.) A June 2020 MTC report
10 noted, “\$95 million programmed to corridor; \$83M remaining after \$12M in previous BART to Liver-
11 more allocations.” (5AR10357.) Attachment C to Resolution No. 3434 shows a \$95 million commitment
12 of AB 1171 funds to “Tri-Valley Transit Access Improvements to/from BART.” (MTC_AR399.)
13 MTC’s establishment of “commitments of AB 1171 bridge toll funds to specific projects and corridors”
14 in MTC Resolution No. 3434 (3AR6027) is an ultra vires act because Section 31010(b) gives that power
15 to BATA, “a separate entity.” At no time did BATA authorize AB 1171 funds to Project #32. The MTC
16 Parties prejudicially abused their discretion in their 2018 and 2020 funding allocations to the Valley
17 Link project because there is no substantial evidence showing that “the authority” (BATA) made a find-
18 ing of “excess” AB 1171 seismic retrofit funds “available” for funding projects under § 30914(c)(32).

19 This Court should issue a writ of mandate to BATA, MTC, and the RAIL AUTHORITY Parties
20 to rescind MTC’s 2018 and 2020 funding allocations to the RAIL AUTHORITY because BATA failed
21 to act to make available AB 1171 funds to projects under Section 30914(c)(32), including the Valley
22 Link project, in accordance with Streets and Highways Code Section 31010(b).

23 **C. The Valley Link Project Is Inconsistent with Streets & Highways Code § 30914(c)(32).**

24 Streets and Highways Code section 30914, subdivision (c)(32) states in full, “I-580 (Tri Valley)
25 Rapid Transit Corridor Improvements. Provide rail or High-Occupancy Vehicle lane direct connector to
26 Dublin BART and other improvements on I-580 in Alameda County for use by express buses. Sixty-five
27 million dollars (\$65,000,000). The project sponsor is the Alameda County Transportation Commission.”
28 The Valley Link Project is inconsistent with Section 30914.

1. *The RAIL AUTHORITY is not an eligible “project sponsor” under §30914(c)(32).*

As a threshold issue, MTC Parties' allocation of AB 1171 funds to the RAIL AUTHORITY for Project #32 violates Section 30914(c)(32) because the RAIL AUTHORITY is not the eligible "project sponsor." The Legislature designated the Alameda County Transportation Commission as the "project sponsor" in Section 30914(c)(32) (See fn. 1, *supra*). However, the funding allocation requests for the Valley Link Project in 2018 and 2020 were submitted to MTC by the AUTHORITY Parties, rather than the ALAMEDA CTC Parties. The RAIL AUTHORITY BOARD falsely claimed in its resolutions, "RESOLVED, that Tri-Valley—San Joaquin Valley Regional Rail Authority is an eligible sponsor of projects funded with AB 1171 bridge tolls." (3AR6167; 5AR9971; 5AR10265.)

When the Legislature created the RAIL AUTHORITY, it could have made it a "project sponsor" in Section 30914(c)(32). The Legislature chose to not give it "project sponsor" status. The RAIL AUTHORITY Parties have no rights under Section 30914(c)(32). Hence, the RAIL AUTHORITY Parties had no legal authority to submit funding allocation requests to MTC pursuant to Section 30914(c)(32). MTC's allocations of AB 1171 funding to the Valley Link Project through the RAIL AUTHORITY were ultra vires.

2. *The Valley Link Project exceeds the scope of the project authorized under §30914(c)(32).* In adopting SB 916 (2003), which authorized placing Regional Measure 2 on the ballot, the Legislature gave MTC and the project sponsor a binary choice in Streets and Highways Code Section 30914(c)(32): "Provide rail or ... improvements on I-580 in Alameda County for use by express buses." (Emphasis added.) The phrase "for use by express buses" modifies only "improvements on I-580 ..."; it does not modify "rail" because that would be an absurd result (buses do not operate on "rail").

Our Supreme Court has articulated a framework for interpretation of the word "or" in statutes:

In construing statutes, we must rely on " 'the usual, ordinary import of the language employed in framing them.' " (*Phelps v. Stostad* (1997) 16 Cal.4th 23, 32 [65 Cal. Rptr. 2d 360, 939 P.2d 760].) The " 'ordinary and popular' " meaning of the word "or" is well settled. (*Houge v. Ford* (1955) 44 Cal.2d 706, 712 [285 P.2d 257].) It has a disjunctive meaning: "In its ordinary sense, the function of the word 'or' is to mark an alternative such as 'either this or that.' " (*Ibid.*) We have *also* recognized that the word may have a conjunctive meaning. But, as we have long stated, "[r]esort to such unnatural construction of the word 'or' is sanctioned only when such construction is found necessary to carry out the obvious intent of the Legislature in a statute or the obvious intent of the parties in a contract, when such intent may be gleaned from the context in which the word is used." (*Ibid.*) (*In re Jesusa V.* (2004) 32 Cal.4th 588, 622-623; emphasis added.)

As demonstrated by BATA Resolution No. 72 and MTC Resolution No. 3664, BATA and MTC chose to proceed with the “improvements on I-580 in Alameda County for use by express buses” option rather than the “rail” option. BATA defined Project #32 in its Long-Range Plan in 2006: “This project will improve express bus service on I-580 in the Tri-Valley area of Alameda County.” (MTC_AR166.)

Defendants MTC and ALAMEDA CTC spent tens of millions of RM2 funds to construct the I-580 eastbound and westbound HOV lanes in the freeway median (see Resolution No. 3664, MTC_AR2164-2166). Those HOV lanes (later converted by ALAMEDA CTC into “express lanes”) occupy the freeway median where the RAIL AUTHORITY Parties approved the Valley Link project in May 2021. The MTC funding allocations to the Valley Link Project in September 2018, March 2020, and June 2020 are inconsistent with BATA’s and MTC’s earlier choices to make “improvements on I-580 in Alameda County for use by express buses” instead of “rail.” Plaintiffs assert that funding a rail project, after having funded I-580 widening, violates the clear “or” language of Streets & Highways Code section 30914(c)(32) and MTC’s earlier funding allocations to “I-580 (Tri Valley) Rapid Transit Corridor Improvements” in MTC Resolution No. 3664. Demolition of the RM2-funded HOV/express lanes constitutes injury to funds, property, and the public fisc.

The MTC Parties’ funding of both “improvements on I-580 in Alameda County for use by express buses” and “rail” violates Section 30914(c)(32). They are mutually exclusive because the Valley Link Project would occupy several miles of the I-580 median right-of-way now occupied by the HOV lanes built with RM2 funds (MTC Resolution No. 3664). Not only is this a form of “double-dipping” into bridge toll revenues, it also would cause nearly eleven miles of those HOV lanes (now “express lanes”) to be destroyed in order to clear the right-of-way for the Valley Link project between the Dublin/Pleasanton BART station and the vicinity of Greenville Road. Spending pursuant to Section 30914(c)-(32) on a “rail” project that would destroy “improvements on I-580 in Alameda County for use by express buses” constitutes “illegal expenditure of, waste of, or injury to, the estate, funds, or other property of a local agency” under Code of Civil Procedure section 526a and related common law taxpayer actions because it violates the legal standards set by Section 30914(c)(32) and, hence, is ultra vires.

1 **D. The Valley Link Project Is Inconsistent with the Voter-Approved “Legal Text of**
2 **Regional Measure 2” (RM2).**

3 The Voter Information Guide for the March 2004 Regional Measure 2 (RM2) election includes
4 the “Legal Text of Regional Measure 2,” also known as the “Regional Measure 2 Regional Traffic
5 Relief Plan.” (1AR0386.)

6 That “Legal Text” of RM2 was a specific proposal submitted to voters. It has the attributes of a
7 contract and must be respected:

8 It is undoubtedly true, as contended, that the BART resolution stating the
9 purposes of and calling the bond election, and the acceptance of the ballot
10 proposition by the voters, was analogous to a contract between BART and the
11 voters or at least the taxpayers of the district ... And obviously, the terms of the
12 specific proposal submitted to voters have the attributes of such a contract and
13 must be respected. (*Tooker v. San Francisco Bay Area Rapid Transit Dist.* (1972)
14 22 Cal.App.3d 643, 649.)

15 The “Regional Traffic Relief Plan” map in the Legal Text of RM2 includes the “I-580 (Tri-
16 Valley) Rapid Transit Corridor.” (1AR0387.) The “South Bay Projects” map in the Legal Text of RM2
17 includes the “I-580 (Tri-Valley) Rapid Transit Corridor Improvements.” (1AR0405.) In both of those
18 maps, the line indicating the project begins at the (East) Dublin/Pleasanton BART station on the west
19 and ends on the Livermore Valley floor. These maps indicate that the “I-580 (Tri-Valley) Rapid Transit
20 Corridor” projects, as represented to RM2 voters, were wholly within Alameda County, far away from
21 the San Joaquin County line to the east. They did not connect to San Joaquin County.

22 The Legal Text of RM2 also states, “Interstate 580 Rapid Transit Corridor Improvements: \$65
23 million • Corridor improvements on I-580 in Alameda County. Funds available for new rail service or
24 express bus improvements, such as a carpool-lane direct connector to Dublin BART” (1AR0406;
25 emphasis added.) This Legal Text supports Plaintiffs’ interpretation that Section 30914(c)(32) offers a
26 binary choice: “new rail service or express bus improvements.” RM2 voters authorized funding for
27 “new rail service” or “express bus improvements,” not both. RM2 voters authorized funding for
28 “Corridor improvements on I-580 in Alameda County,” not improvements in any other highway corridor
in any other county (e.g., I-205 or I-5 corridors in San Joaquin County), especially in any county not
among the seven counties included in the RM2 election. (1AR0386, 389.) Agencies have limited
“power to redesign a project specifically authorized and funded by a vote of the people.” (*Hayward Area*
Planning Assn. v. Alameda County Transportation Authority (1999) 72 Cal.App.4th 95, 107.)

1 Spending on a “rail” project in the I-580 corridor (i.e., Valley Link Project) that would destroy
2 RM2-funded “improvements on I-580 in Alameda County for use by express buses” is inconsistent with
3 the voter-approved Legal Text of RM2 and constitutes “illegal expenditure,” “injury,” or “waste” under
4 Code of Civil Procedure section 526a and related common law taxpayer actions.

5 **E. The Valley Link Project Is Inconsistent with Streets & Highways Code Section 30914(e)**
6 **(“The Project Sponsor Shall Submit an Initial Project Report ... Before July 1, 2004”)**

7 Streets and Highways Code section 30914(e) states in part (emphasis added):

8 For all projects authorized under subdivision (c), the project sponsor shall submit
9 an initial project report to the Metropolitan Transportation Commission before
10 July 1, 2004. ... The project sponsor shall update this report as needed or
11 requested by the commission. No funds shall be allocated by the commission for
12 any project authorized by subdivision (c) until the project sponsor submits the
13 initial project report, and the report is reviewed and approved by the commission.

14 The RAIL AUTHORITY Parties and MTC Parties violated Section 30914(e). As set forth, *supra*, the
15 AUTHORITY is not “the project sponsor” authorized under subdivision (c), so it was not authorized to
16 submit any Initial Project Reports (IPRs) to MTC. MTC had no legal authority to allocate funds to the
17 Valley Link Project “until the project sponsor submits the initial project report.” ALAMEDA CTC, the
18 “project sponsor” designated by the Legislature, has not submitted an IPR for the Valley Link Project.
19 Hence, MTC’s September 2018, March 2020, and June 2020 funding allocations are ultra vires.

20 Moreover, the RAIL AUTHORITY Parties did not submit their “Initial Project Report” for the
21 Valley Link Project “before July 1, 2004.” Such noncompliance with Section 30914(e) constitutes
22 violation of that statute and prejudicial abuse of discretion by the MTC and AUTHORITY parties.

23 **F. The MTC PARTIES Made an Unconstitutional Gift of AB 1171 Bridge Toll Revenues**
24 **to the Rail Authority Parties in Violation of Cal. Constitution, Article XVI, Section 6.**

25 The diversion and allocation of AB 1171 BATA/MTC seismic retrofit toll bridge revenues to the
26 Valley Link project in San Joaquin County is an illegal gift of public funds that is unconstitutional under
27 the California Constitution, article XVI, section 6.

28 In *Golden Gate Bridge & Highway Dist. v. Luehring* (1970) 4 Cal.App.3d 204, 213 (“*Golden Gate Bridge*”), the court interpreted article XVI, section 6 (then at codified at article XIII, § 25) and ruled that the Golden Gate Bridge District could not divert surplus revenues to county governments because “[t]he county tax authorities collected the taxes, but the county governments had nothing to do which [sic] their imposition and never had any right to the amounts collected.”

1 The court further noted, “The revenues of the district, in contrast, are derived from tolls -- paid
2 by a group of people who are not claimed to be substantially identical with county or district taxpayers.
3 Therefore, there is no "intertwining" of the district and the counties so far as revenue is concerned.” (*Id.*
4 at p. 214.) The court held that transfer of surplus bridge toll revenues was “contrary” to the Constitution.

5 MTC Parties’ allocation, diversion, and/or transfer of AB 1171 toll bridge revenues to the AUT-
6 HORITY Parties is unconstitutional, for similar reasons. The AUTHORITY Parties had nothing to do
7 with the imposition of AB 1171 bridge tolls and never had any right to the amounts collected. San Joa-
8 quin County is outside of MTC/BATA’s nine Bay Area counties jurisdiction. The bridge tolls are paid
9 by bridge users who are not substantially identical with Tri-Valley and San Joaquin County taxpayers.

10 Therefore, Plaintiffs seek this Court’s judicial declaration that the MTC COMMISSION’s
11 allocation of AB 1171 funds to the AUTHORITY for the Valley Link Project is an unconstitutional gift
12 of public funds under the article XVI, section 6 and the related *Golden Gate Bridge* standard. Plaintiffs
13 also seek a temporary restraining order, preliminary injunction, and permanent injunction from the Court
14 restraining and preventing MTC Parties from providing AB 1171 toll bridge revenues to the
15 AUTHORITY Parties for the Valley Link Project.

16 **II. THE MTC PARTIES’ AB 1171 FUNDING ALLOCATIONS TO THE RAIL**
17 **AUTHORITY PARTIES IN 2018 AND 2020 ARE INCONSISTENT WITH MTC**
18 **RESOLUTION No. 3636.**

19 In allocating AB 1171 funds to the RAIL AUTHORITY for the Valley Link Project in MTC
20 Resolution No. 3914, Revised, MTC imposed a condition: “TVSJVRRRA agrees to comply with the
21 provisions of MTC Resolution No. 3636, Revised and that any AB 1171 Bridge Toll Funds received
22 under this allocation shall be subject to MTC Resolution No. 3636, Revised.” (3AR6062; 5AR10342;
23 5AR10344.) Defendant RAIL AUTHORITY expressly agreed to this funding condition in all three of
24 its resolutions requesting the AB 1171 funding: “RESOLVED, that Tri-Valley—San Joaquin Valley
25 Regional Rail Authority, and its agents, shall comply with the provisions of the Metropolitan
26 Transportation Commission’s Regional Measure 2 Policy Guidance (MTC Resolution No. 3636).”
(3AR6167; 5AR09971; 5AR10265.)

27 The “Terms and Conditions” of the “Allocation Instruction” included, “All routes are required to
28 meet RM2 performance standards specified in MTC’s adopted RM2 policies and procedures.”

(3AR6111; 5AR10050; 5AR10296.) Hence, the RAIL AUTHORITY Parties also have contractual obligations to comply with Resolution No. 3636, Revised.

In making their 2018 and 2020 AB 1171 funding allocation requests, the RAIL AUTHORITY Parties prejudicially abused their discretion due to noncompliance with Resolution No. 3636. The MTC Parties prejudicially abused their discretion in granting those funding allocation requests in September 2018, March 2020, and June 2020, due to noncompliance with Resolution No. 3636.

A. The Valley Link Project Is Inconsistent with the MTC and SJCOG Regional Transportation Plans (RTPs) Then in Effect at the Time of the MTC Funding Allocations in 2018 and 2020.

MTC Resolution No. 3636 states in part, “**CONSISTENCY WITH OTHER PLANS AND POLICIES** **RTP Consistency** Capital projects seeking allocations must be consistent with the adopted Regional Transportation Plan (RTP), which state law requires be consistent with federal planning and programming requirements.” (1AR0756; see, e.g., Gov. Code, § 65080 et seq.)

Defendant RAIL AUTHORITY falsely stated in its three resolutions to MTC requesting the three funding allocations in 2018 and 2020: “RESOLVED, that Tri-Valley—San Joaquin Valley Regional Rail Authority certifies that the project is consistent with the Regional Transportation Plan (RTP).” (3AR6167; 5AR09971; 5AR10265.) There is no substantial evidence supporting the RAIL AUTHORITY’s certification of RTP consistency. (cf. *Golden Door Properties, LLC v. County of San Diego* (2020) 50 Cal.App.5th 467, 540.)

The Valley Link Project is inconsistent with Resolution No. 3636 and ineligible for AB 1171 funding because it is inconsistent with MTC’s Regional Transportation Plan (RTP) in effect at the time of the MTC funding allocations in 2018 and 2020. The Valley Link Project was not included in MTC’s Plan Bay Area 2040 RTP, adopted in July 2017. (3AR4955-62.) At that time, the “BART to Livermore/ACE” project (3AR4957, 4959-4962) was in the RTP. MTC approved two amendments to the 2017 RTP; neither included the Valley Link Project. The first 2017 RTP amendment (March 2018) concerned U.S. 101 in San Mateo County (MTC_AR1613). The second 2017 RTP amendment (May 2020) concerned ALAMEDA CTC’s I-680 express lanes project in Alameda County (MTC_AR2203). These amendments demonstrate that Valley Link could have been timely included in MTC’s Plan Bay Area 2040 RTP, as amended, but in fact was not. It was only when MTC adopted Plan Bay Area 2050

1 in October 2021 (2021 RTP) that the Valley Link Project was added to the RTP (MTC_AR2650). That
2 was fifteen months after the June 2020 funding allocation to the Valley Link Project.

3 The Valley Link Project is also inconsistent with Resolution No. 3636 and ineligible for AB
4 1171 funding because it is inconsistent with the San Joaquin County Council of Governments (SJCOG)
5 Regional Transportation Plan (RTP) then in effect at the time of the MTC funding allocations in 2018
6 and 2020. The Valley Link Project was not included in the San Joaquin County General Plan
7 Transportation and Mobility Section (December 2016) (MTC_AR1493) or in the County's Regional
8 Congestion Management Program (April 2018) (MTC_AR1623). SJCOG amended its 2018 Regional
9 Transportation Plan in April 2020 to include a Valley Link Project, but that is limited to a single station
10 in San Joaquin County with an access road to Patterson Pass Road (essentially a "Mountain House"
11 station close to the Alameda County line) (5AR10052).⁶ This means that the Valley Link Project
12 seeking the funding allocations from MTC is inconsistent with both the MTC and the SJCOG RTPs.

13 **B. The Valley Link Project Is Inconsistent with the Congestion Management Plans**
14 **(CMPs) or Capital Improvement Programs (CIPs) of Alameda and San Joaquin**
15 **Counties in Effect at the Time of MTC Commission's Allocation Decisions.**

16 MTC Resolution No. 3636 requires that project funding be included in a Countywide Plan:

17 **CMP Consistency** For capital projects, it is required that all committed project
18 phases be included in a Countywide Plan. The phase of the project requiring
19 funding shall be in an approved County Congestion Management Plan (CMP) or
20 in an adopted Capital Improvement Program (CIP) for counties that have opted
out of the CMP requirement, prior to seeking allocation of RM2 funds. For
multicounty projects, the project must be in the countywide plans and CMP/CIP
of the counties affected by the project. (1AR0756; emphasis added.)

21 The Valley Link Project is inconsistent with Resolution No. 3636 and ineligible for AB 1171
22 funding because it was not included in the 2016 Alameda Countywide Transportation Plan
23 (MTC_AR828). The Valley Link Project was added to the Alameda Countywide Transportation Plan
24 for Alameda County in October 2020 (MTC_AR2574; 5AR10771-72), nearly four months after MTC's
25 June 2020 allocation decision. The Valley Link Project was not in San Joaquin County's Congestion
26 Management Plan (CMP) as of 2018 (MTC_AR1623-1768).

27 _____
28 ⁶ Note well that that RAIL AUTHORITY Board's adopted Valley Link Project in May 2021 included
four stations in San Joaquin County.

1 The Valley Link Project is inconsistent with Resolution No. 3636 and ineligible for AB 1171
2 funding because it is inconsistent with the Capital Improvement Programs (CIPs) of Alameda and San
3 Joaquin Counties at the time of the MTC funding allocations in 2018 and 2020. The Valley Link Project
4 was not included in the Capital Improvement Program for ALAMEDA CTC in effect in 2020. (See
5 PRJN Exhs. 17-18; ACTC_AR0676-717, “2020 Comprehensive Investment Plan Fiscal Years 2019/20
6 to 2023/24” dated June 17, 2019 and ACTC_AR0915-1096, “2020 Comprehensive Investment Plan
7 Update Fiscal Years 2019/20 to 2023/24” dated May 2020.). The Valley Link Project was not included
8 in the Capital Improvement Program for San Joaquin County in 2018. (See MTC_AR1699-1701.)

9
10 **C. The Valley Link Project Is Inconsistent with the Air Quality Conformity and**
11 **Transportation Improvement Programs (TIP) in Effect at the Time of the MTC**
12 **Commission’s Allocation Decisions in 2018 and 2020.**

13 MTC Resolution No. 3636 states in part:

14 **TIP and Air Quality Conformity** ... all regionally significant RM2 projects
15 must be included in the conformity analysis for the Regional Transportation Plan
16 (Plan) and Transportation Improvement Program (Program). ... (1AR0756-757.)

17 The Valley Link Project is “regionally significant” because it increases transit capacity or offers
18 an alternative to established regional highway travel. The Valley Link Project “must be included in the
19 conformity analysis, regardless of its fund source” because it is a “regionally significant project[.]” that
20 “must be included in the conformity analysis for the Regional Transportation Plan (Plan) and
21 Transportation Improvement Program (Program).”

22 The Valley Link Project is not included in the conformity analysis for MTC’s 2017 Regional
23 Transportation Plan (Plan Bay Area 2040), as amended, at the time of the September 2018, March 2020,
24 and June 2020 funding allocations. (MTC_AR1198-1476; MTC Res. No. 4274.) The “BART to
25 Livermore Extension” project is included. (MTC_AR1321.)

26 The Valley Link Project is not included in the 2019 Transportation Improvement Program. In
27 September 2018, MTC prepared and approved the “Final Transportation-Air Quality Conformity
28 Analysis for the Amended Plan Bay Area and the 2019 Transportation Improvement Program.”
(MTC_AR1769.) The Valley Link Project is not included in the lists of projects in Appendices A-1, A-
2, and B. (See MTC_AR1800 through 1881.) A project called “BART to Livermore/ACE Project
Development and Construction Reserve” is included as RTPID No. 17-01-0062. (MTC_AR1862.)

1 In its May 2020 update, MTC prepared and approved the Final Air Quality Conformity Analysis
2 for the Amended Plan Bay Area 2040 and Amended 2019 Transportation Improvement Program.

3 (MTC_AR2211.) The Valley Link Project is not included in the lists of projects in Appendices A-1, A-
4 2, and B. (See MTC_AR2240 through 2331.) A project called “BART to Livermore/ACE Project
5 Development and Construction Reserve” is included as RTPID No. 17-01-0062. (MTC_AR2316.)

6 Hence, the Valley Link Project does not comply with the standards set in Resolution No. 3636
7 and is ineligible for AB 1171 funding because it is a “regionally significant” project that is not included
8 in the Air Quality Conformity and the Transportation Improvement Plan (TIP) at the time of the MTC
9 funding allocations in 2018 and 2020.

10 **D. The Valley Link Project Environmental Studies, Preliminary Engineering, and Design**
11 **Costs in the 2018 and 2020 Funding Allocations Are Not “Eligible Expenses.” They Are**
12 **“Beyond the Project Scope and Intent as Outlined in S&HC 30914(c).”**

13 MTC Resolution No. 3636 requires that funded projects be within “the project scope and intent
14 as outlined” in Streets and Highways Code Section 30914(c):

15 **Eligible Expenses ... 1. Environmental Studies and Preliminary**
16 **Engineering ... Environmental costs eligible for reimbursement shall be limited**
17 **to the project as described in S&HC Section 30914 (c). Any environmental costs**
18 **associated with an element of the environmentally scoped project that is beyond**
19 **the project scope and intent as outlined in S&HC 30914 (c) and approved by the**
20 **Commission in the IPR is not eligible for reimbursement under RM2. (Emphasis**
21 **added.) (1AR0750.)**

22 The \$60 million of Valley Link Project components funded through MTC’s 2018 and 2020 AB
23 1171 allocations include environmental studies, preliminary engineering, and design. They are
24 inconsistent with this provision of Resolution No. 3636 because they are “beyond the project scope and
25 intent as outlined in S&HC 30914(c).” As discussed *supra*, the project description in Streets and
26 Highways Code section 30914, subdivision (c)(32) is “I-580 (Tri Valley) Rapid Transit Corridor
27 Improvements. Provide rail or High-Occupancy Vehicle lane direct connector to Dublin BART and
28 other improvements on I-580 in Alameda County for use by express buses.” (Emphasis added.) As
demonstrated by the maps in the “Legal Text” of RM2 (1AR0387, 1AR0405), the project scope and
intent are limited to the Livermore/Amador Valley floor in Alameda County; the scope and intent do not
extend into the Altamont region east of Greenville Road in Livermore or into San Joaquin County.
Environmental, engineering, and design in San Joaquin County unquestionably is beyond the project

scope and intent in Section 30914(c)(32) and are therefore not “eligible expenses.”

E. MTC’s 2018 Funding Allocation to the Valley Link Project Violated Resolution No. 3636 Because the RAIL AUTHORITY BOARD Did Not Adopt the IPR Prior to MTC’s September 26, 2018 Approval of the IPR and Allocation of Funds.

Resolution No. 3636 states in part, “An IPR for capital projects, as outlined in S&HC 30914(e) and detailed in Appendix A and B, shall be prepared and adopted by the appropriate governing board prior to MTC approval of the IPR and allocation of funds.” (MTC_AR0511; emphasis added.) MTC and the RAIL AUTHORITY violated this provision in the 2018 allocation. MTC COMMISSION approved the IPR and allocation of funds on September 26, 2018 (3AR6106); the AUTHORITY BOARD adopted the IPR through Resolution No. R07-2018 two weeks later on October 10, 2018 (3AR6166-69), which the meeting minutes also demonstrate (3AR6171).

F. The Valley Link Project’s Initial Operating Segment (IOS) Terminating at Southfront Station or Mountain House Station Alternative Violates Resolution No. 3636 Because It Would Not “Mak[e] Available to the Public a Useable or Operable Segment.”

Resolution No. 3636, Revised, states in part, “The expenditure of RM2 funds for any phase of the project should lead to making available to the public a useable or operable segment in accordance with the legislative intent.” (MTC_AR510; emphasis added.)

The AUTHORITY BOARD approved a project on May 12, 2021 with an Initial Operating Segment (IOS) terminating at either Southfront Station or Mountain House Station Alternative. Neither a Southfront Station nor a Mountain House Station Alternative would be on the ACE rail line. Any such IOS would not be “a useable or operable segment in accordance with the legislative intent” because Public Utilities Code § 132652 expressly requires “transit connectivity, between BART’s rapid transit system and the Altamont Corridor Express commuter rail service.” An IOS to Southfront Station or Mountain House Station Alternative would not achieve the requisite “transit connectivity.”

The AUTHORITY Parties prejudicially abused their discretion and violated MTC Resolution No. 3636, Revised, in AUTHORITY BOARD’s May 12, 2021 project approval because any IOS that does not connect BART and ACE (such as an IOS terminating at Southfront Station or Mountain House Station Alternative) would not be in accordance with the legislative intent of § 132652.

The MTC Parties have prejudicially abused their discretion as to the 2018 and 2020 allocations because the “Preferred Alternative” Valley Link project approved by AUTHORITY BOARD on May

12, 2021 does not comply with Resolution No. 3636’s requirement that “the project should lead to making available to the public a useable or operable segment in accordance with the legislative intent.”

III. MTC’s 2018 AND 2020 FUNDING ALLOCATIONS TO THE VALLEY LINK PROJECT ARE INCONSISTENT WITH MTC RESOLUTION No. 3434 (AND RELATED RESOLUTION No. 3357)

MTC Resolution No. 3434 is the Regional Transit Expansion Program of Projects. (1AR685.) The companion Regional Transit Expansion Policy and Criteria, Resolution No. 3357, is incorporated by reference. (1AR13; 686; 688-89.)

A. The Scope of the Valley Link Project Is Not Consistent with the Scope of the “Tri-Valley Transit Access Improvements to/from BART” in MTC Resolution No. 3434.

The “Program of Projects: Rail Expansion” map in Resolution No. 3434 shows “(4) BART Tri-Valley extension” beginning at the (East) Dublin/ Pleasanton BART station on the west and terminating in the vicinity of Greenville Road in Livermore on the east; it does not extend into the Altamont Pass region easterly of Greenville Road; it does not extend to the San Joaquin County line or into San Joaquin County. (MTC_AR0383.) An entirely different project, “(14) Altamont Commuter Express: Increased Service,” extends easterly through the Altamont Pass region and into San Joaquin County. (MTC_AR0383.) The Valley Link Project descriptions in the IPRs for the funding allocation requests (3AR6130-41, 5AR9956-64, 5AR10271-81) are inconsistent with Resolution No. 3434’s maps.

B. The MTC Parties Did Not Evaluate Valley Link Project “Cost-Effectiveness” Consistent with MTC Resolutions Nos. 3357 AND 3434.

MTC Resolution No. 3434 states in part, “MTC adopts a Regional Transit Expansion Program of Projects, consistent with the Policy and Criteria established in Resolution No. 3357, as outlined in Attachment A, attached hereto and incorporated herein as though set forth at length.” (MTC_AR0020.) Attachment A states in part, “Cost-effectiveness: “Cost per new rider”, measured as dollars per new rider (shifting from auto to transit; not transit to transit).” (MTC_AR0023.) MTC Resolution No. 3357 is a set of financial and performance criteria under which projects proposed for the Regional Transit Expansion Plan are evaluated. These criteria include “cost-effectiveness”: “cost per new rider” (1AR0021-22).

The MTC Parties failed to comply with or adhere to Resolution Nos. 3357 and 3434 in allocating funds to the Valley Link Project because there is no evidence that the MTC Parties or AUTHORITY Parties evaluated the Valley Link Project’s “cost-effectiveness” in accordance with said resolutions. This Court should order the MTC Parties to rescind the 2018 and 2020 funding allocations to the Valley

Link project (Res. No. 3914) and order them to evaluate the project’s “cost-effectiveness,” consistent with Resolution Nos. 3357 and 3434, before allocating AB 1171 funds to the Valley Link project.

IV. MTC PARTIES’ 2020 FUNDING ALLOCATIONS TO THE VALLEY LINK PROJECT ARE INCONSISTENT WITH MTC RESOLUTION No. 4399.

The Metropolitan Transportation Commission Act, Government Code § 66502, states that the agency has the nine Bay Area counties in its “region.” San Joaquin County is not included.

The AUTHORITY Parties are illegally using MTC discretionary funds (including but not limited to AB 1171 Bay Area bridge toll revenues) for the AUTHORITY’s Valley Link Project, a significant portion of which would be located in San Joaquin County, outside MTC’s and BATA’s “region” and jurisdiction. Allocation, diversion, and/or transfer of Bay Area bridge toll revenues by the MTC Parties to a project largely in San Joaquin County is without legal authority and, as an ultra vires act, is illegal expenditure of, waste of, or injury to public funds and/or property. (Code Civ. Proc., § 526a.)

On December 18, 2019, MTC COMMISSION approved MTC Resolution No. 4399 (Interregional Project Funding and Coordination Policy), which states, in part:

Any Interregional Project (with total cost of \$100 million or more) using MTC Discretionary Funds located wholly or partially outside of the MTC region must meet the following conditions prior to the programming or allocation of MTC Discretionary Funds • Consistency with Plans/Programs. The Interregional Project must be consistent with the Regional Transportation Plan (RTP) for MTC and the applicable Metropolitan Planning Organization (MPO)/Regional Transportation Planning Agency (RTPA). (5AR09916; emphasis added.)

The AUTHORITY’s approved Valley Link Project is not “consistent with the Regional Transportation Plan (RTP) for MTC or the applicable Metropolitan Planning Organization (MPO)/Regional Transportation Planning Agency (RTPA)” in violation of the “conditions” of MTC Resolution No. 4399.

As discussed *supra*, MTC’s RTP (2017 Plan Bay Area 2040, as amended) did not include the Valley Link Project at the time of the AB 1171 funding allocation decisions in 2018 and 2020.

In June 2018, the San Joaquin Council of Governments (SJCOG) Board of Directors adopted the 2018 Regional Transportation Plan. On April 16, 2020, the SJCOG Board of Directors approved “2018 Regional Transportation Plan Amendment #3 for the Valley Link Project.” The RTP amendment added MPO RTP ID SJ18-6011 for the “Valley Link Project” with a “Total Project Cost” of “\$163,900,000” and the following “Project Description,” which states in full:

1 Improve the Union Pacific Railroad right-of-way from the San Joaquin County
2 Line for a passenger rail service. Construction of a station and platform to
3 accommodate the new passenger rail service with parking and access onto
4 Patterson Pass Road. Construction of an operations and maintenance facility at
5 Hanson Road in Tracy along the alignment. (5AR10055; emphasis added.)

6 The Valley Link Project funded by MTC Parties is not “consistent with the Regional
7 Transportation Plan” for SJCOG. The “2018 Regional Transportation Plan Amendment #3 for the
8 Valley Link Project” calls for “a station” within San Joaquin County “with parking and access onto
9 Patterson Pass Road.” But the AUTHORITY’s May 2020 IPR to MTC includes four stations within San
10 Joaquin County (5AR10272, 10281).

11 Even though Valley Link is MTC’s only funded interregional project, MTC has failed to execute
12 an Interagency Agreement concerning the Valley Link Project. MTC Resolution No. 4399 also states, in
13 part, “[T]he Executive Director or designee or standing Committee of the Commission shall take the
14 steps necessary to execute interagency agreements in accordance with the conditions set forth in
15 Attachment A to this resolution.” Neither Executive Director McMILLAN nor current Executive
16 Director Fremier, nor their designee, nor a standing Committee of the Commission, has taken the steps
17 necessary to execute an interagency agreement concerning the Valley Link Project. (PRJN602, 659.)

18 **V. AFTER FINDING VIOLATIONS IN THE EIGHTH, NINTH, AND TENTH CAUSES**
19 **OF ACTION, THIS COURT SHOULD ORDER THE FOLLOWING REMEDIES.**

20 **A. Declaratory Relief.**

21 Plaintiffs seek this Court’s declaration that the MTC Parties and AUTHORITY Parties violated
22 the following legal authorities in allocating, transferring, distributing, or disbursing AB 1171 funds to
23 the Valley Link Project via MTC Resolution No. 3914 in September 2018, March 2020, and June 2020:

- 24 • AUTHORITY Parties’ AB 1171 funding requests and MTC Parties’ AB 1171 allocations for the
25 Project are inconsistent with Public Utilities Code section 132652, Streets and Highways Code
26 sections 31010(b) and/or 30914, the Legal Text of Regional Measure 2 (RM2), and/or MTC
27 Resolution Nos. 3357, 3434 and/or 3636, Revised.
- 28 • MTC Parties violated Streets and Highways Code section 31010(b) in allocating AB 1171 funds to
MTC and AUTHORITY Parties for the Valley Link Project before BATA determined AB 1171
funds “are in excess of those needed to meet the toll commitment” and before BATA made AB 1171
funds “available” to MTC for funding the Valley Link Project.

- 1 • The RAIL AUTHORITY is not an eligible "project sponsor" for Project #32 under § 30914(c)(32)
2 and did not submit an Initial Project Report (IPR) before the statutory deadline on July 1, 2024.
- 3 • MTC Parties exceeded the project scope in S&HC § 30914(c)(32) "Provide rail or ... improvements
4 on I-580 in Alameda County for use by express buses" by funding both rail and bus projects. MTC
5 Parties had already funded improvements for express buses as Project #32 with RM2 bridge toll
6 funds. So MTC Parties could not legally fund a "rail" project under (c)(32) with AB 1171 funds,
7 especially a Valley Link Project that would destroy the RM2-funded I-580 "improvements" projects.
- 8 • The Valley Link Project is inconsistent with the "I-580" corridor project in the RM2 "Legal Text."
- 9 • AUTHORITY Parties and/or MTC Parties violated MTC Resolution No. 3636. At the time of AB
10 1171 funding allocation requests and allocations in 2018 and 2020 to the Valley Link Project, the
11 Project was not consistent with the MTC's and SJCOG's RTPs, MTC's Air Quality Conformity and
12 TIPS, and or Alameda CTC's and/or SJCOGs countywide plans and/or CIPs. The Project descrip-
13 tion was "beyond the project scope and intent as outlined in S&HC 30914 (c)" and ineligible for
14 "Environmental" phase funding. In the September 2018 allocation, the AUTHORITY BOARD did
15 not adopt the IPR "prior to MTC approval." The Valley Link IOS terminating at Southfront or
16 Mountain House would not "mak[e] available to the public a useable or operable segment."
- 17 • AUTHORITY Parties and/or MTC Parties violated MTC Resolution No. 3434 in allocating funds to
18 the Project because the Project is beyond the scope of the "Tri-Valley Transit Access" project in said
19 resolution and they failed to evaluate the project's "cost-effectiveness" (Res. No. 3357).
- 20 • MTC Parties violated Resolution No. 4399 because the Project is an "interregional project" that has
21 not satisfied the "conditions" of that resolution and therefore is not eligible for MTC discretionary
22 funds. Executive Director McMILLAN, Executive Director Fremier, or their designee or a standing
23 Committee of the Commission have not executed an interagency agreement concerning the Project.
- 24 • AUTHORITY Parties and/or MTC Parties violated Public Utilities Code section 132652, e.g.,
25 because an IOS to Southfront or Mountain House would not provide "transit connectivity, between
26 BART's rapid transit system and the Altamont Corridor Express commuter rail service."
- 27 • MTC Parties' allocation of AB 1171 funds to AUTHORITY for the Project is an unconstitutional
28 gift of public funds under Cal. Const., article XVI, § 6, and the related *Golden Gate Bridge* standard.

- MTC Parties and/or AUTHORITY Parties failed to exercise due care and/or reasonable diligence in authorizing the expenditure of AB 1171 public funds relating to the Project (*Rizzo, Davis II*).

B. Relief Pursuant to Code of Civil Procedure Sections 526a and 527 and Common Law Taxpayer Action.

The MTC Parties and RAIL AUTHORITY Parties have not complied with legal standards (*Harman, Rathbun, Vasquez*), including but not limited to Streets & Highways Code sections 31010 and 30914(c)(32), the Legal Text of Regional Measure 2 (RM2), P.U.C. section 132652, Cal. Const. article XVI, and/or MTC Resolution Nos. 3357, 3434, 3636, and/or 4399. When compared against these legal standards, MTC Parties' AB 1171 funding of the Valley Link Project in 2018 and 2020 is ultra vires. This Court should issue a judgment, restraining and preventing any illegal expenditure of, waste of, or injury to, the estate, funds, or other property (including existing I-580 median improvements) forthwith.

Pursuant to Code of Civil Procedure sections 526a (including subd. (c)) and 527 and common law taxpayer actions, Plaintiffs request that this Court issue a temporary restraining order, preliminary injunction, and permanent injunction, restraining and preventing:

- MTC Parties from transferring to the AUTHORITY Parties AB 1171 funds allocated by the MTC COMMISSION in September 2018, March 2020, and June 2020 for the Valley Link Project.
- AUTHORITY Parties from expending AB 1171 funds on the Valley Link Project that the MTC Parties allocated in 2018 and 2020.
- Future transfers of AB 1171 funds to projects that are inconsistent with legal standards, including S&H Code §§ 31010, 30914; Cal. Const., art. XVI and Resolutions Nos. 3357, 3434, 3636, 4399.
- MTC Parties and AUTHORITY Parties from demolishing and/or converting the RM2-funded HOV/express lanes in the I-580 median for the Valley Link Project because such action would constitute "illegal expenditure" and/or "injury" to funds and/or property.
- MTC Parties from allocating and/or transferring AB 1171 funds to the AUTHORITY Parties (and AUTHORITY Parties from expending such funds) for any use that includes an Initial Operating Segment that does not provide "transit connectivity, between BART's rapid transit system and the Altamont Corridor Express commuter rail service" in accordance with P.U.C. § 132652.
- In the future, MTC Parties must verify compliance with all applicable legal standards for transportation projects before releasing funds, including but not limited to AB 1171 "excess" funds.

1 The Court should direct COMMISSION OF MTC and MTC to henceforth comply with
2 Resolution No. 4399, including but not limited to the execution of Interregional Agreements, for
3 interregional projects (with total cost of \$100 million or more) using MTC Discretionary Funds.

4 Plaintiffs seek remedies of restitution, disgorgement, and/or recovery from the AUTHORITY
5 Parties and MTC Parties of AB 1171 monies illegally expended or wasted (*Davis II, Stevens, Mock*).

6 **C. Mandatory Relief.**

7 The MTC Parties' approvals of AB 1171 funding for the Valley Link Project in September 2018,
8 March 2020, and June 2020 are arbitrary, capricious, entirely lacking in evidentiary support, unlawful,
9 or procedurally unfair. In making the AB 1171 funding allocations, MTC Parties did not adequately con-
10 sider all relevant factors, demonstrate a rational connection between those factors, the choice made, and
11 the purposes of S&HC §§ 30914, 31010 (*Cal. Hotel*). MTC Parties' AB 1171 funds allocations to RAIL
12 AUTHORITY are a prejudicial abuse of its discretion and/or otherwise not in accordance with law.

13 MTC Parties and RAIL AUTHORITY Parties failed to perform their clear, present, and
14 mandatory duties, especially concerning stewardship of AB 1171 funds and the Valley Link Project.
15 Plaintiffs have a clear, present right to, and beneficial interest in MTC Parties' and RAIL AUTHORITY
16 Parties' performance of those duties. Plaintiffs have no other remedy at law or that remedy is
17 inadequate. Plaintiffs request that this Court issue a peremptory writ of mandate in the public interest:

- 18 • Directing AUTHORITY BOARD to rescind its 2018 and 2020 requests to MTC (Res. Nos. R07-
19 2018, R01-2020, R02-2020) for allocation of AB 1171 funds to AUTHORITY for the Project.
- 20 • Directing the MTC COMMISSION to rescind its September 2018, March 2020, and June 2020
21 allocations of AB 1171 funds to the AUTHORITY in its Resolution No. 3914, Revised.
- 22 • Prohibiting the AUTHORITY Parties from expending AB 1171 funds from the September 2018,
23 March 2020, and June 2020 MTC allocations on the Valley Link Project.
- 24 • The MTC COMMISSION has prejudicially abused its discretion in its failures to enforce Res. 4399.

25 **CONCLUSION**

26 For the reasons stated *supra*, Plaintiffs respectfully request that the Court issue a peremptory writ
27 of mandate and provide the other declaratory, injunctive, and restitution/recovery relief requested.

28 DATED: October 13, 2026

Respectfully submitted,

1 LAW OFFICES OF JASON A. BEZIS

2
3 /s/ Jason A. Bezis

4
5 JASON A. BEZIS

6 Attorney for Plaintiffs and Petitioners ALAMEDA
7 COUNTY TAXPAYERS' ASSOCIATION, INC., a
8 California non-profit corporation; MARCUS CRAWLEY;
9 MONTCLAIR VILLAGE HARDWARE; and
10 TRANSPORTATION SOLUTIONS DEFENSE AND
11 EDUCATION FUND, a California nonprofit corporation
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At the time of service, I was over 18 years of age and not a party to this action. My business address is 3661-B Mosswood Drive, Lafayette, CA 94549-3509.

**PLAINTIFFS' OPENING BRIEF IN SUPPORT OF FIRST AMENDED VERIFIED TAXPAYER
COMPLAINT AND PETITION FOR WRIT OF MANDATE
(EIGHTH, NINTH, AND TENTH CAUSES OF ACTION)**

SERVICE LIST

*Attorneys for Defendants/Respondents
TRI-VALLEY-SAN JOAQUIN VALLEY
REGIONAL RAIL AUTHORITY, its BOARD,
KEVIN SHERIDAN, and MICHAEL TREE*

Attorneys for Defendants/Respondents
METROPOLITAN TRANSPORTATION
COMMISSION, BAY AREA TOLL
AUTHORITY, and THERESE W. McMILLAN

Kevin D. Siegel
Deepa Sharma
Maxwell A. Blum
BURKE, WILLIAMS & SORENSEN, LLP
1 California Street, Suite 3050
San Francisco, CA 94111-5432
Phone: (415) 655-8100
E-mail: ksiegel@bwsllaw.com;
dsharma@bwsllaw.com;
MBlum@bwsllaw.com;

*Attorneys for Defendants/Respondents
METROPOLITAN TRANSPORTATION
COMMISSION, BAY AREA TOLL
AUTHORITY, and THERESE W. McMILLAN*

Joshua D. Cohen
Darien K. Key
FENNEMORE LLP
1111 Broadway, 24th Floor
Oakland, CA 94607-4036
Telephone: (510) 834-6600
E-mail: jcohen@fennemorelaw.com;
dkey@fennemorelaw.com;

*Attorneys for Defendants/Respondents ALAMEDA
COUNTY TRANSPORTATION COMMISSION,
COMMISSIONERS OF ALAMEDA COUNTY
TRANSPORTATION COMMISSION (its
BOARD), AND TESS LENGYEL*

BY ELECTRONIC SERVICE: Based on an agreement of the parties to accept e-mail or electronic transmission and/or in accordance with Alameda County Superior Court Local Rule 3.27, by causing the documents to be sent to the persons at the e-mail addresses listed on the service list as of this date, from e-mail address: jason@bezislaw.com. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.

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

Executed on October 13, 2026, at Lafayette, Contra Costa County, California.

/s/ Jason A. Bezis

JASON A. BEZIS