

ENDORSED  
FILED  
ALAMEDA COUNTY

FEB 27 2014

CLERK OF THE SUPERIOR COURT  
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17 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
18 COUNTY OF ALAMEDA

19 URBAN HABITAT PROGRAM, a non-  
20 profit corporation;

21 Petitioner,

22 vs.

23 METROPOLITAN TRANSPORTATION  
24 COMMISSION,

25 Respondent.

CASE NO.

RG14715534

VERIFIED PETITION FOR WRIT OF  
MANDATE

(California Code of Civil Procedure § 1085;  
California Government Code § 66531)

BY FAX



1 connect people to the resources, opportunities, and services to thrive. The omissions of MTC set  
2 forth herein have frustrated, and continue to frustrate, Urban Habitat's mission.

3 5. As a central part of its mission, Urban Habitat has long engaged actively in  
4 regional transportation, land use, and public health advocacy before local and regional  
5 transportation planning bodies, including the county Congestion Management Agencies (CMAs)  
6 responsible for developing both short-range congestion management programs and long-range  
7 county transportation plans. Cal. Gov. Code §§ 65089, 66531(a). In its diligent pursuit of these  
8 advocacy activities Urban Habitat first became aware in July 2013 that MTC had not developed  
9 the guidance that is the subject of this proceeding. Urban Habitat actively promotes the interests  
10 of those most directly affected by changes in the availability, efficacy, and fairness of local and  
11 regional transportation. Among its recent transportation-related public policy and advocacy  
12 work, Urban Habitat has engaged in the following:

13 a. Advocacy with MTC relating to the development and adoption of its long-  
14 range regional transportation plans, including the regional plan MTC adopted in July 2013.

15 b. Advocacy with MTC and CMAs relating to the adoption of MTC's  
16 regional programs and their implementation by CMAs, including the adoption and  
17 implementation of MTC's Lifeline Program and the One Bay Area Grant program.

18 c. Advocacy with the Alameda County Transportation Commission (the  
19 CMA for Alameda County) in connection with the 2013 update of its countywide transportation  
20 plan.

21 d. Policy development and advocacy with the Alameda County  
22 Transportation Commission in connection with the reauthorization of the Measure B  
23 transportation sales tax and expenditure plan.

24 e. Assistance to the San Francisco County Transportation Authority (the  
25 Congestion Management Agency for San Francisco) on development of an Equity Analysis for its  
26 Transit Effectiveness Project and Proposed Vehicle License Fee on the 2014 ballot.

27 6. Urban Habitat has standing to bring a cause of action for writ of mandate under the  
28 public interest doctrine of *Common Cause of California v. Board of Supervisors*, 49 Cal. 3d 432,

1 439 (1989). *See also Venice Town Council, Inc. v. City of Los Angeles*, 47 Cal. App. 4th 1547,  
2 1564 (1996); *Hogar Dulce Hogar v. Cmty. Dev. Comm'n*, 110 Cal. App. 4th 1288, 1294-95  
3 (2003); *Urban Habitat Program v. City of Pleasanton*, 164 Cal. App. 4th 1561, 1580-81 (2008).  
4 The object of the writ of mandate Urban Habitat seeks is the enforcement of a public duty, and  
5 the public has a right to enforcement of that duty in the public interest. There is a substantial  
6 public interest in MTC meeting its obligation to develop guidelines to be used in the preparation  
7 of county transportation plans, including a substantial public interest in ensuring that county  
8 transportation plans, and the regional transportation plan that is based on them, are consistent  
9 with state and federal legal requirements, and promote the important objectives of regional, state  
10 and federal policy.

11 7. Respondent METROPOLITAN TRANSPORTATION COMMISSION (MTC) is  
12 the transportation planning, coordinating, and financing agency for the nine-county San Francisco  
13 Bay Area, which consists of the Counties of Alameda, Contra Costa, Marin, Napa, San Mateo,  
14 Santa Clara, Solano, and Sonoma and the City and County of San Francisco. MTC is the  
15 metropolitan planning organization and designated recipient of federal transportation funds for  
16 the San Francisco Bay Area under federal law. 23 U.S.C. § 134(b); 49 U.S.C. § 5303; 49 U.S.C.  
17 § 5307(a)(2). MTC also serves as the regional transportation planning agency under state law,  
18 and receives tens of millions of dollars annually in funds or financial assistance directly from the  
19 State of California by grant, contract, or otherwise. Cal. Gov. Code § 66502. By statute, MTC is  
20 tasked with adopting a long-range regional transportation plan and a short-range transportation  
21 improvement program, and with developing guidelines to be used in the preparation of county  
22 transportation plans. *See, e.g.*, Cal. Gov. Code §§ 65080, 66508, 66531. In July 2013, MTC  
23 adopted "Plan Bay Area," its most recent regional transportation plan.

#### 24 **FACTUAL ALLEGATIONS**

25 8. Section 66531(a) of the Government Code statute requires a county transportation  
26 plan to be developed, and updated every two years, for each of the nine counties within MTC's  
27 jurisdiction. At the option of each county's Congestion Management Agency (CMA), it may  
28 adopt and update its own plan, or may opt to have MTC do so for it. *Id.*, subd. (a), (g).

- 1           9.       Section 66531 specifies that those county plans:
- 2               a.       “[S]hall be consistent with, and provide a long-range vision for, the
- 3 congestion management programs in the San Francisco Bay Area prepared pursuant to Section
- 4 65089” (Cal. Gov. Code § 65531(b));
- 5               b.       “[S]hall include recommended transportation improvements for the
- 6 succeeding 10- and 20-year periods” (Cal. Gov. Code § 65531(e));
- 7               c.       “[S]hall consider the most recent regional transportation plan adopted by”
- 8 MTC (Cal. Gov. Code § 65531(f)); and
- 9               d.       “[S]hall be the primary basis for [MTC’s] regional transportation plan and
- 10 shall be considered in the preparation of the regional transportation improvement program.” (*Id.*)
- 11           10.       MTC, in turn, is required to adopt a regional transportation plan that is based on
- 12 current county transportation plans. The regional transportation plan must contain (a) “a policy
- 13 element that describes the transportation issues in the region, identifies and quantifies regional
- 14 needs, and describes the desired short-range and long-range transportation goals, and pragmatic
- 15 objective and policy statements”; (b) “a sustainable communities strategy”; (c) “[a]n action
- 16 element that describes the programs and actions necessary to implement the plan and assigns
- 17 implementation responsibilities”; and (d) “[a] financial element that summarizes the cost of plan
- 18 implementation constrained by a realistic projection of available revenues.” Cal. Gov. Code §
- 19 65080(b).
- 20           11.       Regional transportation planning agencies, including MTC, must adopt and submit
- 21 to state and federal agencies an updated regional transportation plan every four years. Cal. Gov.
- 22 Code § 65080(d). MTC’s most recent regional transportation plan, “Plan Bay Area,” was adopted
- 23 on July 18, 2013. Its next regional transportation plan must be adopted and submitted to the
- 24 relevant state and federal agencies by 2017.
- 25           12.       To ensure that countywide transportation plans are consistent with and promote
- 26 regional goals, the state legislature has also conferred on MTC the responsibility of providing
- 27 direct guidance and assistance to counties in developing and implementing their respective
- 28 transportation plans. Pursuant to Section 66531(c) of the Government Code, MTC “*shall* develop

1 guidelines to be used in the preparation of county transportation plans.” Cal. Gov. Code §  
2 66531(c) (emphasis added). Further, MTC “shall” work with the counties to “jointly develop a  
3 funding strategy for the preparation of each county’s transportation plan.” *Id.* § 66531(h). Those  
4 guidelines must be consistent with MTC’s preparation of the regional transportation plan pursuant  
5 to Section 65081. *Id.* § 66531(c).

6 13. The guidelines MTC develops pursuant to Section 66531(c) must address the  
7 range of issues and requirements set forth in Section 66531. The guidelines must also ensure that  
8 that county transportation plans (a) are consistent with state and federal requirements governing  
9 the regional transportation plan, (b) are consistent with the current Plan Bay Area, and (c) provide  
10 a platform on which a legally-compliant regional transportation plan may be adopted in 2017.

11 14. MTC is not in compliance with its duties under Section 66531(c). Petitioner is  
12 informed and believes, and on that basis alleges, that the guidelines required by Section 66531(c)  
13 do not exist at all, and that such other CMA guidance as MTC may have adopted is incomplete  
14 with respect to county transportation plans and/or is obsolete and inconsistent with MTC’s  
15 preparation of the regional transportation plan as a result of substantial changes in state and  
16 federal legal requirements governing regional transportation planning (including the adoption of  
17 SB 375), and as a result of MTC’s adoption of Plan Bay Area in 2013.

18 15. A consequence of MTC’s failure to issue the guidelines required by Section 66531  
19 is that CMAs in the nine-county Bay Area have not updated their long-range county  
20 transportation plans on a regular basis. Many of those plans are four or more years old, and some  
21 much older. None has yet been updated to bring it into consistency with MTC’s current regional  
22 transportation plan, which was developed over a three-year period beginning in about 2010.  
23 Unless MTC promptly adopts guidelines that provide a consistent framework by which county  
24 transportation plan updates can occur prior to the adoption of MTC’s next regional transportation  
25 plan, the next regional plan will be based on outdated county plans and will not comply with  
26 current state and federal requirements, including those pursuant to S.B. 375 and Title VI of the  
27 Civil Rights Act of 1964.

28

1 **FIRST CAUSE OF ACTION**

2 **Writ of Mandate (Cal. Civ. Proc. Code § 1085)**

3 16. Petitioner incorporates by reference herein each and every allegation contained in  
4 the previous paragraphs.

5 17. Petitioner seeks a writ of mandate requiring MTC to prepare, adopt and implement  
6 guidelines to be used in the preparation of county transportation plans (the Guidelines).

7 18. MTC has a clear, present, and ministerial duty to develop and implement the  
8 Guidelines, and that duty is enforceable through a writ of mandate.

9 19. Petitioner is informed and believes that MTC has not developed the Guidelines as  
10 required by Section 66531(c) of the Government Code and that MTC will not do so absent an  
11 order from this Court.

12 20. Petitioner is directly and beneficially interested in MTC's compliance with all  
13 applicable provisions of state law as set forth herein. Cal. Civ. Proc. Code § 1086. It is interested  
14 in having the laws executed and the public duty enforced. Moreover, MTC's duty to develop the  
15 guidelines to ensure that updated county transportation plans are adopted promptly and in  
16 compliance with all applicable legal requirements for county and regional transportation planning  
17 is sharp, and the public's need for prompt and legally compliant transportation planning is  
18 weighty. Petitioner has standing to bring this claim for writ of mandate on behalf of the public  
19 interest and as a result of its beneficial interest, as set forth above.

20 21. Petitioner has no other plain, speedy, or adequate remedy at law to compel MTC to  
21 develop guidelines consistent with Section 66531(c) of the Government Code. Cal. Civ. Proc.  
22 Code § 1086.

23 22. At all times relevant to this action, MTC has had the ability to perform the duties  
24 set forth herein, and has failed and refused to perform its legal duties. Unless compelled by this  
25 Court to perform those acts and duties, MTC will continue to refuse to carry out those duties and  
26 will continue to violate the law. Petitioner and the public will continue to be injured as a result.

27 23. Wherefore, Petitioner prays for a writ of mandate, as set forth below.  
28

**PRAYER FOR RELIEF**

24. WHEREFORE, petitioner prays that the Court grant it the following relief:

a. For a peremptory writ of mandate commanding MTC, pursuant to Government Code section 66531(c), to develop guidelines to be used in the preparation of county transportation plans that (i) comply with all applicable requirements of state law, and (ii) provide the basis for MTC's adoption of a regional transportation plan that complies with all applicable state and federal requirements;

b. For an award to petitioner of its costs of suit;

c. For an award to petitioner of its reasonable attorneys' fees; and

d. For such other and further relief as the Court deems just and proper.

DATED: February 27, 2014

PAUL HASTINGS LLP

By: 

CHRISTOPHER M. MOONEY

Attorneys for Petitioner  
URBAN HABITAT PROGRAM

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**VERIFICATION**

I, Bob Allen, am the acting executive director of Urban Habitat Program, and am authorized to make this verification on its behalf. I have read the foregoing Petition for Writ of Mandate and know its contents. All facts alleged in the petition are true and correct of my own personal knowledge, except where stated on information and belief, and as to those facts, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 27 day of February, 2014 at San Francisco, California.



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Bob Allen