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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF ALAMEDA  
13 CIVIL DIVISION

14 **URBAN HABITAT PROGRAM; and**  
15 **SANDRA DE GREGORIO,**  
16  
17 Petitioners and Plaintiffs,  
18  
19 **PEOPLE OF THE STATE OF**  
**CALIFORNIA, ex rel. EDMUND G.**  
**BROWN JR., ATTORNEY GENERAL, et**  
**al.,**  
20  
21 Plaintiff-Intervenor,  
22  
23 **v.**  
24  
25 **CITY OF PLEASANTON, a Municipal**  
**Corporation; THE CITY COUNCIL OF**  
**PLEASANTON; and DOES 1-10,**  
26  
27  
28 Respondents and  
Defendants.

Case No. RG 06 293831

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
INTERVENOR'S MOTION FOR WRIT  
OF MANDATE**

Date: December 16, 2009  
Time: 9:00 A.M.  
Judge: The Honorable Frank Roesch  
Dept: 31

Trial Date: TBA

Action Filed: October 17, 2006

**ASSIGNED FOR ALL PURPOSES TO  
JUDGE FRANK ROESCH**

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1 **INTRODUCTION**

2 California has suffered from a severe shortage of affordable housing for decades. State  
3 lawmakers have recognized this deficit as a matter of statewide concern and have determined that  
4 remedying the problem requires local governments to assume responsibility for meeting their fair  
5 share of regional housing needs. To that end, lawmakers have adopted statutes requiring cities to  
6 accommodate their share of housing. Each city receives its share of the regional housing  
7 allocation and it must identify sufficient sites in the housing element of its general plan and  
8 remove regulatory barriers to allow for development of these units within the statutorily  
9 prescribed five-year planning period.

10 Despite this clear directive, the City of Pleasanton (“City” or “Pleasanton”) has adopted and  
11 implemented local policies that prevent the City from complying with these state laws. The City  
12 has capped residential development at 29,000 total units, and it tightly restricts the number of  
13 annual residential building permits that can be issued. Both of these policies are in direct conflict  
14 with state law, because they impede the City’s ability to accommodate its share of the regional  
15 housing need. The conflicts are absolute and unequivocal. The California Constitution specifies  
16 that a city cannot implement local policies that conflict with superior state statutes. Where, as  
17 here, a direct conflict exists, the local regulations are preempted.

18 Moreover, the City’s housing policies are invalid because they violate the Due Process  
19 Clause of the California Constitution. These restrictions have adverse impacts beyond  
20 Pleasanton’s borders and are not reasonably related to the regional public welfare. The City  
21 asserts the policies are necessary for the orderly growth and development of the city; however,  
22 the City’s policies are skewed because they limit residential development while promoting  
23 commercial expansion. This mismatch between housing and commercial growth has led to an  
24 imbalance between jobs and housing in the City. As workers commute into the City for their jobs,  
25 they create increased traffic congestion, which leads to pollution, including greenhouse gas  
26 emissions. The City continues to implement policies that create these impacts, though it  
27 recognizes that the entire Tri-Valley region has a housing shortfall that pushes workers to more  
28 distant locales, such as Contra Costa and San Joaquin counties, to find affordable housing. The

1 detrimental effects to the regional welfare are not outweighed by the City’s weak justification for  
2 adopting these policies, an issue on which the City bears the burden of proof.

3 Lastly, the City’s restrictive housing policies create internal inconsistencies within the  
4 City’s general plan. The policies are part of the Land Use Element of the plan, while policies in  
5 the Housing Element recognize that these residential development restrictions must be removed  
6 to allow the City to comply with its regional housing obligations. The City cannot reconcile the  
7 inconsistency between the policies in its Land Use Element and Housing Element.

8 **ATTORNEY GENERAL’S STATEMENT OF INTEREST**

9 The Attorney General has broad authority to enforce state law. “Subject to the powers and  
10 duties of the Governor, the Attorney General shall be the chief law officer of the State. It shall be  
11 the duty of the Attorney General to see that the laws of the State are uniformly and adequately  
12 enforced.” (Cal. Const. art. 5 §13.) The Legislature has expressly declared that housing is a  
13 matter of statewide importance. (Gov. Code §65580<sup>1</sup>.) And courts have repeatedly found the  
14 provision of adequate housing to be a matter of statewide concern. (*Building Ind. Assn. of San*  
15 *Diego, Inc. v. City of Oceanside* (1994) 27 Cal.App.4th 744, 750 (“*Oceanside*”); *Buena Vista*  
16 *Gardens Apartments Assoc. v. City of San Diego* (1985) 175 Cal.App.3d 289, 306 (“*Buena*  
17 *Vista*”), citing numerous statutes.) As the California Supreme Court recently explained, “no  
18 California locality is immune from the legal and practical necessity to expand housing due to  
19 increasing population pressures.” (*Muzzy Ranch Co. v. Solano Cty. Airport Land Use Comm.*  
20 (2007) 41 Cal.4th 372, 383.)

21 The Attorney General intervened in this litigation because it concerns a blatant attempt by a  
22 local jurisdiction to circumvent state Housing laws. By adopting a strict cap on residential  
23 development, the City has ignored its unambiguous duty to accommodate its fair share of  
24 housing. Such exclusionary policies run directly counter to state law and the public interest. As  
25 Justice Mosk stated in his concurring opinion in *Building Industry Association v. City of*  
26 *Camarillo* (1986) 41 Cal.3d 810, 825:

27 \_\_\_\_\_  
28 <sup>1</sup> Unless otherwise noted, all statutory references are to the California Government Code.

1 I must repeat the misgivings I retain about the constitutional validity of no-growth or  
2 limited-growth ordinances. An impermissible elitist concept is invoked when a community  
3 constructs a legal moat around its perimeter to exclude all or most outsiders. The growing  
4 tendency of some communities to arbitrarily restrict housing to present residents appears at  
5 odds with Supreme Court pronouncements from *Shelley v. Kraemer* (1948) 334 U.S. 1, to  
6 the words of Justice Douglas in *Reitman v. Mulkey* (1967) 387 U.S. 369, 385:“housing is  
7 clearly marked with the public interest.”

8 The City of Pleasanton has attempted to construct a legal moat around its boundaries by capping  
9 residential growth and ignoring state mandates. If other cities in the State were to adopt  
10 restrictions similar to Pleasanton’s policies, they would render as dead letter state statutes adopted  
11 to promote adequate housing for all income levels. Such an outcome is unacceptable.

12 Restrictive housing policies such as those adopted by the City also can create severe jobs-  
13 housing imbalances, as housing opportunities are limited in areas where jobs are located. These in  
14 turn can lead to sprawl, traffic congestion, and adverse air quality and greenhouse gas impacts  
15 that undermine state law aimed at combating global warming. In 2006, the Legislature adopted  
16 major global warming legislation (Assembly Bill 32 (“A.B. 32”)), finding that “[g]lobal warming  
17 poses a serious threat to the economic well-being, public health, natural resources, and the  
18 environment of California,” and requiring substantial statewide reductions in greenhouse gas  
19 emissions by 2020. (Stats. 2006, c. 488, §1.) The agency charged with implementing A.B. 32, the  
20 California Air Resources Board, has called local governments “essential partners” in  
21 implementing the statute and urged them to reduce their emissions 15% from current levels by  
22 2020. (California Air Resources Board, Climate Change Scoping Plan (Dec. 2008) at pp. 26-27,  
23 Intervenor’s Request for Judicial Notice (“IRJN”) Ex. 1.) Additionally, in adopting Senate Bill  
24 375 (“S.B. 375”) in 2008, which seeks to reduce greenhouse gas emissions by mitigating land-use  
25 and transportation impacts, the Legislature further found that “[t]he transportation sector is the  
26 single largest contributor of greenhouse gases of any sector” in the state, with automobiles and  
27 light trucks alone contributing almost 30 percent of statewide emissions (and 50 percent of air  
28 pollution). (Stats. 2008, c. 728, §1(a).) The Attorney General is concerned that exclusionary local  
housing laws like those in Pleasanton will make it very difficult to achieve reductions in  
greenhouse gas emissions from cars and trucks, undercutting these important state laws.

1 **FACTS**

2 In 1996 the City’s voters adopted an initiative capping total residential development at  
3 29,000 units. (“Housing Cap” or “Cap”.) The Cap is part of the Land Use Element of the City’s  
4 general plan:

5 Policy 15: Maintain a maximum housing buildout of 29,000 units within the Planning  
6 Area.

7 Program 15.1: Monitor and zone future residential developments so as not to exceed the  
8 maximum housing buildout.

9 Program 15.2: The foregoing Policy 15 and Program 15.1 and this Program 15.2 shall be  
10 amended only by a vote of the people. (1996 General Plan Land Use Policy 15, see also  
11 General Plan Update 2005-2025, Land Use Element at p. 2-37, Petitioners’ Request for  
12 Judicial Notice (“PRJN”) Ex. J.)

13 The Housing Cap’s rigid numerical limit on residential development does not include an  
14 exception to ensure that the City is able to meet state law requirements.

15 The City has stated in court documents, that as of January 2007, only 2,755 units remained  
16 under the Cap. (Resp. Brief at p.13, PRJN Ex. H.) However, the City’s fair share of the Regional  
17 Housing Needs Allocation (RHNA) for the 2007-2014 planning period is 3,277 units. (2008 Final  
18 RHNA, PRJN Ex. E.) Additionally, the City has a shortfall of 871 units from the prior 1999 -  
19 2007 planning period. (Housing Element at p. 35, PRJN Ex. L.) As a result of its failure to  
20 accommodate this shortfall in the last planning period, the California Department of Housing and  
21 Community Development (“HCD”) found the City’s Housing Element out of compliance with  
22 Housing Element Law. (March 23, 2006, ltr. from C. Creswell to N. Fialho IRJN Ex. 2.)

23 In addition to the Housing Cap, the City has adopted a Growth Management Program that  
24 limits the number of residential units that can be approved each year. The Program’s  
25 implementing ordinance restricts the number of building permits that can be issued each year to  
26 350, with an absolute maximum of 750, if all exceptions are made. (Pleasanton Muni. Code  
27 §17.36.080(A)(1)(b), PRJN Ex. I.) With this restriction, the maximum number of permits that  
28 could issue between now and the end of the 2007-2014 planning period is at the very most 3,750  
units (750 per year for five years). This number is numerically insufficient to meet the past  
RHNA share (871) and the current RHNA share (3,277), a total of 4,148 units.



1 *Lagoon Valley v. City of Vacaville* (2007) 154 Cal.App.4th 807, 815 (citation omitted).) “The  
2 propriety of virtually any local decision affecting land use and development depends upon  
3 consistency with the applicable general plan and its elements.” (*Ibid.*, citing *Citizens of Goleta*  
4 *Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 570-571.) “The general plan ‘is, in short, a  
5 constitution for all further development within the city.’” (*Comm. for Responsible Planning v.*  
6 *City of Indian Wells* (1989) 209 Cal. App. 3d 1005, 1013, quoting *Friends of “B” Street v. City of*  
7 *Hayward* (1980) 106 Cal.App.3d 988, 997.)

8 The housing element is of “preeminent importance” among the seven requisite elements of  
9 a general plan (§65302 subd. (c); *Comm. for Responsible Planning*, *supra*, 209 Cal. App. 3d at p.  
10 1013.) As the Governor’s Office of Planning and Research (“OPR”) explains,

11 Unlike the other mandatory elements, the housing element is subject to detailed statutory  
12 requirements regarding its content and must be updated every five years. The housing  
13 element is also subject to mandatory review by a state agency. This reflects the statutory  
14 recognition that the availability of housing is a matter of statewide importance and that  
15 cooperation between government and the private sector is critical to attainment of the  
16 state’s housing goals. (OPR General Plan Guidelines (2003), IRJN Ex. 3 at p. 61, see  
17 §65588.)<sup>3</sup>

18 OPR goes on to note,

19 Housing element law is the state’s primary market-based strategy to increase housing  
20 supply. The law recognizes the most critical decisions regarding housing development  
21 occur at the local level within the context of the general plan. In order for the private sector  
22 to adequately address housing needs and demand, local governments must adopt land-use  
23 plans and regulatory schemes that provide opportunities for, and do not unduly constrain,  
24 housing development for all income groups. (*Ibid.*)

25 The precise requirements for a housing element are set forth in state Housing Element Law.  
26 (§65580 *et seq.*) Two years before a city’s housing element is due, the California Department of  
27 Housing and Community Development (“HCD”) determines the total regional housing need  
28 allocation (“RHNA”) for each region in the state based on population projections and forecasts. (§  
65584.01 subd. (b).) HCD then provides the regional allocation to each local Council of  
Governments. (§65584 subd. (b).) In the Bay Area, the Association of Bay Area Governments

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<sup>3</sup> As amended, the statute permits cities to revisit their housing elements every eight years, beginning with the next round of revisions. (§65588.)

1 (“ABAG”) receives the RHNA and formulates each city’s fair share of the regional allocation for  
2 the five-year planning period. (*Id.*) To determine this fair share, ABAG uses a methodology that  
3 includes surveying local governments regarding the balance between jobs and housing,  
4 opportunities and constraints on development, and other relevant factors. (§65584.04 subd. (d).)  
5 Although ABAG can take a variety of information into account in setting a city’s RHNA share,  
6 state law specifies that, “Any ordinance, policy, voter-approved measure, or standard of a city or  
7 county that directly or indirectly limits the number of residential building permits issued by a city  
8 or county shall not be a justification for a determination or a reduction in the share of a city or  
9 county of the regional housing need.” (§ 65584.04 subd. (f).)

10 After ABAG allocates the fair share of the RHNA, state law requires each city’s housing  
11 element to identify sufficient sites to accommodate its share. The statute provides that a city’s  
12 housing element must “identify adequate sites for housing, ... and shall make adequate provision  
13 for the existing and projected needs of all economic segments of the community.” (§ 65583.) As  
14 further explained, “These existing and projected needs shall include the locality's share of the  
15 regional housing need in accordance with Section 65584.” (§65583 subd. (a)(1).) This  
16 requirement specifies that the element contain a site-specific inventory of land suitable for  
17 development that will be made available during the five-year planning period. (§§65583 subd.  
18 (c)(1) and 65583.2.) As explained in the statute, “A city's ... inventory of land suitable for  
19 residential development ... shall be used to identify sites that can be developed for housing within  
20 the planning period and that are sufficient to provide for the jurisdiction's share of the regional  
21 housing need for all income levels...” (§65583.2 subd. (a).) And the law specifically mandates  
22 that a city “address, and where appropriate and legally possible, remove governmental restraints”  
23 to housing development. (§65583 subd. (c)(3).)<sup>4</sup> These statutory obligations are mandatory. (§§  
24 65583 subd. (h), 65587 subd. (b); see *Fonseca v. City of Gilroy* (2007) 148 Cal.App.4th 1174,  
25 1182; *Hoffmaster v. City of San Diego* (1997) 55 Cal.App.4th 1098, 1105.)

26 <sup>4</sup> The element must also include a statement of the community’s goals, quantified  
27 objectives and policies related to the maintenance, preservation, improvement and development  
28 of housing (§65583 subd. (b)) and a program setting forth a five-year schedule of actions to  
implement the housing policies and goals. (§65583 subd. (c).)

1           **A. State Lawmakers Have Unequivocally Expressed the Importance of Local**  
2           **Government’s Role in Meeting State Housing Goals**

3           California has experienced decades of undersupply of housing, which has led to an  
4           affordability crisis in the State. (HCD, *The State of Housing in California 2009: Supply and*  
5           *Affordability Problems Remain* (Sept. 2009) at p. 1, IRJN Ex. 4.) Though the current economic  
6           downturn has improved affordability in some areas, it has not mitigated the long-term lack of  
7           supply. (*Ibid.*) The continued housing crisis results in part from sustained population growth,  
8           reduced construction of homes, and the location of foreclosed properties, which “will not meet  
9           the need or demand for more infill housing accessible to jobs and transit in more central locations,  
10          necessary to reduce the costs of energy, transportation and greenhouse gas emissions.” (*Ibid.*)

11          The housing crisis in California has provided the impetus for adopting many of the state  
12          housing laws raised in this litigation. The lawmakers who adopted these statutes expressly voiced  
13          their belief in the critical importance of providing adequate housing to all State residents and their  
14          intent to make local governments responsible for the attainment of State housing goals:

15                 The Legislature... declares...(a) The availability of housing is of vital statewide  
16                 importance, and the early attainment of decent housing and a suitable living environment  
17                 for every Californian... is a priority of the highest order...(d) Local and state governments  
18                 have a responsibility to use the powers vested in them to facilitate the improvement and  
19                 development of housing to make adequate provision for the housing needs of all economic  
20                 segments of the community.” (§65580.)

21          Additionally, they stated: “It is the intent of the Legislature in enacting this article:... (a) To  
22          assure that ... cities recognize their responsibilities in contributing to the attainment of the state  
23          housing goal. (b) To assure that ... cities will prepare and implement housing elements which, ...  
24          will move toward attainment of the state housing goal.” (§65581.)

25          Similarly, in 1980, when the Legislature adopted the Least Cost Zoning Law, it found that  
26          the severe shortage of affordable housing required adoption of state policies requiring local  
27          governments to take actions to encourage development of new housing. The statute provides in  
28          relevant part:

                  The Legislature finds and declares that there exists a severe shortage of affordable housing,  
                  especially for persons and families of low and moderate income, and that there is an  
                  immediate need to encourage the development of new housing... through changes in law

1 designed to do all of the following:...(2) Assure that local governments zone sufficient land  
2 at densities high enough for production of affordable housing. (3) Assure that local  
3 governments make a diligent effort through the administration of land use and development  
4 controls and the provision of regulatory concessions and incentives to significantly reduce  
5 housing development costs and thereby facilitate the development of affordable housing,  
6 including housing for elderly persons and families... (§65913.)

7 The Legislative findings associated with this and other state housing laws leave little room for  
8 doubt that lawmakers have mandated action at the local level to remedy the severe statewide  
9 shortage of affordable housing.

10 Legislative history for these statutes provides additional insight into the intent behind these  
11 laws. On September 18, 1980, Assemblyman Mike Roos, who sponsored the bill that first  
12 adopted the state Housing Element Law, sent a letter to Governor Jerry Brown urging him to sign  
13 the legislation. He stated that the bill’s most significant requirement was that “each community  
14 assume responsibility for meeting its fair share of regional housing needs. This provision  
15 recognizes that housing markets transcend municipal boundaries, that solving the housing crisis  
16 demands cooperation by all communities, and that in a free and open society we must discourage  
17 unwarranted exclusionary policies.” (Sept. 18, 1980, Ltr. from Assemblyman Mike Roos to Hon.  
18 Edmund G. Brown Jr. re: Assembly Bill 2853, at p. 2, IRJN Ex. 5.) In the enrolled bill report for  
19 the same legislation, OPR noted, “California is suffering from a severe housing crisis which the  
20 Administration is determined to alleviate. AB 2853 will serve to facilitate efforts to mitigate this  
21 crisis by indicating various methods local governments can use to increase housing.” (Office of  
22 Planning and Research, Enrolled Bill Report for A.B. 2853, Sept. 24, 1980, at p. 4, IRJN Ex. 5.)

23 Lawmakers have also recognized that the housing crisis requires attention, because it leads  
24 to larger societal and environmental problems in the State. For instance, Government Code  
25 section 65589.5, which is known as the Housing Accountability Act, states:

26 The Legislature finds and declares all of the following: (1) The lack of housing, including  
27 emergency shelters, is a critical problem that threatens the economic, environmental, and  
28 social quality of life in California. (2) ... The excessive cost of the state’s housing supply is  
partially caused by activities and policies of many local governments that limit the approval  
of housing, increase the cost of land for housing, and require high fees and exactions to be  
paid by producers of housing. (3) Among the consequences of those actions are  
discrimination against low-income and minority households, lack of housing to support  
employment growth, imbalance in jobs and housing, reduced mobility, urban sprawl,

1 excessive commuting, and air quality deterioration. (4) Many local governments do not give  
2 adequate attention to the economic, environmental, and social costs of decisions that result  
3 in disapproval of housing projects, reduction in density of housing projects and excessive  
standards for housing projects. (§65589.5.)

4 In numerous statutes over several decades, the Legislature has expressed serious concern  
5 with California’s housing crisis and its impacts. Through the adoption of various measures that  
6 now comprise state Housing Law, lawmakers have directed local governments to play a  
7 significant role in rectifying this crisis. They must accommodate their share of the RHNA by,  
8 among other things, removing regulatory barriers that stand in the way of the construction of the  
9 needed housing at each income level.

10 **II. THE CITY’S HOUSING CAP AND GROWTH MANAGEMENT PROGRAM ARE INVALID**

11 **A. State Housing Law Preempts the City’s Conflicting Housing Policies**

12 The California Constitution provides, “All laws of a general nature have uniform  
13 operation... A local or special statute is invalid in any case if a general statute can be made  
14 applicable.” (Cal. Const. art. 4, §16.) Furthermore, “A county or city may make and enforce  
15 within its limits all local, police, sanitary, and other ordinances and *regulations not in conflict*  
16 *with general laws.*” (Cal. Const. art. 11, §7.) A conflict exists if the local legislation contradicts  
17 general law. (*Shea Homes Ltd. Partnership v. County of Alameda* (2004) 110 Cal.App. 4th 1246,  
18 1265, citing, *Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 897-898.) “A  
19 city may not adopt ordinances and regulations that conflict with the state Planning and Zoning  
20 Law.” (*Leshar Commun., Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 547 (“*Leshar*”).)

21 The first step in the reviewing court's inquiry is to determine whether a genuine conflict  
22 exists between the local ordinance and state law. (*Shea Homes, supra*, 110 Cal.App.4th at p.  
23 1265.) Where a court examines a conflict between local regulations and state law, “the issue is  
24 essentially preemption.” (*Oceanside, supra*, at p. 750.) Once the court determines that there is a  
25 conflict between a local ordinance and state Planning and Zoning law, the state statute  
26 automatically invalidates the ordinance. (*Leshar, supra*, at p. 544.)

27 Here, the City admits that as of January 2007, the City had 2,755 units remaining under the  
28 Cap. Yet under state law, the City must accommodate its fair share of 3,277 residential units

1 within the 2007-2014 planning period. Without modifying or lifting the Housing Cap, the City  
2 falls 522 units short of its RHNA share in this planning period.<sup>5</sup> Moreover, with the Cap in place,  
3 the City will fall short on all future RHNA allocations, which will increase over time as the  
4 population grows. Thus, the Cap presents a clear barrier to achieving the RHNA in this and future  
5 housing cycles. (*Oceanside, supra*, at p. 771 (forecast of city’s inability to meet low-income state  
6 housing obligations in the future used by court to determine that growth management initiative  
7 conflicted with state housing law.) The conflict here is unequivocal. Where such a clear conflict  
8 exists, state law preempts the City’s policy.

9 Similarly, the Growth Management Program is in conflict with state law and is invalid.  
10 Housing Element Law specifically requires cities to lift constraints to meeting their RHNA share,  
11 yet the City has done nothing to address the obstacle posed by the Growth Management Program.  
12 (§§65583 subd. (c), 65583.2 subd. (a), 65913.) The City must accommodate its “carryover”  
13 RHNA obligation from the prior planning period, on top of its current RHNA share, within the  
14 planning period that ends in 2014. It must therefore be capable of issuing permits for 4,148 units  
15 in the next five years—3,277 units for the current period, and 871 carryover units from the prior  
16 planning cycle—units for which it “failed to identify or make available adequate sites.”  
17 (§65584.09 subd (a); §65583.2 subd. (a).) However, even were it to utilize the maximum, the  
18 Growth Management Program allows the City to issue only 3,750 permits during that time, 398  
19 units short of its obligation.

20 In its 2003 Housing Element, the City recognized that the Growth Management Program  
21 stood in the way of accommodating the full share of its RHNA for the previous planning period--  
22 let alone future periods-- and had to be amended for the City to meet state housing law  
23 requirements. It adopted as a policy the following:

24 Program 34.5: Amend the Growth Management Ordinance to allow the City Council

25 <sup>5</sup> Nor can the City meet its obligation to accommodate the unmet portion of the RHNA for  
26 the previous 1999-2007 planning period. As HCD recognized, the City did not take the actions  
27 necessary to address the shortfall of 871 units in the previous cycle. (March 23, 2006, letter from  
28 Cathy Creswell to Nelson Fialho re: Status of the City of Pleasanton’s Housing Element IRJN Ex.  
2.) State law is explicit that the City must accommodate both its previous unmet balance (§  
65584.09) as well as its fair share for the current planning period. (§65583.)

1 to override the annual housing allocations in order to grant approvals to projects so  
2 that the City is able to meet its total regional housing needs goals by the end of the  
3 planning period. Exceptional affordable housing projects which meet the  
4 community's goals and policies, have mitigated their impacts, and can be served with  
5 infrastructure and services consistent with City policies are especially encouraged  
6 with such overrides. (Housing Element Program 34.5 at p. 86, PRJN Ex. L.)

7  
8 Though the City adopted this policy, it failed to change the ordinance. Therefore, like the Cap, the  
9 Growth Management Program prevents the City from complying with state law. Again, the  
10 conflict is unmistakable.

11  
12 **B. The City's Housing Policies Violate the Due Process Clause of the State  
13 Constitution**

14 Pleasanton's implementation of the Housing Cap and Growth Management Program  
15 violates the Due Process Clause of the California Constitution because the policies adversely  
16 impact the welfare of residents beyond its borders and are not reasonably related to the regional  
17 welfare. (Cal. Const. art I, §7(a); *Assoc. Home Builders of the Greater Eastbay, Inc. v. City of  
18 Livermore*, (1976) 18 Cal. 3d 582, 608 ("Livermore").) In *Livermore* the Court evaluated the  
19 constitutionality of an initiative that temporarily prohibited issuance of residential building  
20 permits until local educational, sewage and water supply facilities were constructed to  
21 accommodate new development. The Court explained, "[T]he land use restriction withstands  
22 constitutional attack if it is fairly debatable that the restriction in fact bears a reasonable relation  
23 to the general welfare.... [T]he constitutionality of the restriction must be measured by its impacts  
24 not only upon the welfare of the enacting community, but upon the welfare of the surrounding  
25 region." (*Id.* at p. 601.) The Court specified the test a trial court should use to determine whether  
26 a restriction has a "real and substantial relation to the public welfare[:]" 1) forecast the probable  
27 effect and duration of the restriction; 2) identify the competing interests affected by the restriction;  
28 and 3) determine whether the regulation, in light of its probable impact, represents a reasonable  
accommodation of the competing interests. (*Id.* at pp. 608-609.)

Where the validity of a local growth control measure, such as those adopted by the City, is  
challenged, Evidence Code section 669.5 places the burden of proof on the city to demonstrate  
that its policy is justified. "With the enactment of section 669.5 in 1980, the Legislature intended  
as a matter of public policy to shift the burden of proof in actions challenging the validity of

1 certain growth control ordinances to the proponents of those ordinances, to counteract unjustified  
2 limitations on the supply of local housing sufficient to meet the local entity's share of regional  
3 housing needs.” (*Murphy v. City of Alameda* (1992) 11 Cal.App.4th 906, 910, citing, *Building*  
4 *Industry Assn. v. City of Camarillo, supra*, 41 Cal.3d at p. 818.) Thus the City has the burden of  
5 proving its growth control ordinances are *necessary* for the protection of the public health, safety,  
6 or welfare of the residents of Pleasanton. (Evid. Code §669.5(b).)

7       Here, the City cannot meet its burden under *Livermore* or Evidence Code Section 669.5.  
8 The Housing Cap and Growth Management Program and Ordinance prevent the City from  
9 accommodating its unmet past, current, and future RHNA share and adversely impact the welfare  
10 of residents throughout the Bay Area region. Under the *Livermore* test, it is clear that these  
11 policies do not have a real and substantial relation to the public welfare. First, the probable effects  
12 of these restrictions are significant and likely to get worse. While the Cap and the Growth  
13 Management Program limit residential development indefinitely, the City has promoted and  
14 continues to promote commercial development. As a result, the community is “job rich” with  
15 more than 1.6 jobs for every working resident. (Pleasanton Economic Development Strategic Plan  
16 (Feb. 6, 2007) at p. 4, IRJN Ex. 6.) “[E]ven if every resident stayed in Pleasanton to work, there  
17 would be substantial in-commuting to fill the remaining jobs.” (*Ibid.*) In fact, some 40,000 non-  
18 residents commute to jobs in Pleasanton every day. According to ABAG’s estimates, in 2005  
19 approximately 21% of the City’s workers lived in the City, another 29% lived elsewhere in the  
20 Tri-Valley area and the remaining 50% commute from the greater outlying area. (General Plan  
21 DEIR at 3.3-3, PRJN Ex. R.) In its Economic Development Strategic Plan, which serves as a  
22 “companion to the City’s General Plan Update”, the City recognizes that the jobs/housing  
23 imbalance created by the Cap and Growth Management Program has increased traffic congestion  
24 and pollution. (Economic Development Strategic Plan at p. 5, IRJN Ex. 6.) Yet in its General  
25 Plan Update, adopted July 21, 2009 the City has planned for a substantial increase in commercial  
26 development through 2025, which will further exacerbate this imbalance and its impacts on the  
27 surrounding regions. (Land Use Element at p. 2-17, PRJN Ex. J.) The City projects that the new  
28 jobs will lead to a 46% increase in vehicle miles traveled by 2025 and an attendant growth in

1 greenhouse gas emissions. (General Plan DEIR at p. 3.10-8, PRJN Ex. R.) Because the Cap and  
2 Growth Management Program continue to be enforced, these effects will continue indefinitely.

3 Second, the City's interest in limiting residential development is outweighed by competing  
4 interests. The City states that its goal is the "orderly growth and development of the city..." (Land  
5 Use Element at p. 2-15, PRJN Ex. J.) However, the City's vision of orderly growth means the  
6 promotion of commercial development and artificially restricting residential development. As the  
7 City recognizes, these policies have made Pleasanton one of the most affluent communities in the  
8 Bay Area, but have led to a scarcity in affordable housing for workers within the City and adverse  
9 regional environmental harms. (Economic Development Strategic Plan at pp. 3-4, 25, IRJN Ex.  
10 6.) The City acknowledges that the workers displaced by these policies are not absorbed by  
11 nearby communities.

12 The Tri-Valley area, like the San Francisco Bay Area in general, is experiencing a  
13 shortage of housing. This is evidenced by the relatively low vacancy rates and by the  
14 fact that many Tri-Valley employees commute from outside the area.... The shortfall  
15 is qualitative, as well as quantitative, in that the market has not produced housing  
16 affordable to Tri-Valley workers. A consequence of the imbalance between income  
and the affordability of housing is the increasing number of Tri-Valley workers who  
live in east Contra Costa County and in San Joaquin County resulting in long  
commutes to work via the congested freeway system." (Subregional Planning  
Element at p. 14-7, PRJN M.)

17 And the City recognizes the need to remedy the regional housing shortage: "It is important to  
18 ensure an adequate supply of housing for people who work in the Tri-Valley area. When people  
19 live close to their place of employment, they commute shorter distances, thereby reducing traffic  
20 congestion and air pollution." (*Ibid.*)

21 Third, *Livermore* requires that the Court consider whether the local regulations, in light of  
22 their probable impact, represent a reasonable accommodation of the competing interests. The City  
23 has made no attempt to remedy the problem it has created through its housing policies, and  
24 instead, continues to promote development patterns that will force more of the City's workers to  
25 find housing in distant communities. This will create more sprawl, lead to more greenhouse gas  
26 emissions and other air pollution, and increase dependence on foreign oil. (Jan. 13, 2009 Ltr.  
27 from Attorney General Edmund G. Brown to Janice Stern at p. 5, PRJN Ex. S.) It is not even  
28 "fairly debatable" that these adverse impacts to the region are reasonably related to the general

1 welfare. They are unconstitutional.

2 **C. The City's Housing Policies Render Its General Plan Internally**  
3 **Inconsistent**

4 In addition to the conflict that exists between state law and the City's housing policies,  
5 there are internal inconsistencies within the City's general plan. A city's general plan must be  
6 internally consistent. (§65300.5.) Any element that is found to be inconsistent is invalid.

7 (*Concerned Citizens of Calaveras County v. Board of Supervisors* (1985) 166 Cal.App.3d 90.)

8 Where a general plan on its face shows substantial contradictions and inconsistencies, it "cannot  
9 serve as an effective plan because those subject to the plan cannot tell what it says should happen  
10 or not happen." (*Id.* at 97.)

11 The City's General Plan contains the Housing Cap and Growth Management Program in its  
12 Land Use Element, while its Housing Element includes policies that acknowledge these programs  
13 as impediments to meeting the City's share of the RHNA. Policy 15 of the Land Use Element  
14 requires the City to "Maintain a maximum housing buildout of 29,000 units within the Planning  
15 Area." (Land Use Element at p. 2-37, PRJN J.) Yet the Housing Element contains Program 16.1,  
16 which provides that the City must: "Designate sufficient land at appropriate densities to meet  
17 local and regional housing needs." (Housing Element at p. 75, PRJN Ex. L.) And the Housing  
18 Element tasks the City with modifying the Growth Management Program to allow the City to  
19 meet its share of the RHNA. (Housing Element Program 34.5 at p. 86, PRJN Ex. L.) It is  
20 impossible to implement the Housing Element's policies while adhering to the Cap and Growth  
21 Management Program in the Land Use Element. The Land Use Element is therefore inconsistent  
22 with the Housing Element.

23 **CONCLUSION AND REMEDY**

24 For the foregoing reasons, Intervenor respectfully requests that the Court issue a writ of  
25 mandate directing the City to cease enforcing the Housing Cap, Growth Management Program  
26 and Growth Management Ordinance. The Court should also direct the City to amend its Land Use  
27 Element so that is it consistent with its Housing Element.

1 Dated: October 15, 2009

Respectfully Submitted,

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