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June 1, 2017

**Re: Comments on Plan Bay Area 2040 RTP/SCS Draft EIR and Equity Analysis**

Dear MTC and ABAG,

The undersigned members of the 6 Wins Network provide the following comments on the Plan Bay Area 2040 (“PBA”) Draft Environmental Impact Report (“DEIR”) and Equity Analysis. The 6 Wins Network is a regional coalition of over 20 organizations working to promote social, racial, economic and environmental justice in the Bay Area.

The DEIR and Equity Analysis contain a number of serious flaws that must be addressed for them to adequately inform consideration of Plan Bay Area by the public and by decision makers. In particular, both documents (1) fail to include an adequate assessment of displacement or housing affordability, and (2) fail to identify and consider feasible alternatives, specifically by failing to develop fully the EEJ Alternative. The DEIR grossly understates the scale of displacement, and concludes that impacts from displacement are “unavoidable” without taking real action to mitigate displacement. The crisis of displacement and shortage of homes affordable to lower-income households throughout must be given proper treatment in the DEIR and the Equity Analysis.

**A. The DEIR and Equity Analysis Do Not Properly Analyze or Mitigate Displacement and Housing Affordability**

Overall, the DEIR is based on unsupported assumptions about the amount of affordable homes likely to result from the proposed Plan. It also under-reports the displacement of lower-income residents and fails to consider and incorporate feasible measures to mitigate displacement. As Public Advocates Inc. and Winston and Strawn discuss in more detail in their comment letter (incorporated herein by reference and attached as Attachment A), inadequate affordable housing and displacement have substantial foreseeable impacts on climate, transportation, air quality, and other aspects of the physical environment.

The proposed Plan rests on assumptions about affordable housing that are unrealistic and paints a picture of displacement that is misleading – the Plan must instead include actual policies to increase affordable housing and mitigate displacement. For example, the proposed Plan assumes that new market-rate “housing developments make 10 percent of units deed-restricted for in [sic] cities with PDAs” (1.2-21), yet the proposed Plan includes no meaningful actions that would lead to adoption of inclusionary zoning policies or other mechanisms to produce 10 percent affordable housing. Similarly, the draft Plan assumes higher densities than currently allowed,

eased parking requirements in new housing developments, subsidies to stimulate housing and commercial development, and a commercial development fee to fund affordable housing (1.2-21) but again includes no meaningful strategy to ensure such policies. Without policies in the Plan to achieve the level of affordable housing production that is assumed, the DEIR's finding that the risk of displacement will increase by 5 percent under the draft Plan (2.3-24, 3.1-21) is likely a gross under-estimate.

Moreover, the 5 percent figure is misleading, masking the true scale of the displacement crisis and its impacts. For example, the DEIR does not clearly state the existing risk of displacement or how many additional thousands of residents would be at risk of displacement under the draft Plan. The draft Equity Analysis provides some additional information that hints at the actual numbers, including the percentage of low-income households in PDAs, TPAs, and HOAs that are at risk of displacement in the base year of 2010 in Communities of Concern and the rest of the region (32 percent and 14 percent, respectively) (5-2); the number of low-income residents in 2014 (1,837,830) (3-2), the number of low-income residents in Communities of Concern (almost 800,000) (3-2), and the number of low-income residents in HOAs (311,911) (4-8). But neither the Equity Analysis nor the DEIR clearly provide the number of low-income residents in PDAs and TPAs and aggregate all the relevant data together to provide a clear picture of the number of residents at risk of displacement in the base year and in 2040.<sup>1</sup> Without these numbers, it is difficult to understand how the DEIR could gauge the environmental impacts of displacement or serve as a transparent public document.

The DEIR and Equity Analysis should also consider and incorporate measures to mitigate displacement and resulting environmental impacts. The DEIR fails to include feasible mitigation measures for environmental impacts that arise from even the understated risk of displacement it identifies. Instead, the DEIR concludes that the impacts of displacement are "potentially significant and unavoidable" because "it cannot be ensured that ... mitigation measure[s] would be implemented" by local agencies (2.3-27). This conclusion is reached, however, without the consideration or inclusion of feasible mitigation measures that would directly reduce displacement (see 2.3-27).

The 6 Wins and our allies have proposed numerous actions that MTC and ABAG could take to reduce displacement, create more affordable housing, and mitigate related environmental impacts of the Plan. In a letter dated May 5, 2017 (incorporated herein by reference and attached as Attachment B), the 6 Wins Network, NPH, and Greenbelt Alliance propose several changes and additions to the draft Action Plan which, if implemented, would likely mitigate displacement. For example, MTC should build on the relatively small One Bay Area Grant (OBAG) program by conditioning additional transportation funding on local affordable housing and anti-displacement outcomes, and MTC and ABAG should develop a regional source of revenue for building and preserving affordable housing.

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<sup>1</sup> In addition, the Equity Analysis includes contradicting information. Table 5-1 on page 5-2 notes that under the Draft Plan, the risk of displacement increases by 1% in Communities of Concern and 7% in the remainder of the region. But footnote 4 on page 6-4 notes the opposite: "While the risk of displacement for the Draft Plan increases by 7 percentage point [sic] within CoCs and by 1 percentage points [sic] in the remainder of the region...."

## **B. The Equity, Environment and Jobs Alternative is Not Properly Developed or Modeled**

Properly modeled and sufficiently developed, the EEJ Alternative likely would have performed far better than the version that is analyzed in the DEIR. Unfortunately, even though the EEJ Scenario was the “environmentally superior alternative” identified by the EIR for Plan Bay Area in 2013, MTC and ABAG entirely sidelined the scenario in the process of developing the current Plan. After refusing for approximately two years to evaluate the EEJ Scenario as part of the process for developing the preferred scenario (see 1.2-11), MTC and ABAG contacted the 6 Wins about updating the scenario in December of last year, with just a few days remaining to finalize the alternatives before running their models. This last-minute addition means that it was inadequately developed compared to the other alternatives, likely resulting in under-performance.

Because MTC and ABAG ignored public requests to include an updated EEJ in the process, the EEJ scenario included in the DEIR does not adequately refine and build on the EEJ Alternative studied in PBA 2013. For example, the EEJ Alternative does not include key assumptions related to MTC and ABAG actions that would more directly address affordable housing and displacement. Unlike the other alternatives developed to inform the preferred scenario, the EEJ Alternative did not benefit from a public process that might have resulted in additional feedback and refinements.

Meaningfully including community voice in the planning process should be a central objective of MTC and ABAG. The EEJ Alternative was developed by grassroots organizations representing thousands of residents of low-income communities of color throughout the Bay Area and, as such, should have been considered on a level playing field with other, staff-developed alternatives. Moreover, these residents and grassroots organizations and the policy organizations with which they partner provide deep expertise in strategies to achieve equity, including affordable housing and anti-displacement outcomes.

As a result of these and other deficiencies, the DEIR fails to comply with CEQA, and the Equity Analysis fails to paint a reasonable picture of the impact of the draft Plan on the region’s most vulnerable communities and residents. MTC and ABAG must ensure that the impacts of displacement are adequately analyzed, that effective mitigation measures are included, and that the EEJ Alternative is robustly developed and accurately modeled. Due to the serious and pervasive nature of the flaws in the DEIR, we respectfully request that the DEIR be revised and recirculated.

Thank you,

Dawn Phillips

**Causa Justa :: Just Cause**

Carol Taylor

*Transit Riders United*

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June 1, 2017

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**Re: Comments on Plan Bay Area 2040 Regional Transportation Plan/Sustainable Communities Strategy Draft Environmental Impact Report and Draft Equity Analysis Report**

Dear MTC EIR Project Manager:

We write on behalf of Public Advocates Inc. (“Public Advocates”) to offer the following comments on the Plan Bay Area 2040 Regional Transportation Plan (“RTP”)/Sustainable Communities Strategy (“SCS”) Draft Environmental Impact Report (“DEIR”) and the Draft Equity Analysis Report (“DEAR”). Public Advocates is a nonprofit law firm and advocacy organization that challenges the systemic causes of poverty and racial discrimination by strengthening community voices in public policy and achieving tangible legal victories advancing education, housing, transportation equity, and climate justice. As result, we have a strong interest in ensuring that the RTP/SCS DEIR integrates and adequately considers land use, housing, and transportation planning impacts.

Transportation, housing, and jobs are inextricably linked, and how they function together has profound consequences for the environment, the economy, and equity across the Bay Area. Individuals and families depend on transportation to get from home to work, school, and healthcare providers. Access to transportation is therefore access to economic and social opportunity. The increasing distance between housing and jobs described in the DEAR creates barriers to economic opportunity and makes commuting to work unpredictable, lengthier, and more expensive. Policies that put affordable housing and economic opportunity for low income residents at the center of transportation planning therefore result in fewer (and less significant) physical impacts and the most equitable outcomes.

The Draft Plan Bay Area 2040 recognizes the need to integrate land use, housing, and transportation, and rightly notes the ongoing crisis in housing affordability and neighborhood stability. Housing pressures affect households of all income levels but are particularly acute for low income families. The Draft Plan notes (at 12), for example, that “the vast majority of households with annual incomes below \$50,000 experience an excessive housing cost burden” and that “more than half of low income households live in neighborhoods at risk of or already experiencing displacement and gentrification pressures.” It also acknowledges that displacement is exacerbated by the “lack of adequate tenant protections—or availability of subsidized or ‘naturally affordable’ market-rate units in neighborhoods with quality transit service and other amenities.”

Displacement risks affect a broad segment of the regional population. Approximately 25% of the Bay Area population are low-income residents and approximately 25% of the regional population live in communities of concern.<sup>1</sup> That is on the order of 1.7 million people. As noted above, nearly half of those—or around 850,000 persons—are at risk of displacement. These households spend a much higher share of their income on transportation and rent or the cost of owning a home compared to higher-income households (on average, more than 67% of their income), which has direct implications for both a household's budget and its vulnerability to being priced out of a neighborhood as costs rise faster than wages.<sup>2</sup>

The environmental impacts of displacement can be severe. Given insufficient availability of affordable housing in areas of the greatest economic opportunity, rising prices drive low- and moderate-income households to outlying jurisdictions farther away from jobs, transit, and amenities. These households then face costly, long-distance commutes which exacerbate traffic congestion and air pollution, result in a variety of adverse health impacts, and worsen mass transit crowding. As displacement pressures increase, pressure for development in outlying areas intensifies, which poses threats to open space. The consequences of inadequate housing extend throughout the region, not only putting affordable residential neighborhoods at risk but also threatening parks, recreation areas, and local farms and pasture land.

The effects of the pressure for housing can be seen everywhere and every day: in demographic shifts in outlying areas (*i.e.*, the suburbanization of poverty),<sup>3</sup> the notorious traffic bottlenecks on I-80 in Alameda and Contra Costa Counties and I-580 in eastern Alameda County, and in the increasingly long lines for BART and buses. Freeway congestion delay per commuter and weekday rail ridership are already at record levels. Even if just one-fifth of those at risk of displacement are forced to relocate to outlying areas—even areas covered by the Proposed Plan—the scale of the impacts would be almost unimaginable. Such a mass displacement would mean 170,000 more people commuting into San Francisco, Oakland, and the South Bay each day, adding to congestion, crowding, and pollution. It would also mean decreased access to recreation opportunities for all Bay Area residents within and outside the Bay Area, as outlying open space areas are developed to meet the need for affordable housing. In short, displacement of low-income residents from transit-oriented communities to the far reaches of the region is a crisis, both for the affected communities and families and for the economic and environmental sustainability of the region.<sup>4</sup>

All of this is to say that the lack of affordable housing for low income residents has significant and immediate physical impacts that must be properly accounted for by MTC/ABAG. The DEIR must integrate consideration of land use, (affordable) housing, and transportation planning. And the DEIR must discuss

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<sup>1</sup> DEAR at 2-3.

<sup>2</sup> Draft Plan Bay Area at 12.

<sup>3</sup> See, e.g., Attachment A, *Urban Habitat, Race, Inequality, and the Resegregation of the Bay Area* (November 2016) (available at <http://urbanhabitat.org/sites/default/files/UH%20Policy%20Brief2016.pdf>) (“Urban Habitat Report”). The report notes, for example, that there was a clear and dramatic shift in Black populations from the inner to the outer region, and that poverty in Black populations increased most in the outer region. Likewise, poverty in Latino communities increased disproportionately in the outer parts of the region. The proportion of renter-occupied units to owner-occupied increased most in the outer region as well.

<sup>4</sup> 6 Wins for Social Equity Network, *Displacement: A Regional Crisis* (Attachment B).

feasible measures to mitigate the impacts of displacement. However, as discussed in our comments below, the DEIR fails to satisfy the requirements of CEQA for at least three principal reasons:

- **Failure to Adequately Integrate Housing Affordability.** The DEIR pays lip service to the need to consider equity in transportation planning. However, the DEIR never grapples with effects of the Plan on housing affordability at the level of detail necessary to reveal either the significant additional physical impacts caused by displacement under the Proposed Plan or the better outcomes under the Equity, Environment, and Jobs (“EEJ”) Alternative.
- **Failure to Adequately Assess Impacts of Displacement.** The DEIR fails to quantify the increased environmental impacts associated with displacement, such as increased transportation distance, effects on air quality, increased strain on transportation infrastructure, and pressures on open spaces and agricultural lands.
- **Failure to Identify and Consider Feasible Alternatives and Mitigation.** The DEIR barely skims the surface of feasible alternatives to reduce or mitigate displacement and the lack of affordable housing. The DEIR ignores mitigation measures, including those within the scope of MTC/ABAG’s authority and that have been used successfully in the past, that could facilitate more equitable outcomes. By failing to adequately identify, evaluate, or adopt feasible mitigation measures, the DEIR fails to satisfy CEQA.

We provide detailed comments on the DEIR and supporting documents below. In light of the legal deficiencies in the DEIR, Public Advocates requests that the DEIR and DEAR be revised and recirculated for additional public comment before MTC/ABAG finalizes the EIR and adopts Plan Bay Area 2040.

### **General Comments**

Much effort and resources were devoted to the Plan, the DEIR, and the companion reports. Notwithstanding the time and resources spent during the planning process, the DEIR suffers from critical legal deficiencies:

- The DEIR fails to adequately assess the impacts of the project and its alternatives
- The DEIR makes unrealistic and unreasonable assumptions regarding housing construction that undermine the models and impact assessments
- The DEIR fails to identify and analyze feasible mitigation measures
- The DEIR improperly prioritizes GHG reductions over SB 375’s mandate to house the entire Bay Area population at all income levels.

The DEIR lacks adequate consideration of affordability in its land use analysis. If housing is theoretically available, yet still unaffordable, there will be greater displacement in areas both within and

outside of the Bay Area than the DEIR predicts (even after accounting for “filtering”).<sup>5</sup> This means greater impacts,<sup>6</sup> including impacts on air quality and increased strain on transportation infrastructure, as persons are forced to commute farther distances.<sup>7</sup> And a failure to adequately account for the effects of affordability leads the DEIR to simultaneously underestimate both the benefits of the EEJ Alternative and the adverse impacts of the Proposed Plan.

The DEIR also fails to account not only for the disparity between “planned” affordable housing units and reality, but also for the significant difference between the number of housing units assumed in the land use and transportation models and the Regional Housing Need Allocation (“RHNA”). This means that either the modeling is incorrect or the housing needs are under-estimated.

Mitigation measures can be developed to both foster creation of affordable housing units and minimize displacement—that is, facilitate more equitable outcomes with fewer physical impacts. But, the DEIR does not identify or adequately assess such feasible and available measures, nor does it study how those mitigation measures could change outcomes. On page 1.2-21, the DEIR states that the Proposed Plan does not mandate any changes to local zoning rules, general plans or processes for reviewing projects; nor is the Plan an enforceable direct or indirect cap on development locations or targets in the region. To the extent that discussion suggests that MTC/ABAG must avoid taking action to *influence* local decisions, the DEIR is flawed. Just because MTC/ABAG lacks authority to *mandate* changes to local land use and development plans does not absolve MTC/ABAG from exercising its available powers, including its grant-making and CEQA streamlining authority, to influence local decisions. For example, MTC has previously piloted mitigation measures specifically designed to facilitate equitable outcomes, such as basing funding distribution on RHNA planning and production, providing incentives for local housing production, and favoring projects that include anti-displacement policies.<sup>8</sup> By failing to adequately identify, evaluate, or adopt feasible *regional* mitigation measures that take these pilots to scale, the DEIR fails to satisfy CEQA.

Further, even though it is true that local jurisdictions will ultimately decide whether many of the *local* mitigation measures are actually implemented, the DEIR and Draft Plan should nevertheless identify

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<sup>5</sup> Filtering is an controversial theory that refers to the movement of housing stock from higher- to lower-income households as it ages and deteriorates, supposedly resulting in reductions in the prices of older housing.

<sup>6</sup> See, e.g., Attachment C, *San Mateo County Eviction Report for 2016* (discussing hidden epidemic of displacement in San Mateo County and the deep and long lasting health consequences). The report notes that families desperate to secure housing often accept unsafe or unhealthy housing conditions such as overcrowding, increased noise, and mold or pest exposure, increasing the chances of contracting communicable diseases, asthma, and respiratory illness, and increasing mental distress. See also Attachment D, Olivia Allen-Price, *How Many Are Being Displaced by Gentrification in Oakland?* (available at <https://ww2.kqed.org/news/2017/02/09/how-many-are-being-displaced-by-gentrification-in-oakland/>); Attachment E, Devin Katayama, *An Oakland Diaspora: What Drives Longtime Residents to Leave?* (available at <https://ww2.kqed.org/news/2016/03/02/an-oakland-diaspora-what-drives-longtime-residents-to-leave/>).

<sup>7</sup> See, e.g., Urban Habitat Report, at 1 (noting that “[d]istances from work increased for people living in places with the highest growth rates of poverty”).

<sup>8</sup> See, e.g., OBAG 2 One Bay Area Grant Program Project Selection Criteria and Programming Policy, Attachment A, at 3-4 (distribution formula), 5 (Surplus Land Requirement), 12 (Naturally Occurring Affordable Housing), 15 (housing production incentive), and 17 (project selection and anti-displacement policies) (available at [http://mtc.ca.gov/sites/default/files/RES-4202\\_approved.pdf](http://mtc.ca.gov/sites/default/files/RES-4202_approved.pdf)) (“Attachment F”).



and discuss the policy tools available to local jurisdictions to address the Bay Area housing affordability crisis. Where the DEIR assumes that local jurisdictions will use a policy tool, such as inclusionary zoning, to address housing access equity or displacement under the Proposed Plan or any of the alternatives, it should clearly state these assumptions. Where the Draft Plan identifies impacts associated with displacement or a lack of low income housing access, it should identify policy tools that can be used by local jurisdictions to address those impacts, even if those policy tools are not available to MTC/ABAG directly. This will allow the final EIR to best serve its programmatic function under CEQA, and better inform the public about possible avenues for mitigation of significant impacts by lead agencies overseeing the environmental analysis of individual development projects included in the Plan.

SB 375 requires the Plan both to achieve GHG reduction targets assigned by the state and to house the entire Bay Area population at all income levels. Cal. Gov't Code, § 65080(b)(2)(B). Yet, the DEIR analysis simply assumes sufficient housing for the regional population, an assumption that is at odds with reality and with the policies in the Plan. Doing so not only assumes what state law mandates—a plan that will actually house the population—but also gives the impression of meeting the region's GHG-reduction targets based on a development footprint that is neither reflective of the region's past experience nor made more likely by anything in the Plan itself.

At bottom, the DEIR does not fulfill its basic legal function to fully inform the public of the impacts of the Draft Plan. As the California Supreme Court has recognized, “[t]he preparation and circulation of an EIR is more than a set of technical hurdles for agencies and developers to overcome. The EIR's function is to ensure that government officials who decide to build or approve a project do so with a full understanding of the environmental consequences and, equally important, that the public is assured those consequences have been taken into account. [] For the EIR to serve these goals it must present information in such a manner that the foreseeable impacts of pursuing the project can actually be understood and weighed”. *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 449-45. In order to meet this standard, an EIR “must include a meaningful discussion of both project alternatives *and* mitigation measures.” *Laurel Heights Improvement Assn. v. Regents of Univ. of California* (1988) 47 Cal.3d 376, 40 (emphasis in original). Here, the dynamic effects of affordability put more than 800,000 people at risk of displacement—a displacement crisis that will lead to significant and unassessed physical impacts within the Bay Area and beyond. Those impacts are not meaningfully discussed in the DEIR. The DEIR also fails to even recognize the availability of feasible mitigation measures that can reduce the adverse physical effects associated with displacement.

In light of these significant and substantive deficiencies in the DEIR, it cannot adequately inform the public about the environmental effects of the Draft Plan. Public Advocates respectfully requests that MTC/ABAG revise the DEIR and recirculate it for additional public review and comment.

## **Specific Comments**

### **Section 1.2, *Project Description***

Even though MTC and ABAG determined that the EEJ alternative was the environmental superior alternative in the EIR for Plan Bay Area in 2013, the discussion of the scenario analysis on page 1.2-11 does not even mention the EEJ alternative, and indeed, MTC/ABAG made clear throughout the process of

developing the Plan that the EEJ alternative was not being considered. This omission suggests that MTC/ABAG did not “analyze, review and discuss the alternative in good faith” in detail commensurate with its feasibility as required by CEQA.<sup>9</sup> An EIR “must disclose the analytic route the . . . agency traveled from evidence to action,” which in this case is the full course of the planning process and the full scope of the Plan.<sup>10</sup> Moreover, omitting the alternative from the project description, as the DEIR has done, effectively curtails and distorts the project description, undermining its fundamental purpose to inform decisionmakers and the public consideration and throwing its legal sufficiency into doubt.<sup>11</sup>

The DEIR also segregates much of the analysis and description of the EEJ alternative from that of the other alternatives and fails to include it in the initial project description. The limited analysis of the EEJ alternative is relegated to the DEAR, which suggests a bias against the alternative that is manifest in the DEIR’s overall failure to adequately consider the EEJ alternative benefits or mitigation measures that could facilitate achieving those benefits. The discussion of the EEJ alternative and the comparison of it against the Proposed Plan in the separate DEAR is not a replacement for a detailed substantive discussion integrated into the EIR itself.<sup>12</sup>

## **Section 2.0, *Approach to Analysis***

The DEIR states that mitigation is proposed, where feasible, to reduce potentially significant environmental impacts. While MTC and ABAG do not have direct regulatory or approval authority in some cases, MTC and ABAG nevertheless can identify specific mitigation measures in the DEIR that will enable local agencies to take advantage of streamlined environmental review for subsequent projects. *See* DEIR at 1.1-9 (noting that, under SB 375, “[p]rojects eligible for streamlining must incorporate mitigation measures required by an applicable prior environmental document, such as this EIR if it is certified by MTC and ABAG”). Just as important is the fact that MTC and ABAG can make commitments that themselves function as mitigation measures, as noted in the DEIR. *See, e.g.*, DEIR at 2.0-3. As discussed in more detail below, there are a number of mitigations measures that MTC/ABAG have not identified in the DEIR, but that would be feasible mitigation measures for the recognized displacement impacts.

## **Section 2.1, *Transportation***

The Plan’s discussion of transportation examines the effects of the changes in projected land use and transportation projects. But, it ignores the effects of affordability in causing geographic shifts of low-

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<sup>9</sup> *Save Round Valley All. v. Cty. of Inyo* (2007) 157 Cal.App.4th 1437, 1458 (“Although the level of detail will vary depending upon an alternative’s potential for feasibility, in every case, the EIR must disclose “the analytic route the . . . agency traveled from evidence to action.’ . . . And the lead agency itself must travel that analytic route.”).

<sup>10</sup> *Laurel Heights, supra*, 47 Cal.3d at 404.

<sup>11</sup> “A curtailed or distorted project description may stultify the objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal’s benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal . . . and weigh other alternatives in the balance. An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR. *Cty. of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192–93.

<sup>12</sup> “[A]n EIR must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.” *Laurel Heights, supra*, 47 Cal.3d. at 405.

income communities and communities of concern further away from areas of opportunity and towards the outer reaches of the Bay Area and beyond. This is reflected in the fact that, in general, areas of displacement and displacement risk are concentrated around high capacity transit corridors such as Caltrain on the Peninsula, BART in the East Bay, and in the region's three largest cities. As noted above, by failing to account for the fact that displaced low-income households are likely to have longer commutes following displacement, the DEIR does not adequately consider physical impacts, including increased congestion on roads and highways and increased crowding on transit, or the changes in travel times, accessibility to jobs, vehicle miles traveled per capita, and transit utilization that would result from the implementation of the proposed Plan. The DEIR similarly overestimates the benefits of planned projects because it has not accounted for the shifts in demographics caused by displacement or the resulting changes in physical impacts associated with such displacement.

As a consequence of the DEIR's failure to account for displacement, the Transportation Investment Analysis performed in the DEAR is also flawed. *See* DEAR at 5-4 to 5-9. In reality, low-income residents will enjoy very different—and likely fewer—benefits from the transportation investments called for under the Draft Plan than indicated in the DEAR's Transportation Investment Analysis.

### **Section 2.2, *Air Quality***

On page 2.2-1, the DEIR recognizes the public concern about air quality impacts associated with economic displacement and jobs-housing imbalances that was expressed in comments on the Notice of Preparation. Section 2.2 does not actually address any of these comments, however. The DEIR does not assess the additional vehicle miles traveled as a result of economic displacement, effects of a poor jobs-housing geographic balance or “fit,” or transit utilization. As a result, the DEIR fails to adequately assess the impacts of the proposed Plan on air quality, contrary to CEQA.

Given that the DEIR does not quantify the air quality and transportation impacts associated with the displacement generated by the proposed project, MTC/ABAG has not demonstrated that the Proposed Project's air quality and transportation impacts are not significant. *People v. County of Kern* (1974) 39 Cal.App.3d 830, 841-42 (holding that a conclusory statement “unsupported by empirical or experimental data, scientific authorities, or explanatory information” affords “no basis for a comparison of the problems involved with the proposed project”).

### **Section 2.3, *Land Use and Physical Development***

#### *Failure to Account for Affordability*

There is no disputing the fact that housing affordability is an important aspect of balanced regional growth. On page 2.3-22, the DEIR states that the “EIR land use analysis addresses the following issues: community displacement and disruptions, including potential loss of housing; physical divisions of communities; proposed Plan consistency with adopted land use plans; conversion or loss of important agricultural lands or open space; and loss of forest land.” Yet, it is not clear that the DEIR adequately accounted for affordability, or displacement triggered by a lack of affordability, in the land use analysis or supporting model. Similarly, its discussion of transit-oriented development fails to adequately address affordability and housing accessibility. If housing is theoretically available, yet unaffordable, there will be

greater displacement than otherwise predicted, leading to longer commutes. Because it failed to fully account for housing affordability, the DEIR severely understated the true magnitude of the impacts and performance failures on the Year 2040 Goal of “Equitable Access” and the Performance Targets to “Decrease the share of lower income residents’ household income consumed by housing and transportation (H+T) costs share for lower-income households by 10%” and “to not increase the share of low- and moderate-income households in PDAs, TPAs and HOAs that are at an increased risk of displacement, within and outside CoCs.” *See, e.g.*, DEIR at ES-6; DEIR at 2-5.

On page 2.3-22, the DEIR states that the “land use analysis is based on outputs from the land use and transportation models ... which are compared to existing conditions to identify potential impacts.” Although this section references land use and transportation models, it is not clear that those models in fact are based on *existing* conditions, as opposed to *planning* documents (or even that they reflect the policies contained in those planning documents). Similarly, the Land Use Modeling Report, at page 22, indicates that inclusionary zoning policies are assumed in models of the Proposed Plan and all of the alternatives. It also states that for two of the alternatives (which are not identified), the model assumes subsidies to affordable housing. However, these assumptions do not reflect the actual rate of affordable housing successes in Bay Area jurisdictions.

While many jurisdictions have planning documents that incorporate affordable housing units, the plans often do not reflect reality and are based on overly-optimistic assumptions of future development. For example, the assumption that 10% of new development will contain inclusionary zoning is impermissibly optimistic, as history shows. In addition, the land use model used in the analysis assumes, rather than demonstrates, that sufficient housing will be built to house the entire region’s population growth in the horizon year. The rate of the growth assumed is extreme. For instance, by 2022, the model assumes that 270,360 new units will have been built. By comparison, the entire Regional Housing Needs Allocation (RHNA) at all income levels provides for only 187,900 by 2022; moreover, no more than a fraction of the RHNA units—particularly lower-income units—is likely to have been produced by that year. This set of highly unrealistic assumptions not only points to the inadequacy of the assessment of impacts, but also increases the importance of feasible mitigation measures not identified in the DEIR (discussed herein) because the assumed performance levels most likely cannot be met in reality. At bottom, the Plan fails to contain policies or actions that are likely to result in this level of affordable housing development.

To satisfy CEQA, the DEIR baseline must reflect true baseline conditions, not current *plans*. 14 Cal. Code Regs., § 151245(a) (“An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective.”). Where a proposed project could result in a change to existing zoning or planning designations, the significance of potential impacts should not be compared with conditions that would ultimately occur with build-out of existing designations, but rather with “existing physical conditions.” CEQA Guidelines Section 15125(a), (e); *St. Vincent's School v. City of San Rafael* (2008) 161 Cal.App.4th 989, 1005; *Baldwin v. City of Los Angeles* (1999) 70 Cal.App.4th 819, 842. And, to the extent that there are inconsistencies between, on the one hand, the Proposed Plan, or the assumptions in the model used to forecast the effects of the proposed plan, and on the other hand, actual local or regional plans and zoning designations, those inconsistencies must be described in the DEIR. CEQA Guidelines § 15125(d).

Based on the above, the DEIR fails to consider or disclose the appropriate baseline under CEQA, and fails to incorporate reasonable assumptions into the model about the realization rate of affordable housing.

#### *Failure to Identify Physical Impacts of Displacement*

On page 2.3-22, the DEIR states that the “transportation projects considered include those that have the potential for physical impacts based on characteristics such as expansion, widening, new construction, or new configurations.” This implies that the EIR considered only the effects of physical changes to the transportation system, and not the related physical impacts caused by economic or social effects of a project. CEQA Guidelines Sections 15131 and 15064(e). While the DEIR notes (at 2.3-26) that displacement can cause significant environmental impacts that are assessed elsewhere in the plan, the nature and magnitude of those impacts should be described in this chapter as they are caused by land use changes, including those associated with transportation investments. It is well established that significant environmental impacts often arise from the housing need created when a project will bring substantially more jobs and people into an area. *See, e.g., Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1266; *Napa Citizens, supra*, 91 Cal.App.4th at 367.

The DEIR (on page 2.3-22) evaluates potential direct impacts to existing communities, including potential displacement of residents, as a result of the proposed land use strategy and transportation projects. However, the importance of these impacts demands a much more rigorous analysis than is offered here. Although the DEIR claims that the dynamic nature of displacement makes it difficult to quantify impacts, this is belied by discussion elsewhere in the DEIR that describes displacement in quantitative terms. *See, e.g.,* page 2.3-24 (stating that the proposed Plan decreases the rate of overall displacement risk compared to taking no action: 5% v. 18% percent).

Further, the model takes as a fixed constant the amount of emigration from the Bay Area, and the socioeconomic makeup of the Bay Area. Specifically, the Land Use Modeling Report, at page 13, indicates that the model assumes that the share of households in each quartile of income distribution (from lowest to highest income) will shift from 27%/26%/23%/24% in 2010 to 28%/22%/22%/28% in 2040, and applies this assumption to the analysis of the Proposed Plan and each of the alternatives. This leaves no room to measure the effects of the alternatives on the socioeconomic distribution or on displacement of low income households to locations beyond the Bay Area. By not treating socioeconomic demographic change as a dynamic factor, the model entirely fails to reflect the clear potential for regional displacement. Thus, the EIR fails to assess the scope of potentially significant environmental impacts that could be caused by regional displacement.

#### *Failure to Identify or Assess Feasible Mitigation Measures*

On page 2.3-23, the DEIR states that “[l]ocal jurisdictions are responsible for adopting land use policies as part of their general and neighborhood plans and implementing them through local ordinance” and that “as a result, MTC and ABAG have no direct control over local land use planning, nor does SB 375 require that local jurisdictions align their general plans to conform to the proposed Plan.” According to the DEIR, this alignment is discretionary but encouraged through the availability of streamlined environmental review for consistent projects. The DEIR, however, does not account for the full range of tools that are available to MTC/ABAG to encourage local alignment with the Plan, such as conditioning

project funding on achievement of housing-related goals or implementation of tenant protection measures. See Attachment B. Identification and adoption of feasible measures to mitigate or avoid significant environmental impacts is one of the primary purposes of an EIR. See Pub. Resources Code, § 21081.6(b); see also 14 Cal. Code Regs., § 15121(a); *Fed'n of Hillside and Canyon Ass'ns v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1258. A “feasible” mitigation measure is one capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors. 14 Cal. Code Regs., § 15364.

Relatedly, on page 2.3-24, the DEIR acknowledges that displacement risk is a function of the location and availability of affordable housing near major job centers in a growing regional economy. While the DEIR lists several reasons for increased displacement risk, the DEIR focuses primarily on constraints. It ignores available tools that could mitigate the increased displacement risk. For example, the DEIR should acknowledge that displacement risk may increase because of the “absence of effective regional policies to mitigate or maintain affordable housing.” And, as discussed below, the DEIR should discuss the policies available to MTC/ABAG to mitigate displacement and the lack of affordable housing.

On that same page, the DEIR again attempts to avoid responsibility for actions within its control by claiming that local governments “retain full control over local land use authority.” While true as far as it goes, this assertion ignores the fact that MTC/ABAG can, through the plan, include mitigation that communities can “choose” to adopt in order to receive project funding. An agency with the power of the purse over some \$300 billion over the life of the Plan and a long history of conditioning funding to local governments on regional policy objectives cannot ignore mitigation tools available to it when assessing the plan’s impacts.<sup>13</sup> Indeed, pilot programs that MTC/ABAG has tested, such as the One Bay Area Grant Program, demonstrate that regional policies that condition funding are extremely effective tools to achieve changes in local land use and housing policy. Where multiple measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified. 14 Cal. Code of Regs., §15126.4(a)(1)(B).

The DEIR concludes at 2.3-24 that “[i]mplementation of the proposed Plan could increase the risk of displacement for a substantial number of existing residents, necessitating the construction and preservation of additional affordable housing elsewhere within the region.” Then, on page 2.3-27, the DEIR discusses mitigation measures “to address the effects of displacement,” but focuses exclusively on mitigation of *construction* impacts related to replacement housing or transportation projects. As summarized in the table below, not a single one of the 23 mitigation measures listed on page 2.3-27 would actually mitigate *economic* displacement (as opposed to temporary displacement due to construction). None of the mitigation measures even touch on housing affordability or the physical effects of displacement, much less actually mitigate those impacts. And, none of the measures address the reasons given for the increased displacement risk discussed on 2.3-24. As a result, the DEIR assessment is wholly inadequate to satisfy CEQA.

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<sup>13</sup> See, e.g., MTC’s description of its roles at <http://mtc.ca.gov/about-mtc/what-mtc/what-we-do>.

Mitigation Measure	Topic	Mitigates Economic Displacement?
2.2-2	Air Quality	No. Focused on construction equipment air emission.
2.3-2, 2.3-4, and 2.3-5	Land Use	No. Focused on transportation design features (bike lanes, traffic calming), avoiding important lands ( <i>e.g.</i> , Prime Farmland) and protecting sensitive areas ( <i>e.g.</i> , forests).
2.5-4	Sea Level Rise	No. Focused on adaptation strategies.
2.6-1, 2.6-5, and 2.6-6	Noise	No. Focused on construction noise, emergency generator/external equipment noise, and airport noise.
2.9-1 - 2.9-5	Biological Resources	No. Focused on requiring biological assessments and avoiding sensitive areas.
2.10-1, 2.10-3 to 2.10-5	Visual Resources	No. Focused on minimizing visual impacts.
2.11-1 to 2.11-5	Cultural Resources	No. Focused on identifying and avoiding historic and cultural resources.
2.13-4	Hazards	No. Focused on mitigating impacts of increased water and wastewater treatment demands.

As noted above, the EIR must identify the mitigation measures (*i.e.*, policy tools) available to MTC/ABAG that can be used to incentivize local jurisdictions to mitigate environmental impacts, such as adopting a policy to condition disbursement of project funds on achievement of mitigation measure that would actually mitigate displacement impacts. There are at least two obvious mitigation measures that have been used previously on a smaller scale and that could, if scaled up, effectively mitigate some of the impacts of displacement.

First, MTC/ABAG should consider mitigation measures that expand housing-related conditions in existing funding programs.<sup>14</sup> Wherever possible, MTC/ABAG should condition discretionary funding on strong local jurisdiction performance on both affordable housing production and protection of existing renters from displacement. These measures should be included in funding commitments for new and

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<sup>14</sup> As noted *supra*, note 7, MTC has previously identified mitigation measures to facilitate equitable outcomes, such as basing funding distribution on RHNA and product, incentives for housing production, and favoring projects that include anti-displacement policies. These measures are not adequate at present, and would need to be expanded to be effective. For example, the distribution formula “expands the definition of affordable housing to include housing for moderate-income households” rather than just low-income households and NOAH is all of \$10 million for the whole region. In addition, the housing production incentive rewards the top 10 affordable housing producers, essentially favoring larger cities, but should reward production as a percentage of RHNA or some other proportionate measure. And the anti-displacement policy requirement awards insufficient points to materially change the overall scoring results for OBAG.

existing programs (*e.g.*, OBAG, RM3, SB1). As an example, MTC should build on its existing efforts to require compliance with the state Surplus Land Act and Housing Element law to be eligible for OBAG funding. MTC/ABAG should specifically identify new funding sources that could be subject to these housing conditions (beyond planning grants), strengthen conditions to increase their effectiveness, assert stronger *regional* guidelines rather than passing the buck to county congestion management agencies, and study the effects of those actions in the DEIR.

Second, MTC/ABAG should consider measures to directly mitigate loss of affordable housing and the slow pace of new affordable housing development. MTC/ABAG should identify and develop new regional funding sources that would be used to develop new and preserve existing affordable housing. MTC could, for example, launch a regional infill Infrastructure Bank that would subsidize infrastructure improvements on sites dedicated to development or preservation of affordable housing.

MTC/ABAG should also consider the additional measures discussed in the letter from 6 Wins for Social Equity Network, Non-Profit Housing Association of Northern California (“NPH”), and Greenbelt Alliance to MTC/ABAG. *See* Attachment B. These include pursuit of a permanent source of affordable housing funding, strengthening laws to protect tenants from displacement, strengthening housing element laws, supporting fair housing, and supporting legislation to eliminate the *Palmer* decision’s limitation on inclusionary zoning. In addition, MTC/ABAG should consider measures to address the wage/income side of the housing affordability equation by, for example, incentivizing the creation and retention of middle-wage jobs and strategies to lift up low-wage jobs to help close the gap between wages and housing costs.<sup>15</sup>

By ignoring available tools and failing to discuss the reasons for eliminating them from the list of mitigation measures, the DEIR fails to adequately consider potential mitigation of the impacts of the plan. The DEIR does not provide a thorough, detailed analysis of feasible mitigation measures or alternatives to eliminate or reduce the significant adverse impacts associated with the proposed Plan, in violation of CEQA.

### **Section 3.1.3, *Alternatives Analyzed in this EIR***

The DEIR notes that the Equity, Environment, and Jobs (“EEJ”) Alternative was analyzed in the original Plan Bay Area EIR in 2013, but fails to mention that this alternative was found to be the environmentally superior alternative. The current DEIR also fails to provide a sufficient explanation for not selecting the EEJ alternative as the proposed alternative.<sup>16</sup> A comparison of the various alternatives across the range of performance targets shows the EEJ alternative performing similarly, or better, in all targets other than “goods movement.” The EEJ Alternative fell short on the “goods movement” target due to increased congestion related to greater suburb-to-suburb commuting and elimination of all highway expansion projects, but performed better in other areas. The merits of alternatives must be reasonably

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<sup>15</sup> *See, e.g.*, Urban Habitat Report, at 1 (finding that “[p]laces with high growth rates in poverty increasingly became home to workers in lower wage industries”).

<sup>16</sup> *Laurel Heights, supra*, 47 Cal.3d at 405 (“alternatives and the reasons they were rejected [] must be discussed in the EIR in sufficient detail to enable meaningful participation and criticism by the public”).



compared “even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly.” *Laurel Heights, supra*, 47 Cal.3d at 401.

The assessment of alternatives for land use impacts (page 3.1-46) is woefully inadequate. It barely even touches on the differences in displacement impacts, which were the focus of the discussion in Section 2.3. While all the alternatives result in sufficient housing theoretically being available, the reality is that affordable housing lost in one location is not so easily replaced or substituted elsewhere—particularly where, as in the Bay Area, “planned” low-income housing units have not come close to matching reality in many years.

Further, the assessment of the EEJ alternative mischaracterizes the results of the DEAR by indicating that the EEJ alternative and the Proposed Plan would have “similar” displacement impacts. In fact, the DEAR indicates that the EEJ alternative would result in 1% lower displacement risk for low-income households in Communities of Concern, as compared to the base year, than would the Proposed Plan. *See* DEAR at page 5-2. A 1% increase in this risk among Communities of Concern is significant, as this affects a quarter of all Bay Area households. This increased risk translates into thousands of households that would be displaced under the Proposed Plan but not under the EEJ alternative. Similarly, the Equity Analysis notes that the EEJ alternative would *increase* the share of affordable housing units in Communities of Concern by 3 percentage points, while the Proposed Plan would actually *decrease* the share of affordable housing units. DEAR at 5-3. The Equity Analysis therefore belies the notion that the Proposed Plan performs “similarly” to the EEJ Alternative on measures of equity and housing access.

Especially troubling is the DEIR mischaracterization of displacement impacts as “unavoidable,” despite the evidence in the Equity Analysis that demonstrates the opposite—namely, that such impacts are in fact avoidable and can be mitigated to a level of insignificance through feasible policy measures. Specifically, the Equity Analysis rightly states that “Regional agencies can [help address the housing affordability crisis by] support[ing] local jurisdictions and facilitat[ing] the construction of new housing units (both market rate and affordable) to keep pace with job growth, and the plan can provide incentives and planning assistance to communities that are willing to adopt supportive policies and programs.” The Equity Analysis also identifies the OBAG program as a possible policy lever that could help address housing affordability, by incentivizing investment in affordable housing. DEAR at 7-2 to 7-3. As discussed elsewhere, the Proposed Plan should maximize the leverage of the OBAG program to incentivize investment in affordable housing by conditioning a larger pot of grant funding on concrete affordable housing investments and renter protections. These policies should be included as mitigation measures in the DEIR.

In reality, the benefits of the EEJ alternative relative to the Proposed Plan are likely to be even more significant than assessed in the Equity Analysis when the full range of policies and mitigation are adequately modeled and assessed. The DEIR does not account for affordability when evaluating the EEJ Alternative. As a result, the Proposed Plan will have significantly greater impacts than the DEIR predicts. This also means that the DEIR under-estimates the benefits of the EEJ Alternative, if implemented. In other words, the analysis fails to delve into the EEJ alternative in sufficient detail to reflect the actual benefits of the EEJ alternative. This understatement of benefits occurred because of faulty assumptions (*e.g.*, no CEQA streamlining of projects in the EEJ alternative, lack of feasible mitigation measures) and a lack of effective quantitative metrics by which to compare the alternative against the project.

By failing to evaluate the Proposed Plan and the EEJ Alternative at a level of detail necessary to adequately compare the two options, the DEIR fails to satisfy CEQA. A DEIR must contain sufficient information to inform “public agency decision-makers and the public generally of the significant environmental effects of a project.” See 14 Cal. Code of Regs., § 15121(a); *Ass’n of Irrigated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1390. The ultimate decision to approve a project is a nullity if it is based upon an EIR that does not provide the decision-makers, and the public, with information about the project that is required by CEQA. *Napa Citizens for Honest Gov’t v. Napa County Bd. Of Supervisors* (2001) 91 Cal.App.4th 342, 355-356.

### **Section 3.2.2, Significant Unavoidable Impacts**

Section 3.2.2 indicates that many environmental impacts could be mitigated to a less-than-significant level “to the extent that an individual project adopts and implements all feasible mitigation measures for each significant impact.” However, the DEIR assumes that “MTC/ABAG cannot require local implementing agencies to adopt most of the mitigation measures, and it is ultimately the responsibility of a lead agency to determine and adopt mitigation. Therefore, several impacts have been identified as significant and unavoidable for purposes of this program-level review.” Effectively, then, the DEIR relies on assumed failure to mitigate impacts at the project-specific level to justify a failure to adequately assess alternatives at a programmatic level.

This approach is an abrogation of MTC/ABAG’s responsibilities under CEQA and undermines the usefulness of the DEIR as a programmatic document. With respect to housing and equity issues, this “assumed failure” amounts to an excuse to avoid an analysis of affordability and the associated environmental impacts (*e.g.*, increased VMT) or a discussion of mitigation measures that could alleviate some negative impacts of the Proposed Plan relative to the alternatives (*e.g.*, conditional OBAG funding to incentivize local implementation of affordable housing initiatives necessary to mitigate displacement risks). Agencies must not approve projects if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effect of a project. *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564-565 (citing Pub. Res. Code, §§ 21001(g), 21002).

### **Section 3.2.4, Cumulative Impacts**

On page 3.2-10, the DEIR states that the “proposed Plan provides sufficient housing to accommodate new job growth, relieving pressure to commute into the Bay Area for jobs and out of the Bay Area for housing” and that “[a]s a result, and as shown in Section 2.1, the proposed Plan would result in lower VMT per capita.” As noted above, however, this conclusion is assumed as an input to the model rather than a result achieved by the draft Plan, and was reached without adequately considering the impacts of the Plan on displacement and affordability. Although there are nominally sufficient *planned* housing units to accommodate growth in the model,<sup>17</sup> there is inadequate assessment of whether *actual* units will materialize. Nor does the DEIR account for dispersal of households following displacement or the likelihood of their being able to find suitable replacement housing in the Bay Area in the absence of an

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<sup>17</sup> As discussed below, the model’s assumptions regarding future housing construction far exceed even the overly-optimistic assumptions of the RHNA.

assessment of affordability.<sup>18</sup> This could lead to increased growth in surrounding counties (particularly those located closest to high-opportunity areas) and increased vehicle miles traveled as individuals commute in from more affordable housing outside the Bay Area. As a result, the DEIR's cumulative impact assessment is inadequate.

On page 3.2-12, the DEIR states that the land use growth footprint "assumes an adequate number of residential units to meet the forecasted demand, taking into account localized displacement of some households within the region." As noted above, because the DEIR has not accounted for affordability at the local level, there is insufficient basis on which the DEIR can conclude that there will be adequate units to meet demand. Moreover, by ignoring affordability, the DEIR lacks a basis for concluding that localized displacement would not exert development pressure on areas surrounding the Bay Area. There is inadequate assessment of the historical mismatch (both in timing and duration) between actual and planned affordable housing units. And, the DEIR fails to account for the likelihood that households may choose to live in more affordable housing outside the Bay Area and commute into the Bay Area as a result. Thus, the conclusion that the proposed Plan would not exert development pressure on adjacent counties through displacement is unsupported and fails to satisfy CEQA.

### **Modeling Issues and Faulty Assumptions Giving Rise to Flaws in the Environmental Analysis**

It is crucial that the DEIR and supporting documents identify and explain the assumptions that underlie the DEIR's conclusions about the environmental impacts of the Draft Plan and each of the alternatives. As California courts have made clear, where the data and assumptions that form the basis for an environmental analysis are not made available to the public and decision-makers, "then a stake is driven into the 'heart of CEQA'"<sup>19</sup> Here, several key assumptions that underlie the model, and thus the environmental analysis in the DEIR, are faulty or unclear.

The Land Use Modelling Report describes the application of the Bay Area UrbanSim model to project the effects of the Draft Plan and each of the alternatives. The Land Use Modelling Report describes the assumptions, or "control totals," that were used in this process. Specifically, the Draft Plan and the model *assume* both the population growth of the Bay Area (and thus emigration rates out of the Bay Area), and the socioeconomic makeup of the Bay Area. As discussed above, the Land Use Modeling Report, at page 13, indicates that the model assumes that the share of households in each quartile of income distribution (from lowest to highest income) will shift from 27%/26%/23%/24% in 2010 to 28%/22%/22%/28% in 2040, and applies this assumption to the analysis of the Proposed Plan and each of the alternatives. Because this socioeconomic makeup of the Bay Area a fixed constant in the UrbanSim model, the land use modelling entirely fails to measure the effects of the Draft Plan and each of the alternatives on the socioeconomic makeup of the Bay Area. Land Use Modelling Report at 13.

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<sup>18</sup> Under CEQA, a project's impact must be evaluated in light of the combined effects of existing, concurrent, and future projects in the area: "Even though a project's impact may be "individually limited," such impact may be "cumulatively considerable." Pub. Resources Code, § 21083(b)(2). The CEQA Guidelines define "cumulative impacts" as "two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts." CEQA Guidelines § 15355.

<sup>19</sup> *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 88.

Similarly, the model assumes a rate of emigration as part the regional growth projections, which are developed separate from the model. The “Household Transition Model” and “Household Location Choice Model” measure displacement and relocation caused by the Proposed Plan and each of the alternatives only *within* the Bay Area, and so do not measure the effects of the Proposed Plan or the alternatives on the outflow of low income households *away from* the Bay Area. Land Use Modelling Report at 13. It is simply unrealistic to assume that the Draft Plan will have no effect on emigration out of the Bay Area, or that the Draft Plan will have the same effect on emigration rates as each of the alternatives.

The Draft Plan and model together make another related assumption that fatally undermines the environmental analysis in the DEIR—that is, the Draft Plan calculates the expected number of new housing units to be constructed in the Bay Area as a function of projected population growth, but nowhere indicates that those units will be constructed (either by any actions included in the Plan or based on any realistic past experience). Specifically, ABAG provided a control total (*i.e.*, assumed construction) of 822,600 housing units by 2040. See “Regional Forecast of Jobs, Population, Housing, Draft Supplemental Report” at 31. As with the fixed assumptions about emigration rates and the socioeconomic profile of the Bay Area, this assumption about projected housing construction is *built in to the model’s analysis of the effects of the Draft Plan and each of the alternatives*. But the Draft Plan’s assumption about housing construction rates wildly exceed the RHNA allocated to ABAG by the state Department of Housing and Community Development. The 2022 RHNA for the entire Bay Area region comprises only 187,900 housing units. By comparison, the land use model assumes that 270,360 new housing units will have been built by that year. Thus, the Draft Plan assumes the construction of 82,460 more housing units by 2022 than the RHNA,<sup>20</sup> which the region has not met, particularly with respect to lower-income and moderate-income housing. For instance, page 9 of ABAG’s 2007 report, “A Place to Call Home,” shows that from 1999 to 2006, Bay Area jurisdictions produced or permitted only “44 percent of the [RHNA] target for very low-income units, 75 percent for low-income units, [and] 37 percent for moderate-income units.”<sup>21</sup> A progress report in 2014 for 2007-2014 shows further slippage, with Bay Area jurisdictions permitting only 29 percent of the RHNA target for very low-income units, 26 percent for low-income units, and 28 percent for moderate-income units.<sup>22</sup> This is a profound difference between the model assumptions and even the most optimistic of projections of new housing. The assumptions in the DEIR are simply unrealistic and unachievable. This calls into question the model results presented in the DEIR and, absent further explanation from MTC/ABAG on how the housing gap will be closed, renders the DEIR insufficient under CEQA.

Other faulty assumptions seem to underlie the modelling analysis. As discussed above, the Land Use Modeling Report, at page 22, indicates that inclusionary zoning policies are assumed in models of the

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<sup>20</sup> This suggests that either the Land Use model is over-estimating the number of housing units, which means that the travel demand is incorrect (and the improvements will produce an oversupply of infrastructure). Or, the RHNA that was specified is too low and the housing needed by 2022 has not been sufficiently planned for. Either outcome means that the DEIR fails to satisfy CEQA. In addition, the estimated demand presented in ARB’s 2014 review of the modeling for the SCS for 2020 suggests a total of 170,000 new housing units will come online, compared to the RTP estimate of 270,360, nearly 100,000 more units just two years later (2022). It is unrealistic to assume that 100,000 units would be planned for in the space of two years.

<sup>21</sup> Attachment I (available at [http://www.abag.ca.gov/planning/housingneeds/pdf/resources/A\\_Place\\_to\\_Call\\_Home\\_2007.pdf](http://www.abag.ca.gov/planning/housingneeds/pdf/resources/A_Place_to_Call_Home_2007.pdf)).

<sup>22</sup> See *San Francisco Bay Area Progress in Meeting 2007-2014 Regional Housing Need Allocation (RHNA)* (available at [http://abag.ca.gov/files/RHNAProgress2007\\_2014\\_082815.pdf](http://abag.ca.gov/files/RHNAProgress2007_2014_082815.pdf)) (Attachment J). In contrast, Bay Area jurisdictions permitted 99 percent of above moderate income units.

Proposed Plan and all of the alternatives. But the Land Use Modelling Report does not explain these assumptions in detail. The Land Use Modelling Report does note that for two of the alternatives (which are not identified), the model assumes subsidies to affordable housing. However, these assumptions do not reflect the actual rate of affordable housing successes in Bay Area jurisdictions. The DEIR and the Land Use Modelling Report must be clearer on the policy assumptions that are made so that the public can assess whether these assumptions are reasonable or realistic.

Bias also is built into the Bay Area UrbanSim model, which includes assumptions that powerfully undermine measures that could mitigate the effects of development on low income housing in DEIR analysis. Because the model is driven by calculations concerning the “profitability of new development” given market demands and trends, it discounts the benefits of measures that increase social goods (*e.g.*, affordable housing closer to job opportunities; avoided fragmentation of existing communities) and the associated environmental benefits. Indeed, the UrbanSim Technical Documentation doesn’t even mention the word “affordable,” and the discussion of policy tools available to address displacement or housing affordability in the Draft Supplemental Land Use Modeling Report (“Land Use Modeling Report”) is utterly opaque. *See* Land Use Modeling Report at 22.

In contrast, the Land Use Modeling Report discusses profitability and other market-driven factors at length in clear, accessible language. While we recognize that the UrbanSim model is a market modeling tool that necessarily relies on economic principles, the DEIR and Land Use Modeling Report should nevertheless clearly identify the assumptions the model makes about the use of policy tools, such as inclusionary zoning and development fees and subsidies, and whether or how these assumptions are changed in the modeling of the Proposed Plan and each alternative. Ensuring that the functions and assumptions of a model that is fundamental to the conclusions of the DEIR can be understood by decision-makers and the public is essential. Without modeling transparency, a DEIR based on computer forecasting cannot adequately inform “meaningful participation and criticism by the public”, one of the imperatives of CEQA.<sup>23</sup>

Finally, the DEIR does not provide information about uncertainty in the housing distribution produced by the model, despite a request nearly a year ago that MTC/ABAG follow the lead of the Puget Sound Regional Council, another MPO that utilizes the same UrbanSim model. *See* Letter from Public Advocates to MTC, “Uncertainty in UrbanSim Housing Distribution, and Minority Population in Communities of Concern,” dated July 11, 2016 (Attachment H).

### **Supplemental Draft Equity Analysis Report**

With respect to the DEAR, Public Advocates believes that components of the analysis, including the assessment that the Proposed Plan will have negative effects on the share of affordable housing and the risk of displacement of low-income communities, as compared to the EEJ alternative, are if anything understated.<sup>24</sup> *See* DEAR at 5-2, Table 5-1. Moreover, the fact that this analysis is performed in a

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<sup>23</sup> *Save Round Valley All. v. Cty. of Inyo* (2007) 157 Cal.App.4th 1437, 1460 (quoting *Laurel Heights*, *supra*, 47 Cal. 3d at 405).

<sup>24</sup> Public Advocates continues to object that the DEAR assumes that “communities of concern” will be located in exactly the same census tracts in 24 years as they are today. *See* Attachment H.

“supplemental report” separate and apart from the EIR represents an impermissible “segmentation” of the environmental analysis.<sup>25</sup> The subjects of the DEAR are central to the environmental analysis required by CEQA, and should be addressed front-and-center in the EIR itself. For example, the oblique summaries in the DEIR of the quantitative analyses provided in the DEAR are not a sufficient stand-in for full quantitative assessment of displacement impacts in the EIR itself. *See* DEIR at 3.1-43.

As noted above, the DEAR also understates the relative benefits of the EEJ alternative, and overestimates the benefits of the Proposed Plan. This is crucial to the question of whether the DEIR is sufficient, because the DEIR incorporates by reference the quantitative analysis performed in the DEAR. Specifically, the DEAR overstates the benefits of the Proposed Plan with respect to the equity measures of access to jobs, as these benefits are predicated on assumed increases in “investments in affordable housing in the urban core, close to transit and jobs.” *See* DEAR at 6-6. In reality, investment in affordable housing materializes at rates far lower than assumed by the DEIR or DEAR. As discussed above, MTC has the ability to incentivize action at the local level through the imposition of conditions on OBAG funding, and has done so (though only modestly). MTC/ABAG must explore the benefits of doing so in either the DEIR or the DEAR.

The Land Use Modeling Report makes it clear that an analysis could be done of the impacts of changes in administration of OBAG funding. Specifically, page 21 of the Land Use Modeling Report discusses the OBAG program, and indicates that certain assumptions were made about the incentives that the OBAG “preferential subsidy” program will create—namely, a preference for development in PDAs. Presumably, then, the model could incorporate other assumptions about OBAG funding administration, such as the effect of new conditions on OBAG funding tied to affordable housing. By adjusting the assumptions about how the OBAG program is administered, the modeling tools could be used to measure the impacts of those changes across the Proposed Plan and each alternative. In short, not only could MTC place conditions on OBAG funding, and not only could the EIR identify this policy lever as a possible mitigation measure, but those changes in program administration could and should be modeled and discussed in the EIR.

Page 5-3 accurately states that “[p]ublic agencies have a role to play in solving this [housing] crisis. Regional agencies can support local jurisdictions and facilitate the construction of new housing units (both market rate and affordable) to keep pace with job growth, and the plan can provide incentives and planning assistance to communities that are willing to adopt supportive policies and programs.” But, having rightly acknowledged the ability of regional agencies such as ABAG and MTC to incentivize “supportive policies and programs” at the local level, the DEAR—and more importantly, the DEIR—fails to discuss specific potential incentives let alone to propose concrete steps to implement them. As noted above, concrete mitigation measures are available to incentivize the development of affordable housing and implementation of anti-displacement strategies.

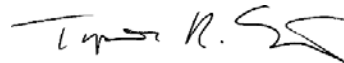
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<sup>25</sup> *See* page 2.2-24 of the DEIR, which indicates that the effects of the Plan on Communities of Concern is addressed separately in the DEAR.

## Conclusion

In light of these significant and substantive deficiencies in the DEIR, Public Advocates respectfully requests that MTC/ABAG revise the DEIR and DEAR to address the above-identified deficiencies and provide another opportunity for public review and comment before finalizing the EIR. Public Advocates appreciates your consideration of these comments and looks forward to reviewing your response.

Sincerely,



Tyson R. Smith  
Winston & Strawn LLP



David Zisser  
Public Advocates

cc:

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MTC Planning Committee  
ABAG Administrative Committee  
375 Beale Street  
San Francisco, CA 94105

May 5, 2017

Re: **Plan Bay Area Action Plan**

Dear MTC Commissioners and ABAG Board Members:

The 6 Wins for Social Equity Network, Non-Profit Housing Association of Northern California (NPH), and Greenbelt Alliance write this letter in the spirit of urgency and collaboration. We are pleased to have the opportunity to work with MTC and ABAG to develop a Plan Bay Area Action Plan with strategies that will help effectively tackle the housing affordability and displacement crisis. Below, we offer **recommended principles to ensure that the Action Plan serves its intended purpose, as well as specific actions that must be included in the Action Plan** to advance tangible affordable housing and anti-displacement outcomes.

As regional leaders, you have used your policy authority, investment decisions, and power of persuasion to shift the regional dialogue and catalyze change at the local, regional, state, and national scale. Now, as the scope of the region's crisis continues to grow, we urge you to take action once again to help restore housing security for the Bay Area's most vulnerable residents.

### **The Growing Problem**

The first chapter of the draft Plan Bay Area includes a number of significant conclusions about the scale of the housing affordability and displacement crisis. For example, “the vast majority of households with annual incomes below \$50,000 experience an excessive housing cost burden” and the “lack of adequate tenant protections—or availability of subsidized or ‘naturally affordable’ market-rate units in neighborhoods with quality transit service and other amenities—has accelerated the displacement of lower-income residents.” Moreover, “more than half of low-income households live in neighborhoods at risk of or already experiencing displacement and gentrification pressures.”

Without effective interventions, hundreds of thousands more Bay Area residents will struggle to pay rent and risk losing their homes. Under the draft Plan, however, the risk of displacement for low- and moderate-income households will increase by 5 percent, and the share of lower-income households' income consumed by housing and transportation will increase by 13 percent.

### **Principles for an Effective Action Plan**

For this reason, you approved the addition of an Action Plan that would “identify concrete ... action items ... to make meaningful progress on ... housing affordability [and] displacement



risk."<sup>1</sup> While we appreciate the inclusion of an Action Plan and the direction it is headed, we have strong concerns that it is not sufficiently ambitious or specific, lacking both clarity about the measurable outcomes that will be achieved and the time period under which these actions will be initiated, conducted, and concluded.

The following principles are essential for ensuring that MTC and ABAG do what they can to tackle the urgent challenges of housing affordability and displacement:

**Principle 1:** The actions in the Action Plan must be clear and specific, with measurable outcomes, responsible parties, and clear timeframes (month and year) for implementation so that MTC, ABAG, and the public know exactly what is expected, when it will be accomplished, and who is responsible for implementation.

**Principle 2:** The actions in the Action Plan must be sufficiently aggressive to address the scale and urgency of the housing crisis.

**Principle 3:** The Action Plan must robustly address displacement and include strategies that help protect tenants and other low-income residents from involuntary displacement from their homes, their neighborhoods, and the region.

**Principle 4:** The Action Plan must emphasize actions that MTC and ABAG themselves can implement, rather than strategies that rely on state or local action.

### **Recommended Actions**

To ensure that the Action Plan lives up to these principles, we ask that you direct staff to make the following changes to the Action Plan:

#### ***Add NEW Actions:***

1. **Generate affordable housing revenue:** MTC and ABAG must commit to identifying and adopting new regional funding sources for affordable housing production and preservation (e.g., through RM 3, HOV tolls, a regional bond measure, a regional impact fee, and private sector contributions) sufficiently scaled to meet needs as projected in Plan Bay Area, and a specific timeframe by which to expect the revenue plan (e.g., November 2017).
2. **Expand housing conditions in existing programs:** Wherever possible, the provision of discretionary funding should be conditioned on strong local jurisdiction performance on affordable housing and prevention of displacement. The Action Plan must not limit itself to including housing provisions or conditions only in *new* funding sources, but should also expand the *existing* funding programs that include housing provisions or conditions. MTC should commit to reviewing all federal, state, and regional funding sources it currently manages by the end of 2017 and report to the Joint MTC Planning and ABAG Administrative Committee with recommendations on how housing conditions

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<sup>1</sup> Memorandum from ABAG Deputy Executive Director and MTC Executive Director, Bay Area 2040 Final Preferred Scenario and Investment Strategy (Nov. 10, 2016), available at <http://bit.ly/2oWkQ8M>.

could be integrated into the provision of those funds. Moreover, MTC must tie funding sources to both affordable housing production *and* anti-displacement protections.

3. **Prioritize public land for affordable housing:** The Action Plan must build on MTC's existing efforts to inventory public land and to require compliance with the state Surplus Land Act to be eligible for OBAG funding by including an action to incentivize the use of public land for affordable housing development.
4. **Report on performance:** To promote transparency and accountability, MTC and ABAG must commit in the Action Plan to providing periodic (e.g., quarterly) progress reports on the Action Plan at Joint Planning and Administrative Committee meetings.

***Add SPECIFICITY to Current Proposals:***

5. **Expand and refine housing initiatives:** The Action Plan must not limit itself to simply *implementing* existing initiatives (such as OBAG, NOAH, JumpStart, and transportation funding conditioned on housing performance) but should also include a commitment to *refine and expand* these initiatives. The Action Plan should also commit MTC to creating a regional infill Infrastructure Bank that could subsidize infrastructure improvements on sites dedicated to the development of affordable housing.
6. **Specify the new funding sources that will be subject to housing conditions:** The Action Plan must provide examples (beyond planning grants) of "upcoming new funding sources" where housing provisions or conditions – including affordable housing production and anti-displacement protections – will be added, such as OBAG, RM3, SB1, etc.
7. **Pursue funding and legislative solutions now:** Rather than wait to "implement the recommendations of CASA," the Action Plan must include an action to pursue funding and legislative solutions right away, including a permanent source of affordable housing funding, protecting tenants from displacement, strengthening housing element law, supporting fair housing, and eliminating the *Palmer* decision's limitation on inclusionary zoning. Moreover, the CASA process is outside of Plan Bay Area and should not be treated as a substitute for centering the Action Plan within the Plan Bay Area public process.
8. **Address job quality:** The Action Plan must explicitly recognize the wage/income side of the housing affordability equation; improving the jobs mix is an essential part of addressing the housing affordability crisis. Specifically, economic development actions in the Action Plan, including the Economic Development District, the Goods Movement strategy, and the Priority Production Areas, should incentivize (1) the creation and retention of middle-wage jobs and (2) strategies to lift up low-wage jobs to help close the gap between wages and housing costs. In addition, worker-level data on wages and earnings from work must be measured and tracked in order to assess whether strategies intended to target middle-wage jobs are working.

MTC and ABAG have a significant opportunity to take strong leadership in developing and implementing real solutions to the region's pressing housing and displacement crisis. We urge you to make the Action Plan a concrete, measurable and effective roadmap for ensuring that the Bay Area's most vulnerable residents can afford to stay here.

Sincerely,

David Zisser and Mashael Majid  
**6 Wins for Social Equity Network<sup>2</sup>**

Pedro Galvao  
**Non-Profit Housing Association of Northern California**

Matt Vander Sluis  
**Greenbelt Alliance**

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<sup>2</sup> The 6 Wins for Social Equity Network is made up of the following social justice, faith, public health, and environmental organizations: Alliance of Californians for Community Empowerment (ACCE), Asian Pacific Environmental Network (APEN), Breakthrough Communities, California Walks, Causa Justa :: Just Cause, SF Council of Community Housing Organizations (CCHO), Community Legal Services in East Palo Alto (CLSEPA), Center for Sustainable Neighborhoods, East Bay Alliance for a Sustainable Economy (EBASE), East Bay Housing Organizations (EBHO), Faith in Action Bay Area, Genesis, Housing Leadership Council of San Mateo County (HLC), North Bay Organizing Project (NBOP), Public Advocates, Regional Asthma Management and Prevention (RAMP), Rose Foundation for Communities and the Environment, Sunflower Alliance, Union Community Alliance of San Mateo County, Urban Habitat, and Working Partnerships USA (WPUSA).