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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF ALAMEDA

14 **THE PEOPLE OF THE STATE OF
CALIFORNIA, ex rel. ATTORNEY
15 GENERAL EDMUND G. BROWN JR.,**

16 Petitioners,

17 v.

18 **CITY OF PLEASANTON,
19 PLEASANTON CITY COUNCIL,**

20 Respondents.

CASE NO. RG09469878

PETITION FOR WRIT OF MANDATE

(California Environmental Quality Act,
21 Pub. Resources Code §§ 21168, 21168.5;
Code of Civ. Proc. §§ 1085, 1094.5)

22 **INTRODUCTION**

23 1. Petitioners, the People of the State of California, ex. rel. Attorney General Edmund G.
24 Brown Jr. (People), bring this action challenging the approval by Respondents City of Pleasanton
25 (“City”) and its City Council (“Council”) of the update of its General Plan (“General Plan
26 Update” or “Project”). On July 21, 2009, the Council approved the General Plan Update, and
27 certified the Environmental Impact Report (“EIR”) on that update as adequate, in violation of the
28 California Environmental Quality Act (“CEQA”; Pub. Resources Code, § 21000 et seq.).

1 which include protecting California’s environment and its natural resources. (Cal. Const., art. V,
2 § 13; Gov. Code, § 12511.) The California Legislature has given the Attorney General a unique
3 and important role to participate in actions concerning pollution and adverse environmental
4 effects that could affect the public or the natural resources of the State. (Gov. Code, §§ 12600-
5 12612.) Government Code section 12600 specifically provides: “It is in the public interest to
6 provide the people of the State of California through the Attorney General with adequate remedy
7 to protect the natural resources of the State of California from pollution, impairment, or
8 destruction.” Petitioners People of the State of California, ex rel. Attorney General Edmund G.
9 Brown Jr., file this Petition for Writ of Mandate pursuant to the Attorney General’s independent
10 power and duty to protect the natural resources of the State from pollution, impairment, or
11 destruction in furtherance of the public interest. The natural resources that will be affected by the
12 General Plan update are vital to the health and welfare of the People of this State.

13 7. Respondent City of Pleasanton is duly organized and existing under the Constitution
14 and laws of the State of California. The City is a “public agency” and is the “lead agency” for the
15 General Plan Update, as those terms are used in CEQA and the CEQA guidelines. The CEQA
16 Guidelines, found at California Code of Regulations, title 14, section 15000, et seq., are
17 regulations interpreting and implementing CEQA; they are binding on all state agencies, and are
18 binding on Respondents. (Cal. Code Regs., tit. 14, § 15000.)

19 8. Respondent Pleasanton City Council is the governing body of the City of Pleasanton
20 and is responsible for approval of land use and development projects within the City’s
21 jurisdiction, including adoption of its General Plan Update. The Council is sued in its official
22 capacity only.

23 **VENUE AND JURISDICTION**

24 9. This Court has jurisdiction to hear this matter pursuant to Public Resources Code
25 sections 21168 and 21168.5, and Code of Civil Procedure sections 1085 and 1094.5.

26 10. Venue is appropriate in this judicial district as the violations of CEQA occurred in
27 Alameda County.

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2 **STATEMENT OF FACTS**

3 11. Under California law (Govt. Code, § 65300, et seq.) every city is required to have a
4 comprehensive, long-term general plan, which acts as “a constitution for future development.”
5 (*Da Vita v. County of Napa* (1995) 9 Cal.4th 763, 773.) The City’s updated General Plan adopts
6 goals and policies that will direct the future of land use, growth, and transportation in the City
7 from the present until 2025.

8 12. The updated General Plan replaced the general plan adopted in 1996. General plans
9 are required to include a housing element, but housing elements may be adopted separately. The
10 City last adopted a housing element in 2003. The General Plan Update does not change the 2003
11 Housing Element and incorporates it by reference.

12 13. The City’s 1996 general plan contained a housing cap provision (“Housing Cap”) that
13 limited the City to a maximum buildout of 29,000 housing units. Following adoption of the 1996
14 general plan, the City adopted by initiative Measure GG, which reaffirmed and readopted the
15 Housing Cap and which added a provision requiring a vote of the people for all future
16 amendments to the Housing Cap.

17 14. The City’s General Plan Update includes the Housing Cap as a policy in its Land Use
18 Element. The City has also adopted a Growth Management Program in the General Plan Update.
19 Under this Program, the maximum number of residential building permits available for
20 development each year is 750. Even if the City issued all the permits allowable under the
21 Program from 2009-2014, it would fall short of the total number of permits needed to satisfy
22 housing requirements under state law. This housing shortage is the subject of a separate lawsuit
23 against the City in which the Attorney General has intervened.

24 15. Policies about the amount of housing that will be allowed under the General Plan
25 Update are inconsistent. For example, the General Plan Update’s Land Use Element contains the
26 Housing Cap and Growth Management Program, both of which serve to limit increases in
27 affordable housing stock. The Housing Element, however, includes policies that acknowledge
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1 the need to meet affordable housing requirements, modify the Growth Management Program, and
2 meet the City's share of regional affordable housing needs.

3 16. The City is located within Alameda County. The City's planning area, for purposes
4 of its General Plan Update, covers 75 square miles. The City projects that in 2025 its population
5 will be 78,200 and that it will have 29,000 housing units. The City also estimates that it will have
6 96,500 jobs available in 2025. Thus, according to City projections, in 2025 the City will have
7 substantially more jobs than residents, and over three times as many jobs as housing units.

8 17. The City also projects that implementation of the proposed General Plan Update will
9 result in an increase of 46% in VMT, compared to a 16% increase in population. As more
10 Pleasanton workers live outside the City and commute in to work, VMT, traffic, and automobile
11 emissions increase.

12 18. The City is located in the Bay Area Air Quality Management District, the regional
13 agency primarily responsible for comprehensive air pollution control within the San Francisco
14 Area Air Basin. The Bay Area has not attained state standards for either ozone or respirable
15 particulate matter (PM10), air pollutants that cause and exacerbate serious health effects. In an
16 effort to achieve these standards in 2005 the District adopted a Bay Area Ozone Strategy and a
17 Particulate Matter Implementation Strategy.

18 19. The EIR found that the increase in VMT would result in a significant and unavoidable
19 increase in air pollutants that could conflict with the implementation of the 2005 Ozone Strategy.
20 The EIR further found that the combination of the Housing Cap and additional business
21 development would be a "cumulative effect" of the Project. The EIR determined that there were
22 no mitigation measures to lower this cumulative impact to a less-than-significant level.

23 20. Although the EIR found a significant impact on air quality resulting from the increase
24 in VMT, the EIR determined that the Project would result in a less-than-significant impact on
25 greenhouse gas emissions and climate change. The City concluded that there would be no
26 significant impact because the Project contains numerous programmatic policies for addressing
27 greenhouse gas emissions, although the City admitted that it was unable to quantify the potential
28 reduction in greenhouse gas emissions resulting from the policies.

1 21. The EIR references greenhouse gas emissions data in the General Plan Update. The
2 emissions data, however, are outdated, and do not represent a thorough and accurate estimate of
3 the City's greenhouse gas emissions.

4 22. The EIR did not analyze the growth-inducing impacts that the jobs/housing imbalance
5 resulting from the General Plan Update would have on surrounding communities. The EIR
6 dismissed the need to analyze such impacts on the grounds that (1) CEQA does not require an
7 analysis of adverse effects caused by the Housing Cap because the Housing Cap pre-dated the
8 General Plan Update, and (2) such an attempt would involve needless speculation.

9 23. The City prepared and made publicly available its draft EIR for the General Plan
10 Update on September 22, 2008. The public review period on the draft EIR began on September
11 22, 2008 and lasted until December 5, 2008. During this period the City Planning Commission
12 held a public hearing on the draft EIR on October 15, 2008.

13 24. The Attorney General submitted lengthy written comments on the inadequacy of the
14 draft EIR. Because the comments on the draft EIR were submitted after the close of the noticed
15 comment period (but six months before the Council certified the EIR), the City's response to the
16 comments is in the City Council's Agenda Report, which is part of the administrative record. The
17 Attorney General also submitted comments on the Final EIR. These comments were submitted
18 more than two months before the Council certified the EIR, and are also part of the administrative
19 record.

20 25. On or about April 24, the City released the Final EIR, consisting of the draft EIR, the
21 comments on the draft, and the responses to those comments. On the same day, the City also
22 released a revised Draft General Plan Update.

23 26. On July 21, 2009, the City Council approved the General Plan Update and certified
24 the EIR as adequate under CEQA.

25 27. The certification of the EIR was accompanied by the approval of a Statement of
26 Overriding Considerations, even though the EIR had not described all environmental impacts of
27 the Project, nor considered feasible mitigation for those impacts or an adequate range of
28 alternatives to the Project.

1 35. California Code of Regulations, title 14, section 15126.6, requires that the FEIR
2 describe a range of reasonable alternatives to the project or its location that would feasibly attain
3 most of the basic objectives of the project, but would avoid or substantially lessen any of the
4 significant impacts of the project. Comparative merits of the alternatives should be evaluated.

5 **FIRST CAUSE OF ACTION**

6 (Pub. Resources Code, §§ 21168, 21168.5; Failure to Adequately Describe Project)

7 36. The allegations of paragraphs 1 through 35 are incorporated by reference into this
8 cause of action as though set forth in full.

9 37. An accurate, stable and finite project description is the sine qua non of an informative
10 and legally sufficient EIR. (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185,
11 192-193.

12 38. Respondents have failed to provide an adequate project description in that, among
13 other things, the Land Use Element and Housing Element are inconsistent as to the number of
14 housing units that can be developed under the Update and as to how the City intends to meet its
15 obligations under state housing law. As a result, the amount of housing allowed under the
16 General Plan Update, and the resulting environmental impacts, are undefined and uncertain.

17 39. Respondents' actions in approving the EIR and the Project, without an adequate
18 project description, are arbitrary and capricious, without evidentiary support, a prejudicial abuse
19 of discretion and are not in accordance with law.

20 **SECOND CAUSE OF ACTION**

21 (Pub. Resources Code, §§ 21168, 21168.5; Failure to Adequately Describe
22 the Environmental Setting of Project)

23 40. The allegations of paragraphs 1 through 39 are incorporated by reference into this
24 cause of action as though set forth in full.

25 41. Respondents violated section 15125 of title 14 of the California Code of Regulations
26 in that they failed to include in their EIR a description of the physical environmental conditions at
27 the time of the notice of preparation of the EIR. Among other things, Respondents failed to
28 include adequate and accurate community-wide greenhouse gas emissions data. Without this

1 information, the City could not properly assess the impacts of the General Plan Update, evaluate
2 effective mitigation, or analyze alternatives.

3 42. Respondents' actions in approving the EIR and the Project, without adequately
4 describing the environmental setting of the Project, are arbitrary and capricious, without
5 evidentiary support, a prejudicial abuse of discretion and are not in accordance with law.

6 **THIRD CAUSE OF ACTION**

7 (Pub. Resources Code, §§ 21168, 21168.5; Failure to Adequately Analyze Significant
8 Environmental Impacts of Project)

9 43. The allegations of paragraphs 1 through 41 are incorporated by reference into this
10 cause of action as though set forth in full.

11 44. Respondents violated section 15126.2 of title 14 of the California Code of
12 Regulations in that the EIR does not adequately identify all significant environmental impacts of
13 the project. Defects in the EIR include, but are not limited to, the following:

14 a. The EIR does not adequately describe and analyze the impacts of the Project's
15 greenhouse gas emissions;

16 b. The EIR does not adequately describe and analyze the conventional air quality
17 impacts of the Project.

18 45. Respondents' actions in approving the EIR and the Project, without adequately
19 analyzing all significant environmental impacts of the project, are arbitrary and capricious,
20 without evidentiary support, a prejudicial abuse of discretion and are not in accordance with law.

21 **FOURTH CAUSE OF ACTION**

22 (Pub. Resources Code, §§ 21168, 21168.5; Failure to Adequately Address
23 Growth-Inducing Impacts of Project)

24 46. The allegations of paragraphs 1 through 45 are incorporated by reference into this
25 cause of action as though set forth in full.

26 47. Respondents violated Public Resources Code section 21100, subd. (b)(5) and section
27 15126.2, subd. (d) of title 14 of the California Code of Regulations, in that the EIR fails to
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1 adequately disclose, analyze, or mitigate the Project’s growth-inducing impacts on surrounding
2 communities caused by the Project’s substantial jobs/housing imbalance.

3 48. Respondents’ actions in approving the EIR and the Project, without adequately
4 addressing the growth-inducing impacts of the project, are arbitrary and capricious, without
5 evidentiary support, a prejudicial abuse of discretion and are not in accordance with law.

6 **FIFTH CAUSE OF ACTION**

7 (Pub. Resources Code, §§ 21168, 21168.5; Failure to Adequately Analyze and Adopt
8 Feasible Mitigation Measures for Impacts of the Project.)

9 49. The allegations of paragraphs 1 through 48 are incorporated by reference as though
10 set forth in full.

11 50. Respondents violated section 15126.4 of title 14 of the California Code of
12 Regulations in that the EIR does not adequately analyze and adopt feasible measures that can
13 minimize significant adverse impacts of the Project, including, but not limited to, the following
14 defects:

15 a. The EIR does not adequately describe and analyze how the Project’s
16 greenhouse gas emissions and impacts on climate change will be mitigated.

17 b. The EIR does not adequately describe and analyze feasible mitigation
18 measures to reduce the air quality impacts associated with the Project.

19 51. Respondents have failed to adopt mitigation measures that are specific,
20 enforceable, and effective.

21 52. Respondents’ actions in approving the EIR and the Project, without adequately
22 analyzing and adopting feasible mitigation for all significant environmental impacts of the
23 Project, and deferring this duty until a later process, are arbitrary and capricious, without
24 evidentiary support, a prejudicial abuse of discretion and are not in accordance with law.
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1 **SIXTH CAUSE OF ACTION**

2 (Pub. Resources Code, §§ 21168, 21168.5; Failure to Adequately Analyze a
3 Reasonable Range of Reasonable Range of Alternatives.)

4 53. The allegations of paragraphs 1 through 52 are incorporated by reference into
5 this cause of action as though set forth in full.

6 54. Respondents violated section 15126.6 of title 14 of the California Code of
7 Regulations in that, despite significant impacts of the Project on air quality and on greenhouse gas
8 emissions and climate change, the EIR does not adequately discuss alternatives that would avoid
9 or substantially lessen these impacts, such as a general plan development scenario without
10 limitations imposed by the Housing Cap and Growth Management Program. The EIR's flawed
11 analysis of only two slightly different development patterns under existing growth constraints
12 does not constitute an adequate analysis of the comparative merits of reasonable alternatives, as
13 required by CEQA.

14 55. Respondents' actions in approving the EIR and the Project, without adequately
15 analyzing a reasonable range of alternatives that would lessen its impacts, are arbitrary and
16 capricious, without evidentiary support, a prejudicial abuse of discretion, and are not in
17 accordance with law.

18 **SEVENTH CAUSE OF ACTION**

19 (Pub. Resources Code, §§ 21168, 21168.5; Failure to
20 Adequately Respond to Comments)

21 56. The allegations of paragraphs 1 through 55 are incorporated by reference into
22 this cause of action as though set forth in full.

23 57. Respondents violated section 15088 of title 14 of the California Code of
24 Regulations in that they failed to adequately respond to the comments by the Attorney General
25 and by others on major environmental issues in the draft EIR, including greenhouse gas emissions
26 and climate change, air quality, and the alternatives analysis.

1 implement in any way the approval of the General Plan Update without full compliance with
2 California law.

3 3. A declaration of the rights and duties of the parties hereto, including but not
4 limited to a declaratory judgment that prior to undertaking any action to carry out any aspect of
5 the General Plan Update, Respondents must prepare, circulate, and adopt a revised EIR in
6 accordance with the requirements of CEQA;

7 4. Petitioners' costs of suit; and

8 5. Such other relief as the Court deems just and proper.

9 Dated: August 21, 2009

Respectfully Submitted,

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