

Peter Singleton, Bay Area Citizens, Public Comment on Draft Plan Bay Area and Draft Plan Bay Area Draft Environmental Impact Report

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Metropolitan Transportation Commission
Plan Bay Area Public Comment
101 Eighth Street
Oakland, CA 94607

re: Public Comment on Draft Plan Bay Area and Draft Plan Bay Area Draft Environmental Impact Report

Dear Metropolitan Transportation Commission,

This letter is submitted as public comment on the Draft Plan Bay Area and Draft Plan Bay Area Draft Environmental Impact Report (State Clearinghouse No. 2012062029).

I am a lifelong resident of the Bay Area, and have deep roots in California, the Bay Area, and my local community. I was born at the Stanford Hospital in Palo Alto, and have lived in and around the Menlo Park area virtually all my life. I am a graduate of local public schools, and have an undergraduate degree from Brown University in Providence, Rhode Island, an MBA from the University of California at Berkeley, and a law degree, summa cum laude, from Hastings College of the Law in San Francisco.

I am currently the Director of Bay Area Citizens, serving in a voluntary capacity. Bay Area Citizens is a nonprofit corporation that supports and protects the interests of the citizens of California in matters including land use regulation, property rights, local community control, and the environment.

Some of my most important early childhood memories are of my parents' activism in the civil rights movement in the Bay Area and nationally in the early 1960s, and I am deeply committed to a community that provides

justice for all, rather than favoring a few. I am also deeply committed to preserving and protecting our natural ecosystem. And, last, I believe in preserving and protecting a healthy, vital human ecosystem that protects our fundamental liberties and enables individuals to flourish in organically organized and naturally developing communities.

Based on the above, I am profoundly opposed to central planning that dramatically impairs individual citizens' rights to live where and how they wish and dramatically undermines local decision making on how a city will grow and change. I am similarly opposed to governmental or social structures that serve powerful political and financial interests alone rather than those of the citizens themselves.

I also have a deep and abiding personal faith, and am an ordained deacon and elder in my local church, Menlo Park Presbyterian Church.

All of the above have informed my comments on Draft Plan Bay Area and Draft Plan Bay Area Draft Environmental Report (EIR) that follow below.

It is my considered opinion that (1) the comment period allowed has been inadequate, and must be extended, and that (2) Plan Bay Area, at its core, is based on models, assumptions, forecasts, and omissions that are gravely deficient and intellectually dishonest.

I. Plan Bay Area's inadequate process

My colleagues and I have faced significant obstacles in securing public records from MTC that were necessary to understand the analysis that underlies the draft Plan and its draft EIR. Hence, I hereby request a 30-day extension of the deadline for submission of comments, until June 15, 2013 or from the date the extension is granted, if the extension is granted after May 16, 2013. The information we requested of MTC on March 13, 2013 and did not receive access to until April 19, 2013, should have been publicly accessible all along—let alone made available in a timely fashion in response to a Public Records Act Request—as this information was essential for the public to understand MTC and ABAG's analysis of the draft Plan and draft EIR and thus to be able to submit informed comments.

In addition, I endorse those requests by citizens and cities that are requesting an overall suspension of the process and that no vote on the Plan occur for at least six months, so that adequate, informed public debate on the Plan can take place. Further, this Plan must not move forward until the substantive, and material concerns that citizens have raised about the Plan, the draft EIR, and the process, have been addressed.

A. March 13, 2013 California Public Records Act request

In early March of 2013, my colleagues and I realized we needed to have information about MTC's models in order to understand the analysis that MTC and ABAG performed in evaluating the alternatives in the draft EIR, as this information had not been made publicly accessible by MTC. We also understood that the modeling information should be easily and quickly available by filing a California Public Records Act request with MTC.

I considered filing a Public Records Act request with MTC as an individual citizen, similar to the way I had filed requests recently with several cities and the state Department of Housing and Community Development¹ for public records regarding Regional Housing Needs Assessments (RHNA). Pursuant to those requests, I had almost invariably received those records in a timely fashion from those agencies.

However, I had had conversations with citizens who had filed Public Records Act requests in late 2012 and early 2013 with MTC and ABAG, and their requests had faced extraordinary levels of stonewalling and obstruction. I had reviewed the correspondence between MTC and ABAG and these citizens. MTC and ABAG could never seem to understand the plain language of these requests² and it was months before any records were furnished--and it was breathtaking for me to read statements in emails from ABAG or MTC that were express violations of the law. Consider the following exchange between a citizen and ABAG, where ABAG asserted

¹ Please see Appendix A for examples of those Public Records Act requests that I filed with other public agencies at about the same time.

² Because of this, we specified in careful detail the records we were looking for in our March 13, 2013 Public Records Act request, having become aware of the seemingly calculated ability of ABAG and MTC to repeatedly fail to understand the plain language of Public Records Act requests from individual citizens.

that it had a right (not permitted to it by the California Public Records Act) to charge the citizen for searching ABAG's files for records responsive to the citizen's request:

On January 24, 2013, the citizen had sent an email to ABAG requesting:

pursuant to the California Public Records Act, all documents, including but not limited to all emails, memorandum, reports, correspondence, meeting agenda and minutes, etc, related to any of the following:

Bay Area Alliance for Sustainable Communities (or any known or reasonable variant of that name)
Compact for a Sustainable Bay Area

Then the citizen received a reply from Joanna Bullock of ABAG on January 28, 2013 that stated:

A search for the documents you request that refer to . . . the Bay Area Alliance . . . during the time period 1995 through 2000 would amount to a significant cost that would be charged to you.

Faced with this evidence of consistent obstruction and months of delays to requests submitted by individual citizens, my colleagues and I asked Judicial Watch to file our Public Records Act request with MTC for data related to its modeling analyzing the Plan and the draft EIR. We surmised that receiving a Public Records Act request from a respected national public interest law firm that specializes in these sorts of requests would more likely get a response from MTC than an individual citizen would, and we turned out to be right in that.

However, we weren't prepared for nor did we expect the level of obstruction that even a request from Judicial Watch received. Our request for modeling data filed March 13, 2013,³ was responded to by MTC at the last possible day on March 25, 2013,⁴ saying that the agency needed additional time.

³ Appendix B.

⁴ Appendix C.

MTC waited until the maximum allowable 14 days until April 8, 2013,⁵ before responding to say they had identified responsive records. Even then it took an additional 11 days, until April 19, 2013, before MTC made those records available to us.

B. First access to records, April 19, 2013

On the morning of April 19, 2013, my colleague Tom Rubin and I requested the assistance of two additional people, one an MBA with a corporate planning background, and the other a retired attorney—both intimately familiar with Plan Bay Area and able to help us review what we expected to be boxes of records made available to us in response to our request. We expected boxes of records because of the week after week in delays in making these records available to us.

What we weren't prepared for was what we were presented with when we arrived at MTC's offices at 9:00am in the morning on Friday, April 19, 2013. The four of us were ushered into a conference room, where we were presented with a single laptop computer. The records included several hundred documents contained in about 30 folders and subfolders on the laptop. All were records that were retained by MTC in electronic form.

In addition, MTC told us that morning, in direct violation of the express terms of the Public Records Act,⁶ that we would be required to pay \$0.25 per electronic page for each record we wanted electronic copies of. Since there were thousands of pages in the electronic documents we were granted access to, the total cost to us would have been in the thousands of dollars. And one of the most important sets of data we were looking for, the spreadsheets, would only be provided to us in .pdf format—a format that wouldn't let us see the formulas in the spreadsheet cells, and wouldn't let us evaluate the analysis performed by MTC and ABAG.

⁵ Appendix D.

⁶ These were records retained by MTC in electronic form. A public agency is not permitted to charge a per page fee for each electronic page of document it retains in electronic form. It is only permitted to charge a fee for the direct costs of copying the electronic record to electronic media. Government Code §6253(b). For electronic documents, this would generally be a nominal fee as most if not all of that fee would be for the media itself (e.g., the CD).

Needless to say, we were stunned and deeply troubled at this further evidence of obstruction of our Public Records Act request. We called the attorney that we had been working with at Judicial Watch, Julie Axelrod. Ms. Axelrod shared with Ms. Pam Grove, MTC's Public Information Officer, that we considered MTC's response to be deficient and in direct violation of the law.

I shared with Ms. Grove our grave concerns over the repeated pattern of obstruction. We had requested the records on March 13, 2013, and were entitled to them within 10 days, or by March 23, 2013. This would have been in time for us to review them at the March 22, 2013 beginning of the 55 day comment period allowed for Plan Bay Area, and before the April 2, 2013 beginning of the 45 day comment period allowed for the draft Plan Bay Area. Yet it was now April 19, 2013--five full weeks after our March 13, 2013 Public Records Act request, a full month into the eight week comment period for the Plan itself, and two and a half weeks into the six and a half week comment period for the draft EIR. And here we were faced here with further unreasonable and unnecessary obstruction.

I also shared with Ms. Grove what she assuredly knew, that MTC's obstruction of our request was preventing us from being able to understand the analysis MTC and ABAG had performed on the Plan and the draft EIR, and was preventing us from being able to submit informed comments on the Plan and draft EIR. Finally, I shared with Ms. Grove (and did so courteously and respectfully), that at this point, MTC's obstructing our ability to comment on the Plan and the draft EIR was becoming MTC's problem, and not ours.

To MTC's credit, and to Ms. Grove's, after being presented with our objections to MTC's continuing pattern of obstruction, MTC relented and provided us with the records on a CD, charging us the statutorily allowed amount of \$8.60 for copying electronic records to electronic media—what they should have done in the first place, and should have done weeks before.

C. Request for Extension

We lost an unrecoverable four weeks in our ability to understand MTC and ABAG's analysis of the draft Plan and draft EIR and thus to our ability to submit informed comments on the draft Plan and draft EIR, due solely to MTC's obstruction of our request. Hence, as mentioned above, we hereby request an additional 30 days to file comments on the draft Plan and draft EIR, either until June 15, 2013 if the request is granted immediately, or for 30 days after the request is granted. We also hereby state that we consider the comment period, if it is not extended for an additional 30 days, to have been inadequate as a matter of law.

D. The Two MTCs – the First Responsive, the Other Obstructive

What's deeply ironic about MTC's pattern of stonewalling and obstruction is as we faced week after week of delay and obstruction, trying to review the documents that were provided on Plan Bay Area's website without essential information on MTC and ABAG's analysis and models, we learned that MTC and ABAG were passing out their entire software models themselves, together with additional model related data, immediately upon request to organizations that were closely aligned with MTC and ABAG. That is, insider, "stakeholder" organizations only needed to request the models themselves, and to those insider organizations, MTC and ABAG were passing out their software models and associated data like Halloween candy.

So, based on the information we learned from one of these organizations that had so easily secured MTC and ABAG's models and associated data, we contacted MTC's chief modeler notifying him we'd heard that the models and associated data were being made available to requesting organizations, and asked for the data.⁷ Within a few days, MTC and ABAG's modeling professionals provided me with ABAG and MTC's software models and associated data on a 1 terabyte hard drive that I had dropped off at their offices.⁸ What a stunning contrast in response to our request. At exactly at the same time, MTC and ABAG's's modeling professionals were offering us

⁷ Email correspondence attached as Appendix E.

⁸ Id.

timely access to the modeling data in their possession when we approached them through the referral of an organization that is closely aligned with MTC and ABAG,⁹ while MTC's executives and lawyers were continuing their week after week obstruction of our simple request for similar and related data when they considered us a citizen or an organization that was not closely aligned with them.

E. Violation of the RTAC Report Mandates

MTC's consistent pattern of obstruction was, and remains, deeply troubling to us because we were aware then, and aware now, that not only is the modeling data absolutely essential for the public to have an understanding of the analysis performed by MTC and ABAG of Plan Bay Area and its draft EIR, and essential to the public's ability to submit informed comments on both, but the state of California has issued strict guidelines mandating full access to and disclosure of modeling data used to analyze a sustainable communities strategy like Plan Bay Area, through the California Air Resource's Board's Regional Targets Advisory Board (RTAC). The formation of the RTAC was mandated in SB 375 itself, Government Code § 65080 (b)(2)(A)(i),¹⁰ and the RTAC's final report discusses the importance

⁹ We have great respect for Mr. Ory and his courtesy and his helpful responses to questions that we had about MTC's modeling efforts, and we don't mean to suggest that his actions with respect to our inquiries were anything but professional. See, for example, the email exchange in Appendix F where Mr. Ory provided us with helpful, and timely information. Based on his statements to us, Mr. Ory appears to have been equally helpful with other organizations, who generally appear to have been closely aligned with MTC, perhaps because those were the only organizations who appear to have known to call the modeling professionals for questions (we found out from one of those organizations).

The obstruction that we faced we attribute to MTC's executives and counsel. To the extent Mr. Ory was not responsive when we began to ask questions that centered around how MTC and ABAG were handling state MPG regulations, we attribute that to MTC executive decisions, as evidenced by the fact that our inquiries to Mr. Ory were responded to by his supervisor, and not him.

¹⁰ Government Code § 65080 (b)(2)(A)(i) reads, in relevant part:

No later than January 31, 2009, the state board shall appoint a Regional Targets Advisory Committee to recommend factors to be considered and methodologies to be used for setting greenhouse gas emission reduction targets for the affected regions. . . . The

of transparency and public accessibility in modeling of the sustainable communities strategy, in great detail.

For example, from the RTAC's 2009 final report:

2. Use of Modeling

This section of the report summarizes Committee discussions on the use of travel demand models and other modeling methods for SB 375 target setting and implementation. In our recommendations, we emphasize the need for MPOs to make modeling data and information regarding greenhouse gas emissions available to the public in a clear and transparent manner. [emphasis added] A network-based travel demand forecasting model allows for simulation of complex interaction among demographics, land use, development patterns, transportation, and other policy factors. A rigorously tested and validated travel demand model with well documented expert peer review will add to the credibility of greenhouse gas estimates.

In this section, “travel demand models” refers to the computer models currently in use at MPO’s for travel forecasting, ranging from relatively simple “four-step” models to more complex “four-step” models, to more sophisticated, activity-based simulation models. “Other modeling methods” refer in general to tools which either augment or replace travel demand models, and are likely to be spreadsheet-based tools.¹¹

And also from the RTAC report:

Throughout its discussion, the Committee came to appreciate how complex modeling systems can be, and as a result, we recognize the vital importance of transparency in the modeling process. [emphasis added] Within the context of improved transparency, the Committee

advisory committee shall transmit a report with its recommendations to the state board no later than September 30, 2009. In recommending factors to be considered and methodologies to be used, the advisory committee may consider any relevant issues, including, but not limited to, data needs, modeling techniques . . .

¹¹ *Recommendations of the Regional Targets Advisory Committee (RTAC) Pursuant to Senate Bill 375*, p. 16. Appendix L.

recommends that use of travel demand models and other modeling methods for SB 375 implementation include . . . assessment and documentation of existing travel demand model capability and sensitivity. . . .

When applying models in target setting and/or demonstration of meeting the target, inherent modeling uncertainties due to input data quality, assumptions, existing modeling capability, and sensitivity need to be well documented.¹²

The Committee could not have stressed more strenuously the importance of making full and open discloses to the general public, and in a form that was accessible to the general public, in order for the public to understand the modeling that was done to analyze the sustainable communities strategy:

SB 375 requires that MPOs “...disseminate the methodology, results, and key assumptions of whichever travel demand models it uses in a way that would be useable and understandable to the public.” Cal. Govt. Code § 14522.2(a).

. . .

If the documentation is highly technical in nature, a summary of the assessments and sensitivity testing should be prepared which would be more generally understandable by a non-technical audience.¹³

F. The Two MTCs – A Question of Intent

In fact, our experiences with MTC, with similar requests, at exactly the same time, couldn't have been more different with respect to the mandates of the RTAC report. At least initially, MTC's modeling professionals, including especially Mr. David Ory, couldn't have acted more consistently with the mandates of the RTAC report. He was helpful, and responsive, and appeared to understand our need to have access to the software models themselves to understand the analysis that MTC and ABAG had done, and to

¹² Id. at 18.

¹³ Id.

be able to submit informed comments. He made it clear that he was equally responsive in providing information to other organizations (albeit all of these organizations appear to have been ones closely aligned with MTC and ABAG).

On the other hand, MTC's executives and counsel, couldn't have been more obstructive, in making it hard for us, and delaying as long as possible, our receiving access to the modeling data, and, as a result, making it hard for us to understand MTC and ABAG's analysis of the draft Plan and the draft EIR, and making it hard to submit informed comments.

The only plausible explanation for this otherwise inexplicable difference between two sets of personnel in the same organization responding to related requests for similar data at exactly the same time, is that both sets of personnel were fully aware of our critical need for the information to understand MTC and ABAG's analysis and submit informed comments, and were aware of the fact that the comment period was well underway. For the software modeling professionals, their initial responsiveness and willingness to provide us with information in a timely fashion was indicia of their desire to make sure that we understood the analysis that had been performed¹⁴ and were able to submit informed comments.

The MTC executives and counsel who so determinedly obstructed our requests for similar data at the same time, also appear to have been doing so because they knew of our critical need for the data to understand MTC and ABAG's analysis, and of our need to have the data as soon as possible to be able to submit informed comments. That they understood our need for the data and wanted to prevent our ability to submit informed comments, is the only plausible and reasonable explanation why they obstructed and delayed our request for week after week, as the clock ticked away the 55 day period for submitting comments on the Plan itself, and the 45 day period for submitting comments on the draft EIR.

G. MTC's Obstruction and Evasion – It Never Stopped

¹⁴ That is, until we began to ask questions about how MTC and ABAG handled the California MPG regulations—those questions were not responded to by MTC's modeler, rather they were immediately referred to his supervisor. Again, I don't fault the modeling professionals for this, rather, MTC and ABAG's senior executives and counsel.

As we began to review the documents on MTC's modeling that were disclosed to us on April 19, 2013, and as it slowly dawned on us the sheer magnitude and extent of the irregularities in MTC and ABAG's assumptions and analysis, we began to ask questions seeking clarification of the EIR team and MTC and ABAG's modeling professionals. And, alas, but perhaps understandably, the same professionals that we had earlier come to respect and appreciate for their courtesy and responsiveness in answering questions, either stopped responding entirely, as did Mr. David Ory, or the EIR Coordinator, Ms. Carolyn Clevenger, who as we came closer and closer to the truth of what MTC and ABAG were doing with their models, became more and more evasive and elusive in her responses to my questions which became more and more simple and direct. I don't fault either Mr. Ory for not responding our latter inquiries, nor Ms. Clevenger for her astonishingly evasive and elusive answers to what eventually from me were simple and direct questions. For whatever reasons, Mr. Ory referred my questions about MTC and ABAG's handling of MPG regulations directly over to his supervisor rather than responding, and in the case of Ms. Clevenger's most artfully worded evasive communications, I suspect those communications were drafted by counsel for her.¹⁵

¹⁵ Note that the more we looked at the data we had received from MTC, the more confident we were in our interpretation of that data, and thus our requests for clarification from MTC were simply acknowledgements from MTC of what the data itself said. Thus, there is no possibility that MTC misunderstood what we were asking for—acknowledgement in writing from them of indisputable facts about how they were modeling California's Clean Car Standards (Pavley 1) and how they were incorporating those results in their analysis. MTC's evasive and seeming obtuseness in response to a direct request for an admission of what unquestionably what MTC and ABAG were in fact doing, appears to be itself a further admission that MTC and ABAG know what they are doing is wrong.

II. The Smoking Gun

So, was there a smoking gun in the data that MTC withheld for week after week, a reason why MTC delayed so long and fought so hard to keep us from understanding what they were doing to analyze the Plan? Indeed there appears to have been, but not just a smoking gun—there was an entire battery of smoking howitzers arrayed along the ridgeline as far as the eye can see.

Throughout this comment I will discuss the importance of the data that was withheld so long then finally disclosed to us on April 19, 2013. And, given the collapsed timeframe, there is much more in these several hundred documents that we have found that warrant—in fact demand—further research and inquiry. Also, there are also many additional issues that we had planned to comment on and have done preliminary research on. However, the delays in receiving the modeling data from MTC, together with the limited time allowed in the comment period overall, have prevented us from doing so. There's also the sheer number, and the gravity, of the deficiencies that we have found in the Plan and its analysis.

But with all that, one simple table may illustrate why MTC was so determined, and fought so hard, to delay disclosing information related to MTC and ABAG's models and analysis, and hence may explain why they fought so hard against disclosing to the public essential facts about their analysis of the Plan and draft EIR.

Passenger Vehicles

The Mythical Model (what they are telling us)		2010	2035	Difference	Difference per VMT
Exhaust Particulate Matter 10	Tons/day	0.75	0.54	-28.00%	-37.76%
Wintertime NOx	Tons/day	75.35	16.10	-78.63%	-81.53%
Vehicle Miles Traveled (VMT)	Thousands /miles	155.668	180.077	15.68%	
MPG	Miles per gallon	20.10	20.44	1.69%	
CO2	1000s tons/day	70.09	80.69	15.12%	-0.48%

 = Using real number for MPG. Clever! Makes Preferred Alternative and its high density housing mandates look better!

 = Using fake number for MPG. Shhhh . . . don't tell anyone! Makes Preferred Alternative and its high density housing mandates look better!

What this table¹⁶ tells us is that MTC and ABAG are treating the identical regulations—California’s Clean Car Standards—differently in their analysis of the Plan and the draft EIR, depending upon whether considering the impact of those regulations will help or hurt their argument that the Preferred Alternative must be selected.

California’s Clean Car Standards were promulgated by the California Air Resources Board (CARB) in 2004, pursuant to AB 1493 (2002, Pavley), and became fully effective in 2009. The Plan and draft EIR call California’s Clean Car Standards “Pavley 1.” Pavley 1 governs the average miles per gallon (MPG) of the new passenger vehicle fleet sold in California from 2009 through 2016, and in the following years.

Pavley 1 will have a significant impact on the average MPG of the passenger vehicle fleet in use in California over the next 25 years.¹⁷ We don’t have to

¹⁶ The data in this table is derived entirely from the file, *MTC Model Run 2035_03_84, 2013 RTP/SCS CO2 and Criteria Pollutant Summary Results, September 11, 2012*, received in MTC’s Public Record Act disclosures, attached as Appendix G. This data contains vitally important information that was not disclosed to the public as part of the public disclosures accompanying the release of the draft Plan, the draft EIR, and accompanying documents—information that was essential for the public’s ability to understand the analysis performed by MTC and ABAG, and to submit informed comments.

This data represents the results of a model run of MTC’s software that looks at emissions from vehicles—which appear to generate the core analysis that MTC and ABAG used to evaluate the four Alternatives and No Project in the draft EIR. All tables of model runs that we received in response to our Public Records Act request were similar to the reported data in the attached file noted above, with only minor variations in the reported results between model runs, and between the alternatives, including between No Project and the four alternatives considered (and these variations between No Project and the four alternatives considered were assuredly within the margin of error of these models—a fact that does not appear to have been disclosed to the public).

¹⁷ Please note that the results ABAG and MTC’s undisclosed models show for the MPG impact of Pavley 1 are included in their results shown for Pavley 1 + LCFS. However, CARB’s Low Carbon Fuel Standard (LCFS) is a set of standards for formulation of gasoline and other motor fuels, and as such, LCFS reduces CO₂ emissions when burned in the vehicle’s engine, but should have little or no impact on the vehicle’s MPG.

Pavley 1, on the other hand, regulates the minimum MPG of the passenger vehicles sold in the state during a given year. Therefore, it is a reasonable assumption to make that all

guess at that—MTC and ABAG modeled that impact,¹⁸ though they have not disclosed to the public that they in fact did so nor have they disclosed to the public their results, presumably because they did not want the public to know the results of that analysis. And this may have been precisely why MTC fought so hard to keep this information from the public in delaying and obstructing our March 13, 2013 Public Records Act request¹⁹—because this information would need to be provided to us in response to our request.

MTC and ABAG’s undisclosed models show that the Pavley 1 regulations will increase fleetwide MPG of California’s passenger vehicles by more than 59% between 2010 and 2035.²⁰ And, since the amount of gasoline burned per vehicle mile traveled (VMT) is reciprocal to the MPG that a vehicle gets, we know that Pavley 1 will have the following inevitable and certain impacts between 2010 and 2035:

- Pavley 1 MPG regulations will reduce passenger vehicle emission-related particulate matter and pollutants per VMT by 37% (and adjusting for the forecasted 15.68% increase in VMT, 31.98% overall)
- Pavley 1 MPG regulations will reduce passenger vehicle emission-related CO₂ per VMT by 37% (and 31.98% overall)

or virtually all of the MPG increases attributed to Pavley 1 + LCFS in ABAG and MTC’s undisclosed models are attributable solely to the impact of Pavley 1.

¹⁸ See, for example, the table of data with model run results discussed in footnote 16 above (Appendix G). All model runs included the undisclosed results from running a post processor that evaluated the impact of Pavley 1 and Low Carbon Fuel Standard (LCFS) on CO₂ (User Guide to the post processor that assesses the impact of Pavley 1 and LCFS attached as Appendix H).

¹⁹ Or, actually, among the reasons. The irregularities in the models, the analysis, and the assumptions, are simply breathtaking. I am only detailing several of them here, but there are many others.

²⁰ This is a simple calculation from the modeling results disclosed to us on April 19, 2013 (but withheld from us for week after week after our request on March 13—and also withheld from the public as a whole, who should have had access to this data). The calculation is simply the increase in fleetwide MPG for passenger vehicles from 20.18 in 2010 to 32.02 MPG in 2035 (for Preferred Alternative; other Alternatives including No Project appear to virtually the same).

- Pavley 1 MPG regulations will reduce gallons of gasoline used by passenger vehicles—and hence available to be taxed—per VMT by 37% (and 31.98% overall)

It is facially obvious from the above that Pavley 1 MPG regulations have an immense impact on the required analysis of the Plan and its draft EIR, and on the decisions that should be made about the Plan by MTC and ABAG, and by the public. But these impacts affect the Plan's Preferred Alternative and its high density housing-heavy land use / mass transit-heavy transportation plan radically differently, depending on which impact we are looking at.

Pavley 1's 37% reduction per VMT in passenger vehicle emission-related particulate matter and pollutants (and 31.98% overall) appears to have been welcomed by MTC and ABAG, and in fact was a significant assistance to them in their justification of their Plan. The draft EIR was required to disclose serious and unmitigatable health impacts to all of the new residents that MTC and ABAG are requiring to live in high density multistory multifamily units near mass transit in suburban and urban downtowns. Pavley 1's 37% reduction per VMT (and 31.98% overall) in these passenger vehicle emission-related particulate matter and pollutants by 2035 was a significant contributor in reducing, but not eliminating, those public health impacts. And, not surprisingly, MTC and ABAG included those impacts in their analysis of the Plan and the draft EIR.

However, they had a little problem to solve before doing so. As noted below, MTC and ABAG had already fabricated a mythical number for fleetwide MPG of passenger vehicles through 2035, which removed the 59% increase due to Pavley 1, and forecasting a number for MPG that was untethered and unrelated to any possible future scenario—an unchanging fleetwide MPG from 2010 through 2035. This appears to have been done to hide the impact of Pavley 1 regulations on reducing CO₂. So, what to do to be able calculate the favorable impacts of Pavley 1's increased MPG on emissions related particulate matter and pollutants?

When fabricating data to produce the analysis that supports ones' objective of adopting the Preferred Alternative (or one of its variants based on the same models and analysis, Alternatives 3, 4, or 5, or some combination of the four), why stop now? And that appears to be exactly what MTC and

ABAG did. They appear to have embedded, and hid, a second number for passenger vehicle fleetwide MPG,²¹ one that incorporates the 59% increase in MPG and thus produced in the model a resulting decrease of 37% per VMT (31.98% overall) in passenger vehicle emission-related particulate matter and other criteria pollutants.

So in this profoundly deceptive exercise, MTC and ABAG were able to produce analysis—in the same model—that projected that passenger vehicles would emit a constant amount of CO₂ per VMT through 2035, through the mythical assumption that Pavley 1's MPG regulations did not exist, and thus fabricating values for fleetwide MPG that were used in their models to generate those fabricated and grossly excessive forecasts of CO₂ emissions. And since their Plan was analyzed for its impact on reducing CO₂, and the reduced CO₂ emissions from Pavley 1 MPG regulations were removed from the model by fabricating data to falsify the model's results, the only means of reducing greenhouse gases (GHGs), e.g., CO₂, that the Plan's analysis recognized as existing were those due to land use and transit.

Since in another set of profoundly flawed assumptions and models, only those land use elements (high density housing and mixed use developments next to mass transit in suburban and urban downtowns) and transit elements (increased subsidies to mass transit) that MTC and ABAG appear to favor were defined as reducing CO₂ emissions, the Plan's models and analysis were designed from the beginning to produce analysis that could only find the Preferred Alternative or some close variant (such as the other three alternatives or some combination of the four) the environmentally and economically superior choice.

²¹ There is simply no question that MTC's models do this. I trust that MTC and ABAG will simply concede this point. There are two different numbers for MPG in the main model that MTC and ABAG used, or not. It's a simple question with a yes-no answer, and the answer is yes. However, if MTC and ABAG choose to obfuscate and evasively avoid this obvious fact in their answer to this point in this comment in the Final EIR, I will file a comment to the Final EIR that details the evidence in as many ways as seems necessary. But I trust that at some point, MTC and ABAG will realize that misleading the public in the CEQA process is frowned upon, and that doing so grossly violates their responsibilities as public agencies as well.

Plan Bay Area's Budget

But MTC and ABAG's disingenuous analysis and fabrication of results to support its desired outcomes did not stop there. Consider the decline in gasoline usage due to Pavley 1 regulations' 59% increase in fleetwide MPG for passenger vehicles in California from 2010 through 2035. MTC and ABAG's own undisclosed models compel the conclusion that gasoline usage by passenger vehicles will decline by 37% per VMT (and 31.98% overall) from 2010 through 2035 (as gasoline usage declines are simply the arithmetic reciprocal of the MPG increase).

If the retail price of gasoline keeps pace with inflation—an uncertain assumption since, as noted above, MTC and ABAG's MPG data compel a finding of an absolute decline of 31.98% in gallons of gasoline used in passenger vehicles by 2035--then total gas tax revenues to the Plan will be 31.98% less in real terms 2035 than they were in 2010.

Consider the position that MTC and ABAG found themselves in. A budget that forecasted total gas tax revenues to the Plan in 2035 31.98% less, in real terms, than in 2010, would not have allowed funding the massive multi-billion dollar mass transit projects that MTC and ABAG wanted to build. Not the \$4.5 billion dollar Trans Bay Terminal in San Francisco. Not the new rail lines that will carry passengers at a cost orders of magnitude greater than that of automobiles—rail lines that will require astronomical public subsidies per passenger mile. Nor would that budget have allowed all of the high density housing mandates that the Plan requires the cities and towns in the Bay Area to zone for, and incents them to build by withholding gas tax revenues designated for road and bridge maintenance from cities that don't actually get the housing built.

However, inconvenient facts are not an insurmountable problem—not ones that render impossible a budget that funds desired programs. New facts can be made up, or inconvenient facts can be assumed out of the models and out of the analysis—and none of this disclosed to the public.

Is this right? No, in fact it is profoundly wrong. But this appears to be exactly what MTC and ABAG have done with the analysis and justification for this Plan.

Specifically with respect to the decline in gasoline usage due to the MPG impacts of Pavley 1, MTC and ABAG's financial models assume a 2.00% decrease in gasoline used per year through 2020.²² However, MTC and ABAG's financial models then ignore the continuing impact of Pavley 1 on decreased gas sales due to increased fleetwide MPG through 2035.²³ And, presumably to "mitigate" the impact of declining gallons of gasoline sold through 2020, MTC and ABAG forecast an astounding 8.00% per year increase in the retail price of gasoline for those same years—3.5x the 2.2% rate of inflation²⁴ they assume in the Plan. These assumptions for extraordinary, and persistent price rises in the retail price of gasoline not only fully offset the impact on gas tax revenues of the reduction in gasoline used that their financial models forecast through 2020, but MTC and ABAG actually forecast increased gas tax revenues during those years.

Then, possibly to leave nothing to chance, MTC and ABAG forecast continuing gas price increases from 2020 through 2035 of 3.3% per year²⁵—fully 50% higher than the 2.2% assumed rate of inflation²⁶ that the Plan is based on. In fact, including the 8% per year gas price increases through

²² See, for example, *Regional Fuel Tax worksheet, 2013 RTP Model (State and Federal)_Final* attached as Appendix I. Please note that this data was not made available to the public in the disclosures provided to the public as part of the information provided to the public by MTC and ABAG for the public's review of the Plan and draft EIR, and was only provided to us after weeks of delay and obstruction in the Public Records Act response that we received on April 19, 2013. This information was not only important, but was essential to the public's ability to understand the financial models that underlie the Plan, and should have been available to the general public as part of the disclosures MTC and ABAG were required to make about the Plan and the draft EIR.

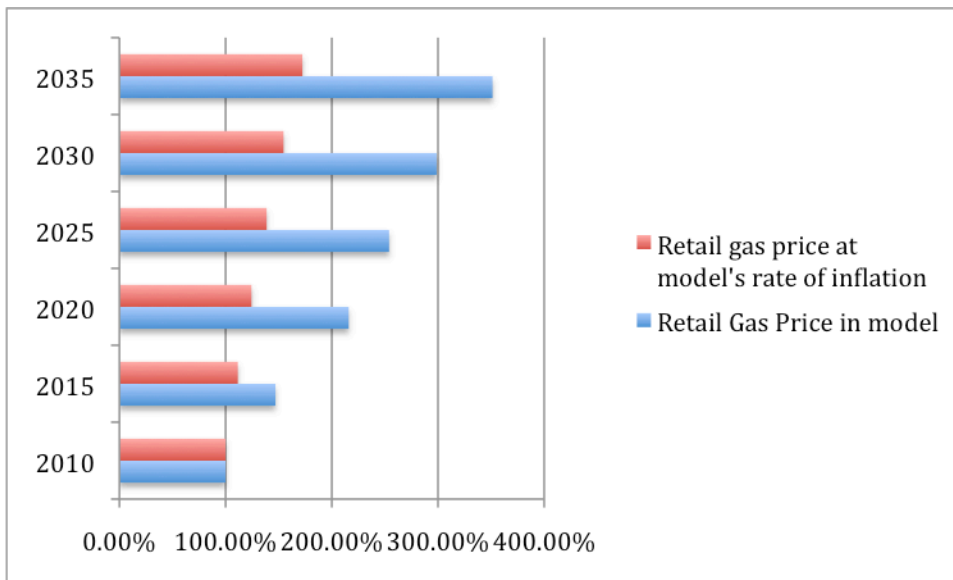
²³ According to MTC and ABAG's own undisclosed models of the impact of Pavley 1 on fleetwide MPG, fleetwide MPG for passenger vehicles will increase by 14.68% (from 27.92 MPG in 2020 to 32.02 MPG in 2035), and hence gasoline used per VMT will decline a further 12.80% over that same period, and even after adjusting for added VMT, by well over 10% in absolute terms.

²⁴ See *Worksheet 2013 values - 2013 RTP Model (State and Federal)_Final*, Appendix J. This was yet another assumption that was not disclosed as part of the Plan, the draft EIR, and their supporting documents, and was only identified by us in the disclosures we received after such long delay on April 19, 2013.

²⁵ Appendix I.

²⁶ Appendix J.

2020, and the 3.3% per year gas price increases from 2020 through 2035, MTC and ABAG are forecasting a retail gas price in 2035 of 351% that of the retail gas price in 2010. That is, MTC and ABAG are forecasting a gas price that will increase by more than twice that the rate of inflation (171%) that their model forecasts over those same years. And, thus, the 31.98% decline in actual gallons of gasoline sold in 2035 over 2010, due to Pavley 1's MPG regulations, are more than offset by the model's assumed gas price increases. This is quite clever—constantly rising prices, far above the rate of inflation, and as far as the eye can see, while the actual number of gallons continues to fall, also as far as the eye can see. And thus the budget assumes that gas tax revenues go up and up and up while actual gallons of gas demanded at the gas pump go down and down.



Considering that MTC and ABAG appear to have an obvious incentive, as well as a seemingly well-honed track record for creating “facts” and thence forecasts that serve their objective of justifying Plan Bay Area and its policy elements, perhaps we should compare MTC and ABAG’s forecasts for gasoline price rises with the California state agency that is expert in these matters, the California Energy Commission (CEC). What we learn in doing so, leaves us in utter disbelief.

The CEC in 2011 produced a set of gasoline price forecasts from 2010 through 2030, projecting gas prices in 2010 dollars, coming up with a high price scenario, and a low price scenario. CEC appears to have considered the impact of Pavley 1 on gas prices (e.g., that Pavley 1 would reduce the

total numbers of gasoline used by passenger cars), though it's unclear how much of Pavley's impact in reducing demand they incorporated in their model.²⁷ And of course they could not have considered the effect of Pavley 2, which had not yet been proposed in 2011 when the CEC prepared its projections. So, since Pavley 2 will lead to additional, sharp declines in gasoline used by passenger vehicles and these CEC numbers may not have accounted for the fully impact of the reductions in gasoline usage due to Pavley 1, these CEC are assuredly considerably higher than a forecast that would be made today, but they do reflect the CEC's views of future gas prices in 2011, and without consideration of the impact of Pavley 2. Their projections²⁸ are nothing short of astounding, when considered along side of MTC and ABAG's forecasts for gas price increases in Plan Bay Area.

CEC's low price scenario projects retail gasoline prices, in real terms, to be 1.23% lower in 2030, than in 2011 (see table below). And, since CEC's projections did not account for the additional, substantial declines in gasoline usage due to Pavley 2—declines in usage that will be national, since Pavley 2 simply adopts in California the federal 2025 CAFÉ standards—CEC 2011 gas price forecasts must be viewed as considerably higher than they would be if Pavley 2 was considered. CEC's high end gas price forecast, in real terms, and with the same qualification, is that gas prices in 2030 will be 28.07% higher in 2030 than in 2011.

What sayeth MTC and ABAG? Surely, as California public agencies, MTC and ABAG would use the gasoline price forecasts of the state's energy agency, as those forecasts would presumably be considered authoritative. In developing a regional plan like Plan Bay Area, wouldn't it be improper, possibly even unethical, to disregard those forecasts that were available to MTC and ABAG in 2011, a full year before the formal analysis of the Plan and its draft EIR began in late July, 2012? And, since Pavley 2 was announced in January of 2012, and became fully effective in December of 2012, fully four months before their analysis was complete and MTC and ABAG released the draft Plan and draft EIR to the public, MTC and ABAG

²⁷ MTC and ABAG, on the other hand, were required to consider the full impact of Pavley 1 in reducing demand for gasoline from passenger vehicles, and their own undisclosed models compel a finding that total gas demand will drop by 31.98% by 2035, just due to Pavley 1.

²⁸ *CA Energy Commission gasoline price forecast 2010-2030*, Appendix K.

surely would make appropriate adjustments downward if they used CEC's 2011 gasoline price assumptions to account for the significant impact of Pavley 2 on retail demand, and hence retail price, for gasoline. Wouldn't they?

Alas, we now know enough to predict that that won't be the case. And, sadly, MTC and ABAG act again consistently with their pattern. Their question appears to be, "what assumption do we need to make to enable us to justify the Plan we want to have" rather than "what assumption do we need to use to accurately reflect real world conditions" or "what assumption do we need to use to reflect the integrity and honesty that the public expects, and has a right to demand, from public agencies that are spending public funds"? We find that MTC and ABAG are projecting in their Plan, gasoline prices, in real terms, 85.30% higher in 2030 than in 2011.

Gas Price Forecasts, Difference, Real Terms, 2011-2030²⁹
 (% of 2011 gas price)

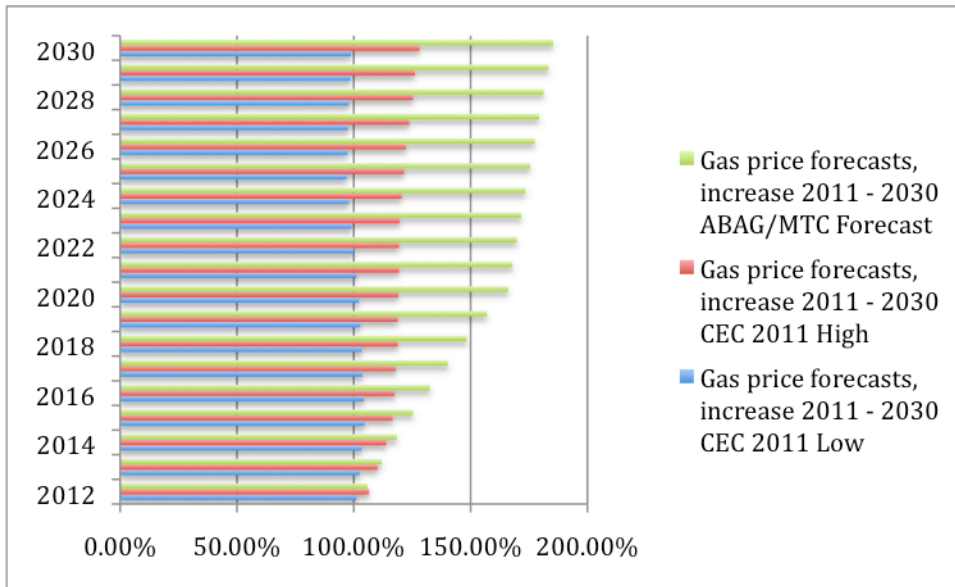
	CEC 2011 – Low	CEC 2011 – High	MTC/ABAG
2012	101.23%	106.54%	105.80%
2013	102.47%	110.08%	111.94%
2014	103.40%	113.90%	118.43%
2015	104.63%	116.62%	125.30%
2016	104.32%	117.44%	132.56%
2017	103.70%	117.98%	140.25%
2018	103.40%	118.80%	148.39%
2019	102.78%	118.80%	156.99%
2020	102.16%	119.07%	166.10%
2021	101.23%	119.35%	167.93%
2022	100.00%	119.35%	169.77%
2023	99.07%	119.62%	171.64%
2024	97.84%	120.44%	173.53%
2025	96.91%	121.53%	175.44%
2026	97.22%	122.34%	177.37%
2027	97.53%	123.71%	179.32%
2028	97.84%	125.34%	181.29%
2029	98.46%	126.16%	183.29%
2030	98.77%	128.07%	185.30%

Notes:

1. CEC 2011 forecasts do not consider the impact of Pavley 2 on retail gasoline prices. Pavley 2 will lead to sharp declines in gasoline prices due to sharp declines in gasoline usage by passenger cars.
2. MTC and ABAG were required to account for the impact of Pavley 2 on gasoline prices in their budget for Plan Bay Area.

²⁹ Data for CEC are computed from yearly forecasted values in *CA Energy Commission gasoline price forecast 2010-2030*, Appendix K, and data for ABAG/MTC are computed from gas price increases per year in *Regional Fuel Tax worksheet, 2013 RTP Model (State and Federal)_Final*, Appendix I.

Gas Price Forecasts, Difference, Real Terms, 2011-2030 (% of 2011 gas price)



Notes:

1. CEC 2011 forecasts do not consider the impact of Pavley 2 on retail gasoline prices. Pavley 2 will lead to sharp declines in gasoline prices due to sharp declines in gasoline usage by passenger cars.
2. MTC and ABAG were required to account for the impact of Pavley 2 on gasoline prices in their budget for Plan Bay Area.

It has oft been said that a picture can be worth a thousand words. But when it comes to MTC and ABAG—and the forecasts, assumptions, models, and omissions they fabricated and used to justify Plan Bay Area—a simple chart leaves one speechless.

California’s Advanced Clean Car Standards (“Pavley 2”)

To summarize in a simple table what MTC and ABAG are doing here with respect to the impacts of Pavley 1 MPG regulations on emissions-related particulate matter and other criteria pollutants, CO₂, and in their financial model:

Pavley 1 impacts:

	Do the Impacts Benefit Preferred Alternative?	Did ABAG and MTC incorporate in results?
Particulates and pollutants	YES	YES
CO2	NO	NO
Gas tax revenues	NO	“Mitigated” with high gas prices until 2020, ignored after 2020

And MTC and ABAG’s profoundly disingenuous models and analysis go from bad to worse. California’s Advanced Clean Car Standards (“Pavley 2”) were announced January 27, 2012,³⁰ and went into full effect December 31, 2012.³¹ So, 14 months before the release of the draft Plan on March 22, 2013, and 14 months before the release of the draft EIR on April 2, 2013, MTC and ABAG had full knowledge of the Advanced Clean Car standards.

³⁰ *California Air Resources Board Approves Advanced Clean Car Rules, 20120127, Appendix M.*

³¹ *California Air Resources Board Advanced Clean Car Rules, Final Approval, December 31, 2012, Appendix N.*

In fact these standards were announced fully six months before the analysis of the draft EIR and its alternatives formally began in late July of 2012.

California's Advanced Clean Car Standards simply adopt for California the federal CAFÉ standards that require an average fleetwide MPG for passenger vehicles sold in 2025 of 54.5 MPG. These already on-the-books and final regulations affect the passenger vehicles sold in California from 2017 through 2025 and forward from there.

As MTC and ABAG did not model the impact of Pavley 2 like they did in their undisclosed models of the impact of Pavley 1, we must to engage in some informed estimates here (in the Table below). Pavley 2's MPG regulations begin to affect the passenger vehicle fleet sold in California beginning in 2017, and require the average MPG of the passenger vehicle fleet sold in California from 2025 and beyond to be at least 54.5 MPG. We also know from MTC and ABAG's undisclosed models that just from the impact of Pavley 1 alone, they are projecting the passenger vehicle fleet in use in 2035 to be 32.02 MPG—and we also know that the impact of Pavley 2 will additive to that of Pavley 1.

It defies all credulity to assume that the fleetwide MPG of the passenger vehicle fleet in 2035 would only be 40 MPG due to the added impact of Pavley 2, which requires all passenger vehicles sold from 2025 and forward to average at least 54.5 MPG, and whose much more stringent standards than Pavley 1 begin to be phased in for passenger vehicles sold from 2017 on. But let's assume, for the sake of argument, that that's our low estimate for the impact of Pavley 2 added to Pavley 1. However, a much more credible argument can be made that the impact of Pavley 2 added to Pavley 1 will lead to a fleetwide MPG of at least 45 MPG in 2035 (our "mid-range" estimate), and perhaps more likely closer to our high end estimate of 50 MPG in 2035.

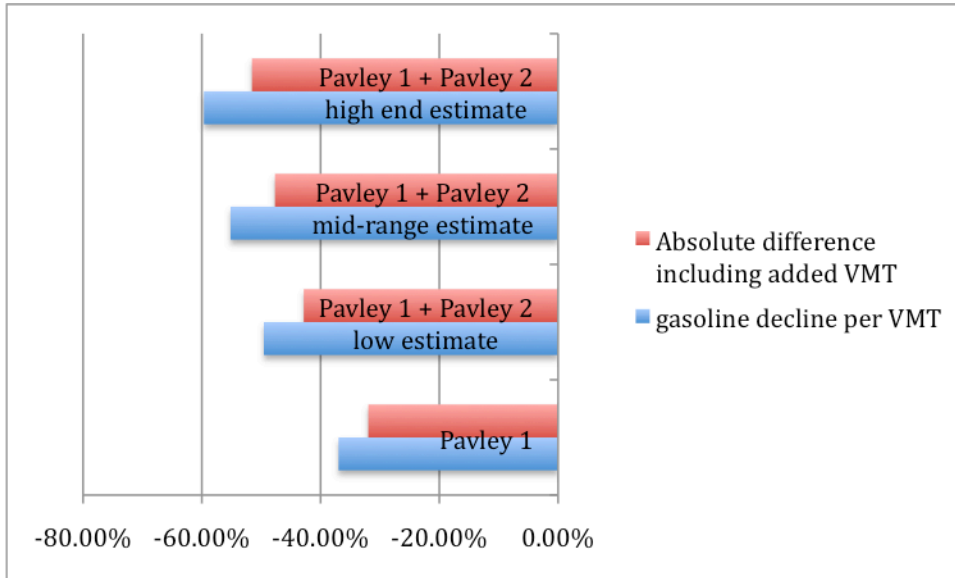
Remember, Pavley 2's Advanced Clean Car Standards are on-the-books regulations that will govern the passenger vehicles sold in California from 2017 forward, hence for almost all of the Plan period. And yet the Plan and draft EIR completely ignore the impact of Pavley 2. This renders the Plan's analysis meaningless, and thus the Plan must be rejected.

Consider the impact on emissions-related particulate matter and other criteria pollutants, CO2, and on the Plan’s budget if the inevitable and certain impacts of Pavley 2 over the Plan period had been analyzed, considered in the Plan and its draft EIR, and disclosed to the public, as MTC and ABAG were required to do so:

Impact of Pavley 1 + Pavley 2:

	2010	2035	MPG increase	Gasoline decline per VMT	Absolute difference including added VMT
Pavley 1	20.18	32.02	58.67%	-36.98%	-31.98%
Pavley 1 + Pavley 2 low estimate	20.18	40.00	98.22%	-49.55%	-42.83%
Pavley 1 + Pavley 2 mid range estimate	20.18	45.00	122.99%	-55.16%	-47.68%
Pavley 1 + Pavley 2 high end estimate	20.18	50.00	147.77%	-59.64%	-51.56%

**Impact of Pavley 1 + Pavley 2 on gasoline usage
Absolute decline, and decline per VMT
2010 - 2035**



To repeat myself, when it comes to MTC and ABAG—and the forecasts, assumptions, models, and omissions they fabricated and used to justify Plan Bay Area—a simple chart leaves one speechless.

III. The Inevitable Response

MTC and ABAG will assuredly respond with indignation to the points raised in Section II above, and will likely make the following claims in response:

- SB 375 compels MTC and ABAG to ignore the impacts of state MPG regulations on CO₂,
- MTC and ABAG reasonably relied on the modeling software that they used for emissions, EMFAC2011, and if there were any deficiencies in the EMFAC2011 modeling software it was the fault of the developers of the software (California Air Resources Board (CARB)),

I will comment here on each of these expected responses from MTC and ABAG, in the hopes that it will give the two lead agencies guidance in fully making their case with respect to each of these claims, and, in fact, specifically ask that they answer the following questions if they do make either or both of the above claims above.

A. SB 375

From the draft EIR, page 2.5-43:

The analysis conducted for Criterion 1 focuses on carbon dioxide (CO₂) emissions related to the operation of passenger vehicles and light duty trucks. Emissions for Criterion 1 are considered to be conservative estimates because they are presented without accounting for reductions in mobile source emissions that would be expected to result from ongoing implementation of Pavley 1 and the LCFS; per SB 375 the impact assessment does not include the emissions reductions from these legislative requirements. (emphasis added).

Simple enough. However, I've read the statute, and the plain language of the statute does not support this reading. As an attorney and as a former law clerk to a state supreme court justice, I have some experience in close and careful reading of statutes. So, rather than a blanket denial, I hereby request that any such claim by MTC and ABAG in the Final EIR include:

1. The express provision(s) of SB 375 that MTC and ABAG are relying on for this interpretation,
2. How the plain language of this provision (these provisions) supports your interpretation, or if you are conceding that the plain language does not support this interpretation, what specific legal authority you are relying on to support an interpretation of the statute that is not supported by its plain language,
3. Do you believe the statute, or whatever legal authority you are relying on, compels, or simply permits MTC and ABAG to ignore the impact of state MPG regulations on CO₂ emissions, and if it simply permits MTC and ABAG to ignore the impact of state MPG regulations on CO₂ emissions, what was the reasoning relied upon by MTC and ABAG in deciding to ignore that impact,
4. Assuming, for the sake of argument only, that the statute permits MTC and ABAG to ignore the impact of state MPG regulations on CO₂, how does that further permit MTC and ABAG to:
 - a. Use models that fabricate data and produce model results that are known to be false,
 - b. Use models that have multiple values for a single variable that must be consistent in its use throughout the model (e.g., fleetwide MPG for passenger vehicles) for the model to be logically consistent and produce valid results,
 - c. Fail to disclose to the public the full results of the modeling that MTC and ABAG performed but did not disclose, of Pavley 1's impact on MPG, emission-related particulate matter and other criteria pollutants, and CO₂,
5. How does any of the above accord with MTC and ABAG's duties and responsibilities as lead agencies in the environmental review process where full and thorough analysis of relevant factors and impacts is required, and full disclosure of both the analysis and all significant impacts is mandated—whether or not that analysis and those impacts support the conclusions the lead agency or agencies would like to reach?

And, doesn't your failure analyze and disclose all impacts make a mockery of CEQA, which is supposed to inform the public of anticipated actual, not constructive, reality?

6. How does the level (and lack) of disclosure to the public accord with the RTAC report's mandates with respect to full public disclosure of all modeling results?

7. Please also comment on how the disclosures made by MTC and ABAG in the draft Plan, draft EIR, and in the supplemental documents that were released with the draft Plan and draft EIR address the RTAC reports mandate on p. 19 that "[t]he assessment and documentation should identify areas where the model lacks capacity for analysis of a factor or policy, and any factors or policy for which the model sensitivities fall outside the range of results documented in research literature."³²

B. EMFAC2011

According to the draft EIR, and my email correspondence with MTC, MTC and ABAG used the CARB-supplied software modeling program EMFAC2011 to model impacts such as MPG, emissions-related particulate matter and other criteria pollutants, and CO₂. And, while MTC's email correspondence with me was unnecessarily evasive and vague on this issue, it is unquestionable and indisputable that MTC and ABAG used the CARB-supplied postprocessor³³ that takes EMFAC2011 data and evaluates the impact of Pavley 1 (and LCFS) on CO₂, and only on CO₂—with all other impacts of Pavley 1 (and LCFS) on emission-related particulate matter and other criteria pollutants performed in the main EMFAC2011 model itself.

As noted above, I anticipate the following response from MTC and ABAG in their Final EIR:

³² *Regional Targets Advisory Committee Final Report*, pp. 16-19, Appendix L.

³³ *Pavley I + Low Carbon Fuel Standard Postprocessor Version 1.0 User's Guide*, Appendix H.

MTC and ABAG reasonably relied on the modeling software that they used for emissions, EMFAC2011, and if there were any deficiencies in the EMFAC2011 modeling software it was the fault of the developers of the software (California Air Resources Board (CARB))

If so, I would appreciate answers to the following questions in the Final EIR to fully understand any such claim or contention by MTC and ABAG:

1. Do MTC and ABAG thereby claim that their analysis of the Plan and draft EIR cannot be challenged even if the modeling software they used was deficient, and even though they are lead agencies? How does this accord with MTC and ABAG's responsibilities as lead agencies, and what legal arguments do MTC and ABAG use to contend that software models supplied by third parties can be used by lead agencies, with all deficiencies in the analysis produced by that third party software totally insulated from attribution to the lead agencies themselves,
2. It's clear that MTC and ABAG (executives, counsel, and modeling professionals) are fully aware of the deficiencies in the modeling software used in analyzing the Plan and its draft EIR that are outlined in Section II above. Please admit or deny that MTC and ABAG were, and are, aware of these deficiencies.³⁴
3. Do MTC and ABAG claim that they were required by statutory or regulatory mandate to use EMFAC2011 for their analysis of the Plan and its draft EIR, and if so, please provide specific citation to that statutory or regulatory mandate.
4. If MTC and ABAG claim that if they were required, or alternatively, were permitted to rely on a software program for part of their analysis that had known, and material limitations or deficiencies, such as those outlined in Section II above, do MTC and ABAG further claim that they have no duty or responsibility as lead agencies to remedy or correct these shortcomings,

³⁴ Please also note that Question 7, under SB 375 above, is also relevant to this question—please address in your answer how the draft Plan, draft EIR, and supporting documents released at the same time accord with the RTAC report's mandate on p. 19 that “[t]he assessment and documentation should identify areas where the model lacks capacity for analysis of a factor or policy, and any factors or policy for which the model sensitivities fall outside the range of results documented in research literature.”

Appendix L.

limitations, or flaws in the software program that they relied on in their analysis, such as through the “other modeling methods” described in the RTAC report on page 16³⁵:

‘Other modeling methods’ refer in general to tools which either augment or replace travel demand models, and are likely to be spreadsheet-based tools.

and also as described on p. 17³⁶:

[T]he Committee concluded there was a need to augment travel demand models with other methods to achieve reasonable levels of sensitivity for SB 375 implementation purposes. These other methods include:

...

“Post processor tool”, wherein MPOs would apply the tool to adjust outputs of their travel demand model such that they account for areas where the model lacks capability, or is insensitive to a particular policy or factor.

³⁵ Id.

³⁶ Id.

IV. Plan Bay Area, at its core, is based on models, assumptions, forecasts, and omissions that are gravely deficient and profoundly dishonest

Because of the extent and nature of the deficiencies in the Plan and its draft EIR, I will limit my comments here to several key issues.³⁷ I offer here not only my own analysis, but also refer to two submitted comments on the Plan and its draft EIR that are important in their own right, and are illustrative of a number of other comments that I have read in draft form or am otherwise familiar with.

The following, together with these additional comment letters, provides unassailable and indisputable facts and analysis that establish conclusively that the Plan will not and cannot work, even according to its own premises, which are in and of themselves deeply flawed.

Please note that given the short time allowed for analyzing and responding to this Plan and its draft EIR, there are many other deficiencies that will simply not get noted by me or by any member of the public, because we have not been given enough time to review and comment on the Plan and its draft EIR.

The points I raise herein not only discredit the Plan, the agencies promulgating it, and the process—they de-legitimize them. Together they paint a devastating picture of two unaccountable agencies and a process that has gone terribly awry.

A. The Plan’s transit elements will not increase ridership, will not reduce greenhouse gases (GHGs), and will do nothing to help lower income citizens who are dependent on transit for their personal mobility

³⁷ Because of the importance of detailing in Section II the critical importance of the information that was unreasonably withheld from me and my colleagues for week after week by MTC—information that should have been available to all of the public during the entire comment period on the Plan and its draft EIR—some of the information in Section II of this comment will necessarily need to be repeated in this section of the comment as well.

I am attaching here³⁸ the comment letter submitted by Tom Rubin on Plan Bay Area's conformity analysis on Friday, May 3, 2013. Conformity analysis is a federal Clean Air Act requirement--essentially it requires that the transit elements of the Plan be reasonable and achievable. I have not included the appendices in the interests of space.

Mr. Rubin is one of the nation's leading experts in transportation. He built and led the leading transportation and land use consulting practice for a then-Big 8 firm in the 1980s, then served as chief financial officer for the nation's then third largest public transit agency (in the Los Angeles area) from the late 1980s through mid-1990s. He's been a highly respected independent consultant since then.

Mr. Rubin is also a long time Bay Area resident, and is deeply committed to honest government and effective public policy. Mr. Rubin cares deeply about transit that works and serves the interests of transit dependent folks that need it (largely lower income residents who rely on bus routes for personal mobility).

Mr. Rubin concludes, based on indisputable data and analysis:

- Plan Bay Area ignores the one form of transportation subsidies that are proven to increase transit usage, benefit the environment, and benefit lower income, transit-dependent residents (lowering fares and increasing service quality on existing routes, especially bus lines),
- The Plan continues the same transit strategies that have been deployed for the past 30 years in the Bay Area that have led to massive increases in the cost of transit while ridership has declined in absolute numbers (not just per capita usage),
- MTC and the Bay Area transportation and transit agencies have an appalling record of cost overruns for its transit projects, and
- MTC and ABAG are substantially overestimating expected revenues by willfully and intentionally ignoring the full impact of already on-the-books regulations regarding average mileage per gallon of the vehicle fleet

³⁸ *Tom Rubin conformity comment, Appendix O.*

sold in California that will dramatically reduce gasoline tax revenues available to this Plan (a point made at length in this comment as well).

I have read a number of other comments in draft form that will be submitted by other persons that offer similarly devastating, factual and analytically unassailable critiques of the transit elements of the Plan. Any one of them individually discredits and invalidates the transit elements of the Plan—and each offers complementary and essential facts and analysis in doing so.

B. The Plan’s mandate requiring that 80% of all new housing in the Bay Area be built in high density, multistory, multifamily attached units near mass transit in suburban and urban downtowns will not reduce GHGs

I am also attaching here³⁹ the letter, in draft form, that has been submitted by Bob Silvestri as his comments on draft Plan Bay Area and its draft EIR.

Mr. Silvestri is an architect, an affordable housing developer, an environmental activist, and a respected expert on land use issues. Mr. Silvestri is a longtime resident of Marin County who is frequently quoted in the local press, and he has authored a book on Plan Bay Area called *The Best Laid Plans*.

Mr. Silvestri’s report not only establishes that the Plan’s draft EIR fails to provide “proof of the efficacy of the proposed Plan or the Alternatives in reducing per capita or overall greenhouse gas emissions (GHGs), to meet SCS goals,” pp. 1-2, but it concludes “that Plan Bay Area and the Alternatives will increase overall and per capita GHGs rather than decrease them.” *Id.* at p. 2.

I am familiar with at least a dozen other comment letters that raise profound and material questions about the Plan’s land use elements, or about the forecasts, assumptions, models, and omissions that underlie the Plan and its draft EIR. Each of them discredits and invalidates the foundations of the Plan, and does so based on analytically-sound and empirically-based assessments of the Plan.

³⁹ *Bob Silvestri comment*, Appendix P.

Plan Bay Area is a transportation plan, and a land use plan. Mr. Rubin's report and others establish that the transportation elements of the Plan will not reduce GHGs, will not increase ridership, and will not help lower income residents who are dependent on public transit for personal mobility. These reports show that the Plan leaves the Bay Area's local roads and bridges dangerously underfunded in order to fund massive mass transit projects that will have limited or no efficacy in leading to gains in transit ridership and will have no beneficial environmental effects. Mr. Silvestri's report together with more than a dozen others, in turn, establish that the land use elements of the Plan will similarly not meet their stated objectives (reducing GHGs), and in fact will be counterproductive.

If the transportation plan and the land use plan won't work and cannot work, and in fact are counterproductive, what then are we left with? A Plan that is bereft of public benefits, that limits our ability to live where and how we wish as well as how we can travel, and that dramatically limits our ability to make our own decisions as individual residents, and as cities and counties. And we are left with a Plan that imposes massive and undisclosed unfunded mandates on the cities and counties in the Bay Area.

Could it get any worse than this? Yes, unfortunately it can. A Plan this fatally flawed and lacking in integrity could only have been fabricated and sold to the public through misleading representations and profoundly dishonest analysis. And it has been.

C. The Plan and its draft EIR consider the impact of emission and mileage standards in ways that are misleading and profoundly dishonest

The following chart⁴⁰ summarizes the discussion that follows:

California Air Resources Board (CARB) MPG regulation	Particulates and pollutants other than CO2	CO2	Reduction in gasoline use and gas tax revenues
<p><u>Pavley 1</u></p> <p><u>Clean Car Standard</u>, governing passenger vehicles sold 2009 – 2016 and beyond. Finalized 2009, announced 2004.</p>	<p>EMFAC2011 appears to consider the significant impacts of Pavley 1 in reducing particulates and pollutants and thus those reductions appear to be reflected in the Plan analysis. This substantially reduces the health risks of forcing people to live in high density housing near transit in suburban and urban downtowns, but doesn't eliminate them.</p>	<p>EMFAC2011 doesn't consider in its main model, but considers in a separate postprocessor. MTC ran the postprocessor on every model run. It ignores everything other than CO2 impact of Pavley 1 and LCFS (Low Carbon Fuel Standard). Those impacts are massive, <u>and were undisclosed</u>.</p>	<p>ABAG and MTC modeled a 2.00% decline in gasoline demand per year through 2020 due to Pavley 1, but considered no impact of Pavley 1 on gasoline demand after 2020, despite their models of Pavley 1 showing continued Pavley 1 related gains in fleetwide MPG until at least 2035.</p> <p>ABAG and MTC also appear to have "mitigated" the budgetary impact of the modeled 2.00% decline in gasoline demand per year until 2020 by also, "coincidentally," modeling an 8.00% per year gasoline price increase through 2020.</p>

⁴⁰ Please note that EMFAC2011 is the modeling software that ABAG and MTC used to model particulate matter, other criteria pollutants, CO2, and miles per gallon (MPG) of the vehicle fleet in use during the Plan period.

<p>California Air Resources Board (CARB) MPG regulation</p>	<p>Particulates and pollutants other than CO2</p>	<p>CO2</p>	<p>Reduction in gasoline use and gas tax revenues</p>
<p><u>Pavley 2</u></p> <p><u>Advanced Clean Car Standard</u>, governing passenger vehicles sold 2017 – 2025 and beyond. Finalized December 31, 2012, announced January 27, 2012 (CARB simply adopted for California the federal 2025 CAFÉ standard requiring average 54.5 MPG for fleet sold in 2025).</p>	<p>EMFAC2011 does not consider, CARB does not have a postprocessor, and MTC did not consider in their analysis, despite the regulations having been announced 15 months before their analysis was completed on the draft Plan and draft EIR, and having been finalized three months before the draft Plan was released March 22, 2013, and the draft EIR was released April 2, 2013</p>	<p>EMFAC2011 does not consider, CARB does not have a postprocessor, and MTC did not consider in their analysis, despite the regulations having been announced 15 months before their analysis was completed on the draft Plan and draft EIR, and having been finalized three months before the draft Plan was released March 22, 2013, and the draft EIR was released April 2, 2013.</p> <p>The impact of Pavley 2, alone, on CO2 should be at least as great as 2/3 the impact of Pavley 1 and LCFS together (likely reduction of CO2 of more than 19 thousand tons per day, versus Pavley 1 and LCFS reduction of 30 thousand tons per day, for a total reduction by 2035 of more than 49 thousand tons of CO2 per day.</p>	<p>Completely ignored the <u>very substantial budgetary impact</u> of Pavley 2 on reductions in gasoline demand hence reductions in gas tax revenues.</p>

1. California’s Clean Car Standard (“Pavley 1”) and Advanced Clean Car Standard (“Pavley 2”)

California has two major sets of regulations that set mandates for the average miles per gallon (MPG) of the new passenger vehicle fleet sold in the state in a given year. Both have been promulgated by the California Air Resources Board (CARB) pursuant to the authority granted it by Assembly Bill 1493 (2002, Pavley).

Pavley 1:

California’s Clean Car Standard (“Pavley 1”) governs the passenger vehicle fleet sold in the years 2009 through 2016 (and beyond). Pavley 1 regulations became effective and final in 2009.

Pavley 1 became effective before MTC and ABAG’s analysis of Plan Bay Area’s draft EIR began formally in July of 2012. Thus, all impacts attributable to Pavley 1 were required to be fully analyzed by ABAG and MTC and fully disclosed to the public.

Pavley 2:

California’s Advanced Clean Car Standard (“Pavley 2”) was announced by CARB on January 27, 2012⁴¹, and these regulations became final on December 31, 2012.⁴² Pavley 2 adopts in California the federal CAFÉ MPG standard that requires the passenger vehicle fleet sold in 2025 and later to average 54.5 MPG. Pavley 2 governs new vehicles sold between 2017 through 2025 (and beyond).

Pavley 2 became effective during the period of time that MTC and ABAG performed their analysis of the draft Plan and its draft EIR—in fact, it became fully effective almost three months before the draft Plan was released on March 22, 2013, and more than three months before the draft EIR was released on April 2, 2013. Thus, all impacts attributable to Pavley

⁴¹ *California Air Resources Board Approves Advanced Clean Car Rules, 20120127, Appendix M.*

⁴² *California Air Resources Board Advanced Clean Car Rules, Final Approval, December 31, 2012, Appendix N.*

2 were required to be fully analyzed by ABAG and MTC, and fully disclosed to the public.

The draft Plan and draft EIR mention both Pavley 1 and Pavley 2 in several locations.⁴³ However, the impacts of Pavley 1 were analyzed differently according to whether they were favorable to the Preferred Alternative. The impacts that were favorable to the Plan were incorporated in the analysis and results. The impacts that were not favorable to the Plan were either analyzed but not incorporated into the results, or were minimized by the use of improper and unjustifiable assumptions. The impacts of Pavley 2--which would have been devastating on the Plan's analysis of CO₂ and on the Plan's budget--were ignored entirely.

Pavley 1 and Pavley 2 each lead to substantial increases in the average MPG of the passenger vehicle fleet sold in California--and over time, in the average MPG of the passenger vehicle fleet in use in the state. ABAG and MTC's own, undisclosed models⁴⁴ show that Pavley 1 increases the average MPG of the passenger vehicle fleet in use in the Bay Area by almost 60% (from 20.18 MPG in 2010 to 32.02 MPG in 2035 in their analysis of the Preferred Alternative, with almost identical results projected for the other alternatives including No Project).⁴⁵

⁴³ See, for example, draft EIR, p. 2.5-43; Financial Assumptions, p. 4.

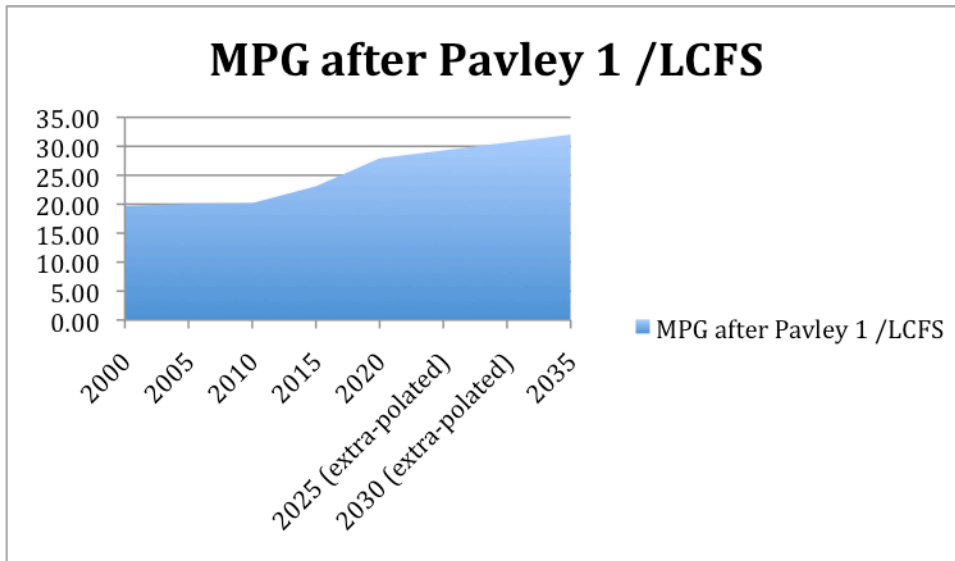
⁴⁴ The data source for the charts below is from MTC's own model run results, attached here as Appendix G, *MTC Model Run 2035_03_84, 2013 RTP/SCS CO2 and Criteria Pollutant Summary Results, September 11, 2012.pdf*.

⁴⁵ Please note that the results that ABAG and MTC's undisclosed models show for the MPG impact of Pavley 1 are included in their results shown for Pavley 1 + LCFS. However, CARB's Low Carbon Fuel Standard (LCFS) is a set of standards for formulation of gasoline and other motor fuels, and as such, LCFS reduces CO₂ emissions when burned in the vehicle's engine, but should have little or no impact on the vehicle's MPG.

Pavley 1, on the other hand, regulates the minimum MPG of the passenger vehicles sold in the state during a given year. Therefore, it is a reasonable assumption to make that all or virtually all of the MPG increases attributed to Pavley 1 + LCFS in ABAG and MTC's undisclosed models are attributable solely to the impact of Pavley 1.

Miles Per Gallon of Passenger Vehicle Fleet after Pavley 1 / LCFS

	2000	2005	2010	2015	2020	2025 (extra- polated)	2030 (extra- polated)	2035
MPG after Pavley 1 /LCFS	19.69	20.09	20.18	23.09	27.92	29.29	30.65	32.02
% increase		2.03%	0.45%	14.42%	20.92%	4.89%	4.67%	4.46%



A reasonable assumption would be that by the end of the Plan Bay Area planning period in 2040, the percentagewise increase in average fleetwide MPG due to Pavley 2 will be approximately the same as that of Pavley 1, and those impacts will be additive, leading to an average MPG for the vehicle fleet in use in California of at least 45 MPG and more likely close to 50 MPG.⁴⁶

⁴⁶ ABAG and MTC’s undisclosed models show that from Pavley 1’s second year in 2010 until 2035, fleetwide MPG gains attributable to Pavley 1 will be more than 59% (from 20.18 MPG in 2010 to 32.02 MPG in 2035). Pavley 2 requires the average new passenger vehicle sold from 2025 and later in California to average at least 54.5 MPG. A

Why is this important? Because of the massive impact of these vehicle fleet MPG gains on three of the most important considerations in the Plan: CO₂ emissions; emission-related particulate matter and other pollutants; and the budget.

To restate the above, we know from ABAG and MTC's own, undisclosed models, that Pavley 1 alone will increase average fleetwide MPG by almost 60% between 2010 and 2035. As gallons of gasoline burned are reciprocal to MPG, we know as a matter of simple arithmetic that Pavley 1 will reduce gallons of gas burned by passenger vehicles by more than 37% per vehicle mile traveled (VMT) (and after adjusting for the 15.68% increase in VMT, by 31.98% overall) between 2010 and 2035.

This means that according to MTC and ABAG's own, undisclosed models, as a matter of simple arithmetic, that the Pavley 1 MPG regulations will:

- reduce emission-related particulate matter and pollutants from passenger vehicles (the dominant source of these emissions) by more than 37% per VMT (and 31.98% overall) by 2035,
- reduce CO₂ from passenger vehicles by more than 37% per VMT (and 31.98% overall) by 2035 , and
- reduce gallons of gasoline sold per VMT by more than 37% (and by 31.98% overall) by 2035.

ABAG and MTC were required to account for these effects and to faithfully incorporate these effects into the results of their analysis. But this is precisely what ABAG and MTC did not do.

reasonable assumption would be that 23 years after Pavley 2 regulations begin to first affect the passenger vehicle fleet sold in California (2017)—that is by 2040—that the impact of Pavley 2, added to the impact of Pavley 1 (which appears to cap out at just over 32 MPG in 2035), will lead to a further increase of close to 60% in the fleetwide MPG by 2040, or to a fleetwide average of just over 51 MPG.

Pavley 1 impacts:

	Do the Impacts Benefit Preferred Alternative?	Did ABAG and MTC incorporate in results?
Particulates and pollutants	YES	YES
CO2	NO	NO
Gas tax revenues	NO	“Mitigated” with high gas prices until 2020, ignored after 2020

When the impact of Pavley 1 MPG regulations benefits their Plan--as it does with emission-related particulate matter and pollutants—MTC and ABAG incorporate those impacts in their analysis and in the results they report to the public. Where the impact of Pavley 1 MPG regulations doesn’t benefit their Plan, when in fact it renders their Plan utterly unnecessary—as it does with CO₂ emissions—MTC and ABAG ignore those impacts in their analysis. Nor do they disclose to the public the results of the analysis they actually ran but didn’t incorporate in their assessment of the Plan.⁴⁷

⁴⁷ MTC and ABAG attempt to deflect this objection by saying on p. 2.5-43 of the draft EIR,

Emissions for Criterion 1 are considered to be conservative estimates because they are presented without accounting for reductions in mobile source emissions that would be expected to result from ongoing implementation of Pavley 1 and the LCFS; per SB 375 the impact assessment does not include the emissions reductions from these legislative requirements." (emphasis added).

First, no reasonable reading of the text of the statute supports such an interpretation. Second, the CO₂ reductions attributable to the Pavley 1 regulations alone by 2035, according to ABAG and MTC’s own, undisclosed models, will be

And, last, when the impact of Pavley 1 MPG regulations requires ABAG and MTC to accommodate them in the budget, as fewer gallons of gasoline sold equals lower gas tax revenues for the Plan's projects and initiatives, ABAG and MTC appear to have "mitigated" the impact of those declining gallons of gasoline sold by assuming strikingly high increases in the price of gasoline each of those years. Thus, ABAG and MTC models show decreases of 2.00% per year through 2020 in gallons of gas sold, but "mitigate" those decreases in the gallons of gasoline sold by assuming that the retail price of gasoline will increase by 8.00% per year through those same years.⁴⁸ Was it a simple matter of adjusting the financial model's assumption regarding the price per gallon of gas sold to make the problem of Pavley 1's impact of reducing the number of gallons sold per year through 2020 go away? If so, problem solved.

What about after 2020? ABAG and MTC's own undisclosed models show that fleetwide MPG continues to rise substantially due to the impact of Pavley 1's MPG regulations, past 2020 and at least until 2035.⁴⁹ Yet ABAG and MTC ignore this impact entirely on the budget. Could it be because they could only "mitigate" the impact of the gasoline usage declines on their budget with an offsetting assumption of a 8.00% per year increase in the

10-12x the amount that their models show will be the difference between their Preferred Alternative and No Project that same year. When one considers the impact of both Pavley 1 and Pavley 2 in the last year of the Plan, 2040, those MPG regulations, which are already on the books now and fully effective, will lead to more than 16x the CO₂ reductions than the CO reductions from choosing the Preferred Alternative over No Project—even assuming the rest of the Plan's models and assumptions are correct.

ABAG and MTC are like a doctor who insists that the patient (the public) take an immensely costly and risky regimen of treatment that has no possibility of curing the patient and has serious side potential side effects that may kill the patient, while failing to tell the patient that the treatment is entirely unnecessary because the patient is sure to get better anyway.

⁴⁸ *Regional Fuel Tax worksheet, 2013 RTP Model (State and Federal)_Final*, Appendix I.

⁴⁹ MTC and ABAG's models show fleetwide passenger vehicle MPG increasing an additional 14.68% between 2020 and 2035 due to the impact of Pavley 1, leading to an additional decline in gasoline used per VMT by the passenger vehicle fleet of 12.80%.

retail price of gasoline only for 7 years until 2020, but doing so for additional years beyond that would draw too much attention?

The Plan already uses the astonishing device of a plug number. Their expenditure plans, assuming their programs come in on budget--which Mr. Rubin's report shows is not even plausible--are underfunded by 5%. Do ABAG and MTC dial back their expenditure plans by 5% to keep their budget in balance? Of course they don't. They insert a plug number of 5% of the budget for "unanticipated," "anticipated" revenues. Yes, they really call it that.⁵⁰

Pavley 2 impacts:

	Do the Impacts Benefit Preferred Alternative?	Did ABAG and MTC analyze and incorporate in results?
Particulates and pollutants	YES	NO
CO₂	NO	NO
Gas tax revenues	NO	NO

And what of California's Advanced Clean Car Standards ("Pavley 2")? Those regulations governing the passenger vehicle fleet sold in California from 2017 through 2025 and beyond, will have at least as great an effect on fleetwide MPG as Pavley 1, and Pavley 2's impact will be additive—in addition to—that of Pavley 1. And all completely unanalyzed and ignored in the Plan and its draft EIR.

⁵⁰ Plan, p. 64.

2. The benefits to the Preferred Alternative of incorporating Pavley 1 impacts on emission-related particulate matter and pollutants

The Preferred Alternative mandates that 80% of all new housing units be in high density, multifamily, multistory projects near mass transit in suburban or urban downtowns. The Plan was required to disclose what it described as significant and unmitigatable impacts on human health to the residents who will live in those units.

The draft EIR discusses in section 2.2(d) on page 2.2-81,⁵¹ the mitigations it recommends to reduce those health risks to people who will live in these new high density housing units. Those include air filtration units for each living unit, and presumably may mean, at least in some locations, windows that don't open. Of course, in a suburban home, "air conditioning" means open two windows, and let the breeze blowing through the trees flow through your house.

The draft EIR further suggests keeping housing units at least 500 feet from freeways, and as far from trucks, buses, and rail as possible, and recommends planting as much vegetation as possible. The Plan's mitigations sound like recreating the living conditions in a single family home in a suburban town, but alas, the Plan mandates that 80% of all new housing units be in these high density dwelling units near transit in suburban and urban downtowns.

Given these significant and unmitigatable health risks posed by the Plan's mandates that 80% of all new housing units be built in these conditions, it makes great sense that ABAG and MTC would want their analysis of the Plan to incorporate the significant reductions in emission-related particulates and pollutants that will result from Pavley 1, and that's exactly what they've done. While there are a number of other regulations⁵² that contribute to the significant, and persistent declines in these particulates and pollutants during

⁵¹ *DEIR section 2.2(d) Mitigation measures, Appendix Q.*

⁵² Especially CARB's Low Emission Vehicle (LEV) and Low Emission Vehicle II (LEV II) regulations.

the Plan period which can be seen in the Plan's model results,⁵³ the estimated 37% per VMT (and after considering the 15.68% increase in VMT, 31.98% overall) reduction in these particulates and pollutants due to the passenger vehicle fleet and attributable solely to Pavley 1's increase in fleetwide MPG by 2035 were a major factor in the Plan's analysis, and in the reduced, but nowhere near eliminated, health risks to the residents in the mandated 80% of all new housing units that must be high density units near transit in suburban and urban downtowns.

2. The benefits to the Preferred Alternative of ignoring Pavley 1 impacts on CO₂

Reporting the CO₂ results of Pavley 1 would have required ABAG and MTC to disclose that the Pavley 1 regulations, together with CARB's Low Carbon Fuel Standards (LCFS) will lead to ten to twelve times (10 to 12 times) the reduction in CO₂ than the reductions in CO₂ that their land use and transportation plan elements would produce, even if their models were to be believed and were believable.⁵⁴ We don't need to guess at this difference. ABAG and MTC's own models show us this, though none of this has been disclosed to the public.

MTC's own model run on November 6, 2012⁵⁵ shows that even assuming ABAG and MTC's high density housing mandates and additional mass transit subsidies produce all of the GHG gains that ABAG and MTC believe they will, the difference between No Project and ABAG and MTC's Preferred Alternative is only 3.01 thousand tons per day of CO₂ out of more than 100 tons per day for either No Project or the Preferred Alternative. That is, assuredly within the margin of error, even assuming ABAG and MTC's models are correct. And at an appalling cost—not only those borne by individual members of the public and in public sector spending at all levels and through the massive new unfunded mandates, but also upon Bay

⁵³ For example, see model results in *MTC Model Run 2035_03_84, 2013 RTP/SCS CO₂ and Criteria Pollutant Summary Results, September 11, 2012*, Appendix G, but all model runs were similar to these results.

⁵⁴ Of course as discussed elsewhere, those models are not believable.

⁵⁵ *MTC Model Run 2040_03_78, 91, 2013 RTP/SCS CO₂ and Criteria Pollutant Summary Results, November 6, 2012*, Appendix R.

Area residents' ability to live where and how they choose, travel the way they wish to, and upon their ability to make their own decisions within their own communities.

It's instructive to display the data in ABAG and MTC's own models, in a few simple charts, to see the misleading story that they are telling the public about their Plan, and compare that story with what their own data actual shows.

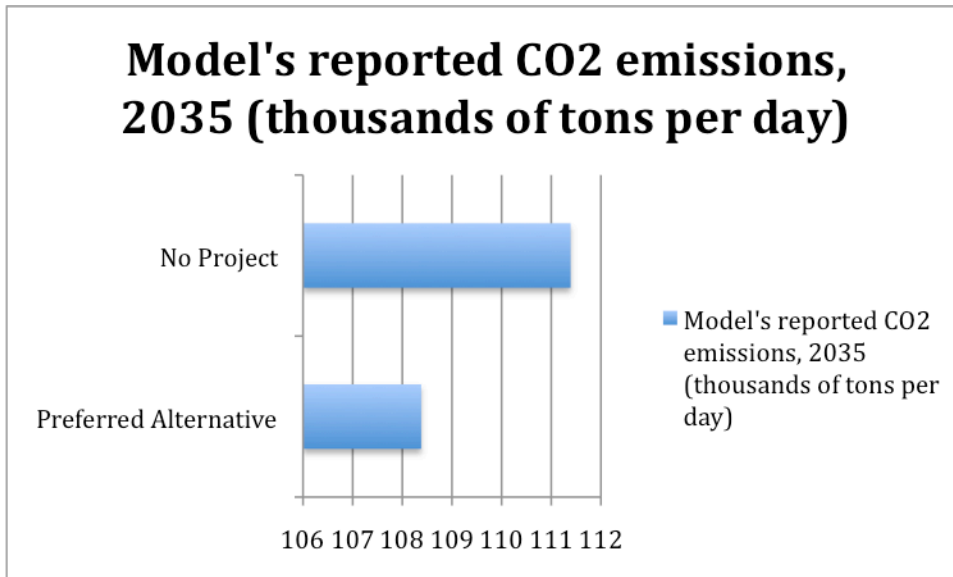
ABAG and MTC's narrative—"there's a massive difference between No Project and our Preferred Alternative"

ABAG and MTC tell the public, in effect, that their analysis shows a massive difference between No Project and their Preferred Alternative, and thus that the immense costs, and risks, and the Plan's sharp limits on the ability of citizens to live where and how they wish, and to make decisions in their own communities as to how those communities will grow and change, are somehow justified.⁵⁶

⁵⁶ These costs, and risks, and the limits on individual liberties and local decision making are not justifiable, but this is ABAG and MTC's underlying rationale.

**Preferred Alternative and No Project –
As MTC and ABAG Portray Them**

	Preferred Alternative	No Project
Model's reported CO ₂ emissions, 2035 (thousands of tons per day)	108.38	111.39

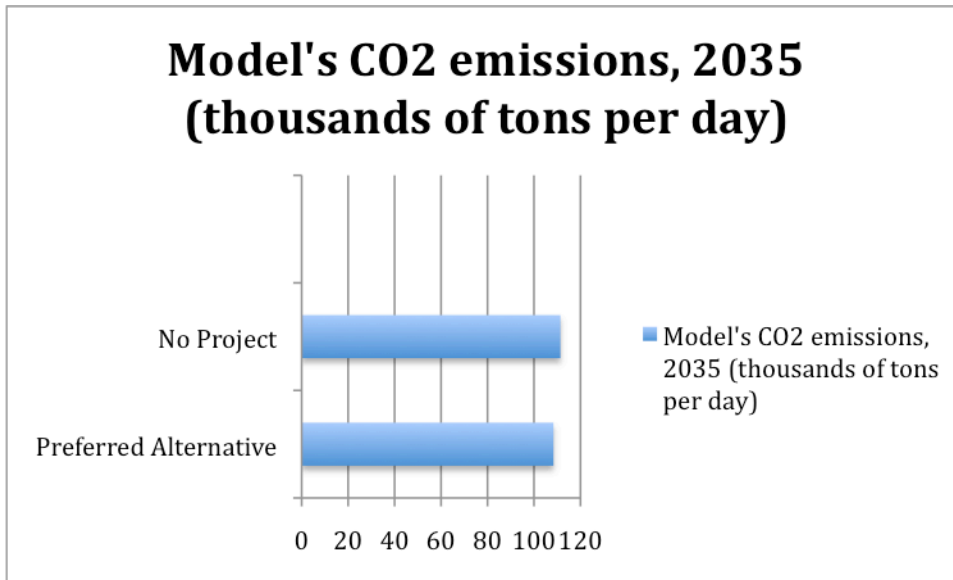


The above chart is based ABAG and MTC’s own data from one of their own Model runs,⁵⁷ and is representative of the sorts of data that their model runs produced. This is not a chart used by ABAG and MTC to sell their Plan to the public--rather it is shown here as an illustration of the image left in the public’ perception after ABAG and MTC describe the difference between their Preferred Alternative and No Project—suggesting a massive difference between the two.

⁵⁷ MTC Model Run 2040_03_78, 91, 2013 RTP/SCS CO₂ and Criteria Pollutant Summary Results, November 6, 2012, Appendix R.

What their model results really show

However, changing the scale on the chart to their true values on ABAG and MTC’s model run here (and all of their model runs were very similar) shows the true difference between No Project and their Preferred Alternative—less than a 3.00% difference, assuredly within the margin of error in their calculations here.



But their model results reported in their analysis describe a mythical future that will not and cannot exist—and they know that, but don't tell the public

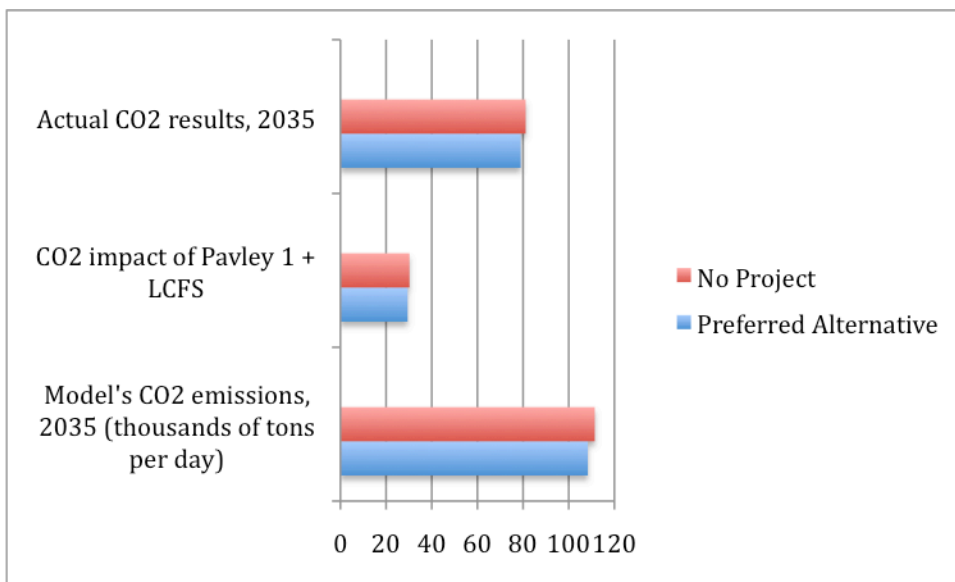
Even more problematic, though, is that the future Bay Area portrayed in these charts above, which are directly sourced from ABAG and MTC’s own model runs, is a myth which appears to have been created by ABAG and MTC to convince the public that GHG (e.g., CO₂) emissions in California and the Bay Area are a dire problem that has no solution other than dramatic changes in our lifestyles, and dramatic limitations on our choices. Their implied narrative is that the only way to reduce GHGs is to reduce automobile use, or, to use their term, to reduce vehicle miles traveled (VMT). And the only way to reduce VMT is to change the way Bay Area residents live and the way Bay Area residents travel. Whether Bay Area residents want to change the way they live and travel, or not.

However, ABAG and MTC's implied narrative assumes there is only one way to reduce GHGs from automobiles—and that is to reduce automobile use (e.g., reduce VMT). But, as a simple matter of logic, there is another way to reduce GHGs from automobiles, and that is to reduce the amount of GHGs that automobiles emit (e.g., reduce GHG per VMT). And it turns out that doing the latter is vastly easier and less expensive, and vastly less restrictive of individual choice in how Bay Area residents live and travel. And, doing so doesn't incur the extraordinary risks and uncertainties that Plan Bay Area poses to the Bay Area economy, and to Bay Area communities.

And, the regulations are already on the books. In fact, the outcomes of the Pavley 1 regulations on GHG emissions in the Bay Area have already been modeled by ABAG and MTC. However, they didn't consider the impacts of those GHG reductions in their analysis of Plan Bay Area and the draft EIR, and they haven't disclosed the results of their modeling of the GHG reductions from Pavley 1 to the public. For obvious reasons, which will become clear upon looking at a chart of the models that ABAG and MTC ran that reflected the future Bay Area as it will be, not the mythical future with no GHG reductions due to MPG regulations:

ABAG and MTC's model runs incorporating Pavley 1 and LCFS, that weren't incorporated in their analysis of the Plan and its alternatives, and haven't been disclosed, reflect the reality of the Bay Area's future (rather than the mythical future used to analyze the Plan

	Preferred Alternative	No Project
Model's CO₂ emissions, 2035 (thousands of tons per day)	108.38	111.39
CO₂ impact of Pavley 1+ LCFS	29.42	30.25
Actual CO₂ results, 2035	78.96	81.14



There is no future world contemplated by ABAG and MTC that does not include the Pavley 1 regulations and LCFS.⁵⁸ So the truthful analysis that should have been presented to the public in the draft Plan and its draft EIR—and should have been used to evaluate the Plan and its alternatives—is the chart and data above, not the fabricated and mythical data that ABAG and MTC actually did present to the public.⁵⁹

What the above chart shows, again, sourced solely from ABAG and MTC's model runs,⁶⁰ is that for ABAG and MTC's immensely expensive, immensely risky Preferred Alternative⁶¹—even assuming their models showing GHG reductions from their housing mandates and transit subsidies are accurate—the difference between No Project, and the Preferred Alternative is miniscule overall, and infinitesimal compared to the certain-to-occur CO₂ reductions from California regulations that are already on the books, and that ABAG and MTC have modeled the impact of.⁶²

⁵⁸ Pavley 1, again, affects the overall MPG of the vehicle fleet sold in California from 2009 through 2016 (and forward from 2016), and the Low Carbon Fuel Regulations affect the formulation of gasoline sold in California.

⁵⁹ The data in the chart above, and the data in the previous charts, were all source from the same model run, *MTC Model Run 2040_03_78, 91, 2013 RTP/SCS CO₂ and Criteria Pollutant Summary Results, November 6, 2012*, Appendix R, though the data that reflects the impact of Pavley 1 in increasing MPG (and thus reducing CO₂ was performed by a postprocessor application. This postprocessor application appears to have been applied to every model run.

⁶⁰ All model runs appear to have been roughly consistent to the one disclosed above with only minor differences in results.

⁶¹ Note that all of the three other alternatives that ABAG and MTC considered in their analyses were only minor variants of the Preferred Alternative, and thus the assessment here applies to Alternatives 3, 4, and 5 as well.

⁶² It's also worth noting in the table of data that underlies the above chart—that table immediately above the chart—that ABAG and MTC's own models show that including the impact of Pavley 1 and LCFS on CO₂ emissions also reduces the absolute gap that their models show between No Project and their Preferred Alternative (by almost 1/3 from a gap of 3.01 thousand tons per day in their mythical world of the future with no Pavley 1 and LCFS to 2.18 thousand tons per day in the actual world that does include Pavley 1 and LCFS).

Reporting the CO₂ results of Pavley 2 would show further, vast decreases in CO₂ from passenger vehicles that need to be added to the impact of Pavley 1 and LCFS.⁶³

So, if we do nothing, already on-the-books, mandatory regulations for MPG, with the full impacts already modeled by ABAG and MTC for the first set of regulations (Pavley 1 + LCFS) and the added impacts of the second set of regulations (Pavley 2) easily estimatable, reductions in CO₂ by the end of the Plan's period will likely be more than 49 thousand tons of CO₂ per day, more than 16x the reductions claimed that will occur as a result of the Plan's housing mandates and additional transit subsidies, over No Project.⁶⁴

Why No Project is the Superior, in fact, Only, Alternative of the Five Considered

Adopting No Project is not “doing nothing.” It's just not doing the fantastically expensive, unworkable policy elements that not only characterize the Preferred Alternative, but also all three other alternatives as well (as they are just minor variants of the Preferred Alternative that contain all of the Preferred Alternative's foundational deficiencies).

Adopting No Project is simply letting people live where they want, how they want. It's letting local cities decide how to zone as they wish. It doesn't require the massive new regional redevelopment agencies that the Plan tells us are essential to its success. Essential to the success of the Plan, of course, because the Plan's housing mandates will require the vast majority of all of the new high density housing units be heavily subsidized. The only high

⁶³ Assuming that Pavley 2 increases fleetwide MPG by the same 60% that Pavley 1 does, hence that Pavley 2 decreases gallons of gasoline burned per VMT as much as Pavley 1 does (the reduction in gallons of gas burned are simply a reciprocal of the increase in MPG), then just from the impact of Pavley 2 alone in 2035 would lead to another 19.34 thousand tons in CO₂ reductions, on top of the 30 thousand tons in CO₂ reductions, from the 51.92 thousand tons per day due to passenger vehicles in 2035 (Preferred Alternative calculations).

⁶⁴ And, since as noted in footnote 62, since the gap between the Preferred Alternative and No Project's modeled CO₂ emissions narrowed by almost a third when the correct models were used, including the impacts of Pavley 1 + LCFS, also including the impact of Pavley 2 will presumably narrow the difference between the Preferred Alternative and No Project's modeled CO₂ emissions even further, perhaps to 1.5 thousand tons per day.

density housing projects that won't require substantial public subsidies are in those locations such as in the larger cities where there is already existing, market demand for high rise, high density multi family housing in downtown locations—a fact impliedly admitted to by the Plan's insistence on redevelopment agencies as necessary to subsidize its housing mandates.

Plan Bay Area requires regional redevelopment agencies also because its high density housing mandates require large projects in suburban downtowns where much of that land already has existing uses—often small businesses serving the local community. Many of those small landowners will not want to sell and those small businesses will not want to move—so Plan Bay Area insists that it needs to have eminent domain powers to force all those landowners to sell, and all those small businesses to move, in order to build all the high density housing that ABAG and MTC insist must be built.

The report on PDA Readiness by Economic Planning + Systems (EPS), prepared for MTC and ABAG to assess the viability of the Plan's mandate that 80% of all new housing units be built as multistory, multifamily units near mass transit in suburban and urban downtowns⁶⁵ unwittingly gives the public an extraordinarily illustrative and powerful window into the thinking behind Plan Bay Area. It posits a parcel of land with a small shopping center with a happy landowner who doesn't want to sell and happy tenants of that shopping center—tenants who are thriving, productive, and providing services to the local community. The value of the cash flows to the shopping center make the parcel worth \$4 million dollars—precisely because these are local businesses that are thriving, and providing services to the local community that wants those services.

Yet in MTC and ABAG's relentless drive to force unwanted housing mandates on cities, and housing in high density form for which there is only

⁶⁵ The EPS report, and the whole issue of the Plan's models, assumptions, and forecasts for market demand, are ones that I have long planned to write on in my comments. However, given the loss of time due to the inability to secure modeling related data from MTC for many weeks and the difficulties that caused in my ability to understand the Plan's analysis in those areas, I was unable to complete my work on the Plan's models, assumptions, and forecasts for high density housing in Priority Development Areas. This is one of the areas that I intend to complete work on and submit in my supplemental comments during the 30 day extension to the comment period that I am requesting in the comment letter.

limited market demand, the EPS report posits a world under Plan Bay Area where unaccountable regional redevelopment agencies will be able to forcibly acquire that parcel of land from that happy landowner who is unwilling to sell, forcibly evict those thriving small businesses that are profitably providing products services desired and used by the local community—all in order to turn that parcel of land over to a developer that will develop housing units that will have an economic value of \$2 million. The sheer and appalling economic waste of that forced transaction, the \$2 million difference between the value of the parcel with the shopping center on it (\$4 million) and the \$2 million value of the cash flows from the housing, would be borne by the public through the subsidies provided by the regional redevelopment agency.

In most PDAs, the majority of the new development envisioned will be built within an existing urban framework, including on existing developed sites that will need to be assembled and redeveloped. This process is challenging and comparatively expensive, because the new development must yield sufficient revenue to cover not only the cost of the development but also the “opportunity cost” of retaining a use that typically is generating a positive cash flow for the existing property owner. For example, a parcel may be worth \$2 million for a new multifamily development (based on achievable building values less development costs and developer returns), and have an existing shopping center that is worth \$4 million (based on capitalized net income from the shopping center). Unless the multifamily development receives some financial assistance to make up the difference, the site is likely to remain a shopping center rather than converting to a more intensive use.

This problem is one of the key reasons the state authorized local governments to establish redevelopment agencies with broad powers to assemble land and incentivize development. The elimination of this authority in California as a means to address the state’s fiscal problems was a major blow to local government capacity to financially incentivize desired development. Without reinstatement of this authority and resources, local governments will be severely disadvantaged in tackling the problems associated with redevelopment of existing urban areas.

EPS PDA Readiness Report, p. 38.

The Bay Area Citizens Transportation and Housing Alternative—the Alternative that should have been Considered and Selected

I strongly recommend that an additional alternative be studied as part of the Plan and draft EIR, a Bay Area Citizens Transportation and Housing alternative that respects and supports the wishes and needs of Bay Area citizens in all their infinite variety and creativity, and respects their individual decision-making and desire for personal freedoms, and allows them to participate in natural, decentralized, and organically-developing human ecosystems. The Bay Area Citizens Transportation and Housing alternative consists of:

1. Expansion and improvement of existing transit systems, strongly emphasizing those modes that can be implemented quickly and with relatively low capital cost, including improvement of motor bus and vanpool services as outlined above—such as adding bus routes to make transit more accessible to lower-income residents, and adding bus capacity on heavily traveled routes. Please note that the Bay Area Citizens Transportation and Housing alternative does not consider Bay Area citizens who have lower incomes as a special interest group, but simply as valued members of our community whose personal mobility needs can be greatly enhanced, not by additional transit expenditures, but by simply redirecting existing and planned expenditures to where they have the greatest benefit to the community as a whole.
2. Major fare reductions, particularly for those types of services utilized primarily by residents with lower incomes who are dependent on public transit for their personal mobility. Consider use of transit vouchers so that fare reductions do not become a form of subsidy for inefficient public transit providers, with transit vouchers allowing the resident to select the transit provider that offers the best service for the price, thus empowering the resident, and bringing a measure of market discipline to the transit agencies.

3. De-emphasis of expansion of expensive and low cost-effective rail transit and ferry service, using the funding saved for the other elements of this alternative, and insisting that future major transit projects provide peer reviewed analysis of environmental benefits and cost per passenger mile benefits to the project before funding proceeds, to avoid funding major projects that will not produce any public or environmental benefits at an astronomical cost to the public.
4. Studying how casual carpooling through real-time matching through portable electronic devices can be advanced to both reduce vehicle miles traveled by increasing average passenger load and provide additional transportation opportunities for the transportation-disadvantaged. It should be understood that the government role in this should be largely one of ensuring that a proper legal and regulatory structure is in place to allow innovation, while providing for safe and secure usage, is the goal – and that, to a large extent, the role of government is to get out of the way and watch it happen.
5. Encourage flexibility in local zoning so that Regional Housing Mandate Assessment allocations are able to be met in a manner that is compatible with the wishes of the local officeholders and residents of that city, takes advantage of their knowledge of and creativity in finding solutions for their own community and provides them maximum flexibility to preserve the quality and character of their town.
6. Encourage housing in all parts of the nine county Bay Area, including in the suburban and rural areas, to the extent that that housing is consistent with the local general plans and wishes of the local officials and residents in those communities. Rather than clustering people in densely packed urban and suburban downtowns, against people's expressed wishes for more dispersed and organic community growth, foster the development of local robust human and economic ecosystems throughout the Bay Area, all developed organically and naturally by the wishes and decisions of the residents themselves.

7. Encourage expanded use of telecommuting both within the nine county Bay Area and from locations outside of the nine county Bay Area, including especially from other locations in the state that would be mutually beneficial to the cities, towns and businesses in the Bay Area, and to the Bay Area's sister cities in other counties, especially in the rural counties where many Bay Area residents would wish to live and work from if their job permitted them to telecommute from that location. Explore sister city and area locations in northern and central California's rural and exurban counties where jobs can be co-located in both the Bay Area's job center and technology and service hub, but local employment ecosystems can be established to greatly facilitate working and living in the rural or exurban area desired by the resident, while staying connected to the job center in the Bay Area. Also, establish better statistics on the currently widespread use of telecommuting by person's with jobs in the Bay Area, to understand the full benefits to those employed persons of being able to be employed in a major job center, while living somewhere else in the Bay Area, or elsewhere in California, or elsewhere in the United States.
8. Insist that before RHNA allocations are assigned to a city that the full public subsidy costs of those housing mandates are made fully transparent and require that the extent of those public subsidy costs be made a part of the decision process whether the allocation shall be permitted to placed on that city.
9. Insist that before RHNA allocations are assigned to a city that all unfunded mandates and associated costs, including the costs of subsidies, incentives, concessions, required city and school services, and property tax exemptions be fully transparent and require that the extent of those costs be made part of the decision process whether the allocation shall be permitted to be placed on that city.
10. Actions in Sacramento and Washington, DC to advocate for flexibility in transportation funding to emphasize the objective of cost-effective and productive transportation outcomes, rather than

designated funding sources that can only be used for specified types of capital projections.

11. Actions in Sacramento to reform those aspects of California's housing laws that have proven to be unworkable, difficult, and expensive to cities while offering limited or no benefits to the general public, while providing substantial benefits to special interests and only limited benefits to small numbers of lower income residents at an astronomical cost.
12. Focus the transportation plan and land use plan on measurable outputs such as ridership, or rider satisfaction, or cost per passenger mile (and compare different modalities) rather than on the cost of the inputs (where the measure of success is the greater the cost of the input). Do not decide, define, or describe policies in intangible terms selected for their affective response such as "smart," "sustainable," "fair share," "affordable," as these obscure and defeat open and fair public debate on important policy issues to all citizens.

D. The Plan's Models Use Unreasonable and Unrealistic Assumptions that Could Only have been Selected by ABAG and MTC to Assure the Preferred Alternative Performs Better than No Project

And, what of that paltry difference projected between No Project and the Preferred Alternative in 2040, the 3 thousand tons per day difference in CO₂ emitted between the two alternatives that the ABAG and MTC's models project, out of more than 100 thousand tons per day in the mythical world that ABAG and MTC appear to have created to sell the public on Plan Bay Area⁶⁶? How was that difference between the Preferred Alternative and No Project actually arrived at in the Plan's models?

We know from the reports of Mr. Rubin and Mr. Silvestri, and many other comment letters that will be submitted, that none of the GHG gains from the Plan's Preferred Alternative will materialize. But assuming, for the sake of argument, that the Plan's models for the Preferred Alternative are correct, and ignoring Plan Bay Area's appalling cost and dramatic limits on Bay Area residents ability to live as they chose and travel as they wish, what about the analysis comparing the Preferred Alternative and No Project? Should we expect honest analysis here based on the practices noted above? Of course not, and that's exactly what we don't find. We find the same thumb on the scales and gearing of the results here that we find elsewhere.

The Plan itself waxes poetic about the coming dramatic shift in demand by Bay Area residents away from single family homes and toward apartments and condos in densely packed suburban downtowns. Despite the lack of empirical and analytical support for these models, easily falsifiable by the Plan's data and the data in its supporting documents, let's assume, as does the Plan's analysis, that there will be a substantial increase in market demand for high density housing in suburban and urban downtowns. And, further, let's assume that high density housing will reduce GHG emissions, and that high density housing is the only kind of housing to reduce GHG emissions—as, for the sake of argument here, we must make these assumptions because the Plan's models make these assumptions, and ABAG and MTC used their models to analyze the difference between No Project and the Preferred Alternative.

⁶⁶ Or the likely true difference of 1.5 thousand tons per day out of a total of 60 thousand tons of CO₂ per day in the actual world that will exist where the impacts of Pavley 1, LCFS, and Pavley 2 are considered

Under no project in the world as it exists, by definition, the cities can zone as they wish within the limits of state law, and landowners and developers can build where cities allow them to build and in the ways cities allow them to build—as long as they can make a profit doing so (e.g., as long as there is a market so those housing units can be sold at a higher price than their cost). But under “No Project,” an artificial construct created by ABAG and MTC to guarantee that their Preferred Alternative performs well in the analysis and No Project performs poorly, the models analyzing No Project disallow any new zoning changes in any of the 101 cities and towns in the Bay Area and in the unincorporated areas of the nine counties. Not even a variance is accommodated for in the modeling for No Project. Only housing units that could be built today under today’s zoning codes are allowed, and no changes in zoning are allowed for the next 30 years. Ponder, if you will, how astonishingly untethered from reality this assumption is—but the assumption appears to have served its purpose in the analysis, that of impairing the results of the analysis for No Project.

Remember, Plan Bay Area’s models assume a vast new demand for high density housing in suburban and urban downtowns. However, the mythical construct of No Project will not allow any of this to be built unless it is already zoned for today. Thus, despite this vast new demand—which is not here now, but is assumed to appear at some time in the future—these units will not get built. And, because the Plan’s models also assume that only high density housing will reduce GHG emissions, then the mythical construct of No Project, by definition, cannot reduce GHG.

On the other hand, the Preferred Alternative is defined as allowing unlimited upzoning for cities and towns to accommodate this assumed vast new demand for high density housing in suburban and urban downtowns. And since by definition—that is, according to the Plan’s models—these high density housing units are the only housing units that reduce GHGs, and the Preferred Alternative is defined as allowing unlimited upzoning to get these units built, and No Project is defined as barring any upzoning to increase the capacity for cities to build these, by these assumptions and these assumptions alone, the Preferred Alternative will be an environmentally superior alternative and No Project will be an environmentally inferior alternative.

Not because one is superior or inferior to the other in fact. It's simply by definition. Before the analysis began, ABAG and MTC appear to have made sure that their Preferred Alternative would perform better on their analysis than No Project.

This gearing of the outcome by the definition of the models analyzing the alternatives was so egregious that two of the modeling professionals attending the October 2, 2012 Regional Modeling Working Group meeting (minutes attached here as Appendix S⁶⁷) where ABAG and MTC's handiwork was reviewed, complained about this:

Chris and George asked about the implementation of existing general plans in UrbanSim and why zoning was changed in the Project alternative; Michael responded that the maximum zoning in city plans was used for the No Project, while upzoning was performed in the Project to support focused growth in PDAs.

⁶⁷ This was another document, and set of facts, that was were clearly disclosed in the records that MTC furnished to my colleagues and me on April 19, 2013. However, though even a cursory read of the meeting minutes caused this disclosure to jump out as troubling and material, I don't characterize this a "smoking gun" disclosure as a close and careful reading of the draft EIR enables one to puzzle out this pairing of assumptions and their impact, as well.

V. Other Problems with the Plan's Models and Assumptions

The Plan's land use and transit plans are offered by ABAG and MTC with the rationale that these plans will solve the presumed problem of climate change and GHG emissions. ABAG and MTC also suggest that their plans will foster economic growth, and is a response to the desires and needs of the cities, residents, and businesses in the Bay Area.

There are a number of problems with this narrative.

First, the Plan's models that assume locating housing next to commercial space and both next to transit stations will lead to those residents taking jobs in those businesses and both the residents and employees taking transit rather than using cars, are wrong. The Plan and the draft EIR proffer no empirical evidence to suggest that this will take place--and there is no such empirical evidence available—rather, all the available empirical evidence suggests that it will not take place.

Second, the Plan's policy mandate that 80% of all new housing units must be built in high density, attached multi-family units in suburban and urban downtowns near mass transit is proven to be infeasible and unworkable by ABAG and MTC's own consulting study,⁶⁸ that concluded that only 62% of the targeted housing units planned by Plan in these PDAs was possible during the Plan period. And this given the study's favorable study design. There appears to have been a high degree of selection bias in the 20 PDAs that were studied out of total of 169 PDAs—as these PDAs, on average, appeared to offer much more data on readiness than the other PDAs, and thus must have been more ready for development than the others.⁶⁹ Also,

⁶⁸ EPS Report, *PDA Readiness Assessment*.

⁶⁹ While EPS on the one hand appears to suggest that the 20 PDAs were representative of the entire universe of 169 PDAs,

Twenty PDAs were selected as a representative sample of the total, including a substantial proportion of the allocated housing growth but also reflecting the diversity of market and physical conditions present among the region's PDAs

the study did not examine the actual results (occupancy, financial returns, tax revenues) versus projections for any of the dozens of similar projects that were built with public subsidies through redevelopment agencies over the past dozen years in the Bay Area.

Third, the Plan's assumptions that market demand will dramatically shift in the Bay Area toward high density multifamily housing from historic preferences for single family housing are without a sound analytical or empirical basis. The Plan's supporting documents themselves admit that even now 80% or more of all people who are surveyed for their preference for housing express a preference for single family housing, and one of the

EPS Study, p. 9, the study's conclusions back away from that implication in expressly limiting their findings to just the 20 studied, and not generalizing their findings to the universe of all 169 PDAs,

In sum, EPS has estimated that the 20 PDAs are "ready" to accommodate 62 percent of the housing growth allocated to them in *Plan Bay Area*.

Id. at 29. But any self-validating claim by the Study itself, without any data to support an inference of generalizability of its findings, would be falsified by the attached list (*PDA-List, January, 2010*, Appendix T) of Priority Development Areas by County from January 2010, more than three years ago (remembering that many of the PDAs have only been designated in the past year or two, and thus are by definition, less ready to be developed per Plan Bay Area's high density housing mandates). This January 2010 list has 114 PDAs on it, 71 of which are designated as "Planned PDAs"—presumably the more advanced and far along of the then PDAs in January of 2010. It appears as if at least fifteen of the 20 PDAs that were selected for the EPS study were among the 71 Planned PDAs in January, 2010, and at least 19 of the 20 were among the total 114 at that time—thus indicating that by definition the 20 PDAs selected for the EPS study are much more advanced and thus far more ready for high density housing development than the average PDA.

In the absence more thorough data and analysis, I would estimate that if the EPS study is correct (not a certain conclusion) that the 20 PDAs is studied can actually reasonably build 62% of the high density housing units the Plan is targeting for those 20 PDAs, that the universe of 169 PDAs overall, including the 20 studied PDAs, could only accommodate 50% or 60% of that number. Or, otherwise put, the universe of 169 PDAs, if the EPS study was generalizable and the selection bias accounted for, could accommodate 31% to 37% of the total high density housing units the Plan expects will be built in those 169 PDAs.

Plan's own consultants on market demand, Karen Chapple admits that the Plan's assumptions for market demand are unrealistic and impractical.⁷⁰

Yet, the Plan completely ignores the empirical data and admissions of its consultants in appearing to argue that while Bay Area residents believe they prefer single family homes, in actuality, they prefer to live in attached multifamily units—that is they would if they only understood how desirable these high density housing units really are. Who are we to believe? The residents themselves, who tell us what they want and need? Or ABAG and MTC who tell us something entirely different about what Bay Area residents want and need.

And, the Plan tells us that market demand will shift markedly away from single family homes towards high density attached multifamily housing due to demographic shifts, in any event. The Plan bases this on several subsidiary assumptions, including, most importantly:

- The population of senior citizens is increasing. Despite the admission of the Plan's supporting documents that senior citizens are the most likely population group to live in single family homes, the Plan nonetheless concludes that seniors will increasingly prefer to sell their single family homes and move into condominiums or apartments downtown. Is this why ABAG and MTC senior staffers have gone on the record, publicly, in stating that they believe that repeal of Proposition 13 is necessary to the success of their plan?⁷¹

Proposition 13 of course was enacted by California residents in large part to enable seniors who have lived in their homes for a long time to stay in their homes. Certainly raising property taxes by substantial amounts on seniors, many of whom have fixed incomes and who have been faced with almost no interest income on their savings accounts for many years now, will force many of them to sell their single family homes and move into apartments. Could this be the source of ABAG and MTC's confidence that in the future,

⁷⁰ "This is really a great idea, but it's just basically possible to implement," Karen Chapple, associate professor of city and regional planning at the University of California at Berkeley, *Cities Resist Regional Plan to Limit Sprawl*, SF Public Press, June 13, 2012, found at Appendix U.

⁷¹ See, for example, transcript of the March 8, 2013 Joint MTC Planning and ABAG Administrative Committee meeting, attached here as Appendix V.

seniors will increasingly sell their single family homes and move into apartments?

- The Plan posits that because the population is becoming more Asian and Hispanic, demand for high density multifamily attached housing will skyrocket because Asian and Hispanic Americans “prefer” multifamily housing over single family homes. But ABAG and MTC proffer no credible evidence to support this astonishing statement that marginalizes and purports to speak for the wishes of members of these two incredibly diverse groups of Americans—with the only possible data to support such a claim the fact that recent immigrants, who presumably are just getting established vocationally and financially in their communities, may be more likely to live in apartments rather than single family homes out of necessity. The Plan proffers no data or analysis that is controlled for length of time a resident has lived in the Bay Area, or for incomes, which would undoubtedly show that all persons of all ethnic groups have a strong preference for single family homes, if they can afford to live in one.

And, last, the Plan’s statements about the policy prescriptions that it believes must be enacted are particularly illuminating. The Plan, and ABAG and MTC senior staffers,⁷² state categorically that a new regional redevelopment agency capacity is essential for the success of the Plan.

Regional redevelopment agencies will not be under the control of local cities and towns, though they will likely be funded in whole or in part by those local cities and towns and their residents. So, local land use decisions will be in great measure or wholly lost, as these new regional redevelopment agencies will make decisions about where to build new high density housing projects. This admission, alone, belies the Plan’s repeated statement that its high density housing agenda is desired and has been asked for by the cities and towns and residents themselves.

But in an even more troubling admission, the Plan and ABAG and MTC senior staffers repeatedly state that they need the government subsidies and eminent domain powers of these proposed new regional redevelopment agencies in order for the Plan to succeed. The demand for public subsidies is an express admission by the Plan that the housing and commercial developments are uneconomic, there is no market demand for the numbers

⁷² Id.

of high density housing units the Plan mandates be built, and the only way these will be built is if the public through various subsidies becomes not only the developer of last resort, but the developer of first resort. And further, the Plan expressly admits through its demand for “special tools for parcel assembly,” e.g., eminent domain powers, that the Plan will require the displacement of vast numbers of small landowners, businesses, and residents, many of whom will not want to sell their property to support the Plan’s massive development projects, and thus the Plan requires government powers to force them to sell.

VI. Equal Protection and Proposition 209

Plan Bay Area relies upon assumptions about minority, ethnic populations to drive policy. We have grave concerns over whether this ethnicity-centric approach accords with the law of the state as expressed in Proposition 209, and whether it accords with the law of the land as expressed in the equal protection clause of the 14th Amendment of the United States Constitution. This Plan balkanizes and marginalizes Bay Area residents by race, when it should treat all equally.

According to the Plan, approximately one-fifth of the total Bay Area population resides in “communities of concern.” Communities of concern are defined as neighborhoods with notably high concentrations of four or more of the following: minority persons; low-income individuals; persons who are Limited English Proficient; seniors age 75 and over; persons with disabilities; households without cars; single-parent households; and renters paying more than 50 percent of household income on rent. Detailed assessments of populations by ethnicity are provided in Tables B-2 and B-3 in the Equity Analysis Appendix.

Hispanic and Asian residents are characterized culturally as having greater propensities for multi-family housing, and less propensity for single-family housing.⁷³ The Plan asserts that Hispanic and Asian residents prefer living in multigenerational arrangements which supports their demand for clustered housing units. Additionally, Hispanic and Asian residents are characterized as having larger families. Indeed, average Bay Area household size increases over the course of the Plan.

The Plan doesn't recognize the interest in, or desire for, more private living space, such as that found in a single family home, or the desire of residents for personal, private transportation such as a passenger vehicle. In other

⁷³ On behalf of all citizens in the Bay Area, of all races, I am deeply offended and outraged at these assumptions embedded in Plan Bay Area. And, in addition, I am deeply incensed as the proud grandfather of a six-year-old grandson who happens to be Hispanic, the uncle of a niece and two nephews who are Hispanic as well, and the uncle of three nephews who are Asian. None of these wonderful, creative, unique human beings deserve to be marginalized and balkanized by MTC and ABAG, nor do they deserve to have their choices and decisions limited by this Plan that purports to know what these incredible young people will desire for themselves when they grow up and choose—as they will—their own destiny.

words, the Plan infers that Hispanic and Asian residents will not assimilate into the American fabric similarly to the way other ethnic groups historically have, and yet it offers no evidence to support this astonishing claim.

The Plan also ties Environmental Justice to minority status to support policies ensure that such populations aren't subject to negative environmental conditions. Finally, in general, the Plan embodies the three principles of environment, economy and equity. These principles are not consistent with the constitutional rights that all Bay Area residents enjoy as Californians, and as Americans.

VI. Summary

*[Brutus] is an honourable man.
I speak not to disprove what Brutus spoke,
But here I am to speak what I do know.*

-- Marc Antony's Funeral Oration, *Julius Caesar* by William Shakespeare, Act 3, Scene 2, ll. 99-101

What are we to make of the above analysis which establishes conclusively that:

- The Plan's transit elements will not increase ridership, will not reduce GHGs, and do not include the only known transit subsidies known to increase ridership and help low income residents who depend on mass transit for personal mobility (lower fares plus service quality improvements, especially of buses).
- The Plan's land use elements will not decrease GHGs.
- According to MTC's internal model runs that haven't been disclosed to the public, the difference in GHG between their Preferred Alternative and No Project is 3.01 thousand tons per day in 2035:

	Preferred Alternative	No Project
Model's reported CO ₂ emissions, 2035 (thousands of tons per day)	108.38	111.39

This is an infinitesimal difference of less than 3%, well within the margin of error for a forecast for 22 years from now with massive numbers of variables considered each with uncertainties involved.

But the model above assumes that the Plan's transit elements decrease GHG's and the model above assumes that the Plan's land use elements decrease GHG's—and both of these assumptions are falsifiable and are incorrect.

- In addition, the model runs above are based on a completely fictitious scenario that MTC and ABAG know will not and cannot happen. That is a scenario where California's Clean Car Standard regulations ("Pavley 1") do not exist. However, the Pavley 1 regulations were promulgated in 2004 pursuant to AB 1493 (2002, Pavley). The Pavley 1 regulations became effective in 2009, and govern MPG of the new passenger vehicle fleet sold in CA from 2009 through 2016 and beyond. According to MTC's own model runs, which it did not disclose to the public and did not incorporate in its analysis of CO₂, Pavley 1 will increase fleetwide MPG from 20 MPG in 2010 to 32 MPG in 2035. This 60% increase in fleetwide MPG will lead, by simple arithmetic, to (1) a 37% per VMT decrease in CO₂ and 31.98% decrease overall factoring in increases in VMT, (2) a 37% per VMT decrease (and 31.98% overall) in particulates, and (3) a 37% decrease in gasoline burned per VMT (and 31.98% overall), which will reduce gasoline tax revenues by 31.98% in real terms by 2035, if the real, inflation adjusted price of gasoline stays the same as it is today.

However, the Plan's modeling shows a constant fleetwide MPG between 2010 and 2035 (about 20 MPG). This is how ABAG and MTC are able to forecast constant rises in CO₂ and hence argue that their land use plan and transit plan must be adopted to reduce CO₂ emissions. But ABAG and MTC know that their justification of their land use plan and transit plan is based on a mythical scenario—a scenario that they have had to fabricate in order to justify their analysis that purports to support the necessity of their land use plan and transit plan. However, since ABAG and MTC appear to want to claim credit for Pavley 1's decreases in particulates and pollutants to mitigate the adverse health impacts of their mandate that 80% of all new housing be built in congested downtowns near transit, they use a second, undisclosed, and hidden value for fleetwide MPG in their modeling to generate the desired declines in particulates and pollutants.

That is, the same model has two values for fleetwide MPG for the relevant period (from 2010 to 2035)--one for calculating CO₂ (20 MPG in 2010, 20

MPG in 2035), the disclosed MPG number—and then a second, hidden MPG number (20 MPG in 2010, 32 MPG in 2035) used to calculate particulates and pollutants. Very clever, indeed.

Here are the real CO₂ numbers, not the mythical ones used in the Plan’s analysis:

	Preferred Alternative	No Project
Model’s CO₂ emissions, 2035 (thousands of tons per day)	108.38	111.39
CO₂ reductions due to Pavley 1+ LCFS	29.42	30.25
Actual CO₂ results, 2035	78.96	81.14

And, the reality of what ABAG and MTC have done in analyzing their Plan is actually much worse than the above would indicate.

ABAG and MTC defined No Project so that, by definition, it would fail compared to Preferred Alternative. The Plan assumes, against all the empirical and analytical data, vast new market demand for high density, multistory, multifamily housing in suburban and urban downtowns next to mass transit. And, the Plan assumes for the Preferred Alternative—and presumably for the other three alternatives, 3, 4, and 5 which are variants of the Preferred Alternative that assume all of its premises and are based on all the same assumptions, and thus share the Preferred Alternative’s fatal flaws—unlimited upzoning by cities in their general plans. But it freezes in place current zoning in all 101 cities for No Project, in fact it doesn't even allow for the possibility of variances.

So, since their model assumes vast unmet future market demand for high density housing next to mass transit in crowded city centers, and their models assume that this kind of housing is the only housing that decreases GHG emissions, their arbitrary and unreasonable assumption that there will not be a single change to city zoning over the next 30 years to accommodate the demand for high density housing in suburban downtowns, inevitably results in a No Project alternative that cannot reduce GHGs because it has been defined with no possibility of upzoning. Yet, the Preferred Alternative has been defined as allowing for unlimited upzoning. Even the modelers complained about this, see attached October 2, 2013 meeting of the Regional Modeling Working Group⁷⁴:

Chris and George asked about the implementation of existing general plans in UrbanSim and why zoning was changed in the Project alternative; Michael responded that the maximum zoning in city plans was used for the No Project, while upzoning was performed in the Project to support focused growth in PDAs.

- The Plan's financial analysis first "mitigates" then ignores the budget impact of Pavley 1. Since Pavley 1's fleetwide increases in MPG from 20 MPG in 2010 to 32 MPG in 2035 will lead to a 37% decrease in gasoline burned per VMT (hence a 37% decrease in gallons of gas used, and, adjusting for increases in VMT, a 31.98% decrease in gallons of gas used by passenger vehicles in 2035 over 2010), the model's assumptions of gas tax revenue are wildly over stated. The Plan's financial model assumes that gallons of gasoline sold will decline by 2.00% per year until 2020, but ignores all impact of the fleetwide MPG increases from 2020 through 2035, which will be substantial. According to MTC and ABAG's own undisclosed models, Pavley 1 will increase fleetwide MPG of passenger vehicles from 2020 through 2035 from 27.92 MPG to 32.02 MPG, a 14.68% increase that will lead to a further 12.80% decline in gallons of gasoline used per VMT by passenger vehicles during those years.

The financial model also "mitigates" the financial impact of those 2.00% per year declines in gallons of gasoline sold through 2020 by also assuming that

⁷⁴ Appendix S.

the retail price of gasoline will go up 8.00% per year through 2020.⁷⁵ By this device, rather than seeing gas tax revenues decrease, the Plan's gas tax revenues actually increase even though actual gallons of gasoline sold decline by 2.00% per year.

In fact, the Plan's financial model assumes that the retail price of gasoline will increase by more than twice the rate of inflation over the entire Plan period (8.00% per year from 2010 through 2020, 3.3% per year from 2021 through 2035—more than twice the rate of 2.2% average annual rate of inflation overall that the Plan is based on⁷⁶). This assumption is facially implausible on its face, made doubly so because MTC and ABAG's undisclosed models of the MPG impact of Pavley 1 also compelled them to model a 31.98% decline overall from 2010 to 2035 in gallons of gasoline used by passenger vehicles. However, despite their own data requiring MTC and ABAG to model this decline, MTC and ABAG have not done so, apparently because doing so would have had too adverse an impact on their budget—so they appear to have ignored it.

- The Plan's analysis completely ignores the CO₂ and budget impact of California's Advanced Clean Car standards ("Pavley 2"), which became fully effective in December of 2012, and govern MPG of the new passenger vehicle fleet sold from 2017 through 2025 and thereafter. While ABAG and MTC didn't model the MPG impact of Pavley 2 like they did Pavley 1 in their undisclosed models, we can reasonably assume that Pavley 2 will have approximately the same impact on MPG, hence an additional 60% increase in fleetwide MPG on top of Pavley 1's impact (so bringing fleetwide MPG up to close to 50 MPG by 2040).

Hence, Pavley 2 will lead to (1) another 37% per VMT decrease in particulates and pollutants (which would help in ABAG and MTC's justification for forcing 80% of new housing to be high density units in congested city centers), (2) another 37% per VMT decrease in CO₂ (which would further discredit their analysis arguing for the Preferred Alternative

⁷⁵ Appendix I.

⁷⁶ The Plan's underlying inflation estimate doesn't appear to be anywhere to be found in the Plan, the draft EIR, or in the supporting documents provided to the public, but was found by us in our review of documents provided pursuant to our March 13, 2013 California Public Records Act request with MTC. Appendix J.

(or for Alternatives 3, 4 and 5 for that matter, which are simply minor variants that assume all major premises of Alternative 2), and (3) Pavley 2's additional 37% reduction in gasoline burned will have an absolutely devastating impact on the gas tax revenues that the Plan counts on for the bulk of its discretionary expenditures. Pavley 1 and Pavley 2 will obliterate the Plan's budget--which is presumably why ABAG and MTC's financial models "mitigated" part of Pavley 1's impact with assumptions about offsetting gasoline price increases, then ignored the rest of Pavley 1's impact, and ignored Pavley 2's budgetary impact entirely.

The Plan's financial model has all the integrity of reporting to the SEC or the IRS a financial statement that includes all expenditures but omits all revenues. Alternatively, it has all the integrity of seeking investment capital from equity investors or a loan from a bank by providing a financial model that has all the revenues and none of the expenditures.

What MTC and ABAG are doing here by using one MPG number in their model to produce their CO₂ numbers--this is the disclosed MPG number, in order to report high CO₂ numbers--then an entirely different MPG number, hidden deep inside the model and not disclosed, in the same model to produce their particulate and pollutant results in order to report declines in those particulates and pollutants, is the same as if the same entity was reporting to the SEC and IRS as per above, while at the same time seeking investment capital or bank loans as per above.

This is all before considering the Plan's vast underfunding of maintenance of local streets and roads and another dozen or two egregious and disingenuous elements in the Plan and its analysis.

ABAG and MTC, and their closely aligned non-governmental organizations (NGOs) and powerful political and financial supporters assure us that ABAG and MTC are honourable agencies, and their actions only seek to do good. But if an individual citizen, or a business organization or nonprofit were to engage in the above manipulation of analysis and results, the individual, or the organization's principals, would more likely be looking at a 20 year residency in one of state of California's high density housing facilities—those where residents are not permitted to leave for the duration of their sentence—for their actions, rather than receiving the huzzahs and praise of supporters.

What are we to make of all this? How should we characterize ABAG and MTC's manipulation of the models and the results in order to get their Preferred Alternative adopted?

Let's first look at how ABAG and MTC characterize their analysis, and their Plan. They call it "smart" and "sustainable." How does the dictionary define these terms?

According to dictionary.com,⁷⁷ "smart" is defined as, alternatively:

2. to be the cause of a sharp, stinging pain, as an irritating application, a blow, etc.
3. to feel a sharp, stinging pain, as in a wound.
- ...
6. to cause a sharp pain to or in.

or,

7. quick or prompt in action, as persons.
8. having or showing quick intelligence or ready mental capability

The term "smart" is actually a marvelously clever use of language. It impliedly discloses to the public on the one hand, how the public will experience the mandates and impacts of the Plan's policy elements, in the primary definition noted above, "to be the cause of a sharp, stinging pain, as an irritating application, a blow," and this describes the impact of the Plan on the public to a "t." But the language used also cleverly imports the alternative meaning of the term "smart"—that being "having or showing quick intelligence or ready mental capacity." This alternative meaning of the term "smart" elicits in the listener a positive emotional affect, as in, "I don't know what 'smart growth' is, but I know that I like it because the way it makes me feel when I hear the term. I'm sure I don't want what 'smart growth' is not, because that must be 'dumb growth.'"

⁷⁷ *smart definition, dictionary.com, Appendix W.*

But though “smart” is used often to describe the Plan, the flagship characterization used by ABAG and MTC is indisputably “sustainable.” Thus, it is the definition of “sustainable” that we must look to, to understand how ABAG and MTC themselves characterize their Plan, and their analysis.

The dictionary does not disappoint. According to dictionary.com,⁷⁸ “sustainable” is defined as:

1. capable of being supported or upheld, as by having its weight borne from below.
2. pertaining to a system that maintains its own viability by using techniques that allow for continual reuse: sustainable agriculture. . . .
3. able to be maintained or kept going, as an action or process: . . .
4. able to be confirmed or upheld: a sustainable decision.
5. able to be supported as with the basic necessities or sufficient funds: a sustainable life.

This is exactly what ABAG and MTC are asking the public to believe about their Plan and their analysis. That it is “capable of being supported or upheld,” it represents “a system that maintains its own viability,” “is able to be maintained or kept going,” “is able to be supported as with . . . sufficient funds.”

However, are these definitions of “sustainable” a fair characterization of the Plan and its analysis? As we’ve noted above, the Plan is a land use plan that does not reduce GHGs, and it is a transit plan that will not reduce GHGs. Nor will the transit plan increase ridership, nor does it adopt the only known strategies that will actually increase ridership and help lower income residents who are dependent on mass transit for personal mobility (and will do so cost effectively). Thus, the Plan will not do anything that it says it will do, and yet its policy elements come at an astronomical cost, tremendous risks, leads to significant limitations on the choices of individual residents and businesses to live or locate where and how they wish, and dramatically

⁷⁸ *sustainable definition, dictionary.com, Appendix X.*

erodes the ability of local jurisdictions to decide for themselves how they will change and grow.

Further, the Plan has been justified to the public with models that incorporate the impacts of California MPG regulations to show dramatically decreased particulates and pollutants in order to show that the Plan's mandate that 80% of all new housing be built in high density multistory multifamily units near mass transit in suburban and urban downtowns looks better, because the adverse health impacts of those housing mandates are substantially lessened by the declining amounts of particulates and pollutants due to those increases in fleetwide MPG. But at the same time, the Plan completely ignores the impact of those same MPG regulations on that same exhaust stream from that same vehicle, on reducing CO₂ emissions. And the Plan ignores that impact because incorporating those inevitable and certain CO₂ reductions, which are many orders of magnitude greater than the speculative and uncertain⁷⁹ reductions in CO₂ from the Plan's transit and land use elements would render the Plan's justifications completely untenable, and make obvious that the Plan's costs and limitations on individuals, businesses, and cities are unnecessary and tragic. Which appears to be precisely why ABAG and MTC, though they performed this analysis of these regulations on CO₂ in their modeling work, nonetheless declined to disclose the results of that analysis to the public.

This is also a Plan that has been justified by arbitrarily defining No Project as disallowing any local zoning changes over the next 30 years, in order that No Project, by definition, performs more poorly than the Preferred Alternative, which is defined as allowing unlimited upzoning in local general plans. Is this analysis "sustainable" in the sense that it is fairly characterizes "a system that maintains its own viability," or "is able to be maintained or kept going"?

And does a Plan whose budgetary justification relies solely on its decision to ignore the massive budgetary impact of two sets of California regulations governing MPG that will, successively, reduce gallons of gas sold by first 31.98%, then by another 32% or so on top of the first reduction—a Plan that when in those first few years where the impact cannot be completely ignored, "mitigates" the impact of lowered gallons of gasoline sold by assuming exceptionally high annual increases in the retail price per gallon of

⁷⁹ Actually, certain not to occur.

gasoline for those years? Is this “sustainable” in the sense that it “is able to be supported as with . . . sufficient funds”?

Finding ABAG and MTC’s own characterization of its Plan and its analysis justifying the Plan as lacking support as noted above, we must continue to look through the dictionary to see if there is a more apt or accurate characterization for the Plan, and for the analysis that ABAG and MTC have proffered to the public in justification for its stated firm intention to certify the final EIR and adopt this Plan on July 18, 2013.⁸⁰

I offer the following terms, and definitions, in this comment letter as a possible alternative characterization of the Plan and the analysis that ABAG and MTC have used to justify their intended and certain certification of the final EIR and adoption of the Plan on July 18. These certainly aren’t the only possible alternative characterizations—I simply offer them here for the purposes of discussion and to contribute to the public debate.

However, I do request here, as this is a comment submitted regarding the draft Plan and draft EIR, that ABAG and MTC respond with specifics as to why they consider that their characterization of the Plan and their analysis used to justify the Plan as “sustainable” accords with the dictionary definitions of that term in the light of the undisputed data and the

⁸⁰ Note that ABAG and MTC’s stated intention to certify the final EIR and adopt the Plan on July 18, 2013 is further confirmation, if we needed any, that the entire public input process, and CEQA review, has been a sham. ABAG and MTC have left no time in the process to make substantive modifications to the Plan to respond to the public’s comments. This is an implied, though certain, admission that ABAG and MTC do not intend, and have never intended to consider any substantive comments that require the Plan or its analysis to be modified in any meaningful manner.

Yet it is precisely the possibility that the Plan or its analysis will need to be modified in a meaningful manner that the legislature established the CEQA review process in the first place, and that other state and federal statutes require public input and review of the Plan itself. Lead agencies stating, in effect, that there is no possibility and there are no circumstances under which they will modify their Plan or its analysis in a meaningful manner—e.g., in a manner that would require a delay in their schedule--in responding to public comment on the Plan and the draft EIR makes a mockery of the legislative intent behind these mandated public input processes.

unassailable analysis offered in this comment letter and in its attachments.⁸¹ I also, specifically request ABAG and MTC to respond with specifics why the following alternative possible characterizations are not a more accurate description of the Plan and of ABAG and MTC's analysis used to justify the Plan. And, actually, perhaps the most honest and honourable action that ABAG and MTC can take in response would be simply to acknowledge that their Plan and the analysis they have used to justify it are not "sustainable," and rather, have significant deficiencies that are more accurately characterized with terms more similar to those below.

Returning again to the dictionary, I considered the following definition of "fraudulent":⁸²

1. characterized by, involving, or proceeding from [fraud](#), as actions, enterprise, methods, or gains: a fraudulent scheme to evade taxes.
2. given to or using [fraud](#), as a person; cheating; dishonest.

Clearly, the term "fraudulent" is much more apt and accurate in characterizing the Plan and ABAG and MTC's analysis used to justify the Plan than the term "sustainable" that ABAG and MTC have used. However, we need a bit more information. The meaning of "fraudulent" depends on the meaning of "fraud." How does the dictionary define "fraud"?

And, here, we appear to hit pay dirt. According to dictionary.com,⁸³ "fraud" is defined as:

1. deceit, trickery, sharp practice, or breach of confidence, perpetrated for profit or to gain some unfair or dishonest advantage.
2. a particular instance of such deceit or trickery: mail fraud; election frauds.

⁸¹ And in other comment letters that provide similarly compelling data and analysis regarding the flaws of the Plan and of ABAG and MTC's analysis.

⁸² *fraudulent definition, dictionary.com, Appendix Y.*

⁸³ *fraud definition, dictionary.com, Appendix Y.*

3. any deception, trickery, or humbug: That diet book is a fraud and a waste of time.

And what about synonyms of the term “fraud” such as “deceit”?⁸⁴

1. the act or practice of deceiving; concealment or distortion of the truth for the purpose of misleading; duplicity; fraud; cheating: Once she exposed their deceit, no one ever trusted them again.
2. an act or device intended to deceive; trick; stratagem.

Again, a much closer fit here as well, than ABAG and MTC’s own characterization of “sustainable.”

ABAG and MTC are honourable agencies—at least they assure us that they are, and their closely aligned NGOs and powerful political and financial supporters claim they are as well. However, given the radical disconnect between ABAG and MTC’s own characterization of their Plan and their analysis used to justify the Plan—a more inapt or more inaccurate characterization cannot be found than “sustainable.” Given the seemingly close fit of the above suggested characterizations, “fraudulent,” “fraud,” and “deceit,” I hereby request in this comment a response by ABAG and MTC that either

(1) purports to show, despite the above, that their characterization of “sustainable” is nonetheless accurate and apt, and purports to show, despite the above, that an alternative characterization of “fraudulent,” “fraud,” or “deceit” is not accurate and apt, or

(2) does the honourable thing and admits that “sustainable” is not an accurate or apt characterization of their Plan and the analysis they have used to justify the Plan, and that an alternative characterization such as “fraudulent,” “fraud,” or “deceit” would be a more accurate and apt characterization.

⁸⁴ *deceit definition, dictionary.com, Appendix AA.*