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11  
12 Attorneys for PETITIONERS and  
PLAINTIFFS THE KENNEDY  
13 COMMISSION, JASON PULEO, and  
14 WILLIAM ADAMS

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
16 COUNTY OF ORANGE  
17 (Unlimited Jurisdiction)

Judge Gail Andler

18 THE KENNEDY COMMISSION, a non-profit  
19 corporation; JASON PULEO; and WILLIAM  
20 ADAMS,

21 Petitioners and Plaintiffs,

22 v.

23 CITY OF HUNTINGTON BEACH, a  
24 municipal corporation; THE CITY COUNCIL  
OF HUNTINGTON BEACH; and DOES 1-50,

25 Respondents and Defendants.  
26

27 **CASE NO.**

30-2015-00801675-CU-CM-CXC

**PETITION FOR ALTERNATIVE  
WRIT OF MANDATE AND  
COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

[Cal. Const., art. I, § 7(a), and art. XI, § 7;  
Cal. Civ. Proc. § 1085; and Gov. Code §§  
65008, 65009(c), 65454, 65580, 65581,  
65583, 65588, 65751, 65860, 65913,  
65913.1, 65915, 12900 et seq.]

28 NAI-1500465753v1

**PETITION FOR ALTERNATIVE WRIT OF MANDATE AND COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE RELIEF**

1 **INTRODUCTION**

2 1. Petitioners bring this action against the City and City Council of Huntington Beach  
3 (collectively, "Huntington Beach" or the "City") to invalidate the City's amendment of the Beach  
4 Edinger Corridor Specific Plan ("BECSP"), which severely restricts affordable housing  
5 development, contrary to state law. Despite warnings from both Petitioners and the California  
6 Department of Housing and Community Development, the City adopted the Beach and Edinger  
7 Corridor Specific Plan Amendment ("BECSP Amendment"), which is inconsistent with the  
8 Housing Element of the City's General Plan and in violation of the Housing Element Law  
9 because, among other things, it places a moratorium on the construction of affordable housing  
10 within the BECSP and creates a shortfall of sites available to meet the City's low-income housing  
11 needs. Petitioners bring this action to require that the City repeal the BECSP Amendment and  
12 comply with its own Housing Element and its legal obligations under state housing law.

13 **PARTIES**

14 **A. Petitioners/Plaintiffs**

15 2. Petitioner and Plaintiff the KENNEDY COMMISSION (the "Kennedy  
16 Commission") is a 501(c)(3) non-profit corporation with its principal place of business in Irvine,  
17 County of Orange, California.

18 3. Formed in 2001, the Kennedy Commission's mission is to address the impact of  
19 the statewide housing crisis within Orange County, where rising housing prices make the housing  
20 market increasingly inhospitable to lower income working families. The Kennedy Commission  
21 advocates for production of affordable homes in Orange County on behalf of Orange County's  
22 low-income residents through education for communities and professionals in the housing  
23 industry; policy research and advocacy; and community engagement. Its membership represents  
24 a broad spectrum of the Orange County community, including government officials, housing  
25 developers, homeless service providers, employers, health care providers, lenders, and residents.

26 4. Countywide, the Kennedy Commission's research and advocacy have resulted in  
27 the production or approval of over 3,500 affordable homes. The Kennedy Commission has also  
28 been active in Huntington Beach, where it advocated for passage of Huntington Beach's

1 Inclusionary Housing Ordinance in 2004 and for development of affordable housing at the  
2 Oceana complex, located within the BECSP. Additionally, the Kennedy Commission has  
3 advocated for construction of 30 lower-income on-site affordable homes within other market-rate  
4 developments in Huntington Beach. The Kennedy Commission was also an active public  
5 participant during the drafting of Huntington Beach's Housing Elements for the 2008-2014 and  
6 2014-2021 planning periods, submitting numerous public letters recommending inclusion of  
7 development standards that would promote affordable housing.

8 5. As described below, the Kennedy Commission also opposed adoption of the  
9 BECSP Amendment. The Kennedy Commission researched the impact of the BECSP  
10 Amendment on the development of affordable housing in Huntington Beach, and presented  
11 sophisticated planning analyses to the City through letters and commentary at public hearings.  
12 The Kennedy Commission engaged in these efforts in the public interest and on behalf of lower-  
13 income working families in Huntington Beach and Orange County.

14 6. The Kennedy Commission has committed significant staff time and organizational  
15 resources to oppose the BECSP Amendment. The Kennedy Commission's staff has: (1)  
16 investigated and analyzed the proposed amendments to the BECSP as it relates to the City's  
17 Housing Element and the City's obligations under state law; (2) advocated for fair, non-  
18 discriminatory, non-exclusionary affordable housing policies in Huntington Beach on behalf of  
19 low-income residents; and (3) publically presented its concerns as the City considered amending  
20 the BECSP.

21 7. These advocacy efforts in Huntington Beach have required the Kennedy  
22 Commission to divert substantial resources from the Kennedy Commission's other programs in  
23 Orange County, including financial and staff resources. As such, the Kennedy Commission has a  
24 direct and substantial beneficial interest in assuring that the City comply with its obligations  
25 under its own Housing Element and state housing law and invalidating the BECSP Amendment,  
26 and therefore has standing to bring the claims set forth in this Petition and Complaint.

27 8. Petitioner and Plaintiff WILLIAM ADAMS ("Adams") is a disabled veteran of the  
28 United States Navy who receives government assistance for his housing costs through the

1 Department of Housing and Urban Development's Veterans Affairs Supportive Housing program  
2 ("HUD-VASH"). Adams served in the United States Navy from 1974-1978 and was discharged  
3 honorably with the rank of E-3 Seaman. He suffers from chronic obstructive pulmonary disease  
4 ("COPD"), liver cancer, and a degenerative neck and shoulder disorder. He receives a Veteran's  
5 Pension of approximately \$1,000 per month, which constitutes his entire monthly income. He  
6 must spend approximately 25% of his pension on rent pursuant to the rules of the HUD-VASH  
7 voucher program.

8 9. From approximately 2008 to October 2013, Adams was homeless, living on the  
9 streets of Orange County. During his time on the streets, Adams searched for housing in Orange  
10 County but was unable to find housing that he could afford.

11 10. In the fall of 2013, Adams applied for assistance through the HUD-VASH  
12 program. Adams was approved for HUD-VASH benefits based on his service in the Navy. In  
13 November 2013, Adams moved into the Huntington Breeze apartment complex on Springdale  
14 Street in Huntington Beach, CA, one of the few housing complexes in Huntington Beach that  
15 accepted HUD-VASH vouchers. After five years of homelessness, Adams finally had a home.  
16 He made a number of new friends who were also tenants at Huntington Breeze, including other  
17 veterans receiving HUD-VASH benefits, and regularly hosted community barbecues and  
18 gatherings.

19 11. In April 2015, Adams received a 90-day eviction notice from the Huntington  
20 Breeze apartment complex requiring him to leave by June 30, 2015. The apartment complex had  
21 been sold and Adams' new landlord refused to renew his tenancy, forcing him to seek other  
22 housing.

23 12. Adams searched for housing in Huntington Beach for over two months, but could  
24 not find any housing that he could afford on an income of \$1,000 per month. He applied to  
25 approximately four apartment complexes in Huntington Beach (at a cost of \$70 for each  
26 application), but the rent was too high to be covered by his HUD-VASH voucher and all of his  
27 applications were rejected. Unable to find any housing that would accept his HUD-VASH  
28 voucher or that he could otherwise afford, Adams was forced to move out of Huntington Beach.

1 He finally found housing he could afford with his HUD-VASH voucher in the City of Orange,  
2 California, and moved in on July 1, 2015. Upon information and belief, the market rate for  
3 Adams' current unit is close to \$1000 per month and would be unaffordable to Adams without the  
4 HUD-VASH voucher.

5 13. For Adams, the search for a new apartment was immensely stressful, resulting in  
6 severe negative impacts on his physical health. Adams found that the demand for affordable  
7 housing in Huntington Beach is far greater than the supply, and that apartments that did accept  
8 HUD-VASH vouchers had a waiting list of 3 to 5 years. From April 2015, when he received the  
9 eviction notice requiring him to move out, to July 2015, when he finally found housing, Adams  
10 had to cancel seven doctor appointments. Consumed with his search for housing due to his  
11 imminent eviction date, Adams had to cancel an important medical procedure, leaving him bed-  
12 bound for the first two weeks of July 2015.

13 14. Adams is an active member of the Orange County veterans' community. He  
14 regularly volunteers, attends meetings, and gives community presentations with a number of  
15 Orange County organizations, including Veteran Service Officers, Orange County Veterans, and  
16 Veterans First. He also volunteers at Stand Down programs organized by Veterans Affairs,  
17 providing services to homeless veterans. As a formerly homeless veteran, he is committed to  
18 supporting Orange County's veteran and low-income communities, and considers himself  
19 personally invested in advocating for development of affordable housing in Huntington Beach  
20 and Orange County. As such, Adams has a direct and substantial beneficial interest in assuring  
21 the City comply with its obligations under state housing law and repeal the BECSP Amendment,  
22 and therefore has standing to bring the claims set forth in this Petition and Complaint.

23 15. Petitioner and Plaintiff JASON PULEO ("Puleo") is a veteran of the United States  
24 Army who receives housing assistance through HUD-VASH. He served in the United State  
25 Army from 1975 through 1977 and was discharged honorably with the rank of Private First Class.  
26 He suffers from post-traumatic stress disorder ("PTSD"), lingering effects of a fractured foot and  
27 hearing loss. Puleo's current monthly income is \$0. He is searching for full-time employment.  
28 His only source of financial assistance is for rent, through the HUD-VASH voucher program.

1           16.     Prior to moving to Huntington Beach, Puleo was periodically homeless for over 10  
2 years. Eventually, he was offered assistance through the United States Veterans Initiative  
3 (“U.S.VETS”) and was able to obtain a HUD-VASH voucher. Like Adams, Puleo found an  
4 apartment in the Huntington Breeze apartment complex in Huntington Beach, one of the few  
5 housing complexes in Huntington Beach that accepted HUD-VASH vouchers.

6           17.     After years of homelessness, Puleo settled into his new apartment in Huntington  
7 Beach and began the process of rebuilding his life. Puleo rekindled his lifelong passion of  
8 performing music and established connections in the musical community in and around  
9 Huntington Beach. He began regularly performing at local venues such as Neptune’s, Don the  
10 Beachcomber’s, Harvey’s Steakhouse and Schooner at Sunset. He would also occasionally  
11 perform at veteran-related benefits and shows. Connecting with the musical community in and  
12 around Huntington Beach not only allowed Puleo to reintegrate socially but also allowed him to  
13 supplement his monthly income with money he received from performing.

14           18.     Puleo lived at the Huntington Breeze apartment complex from June 2012 to June  
15 2015. In April 2015, Puleo received a 90-day Notice to Vacate from the Huntington Breeze  
16 apartment complex. The apartment complex had been sold and Puleo’s new landlord refused to  
17 renew his tenancy, forcing him to seek other housing options.

18           19.     For two and a half months Puleo searched for alternative housing in Huntington  
19 Beach. After looking at over a dozen complexes in Huntington Beach he was unable to find any  
20 housing that would accept his HUD-VASH voucher. Puleo found that the demand for affordable  
21 housing in Huntington Beach is far greater than the supply, and that apartments that did accept  
22 HUD-VASH vouchers had a waiting list of 3 to 5 years. Facing homelessness once again, Puleo  
23 was forced to leave the Huntington Beach community and moved to Stanton, California on July 1,  
24 2015.

25           20.     Puleo desires to return to Huntington Beach, and would apply for affordable  
26 housing if it were to become available in the BECSP area. He has no connections to the local  
27 community in Stanton. His new neighborhood in Stanton is plagued with drugs and prostitution,  
28 conditions Puleo never had to confront in Huntington Beach. Further, Puleo is now far removed

1 from the local music venues in and around Huntington Beach where he established both personal  
2 and professional connections and regularly performs. The distance between his Stanton  
3 apartment and Huntington Beach poses transportation problems for Puleo, and he often cannot  
4 afford the gas it takes to drive between the cities. As such, Puleo has a direct and substantial  
5 beneficial interest in assuring the City comply with its obligations under state housing law and  
6 repeal the BECSP Amendment, and therefore has standing to bring the claims set forth in this  
7 Petition and Complaint.

8 **B. Respondents/Defendants**

9 21. Respondent/Defendant CITY OF HUNTINGTON BEACH is a municipal  
10 corporation formed and existing under the laws of the State of California, of which it is a political  
11 subdivision.

12 22. Respondent/Defendant CITY COUNCIL OF HUNTINGTON BEACH is the  
13 legislative body charged under Gov. Code § 65300 with responsibility for adopting a General  
14 Plan (including a Housing Element) for the physical development of Huntington Beach and of  
15 land within the City's planning "sphere of influence," and with implementing the Huntington  
16 Beach Housing Element. Defendant City Council is responsible for carrying out the constitution  
17 and laws of the State of California, and conforming the ordinances, regulations and policies of the  
18 City to the requirements of state law.

19 23. Except as otherwise stated, respondents/defendants CITY OF HUNTINGTON  
20 BEACH and CITY COUNCIL OF HUNTINGTON BEACH are herein collectively referred to as  
21 "Huntington Beach" or the "City."

22 24. Does 1-50 are persons or entities whose identities or relationship to this action are  
23 not now known. Plaintiffs will seek leave of the Court to amend this Complaint by substituting  
24 the true names and relationships of said persons or entities when they become known. Each of  
25 the fictitiously named defendants acted either individually or in concert with the named  
26 Defendant and is responsible in some manner for the occurrences alleged in this Complaint, and  
27 the injuries to Plaintiffs may be further redressed by including such fictitious parties in this  
28 litigation.

1 **STATUTORY BACKGROUND AND FACTUAL ALLEGATIONS**

2 **California's Housing Element Law**

3 25. California's Housing Element Law requires every city and county to adopt and  
4 periodically update a Housing Element as part of its General Plan. Cal. Gov. Code §§ 65580 *et*  
5 *seq.* The Housing Element is a detailed roadmap for facilitating housing development to meet the  
6 community's share of the regional housing needs and must "make adequate provision for the  
7 existing and projected housing needs of all economic segments of the community." Gov. Code §  
8 65583. Among other things, the Housing Element must assess the local housing need, identify  
9 resources and constraints relevant to meeting that need, and implement programs to remove  
10 constraints and promote development. *Id.* In order to ensure that each city and county complies  
11 with these obligations over time, the Housing Element must be periodically updated, and is  
12 subject to review by the California Department of Housing and Community Development  
13 ("HCD"). Gov. Code § 65585(b).

14 26. HCD begins the periodic Housing Element update process by determining a  
15 Regional Housing Need Allocation ("RHNA") for each region of California during a given  
16 "planning period" prescribed by statute. Gov. Code § 65584. The council of governments in  
17 each region—in Southern California, the Southern California Association of Governments  
18 ("SCAG")—then allocates a portion of the regional housing need to each city and county in the  
19 region. *Id.*

20 27. Once each local jurisdiction is assigned its "fair share" of the RHNA, it must  
21 prepare a Housing Element that addresses the housing needs of each income level by, among  
22 other things, preparing an inventory of suitable sites and identifying and making available  
23 sufficient sites to accommodate that need through appropriate zoning, development standards, and  
24 access to infrastructure and services. Gov. Code. §§ 65583(a)(3), 65583(c)(1), 65583.2.

25 28. A fundamental requirement of the Housing Element is the identification of  
26 "adequate sites" to accommodate each jurisdiction's fair share of the RHNA at each income level.  
27 *See* Gov. Code §§ 65583, 65583.2. Sites must be "suitable for residential development," and  
28 must be made available for housing development during the planning period. *Id.* Where a



1 sufficient quantity of adequate sites is not currently available, the community must commit in its  
2 Housing Element to identify and rezone sufficient additional sites within three years from the  
3 adoption of the element in order to accommodate its full share of the RHNA. Gov. Code §§  
4 65583(c)(1), 65583.2(h). Within the first year of the planning period, jurisdictions must also  
5 rezone sufficient sites to accommodate any unmet portions of their RHNA from the prior  
6 planning period. Gov. Code § 65584.09. This carryover need must be accommodated by the new  
7 Housing Element in addition to the complete need allocation for the current planning period.  
8 Gov. Code § 65584.09(b).

9 29. The Housing Element must also analyze governmental and non-governmental  
10 constraints on the development of housing for persons of all income levels. Gov. Code §§  
11 65583(a)(5)-(6). In addition, the Housing Element must demonstrate local efforts to remove  
12 governmental constraints that hinder the locality from meeting its share of the regional housing  
13 need in accordance with Section 65584. Gov. Code §§ 65583(a)(5), 65583(c)(3).

14 30. Before adopting its Housing Element, each city must submit a draft to HCD for  
15 review to ensure substantial compliance with Housing Element Law. Gov. Code § 65585; Health  
16 & Saf. Code § 50459. HCD must issue written findings to the city regarding its determination of  
17 compliance. Upon adoption of the Housing Element, a city must again submit the final, adopted  
18 version to HCD for further review. Gov. Code § 65585(g).

19 31. Once a jurisdiction adopts its Housing Element as part of its General Plan and  
20 obtains approval of the Housing Element by HCD, the jurisdiction is required by law to  
21 implement the Housing Element's programs and is prohibited from acting inconsistently with the  
22 Housing Element, including but not limited to taking actions with respect to any Specific Plan.  
23 Gov. Code §§ 65454, 65580, 65581, 65583, 65587, 65860.

24 **The City of Huntington Beach Adopts its 2013 Housing Element and**  
25 **Obtains Approval from HCD**

26 32. The City of Huntington Beach adopted its current Housing Element for the 2014-  
27 2021 planning period on September 16, 2013 (the "2013 Housing Element"). The City submitted  
28 the 2013 Housing Element to HCD for review, as required by statute. Gov. Code § 65585(b).

1 The 2013 Housing Element submitted to HCD specifically incorporates and relies on the BECSP.  
2 On November 12, 2013, HCD issued a letter to the City approving the 2013 Housing Element as  
3 submitted, finding it in substantial compliance with state law. May 1, 2015 HCD Letter to City at  
4 1 (a true and correct copy of which is attached as Ex. A and incorporated herein by reference). In  
5 making this finding, HCD specifically cited the 2013 Housing Element’s inclusion of the BECSP.

6 33. The City’s 2013 Housing Element acknowledges that many of the people  
7 employed within the City of Huntington Beach cannot afford to live there. “Approximately one-  
8 third of Huntington Beach’s primary employment is in lower paying retail, hospitality,  
9 construction and service-related industries, with wages generally below the level necessary to  
10 afford to live in the city.” Housing Element II-6 (a true and correct copy of which is attached as  
11 Ex. B and incorporated herein by reference). A full 80 percent of the people employed within the  
12 City commute from outside city limits—amounting to a daily influx of 48,800 people. *Id.*

13 34. Of the families who do reside in the City, many homeowners and renters  
14 experience hardship associated with the City’s high housing costs. The 2013 Housing Element  
15 notes that 39 percent of homeowners and 46 percent of renters spend an unaffordable share of  
16 their income on housing costs (defined as spending more than 30 percent of income on housing).  
17 Housing Element II-40, Ex. B. Moreover, 17 percent of homeowners and 21 percent of renters  
18 “severely overpaid” for housing, spending more than half of their income on housing costs in  
19 order to live in the City. *Id.* Furthermore, 60 percent of lower-income owners and 73 percent of  
20 lower-income renters spent more than half their income on housing costs. *Id.*

21 **The City’s RHNA for the 2013 Housing Element**

22 35. The City’s share of the Southern California RHNA, as allocated by the SCAG for  
23 the 2014-2021 planning period and incorporated into the City’s 2013 Housing Element, totaled  
24 1,353 units. The RHNA is broken down into four income levels: very low-income, low-income,  
25 moderate-income, and above moderate-income. Gov. Code § 65584. A “very low-income  
26 household” is one with an income up to 50% of the area median income. Health & Saf. Code §  
27 50105. A “low-income household” is one with an income between 50% and 80% of the area  
28 median income. Health & Saf. Code § 50079.5. A “moderate-income household” is one with an

1 income not higher than 120% of the area median income. Health & Saf. Code § 50093. In  
 2 Orange County, a very low-income family of four is one with an annual income of up to \$48,150  
 3 in 2012, and a low-income family is one with an annual income up to \$77,050. California law  
 4 considers housing affordable if housing costs consume no more than 30% of a household's  
 5 income. For purposes of this Petition and Complaint, Petitioners use the term "lower-income" to  
 6 refer collectively to both very low-income and low-income households.

7 36. The City's share of the Southern California RHNA, as allocated by the SCAG for  
 8 the 2014-2021 planning period and incorporated into the City's 2013 Housing Element, is broken  
 9 down in the chart below. For the current planning period, the City's combined RHNA for very-  
 10 low- and low-income households is 533 units. Housing Element IV-5, Ex. B.

<b>Huntington Beach RHNA for the 2014-2021 Planning Period</b>				
<b>Household Income</b>	<b>Very Low</b>	<b>Low</b>	<b>Moderate</b>	<b>Above Moderate</b>
<b>Number of Units</b>	313	220	248	572

11  
 12  
 13 **The Programs and Policies of the 2013 Housing Element**

14 37. After identifying housing needs, resources, and constraints, the 2013 Housing  
 15 Element lays out a series of Programs and Policies intended to accommodate the City's RHNA  
 16 and facilitate housing development. A Housing Element "Policy" sets the City's official policy  
 17 with regard to housing development during the planning period. A Housing Element "Program"  
 18 sets forth specific actions that the City commits to taking in order to implement those Policies.  
 19 *Id.* at V-14, V-19. For example, the 2013 Housing Element commits the City to facilitating the  
 20 "Provision of Adequate Sites" for housing through "appropriate land use, zoning and specific  
 21 plan designations to accommodate Huntington Beach's share of regional housing needs." *Id.* at  
 22 V-15, V-22. The 2013 Housing Element then sets forth a number of Policies for the Provision of  
 23 Adequate Sites, including the following:

24 a. Policy 2.1, titled "Variety of Housing Choices," states that the City will  
 25 "[p]rovide site opportunities for development of housing that responds to diverse  
 26 community needs in terms of housing types, cost and location, emphasizing locations near  
 27 services and transit that promote walkability." *Id.*

1           b.       Policy 2.2, titled “Residential Mixed Use,” states that the City will  
2 “[f]acilitate the efficient use of land by allowing and encouraging commercial and  
3 residential uses on the same property in both horizontal and vertical mixed-use  
4 configurations.” *Id.*

5           c.       Policy 2.3, titled “Beach and Edinger Corridors Specific Plan,” states that  
6 the City will “[e]ncourage and facilitate the provision of housing affordable to lower  
7 income households within the Beach and Edinger Corridors Specific Plan.” *Id.*

8       38.       The BECSP, described below, is one of three Programs in the 2013 Housing  
9 Element requiring the City to take specific action to implement Policies 2.1 to 2.3, and is the only  
10 Program providing for development of housing affordable to lower-income households.

11       39.       The 2013 Housing Element also commits the City to facilitating the “Provision of  
12 Affordable Housing” by “[e]nhanc[ing] housing affordability so that modest income households  
13 can remain an integral part of the Huntington Beach community.” *Id.* at V-15. The Housing  
14 Element then sets forth a number of Policies for the Provision of Affordable Housing, including  
15 the following:

16           a.       Policy 3.1, titled “Housing Diversity,” states that the City will “[e]ncourage  
17 the production of housing that meets all economic segments of the community, including  
18 lower, moderate, and upper income households, to maintain a balanced community.” *Id.*

19           b.       Policy 3.2, titled “Mixed Income Housing,” states that the City will  
20 “[u]tilize the City’s Inclusionary Housing Ordinance as a tool to integrate affordable units  
21 within market rate developments. Continue to prioritize the construction of affordable  
22 units on-site, with provision of units off-site or payment of an in-lieu housing fee as a less  
23 preferred alternative.” *Id.*

24           c.       Policy 3.3, titled “Affordable Housing Incentives,” states that the City will  
25 “[f]acilitate the development of affordable housing through regulatory incentives and  
26 concessions, and/or financial assistance, with funding priority to projects that include  
27 extremely low income units. Proactively seek out new models and approaches in the  
28 provision of affordable housing.” *Id.* at V-16.

1           40. The 2013 Housing Element also commits the City to “Remove Governmental  
2 Constraints” by “[r]educ[ing] potential governmental constraints to housing production and  
3 affordability.” *Id.* The Housing Element then sets forth a number of Policies to Remove  
4 Governmental Constraints, including the following:

5           a. Policy 4.1, titled “Regulatory Incentives for Affordable Housing,” states  
6 that the City will “[s]upport the use of density bonuses and other incentives, such as fee  
7 deferrals/waivers and parking reductions, to offset or reduce the costs of developing  
8 affordable housing while ensuring that potential impacts are addressed.” *Id.*

9           b. Policy 4.2, titled “Flexible Development Standards,” states that the City  
10 will “[p]rovide flexibility in development standards to accommodate new models and  
11 approaches to providing housing, such as transit-oriented development, mixed use and  
12 live/work housing.” *Id.*

13           c. Policy 4.3, titled “Efficient Development Processing,” states that the City  
14 will “[e]xplore continued improvements to the entitlement process to streamline and  
15 coordinate the processing of permits, design review and environmental clearance.” *Id.*

16           41. The 2013 Housing Element also includes the following Program requiring the City  
17 take specific action to implement Policies 4.1 to 4.3: “[c]ontinue to provide non-discretionary  
18 development review within the Beach and Edinger Corridors Specific Plan. By 2015, adopt  
19 streamlined review procedures for multi-family development on a Citywide basis.” *Id.* at V-27.

20   **The City Adopts the BECSP**

21   **as One of the 2013 Housing Element Programs**

22           42. The BECSP is one of three Programs identified in the 2013 Housing Element for  
23 implementing Policies 2.1 to 2.3 relating to Provision of Adequate Sites, as required by the  
24 Housing Element and state law. *Id.* at V-22-23 (Program 8). Of these three Programs, the  
25 BECSP is the *only* Program that provides for new development to accommodate the City’s  
26 housing needs for lower-income families. *Id.* The other two Programs require the City to  
27 maintain an inventory of vacant and underutilized land and to facilitate development of “second  
28

1 units” on pre-existing residences in order to provide “affordable rental options for seniors, college  
2 students and single persons.” *Id.* at V-23.

3 43. The City adopted the BECSP in March of 2010, during the 2007-2014 Housing  
4 Element planning period, and incorporated it into the text of the 2013 Housing Element. The  
5 BECSP sets forth the standards for housing and commercial development within the 459-acre  
6 BECSP area. According the 2013 Housing Element, the BECSP was adopted “after an extensive,  
7 multi-year planning process” that involved an “extensive outreach program that included 21  
8 workshops and public hearings” in order to “define a clear vision for revitalization and growth.”  
9 *Id.* at V-5, V-22. The BECSP is located along the City’s “two major commercial corridors” with  
10 “easy freeway access,” creating important housing stock not only for Huntington Beach but also  
11 for surrounding cities. *Id.* at IV-9 n. 1, V-22. According to the 2013 Housing Element, the City’s  
12 “growth trends support the need for smaller, higher density and mixed-use units close to  
13 transportation and services, consistent with the types of housing currently being developed and  
14 planned for in the Beach and Edinger Corridors Specific Plan . . . .” *Id.* at II-7.

15 44. As enacted in the 2013 Housing Element, the BECSP permits residential  
16 development as of right. *Id.* at V-22. The BECSP includes no density restrictions, allowing for  
17 high-density multi-family housing—a fact that the 2013 Housing Element repeatedly references  
18 as critical to accommodating the City’s housing needs. *See, e.g., id.* at II-7, II-21, IV-9, IV-10, V-  
19 5, V-23. The BECSP has a building-height limit of up to six stories, has no minimum setbacks,  
20 and requires one or two parking spaces per unit, depending on unit size. The BECSP also allows  
21 for mixed-use zoning, which was intended in part specifically to respond to a housing  
22 accommodation shortfall in the City’s previous RHNA. *Id.* at IV-1, IV-4.

23 45. As noted above, the 2013 Housing Element specifically relies on the BECSP to  
24 accommodate the City’s housing needs for the 2014-2021 planning period. *Id.* at V-15, V-22.  
25 Indeed, the 2013 Housing Element states that the BECSP “*represents the City’s primary*  
26 *mechanism for providing residential sites*” and that the BECSP will therefore “continue in the  
27 updated [2013] Housing Element.” *Id.* at V-5 (analyzing the BECSP’s effectiveness for the  
28 previous planning period and its continued appropriateness for the 2014-2021 period) (emphasis

1 added). Five of the six underutilized sites that the City identified to accommodate its RHNA are  
2 located in the BECSP. *Id.* at IV-10. The 2013 Housing Element also points to the BECSP’s  
3 development standards, including the lack of density restrictions, as crucial to the development of  
4 higher-density multi-family housing, which would allow the City to accommodate its RHNA.  
5 *See, e.g., id.* at IV-9. Thus, the development potential of the BECSP permitted the City to  
6 “identif[y] sufficient sites at appropriate densities to address Huntington Beach’s regional housing  
7 needs.” *Id.* at IV-5.

8 46. Furthermore, because the BECSP’s “generous development standards help to  
9 facilitate lower cost development options,” the 2013 Housing Element identifies the BECSP as  
10 key to providing adequate sites for lower-income housing needs. *See, e.g., id.* at V-15, V-23.

11 Accordingly, the Housing Element requires the City to:

12 Continue to implement the *Beach and Edinger Corridor Specific Plan* to provide  
13 expanded capacity for high density residential and mixed use development by  
14 right. Encourage the provision of housing affordable to lower income households  
15 by requiring inclusionary units to be provided on-site or within the boundaries of  
the Specific Plan, and providing [sic] additional incentives for increased  
percentages of affordable units.

16 *Id.* at V-23 (emphasis in original).

17 47. In order to facilitate development within the BECSP, the 2013 Housing Element  
18 establishes a “streamlined process for development review” of approximately four months, from  
19 application submittal date to project approval date. *See* Housing Element V-27, Ex. B; Apr. 14,  
20 2015 BECSP Staff Report at 9 (a true and correct copy of which is attached as Ex. C and  
21 incorporated herein by reference). The 2013 Housing Element acknowledges that the evaluation  
22 and review process normally required in Huntington Beach constrains development by  
23 contributing to housing costs. Housing Element V-26-27, Ex. B. Indeed, the Housing Element  
24 explains that processing times for discretionary project approvals in Huntington Beach are in the  
25 upper-end of the range of cities surveyed. *Id.* at V-26. As mentioned above, in order to meet the  
26 City’s goal of expanding capacity for high-density residential development within the BECSP, the  
27 2013 Housing Element establishes a Program requiring the City to “[c]ontinue to provide non-

1 discretionary development review” within the BECSP and, “[b]y 2015, adopt streamlined review  
2 procedures for multi-family development on a citywide basis.” *Id.* at V-27 (Program 15).

3 48. As alleged above, once the City adopted its 2013 Housing Element, it committed  
4 to implementing the Policies and Programs therein and to not taking action inconsistent with the  
5 2013 Housing Element. *See* Gov. Code §§ 65454, 65580, 65581, 65583, 65587, 65860.

6 **The City Considers Amending the BECSP**

7 49. In early 2015, the City began considering Zoning Text Amendment 15-003, an  
8 Amendment to the BECSP (“BECSP Amendment”). The BECSP Amendment would place a  
9 “Maximum Amount of New Development” (“MAND”) on new residential development within  
10 the BECSP, impose various permitting restrictions on development, impose new costs and  
11 timelines for obtaining development approvals, and erect barriers to development in the form of  
12 burdensome parking, building setbacks, and building height requirements.

13 **The BECSP Amendment’s Maximum Amount of New Development (MAND)**

14 50. The BECSP Amendment imposes a MAND limit upon the entire 459-acre BECSP  
15 area. BECSP Amendment at 2.1.1 (a true and correct copy of which is attached as Ex. D and  
16 incorporated herein by reference). The MAND “establishes the maximum amount of net new  
17 development that occurs after the adoption of the specific plan,” and provides that “[w]hen the  
18 Maximum Amount of New Development is reached, no further development may be permitted  
19 without an amendment to the MAND provisions and environmental review.” *Id.*

20 51. The new MAND provided by the BECSP Amendment substantially reduces the  
21 number of allowable new residential units within the BECSP. While leaving the commercial  
22 limits untouched, the Amendment reduces the maximum number of new housing units from 4,500  
23 to 2,100. *Id.* Of the 2,100 residential units allowed under the BECSP Amendment, 1,900 have  
24 already been entitled, and another 172 units have a Formal Planning Application pending  
25 approval. *See* March 2, 2015 Study Session at 4-5 (a true and correct copy of which is attached as  
26 Exhibit E and incorporated herein by reference). Consequently, only 28 *dwelling units remain*  
27 *available* within the BECSP under the Amendment. The BECSP Amendment’s MAND  
28 limitation effectively places a moratorium on the construction of new housing within the BECSP.



1           52.     Once the new MAND limit is reached, no new residential development may  
2 proceed within the BECSP unless the developer seeks an amendment to the MAND, which  
3 requires an additional Zoning Text Amendment and Environmental Assessment. BECSP  
4 Amendment at 2.1.1, Ex. D.

5           53.     According to the City, a Zoning Text Amendment costs \$15,163 in fees, and is  
6 subject to noticed public hearings and City Council and Planning Commission approval. Apr. 14,  
7 2015 BECSP Staff Report at 9-10, Ex. C. An Environmental Assessment initially costs \$10,679,  
8 plus the cost of an Environmental Impact Report (“EIR”) if the initial study finds the potential for  
9 substantial environmental effects. *Id.* The EIR costs \$99,922, plus an additional charge of  
10 \$100,000 to \$250,000 from an environmental consultant. *Id.* While approval time under the  
11 original BECSP was only 4 months, the City estimates that the additional permitting requirements  
12 under the BECSP Amendment increases processing time to 10-15 months. *Id.*

13           54.     As a result, the City is now unable to meet its fair share of the RHNA, particularly  
14 in regard to lower-income housing. The City’s 2014-2021 RHNA for low-income households is  
15 220 units, and its RHNA for very low-income households is 313 units. Taken together, the City  
16 must accommodate 533 lower-income units during the current planning period. The City’s  
17 Housing Element identifies sites to accommodate a total of 783 units available citywide for  
18 lower-income housing—but 628 of those units are located within the BECSP. Housing Element  
19 IV-5, Ex. B. By doing away with the BECSP sites, the City has eliminated sites for all but 155  
20 units—across the entire City—for accommodating its lower-income housing needs. Even  
21 assuming all 28 of the remaining unentitled units at the BECSP are devoted to meeting the City’s  
22 RHNA for lower-income housing, the City will still face a shortfall of sites for at least 350 lower-  
23 income units. Petitioners are informed and believe, and thereupon allege, that the Amendment to  
24 the BECSP renders the number of identified available lower-income units insufficient to  
25 accommodate the RHNA identified in the 2013 Housing Element as required by state law.

26                           **The BECSP Amendment’s Conditional Use Permit (CUP)**

27           55.     In addition to the MAND, the BECSP Amendment erects a significant obstacle to  
28 affordable housing development by requiring a Conditional Use Permit (“CUP”). The BECSP

1 Amendment eliminates by-right residential development, mandating that developers obtain a CUP  
2 from the Planning Commission for all future residential and mixed-use residential/commercial  
3 projects within the BECSP, introducing substantial uncertainty in the development approval  
4 process. BECSP Amendment at Development Standards Charts, 2.2(6), Special Condition (C15),  
5 Ex. D. The CUP costs \$9,989 in fees, and would be subject to noticed public hearings and  
6 Planning Commission approval. Apr. 14, 2015 BECSP Staff Report at 10, Ex. C. While  
7 approval time under the original BECSP was only 4 months, the City estimates that the additional  
8 permitting requirements under the BECSP Amendment increases processing time to 10-15  
9 months. *Id.*

10 **The BECSP Amendment’s Setback, Height, Parking, and Use Restrictions**

11 56. The BECSP Amendment was also intended to “manage density through revised  
12 development standards (e.g., setbacks, parking)” and to reduce density within the BECSP by 10-  
13 20%. Mar. 2, 2015 City Council Study Session at 21, Ex. E. Accordingly, the Amendment  
14 imposes onerous building setback requirements, height limitations, and minimum parking  
15 requirements—all of which limit the density, and therefore the number of units, available for  
16 future residential development within the BECSP.

17 57. A minimum “setback” is a development standard that sets the minimum distance  
18 between a building’s façade and the sidewalk. While the original BECSP, as enacted in the 2013  
19 Housing Element, contains no setback requirement, the BECSP Amendment now requires a  
20 minimum 30-foot setback for all residential development. BECSP Amendment 2.1.3-2.1.10, Ex.  
21 D. For structures above three stories, the top floor must also be set back an additional ten feet.  
22 *Id.* This increase in minimum setback from 0 to 30 feet reduces the amount of space available for  
23 development and therefore limits the number of sites available for housing within the BECSP.

24 58. In addition to increasing minimum setbacks, the BECSP Amendment also  
25 increases the number of parking spaces required per residential unit. The Amendment alters  
26 parking requirements as follows:

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<b>Changes to BECSP Parking Requirements</b>		
<b>Residential Use</b>	<b>Original BECSP</b>	<b>BECSP Amendment</b>
<b>Studio Apartment (Apt.)</b>	<b>1 space maximum</b>	<b>2 spaces minimum</b>
<b>1 BR Apt.</b>	<b>1.5 space max.</b>	<b>2 spaces min.</b>
<b>2 BR Apt.</b>	<b>2 spaces max.</b>	<b>2 spaces min.</b>
<b>3+ BR Apt.</b>	<b>(none)</b>	<b>2.5 spaces min.</b>
<b>Guest Spaces Per 10 Units</b>	<b>2 spaces min./3 max.</b>	<b>0.5 spaces per unit</b>

BECSP Amendment 2.1.3-2.1.10, Ex. D. Like setbacks, increased off-street parking requirements reduce the amount of space available for development and therefore limit the number of sites available for housing within the BECSP.

59. The BECSP Amendment also reduces building height limits. Whereas previously the BECSP permitted up to six story buildings, all areas of the BECSP are limited to a building height of four stories under the BECSP Amendment. BECSP Amendment 2.1.3-2.1.6, Ex. D.

60. Finally, the BECSP Amendment requires that all residential units now contain commercial use at street level, again reducing the space available to accommodate housing needs within the BECSP. *See id.* at Development Standards Charts, 2.2(6), Special Condition (C14).

61. The cumulative effect of these various restrictions is to impose density reductions and development standards that are inconsistent with the Housing Element and that inhibit the development of housing, and in particular development of housing affordable to lower-income households.

**The City Receives Warnings that the BECSP Amendment Violates State Law, But Adopts the Amendment Anyway**

62. On March 24, 2015, Plaintiff Kennedy Commission sent a letter to the City warning the City of the “barriers and constraints the BESCSP amendment will impose on the future development of affordable homes for lower income families in the City,” and requesting that the City conduct an analysis of these impacts. Mar. 24, 2015 Kennedy Commission Letter to City at 1 (a true and correct copy of which is attached as Ex. F and incorporated herein by reference). Plaintiff Kennedy Commission reminded the City that HCD’s approval of the 2013 Housing Element was contingent on the City’s identification of adequate sites for lower-income housing, the vast majority of which were located in the BECSP. *Id.* at 2.

1           63.     Also on March 24, 2015, Plaintiff Kennedy Commission presented comments at a  
2 Huntington Beach Planning Commission Study Session. *See* Apr. 14, 2015 BECSP Staff Report  
3 at 5, Ex. C. Representatives from Plaintiff Kennedy Commission spoke in support of the BECSP  
4 as key to providing affordable housing to very-low- and low-income households, cited concerns  
5 with the BECSP Amendment’s potential effects on affordable housing development, and asked  
6 the City to provide additional analysis on the BECSP Amendment’s impacts. *Id.*

7           64.     On April 14, 2015, Plaintiff Kennedy Commission sent another letter to the City,  
8 reiterating the concerns stated in its March 24, 2015 letter. Apr. 14, 2015 Kennedy Commission  
9 Letter to City (a true and correct copy of which is attached as Ex. G and incorporated herein by  
10 reference). Plaintiff Kennedy Commission advised the City that the BECSP Amendment would  
11 effectively stop development within the BECSP because all but 28 of the units allowed under the  
12 proposed MAND had already been slated for development. *Id.* at 2. The letter also expressed  
13 concern about the costs imposed on affordable housing developers by the BECSP Amendment’s  
14 CUP, Zoning Text Amendment, and Environmental Assessment requirements, alerting the City to  
15 the constraints these requirements would impose on the development of homes affordable to  
16 lower-income families. *Id.* at 2.

17           65.     Plaintiff Kennedy Commission also presented comments in opposition to the  
18 BECSP Amendment at the April 14, 2015 Planning Commission meeting. As reflected in a  
19 memorandum from the City Manager to the City Council, representatives from the Kennedy  
20 Commission “indicated that the proposed changes may impact the City’s General Plan Housing  
21 Element compliance with the State.” May 4, 2015 Memorandum from City Manager to City  
22 Council at 3 (a true and correct copy of which is attached as Ex. H and incorporated herein by  
23 reference). At the same meeting, property owners with potential residential or mixed-use projects  
24 in the BECSP expressed concern that the “proposed parking changes and a reduction in the  
25 MAND would be detrimental for the future success of the BECSP area.” *Id.*

26           66.     On April 14, 2015, the City Council also received a Staff Report warning that the  
27 BECSP Amendment, and in particular the MAND reduction, could cause the City to be out of  
28 compliance with state law. *See* Apr. 14, 2015 BECSP Staff Report at 10, Ex. C.

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67. On May 1, 2015, HCD sent a letter to the City advising that the BECSP Amendment is “inconsistent with the policies and programs within the City’s adopted housing element.” May 1, 2015 HCD Letter to City at 2, Ex. A. HCD explained that the BECSP, as enacted in the 2013 Housing Element, is critical to accommodating the RHNA for lower-income households in Huntington Beach and that the BECSP was therefore central to HCD’s decision to approve the 2013 Housing Element. *Id.* at 1-2. HCD further warned that the BECSP Amendment’s CUP, increased parking, decreased height limits, and other changes to development standards “impact cost and feasibility of development of housing and can pose a significant constraint to the development of affordable housing.” *Id.* at 2.

68. Also on May 1, 2015, Plaintiff Kennedy Commission sent another letter to the City stating that “[w]ithout the BECSP’s sites, there will be a shortfall of sites for the development of lower income families. With a shortfall of sites, the City’s 2014-2021 Housing Element will be found out of compliance with State Housing Element law.” May 1, 2015 Kennedy Commission Letter to City at 1 (a true and correct copy of which is attached as Ex. N and incorporated herein by reference). Plaintiff Kennedy Commission restated its concern about the costs imposed on affordable housing developers by the BECSP Amendment’s CUP, Zoning Text Amendment, and Environmental Assessment requirements. *Id.* at 2.

69. On May 4, 2015, Plaintiff Kennedy Commission presented public comments at a City Council Hearing, again cautioning the City that the proposed MAND limits will thwart opportunities for future development of affordable housing. May 4, 2015 City Council Minutes at 15 (a true and correct copy of which is attached as Ex. I and incorporated herein by reference).

70. Despite these clear warnings from Huntington Beach Staff, HCD, Plaintiff Kennedy Commission, and others, the City Council adopted the BECSP Amendment on or about May 4, 2015. BECSP Amendment, Ex. D; May 4, 2015 City Council Minutes, Ex. I.

**HCD Finds the City Out of Compliance With State Law**

71. On June 23, 2015, HCD informed the City in writing that as a result of the BECSP amendment to the Housing Element, the Housing Element no longer complies with state law.

June 23, 2015 HCD Letter to City (a true and correct copy of which is attached as Ex. J and NAI-1500465753v1)

1 incorporated herein by reference). HCD found that “Amendments made to the BECSP change  
2 the maximum number of allowable units to an amount less than the City’s remaining regional  
3 housing need allocation. Such an action fundamentally alters the inventory of available sites  
4 constituting a de facto change to the housing element’s available sites calculation. . . . The  
5 amendments to the BECSP change the premises upon which the Department’s prior Certification  
6 was based, thereby nullifying that prior Certification.” *Id.*

7 72. On June 25, 2015, Plaintiffs, through their undersigned counsel, sent the City a  
8 letter warning that adoption of the BECSP Amendment is inconsistent with the Housing Element  
9 of the City’s General Plan and violates state law. June 25, 2015 Plaintiff Letter to City (a true and  
10 correct copy of which is attached as Ex. K and incorporated herein by reference). As in the May  
11 1, 2015 letter, Plaintiffs advised the City that the BECSP Amendment “virtually eliminates the  
12 possibility of additional housing being developed within the BECSP, creating a city-wide  
13 shortfall of hundreds of very low- and low-income homes.” *Id.* at 1-2. Plaintiffs urged the City  
14 to comply with state law and immediately reverse its action of May 4, 2015 adopting the BECSP  
15 Amendment. *Id.* at 2.

16 73. On July 8, 2015, the City responded to Plaintiff’s June 23, 2015 letter by sending  
17 an email to Plaintiffs’ counsel. July 8, 2015 City Email to Plfs. (a true and correct copy of which  
18 is attached as Ex. L and incorporated herein by reference). The email indicated that the City had  
19 hired a Housing Element consultant on May 14, 2015, ten days after the City adopted the BECSP  
20 Amendment, to “begin” the process of reviewing and revising the 2013 Housing Element but  
21 provided no specific timeline or proposal for the City to comply with state law. *Id.*

22 74. On July 17, 2015, Plaintiffs, through their undersigned counsel, sent a letter to the  
23 City responding to the City’s July 8, 2015 email. July 17, 2015 Plf. Letter to City (a true and  
24 correct copy of which is attached as Ex. M and incorporated herein by reference). Counsel for  
25 Plaintiffs advised the City that the City’s email response was inadequate, that the City remains  
26 out of compliance with state law, and that counsel would be advising Plaintiffs of their judicial  
27 remedies against the City due to their ongoing and open disregard for state law and their own  
28 Housing Element. *Id.*

1 75. To date, Plaintiffs and their counsel have not received any further response from  
2 the City.

3 **CAUSES OF ACTION**

4 **FIRST CAUSE OF ACTION**

5 **Writ of Mandate – Failure to Act Consistently with the Housing Element**  
6 **(Gov. Code §§ 65454, 65580, 65583, 65587, 65860, Code of Civ. P. § 1085)**  
7 **[All Defendants]**

8 76. Plaintiffs incorporate by reference herein each and every allegation of paragraphs  
9 1-75, inclusive, above.

10 77. State law provides that “[n]o specific plan may be adopted or amended unless the  
11 proposed plan or amendment is consistent with the general plan.” Gov. Code § 65454. State law  
12 also requires that the Housing Element of a city’s General Plan make “adequate provision for the  
13 existing and projected housing needs of all economic segments of the community,” which  
14 includes the community’s share of the regional needs. *Id.* at § 65583. This means that local  
15 jurisdictions have a legal mandate to plan for meeting their “fair share” of regional housing needs,  
16 in accordance with the jurisdiction’s RHNA. State law further mandates that jurisdictions  
17 undertake efforts to remove governmental constraints that hinder the locality from meeting its  
18 share of the regional housing need. *Id.* at § 65583(a)(5).

19 78. The City’s 2013 Housing Element explicitly provides that the City will  
20 accommodate in its entirety its share of the RHNA at each income level, including 533 lower-  
21 income units. Housing Element IV-5, Ex. B. The vast majority of lower-income units are to be  
22 accommodated within the BECSP, *id.*, a fact that HCD relied upon heavily in finding the City’s  
23 2013 Housing Element in compliance with state law. May 1, 2015 HCD Letter, Ex. A.  
24 Moreover, the 2013 Housing Element sets forth specific Policies that commit the City to:

25 a. “Provid[ing] adequate housing sites through appropriate land use, zoning  
26 and specific plan designations to accommodate Huntington Beach’s share of regional  
27 housing needs” (Policies 2.1, 2.2, and 2.3);

28 b. “Enhanc[ing] housing affordability so that modest income households can  
remain an integral part of the Huntington Beach Community” (Policies 3.1, 3.2, and 3.3);

1 c. “Reduc[ing] potential governmental constraints to housing production and  
2 affordability” (Policies 4.1, 4.2, and 4.3).

3 Housing Element at V-15-16, Ex. B.

4 79. The 2013 Housing Element also includes the following Programs to implement  
5 these Policies:

6 a. The BECSP itself, which is the only Program providing for development of  
7 housing affordable to lower-income households (Program 8); and

8 b. A Program to “[c]ontinue to provide non-discretionary development review  
9 within the [BECSP]” and to “[b]y 2015, adopt streamlined review procedures for multi-  
10 family development on a Citywide basis” (Program 15).

11 *Id.* at V-22-23, V-26-27.

12 80. When the City Council voted to amend the BECSP, it eliminated the vast majority  
13 of sites identified for lower-income housing in the City’s 2013 Housing Element. Furthermore,  
14 by increasing parking requirements and minimum setbacks, decreasing height limits, imposing  
15 costly and time-consuming CUP, Zoning Text Amendment, and Environmental Assessment  
16 requirements, the BECSP Amendment created insurmountable barriers to development of the  
17 City’s lower-income housing allocation.

18 81. The new MAND restrictions and density controls imposed by the BECSP  
19 Amendment, which prevent the City from accommodating the unmet portion of its share of the  
20 RHNA, are inconsistent with the language of the 2013 Housing Element and the BECSP  
21 Program, which explicitly provide that the City will accommodate in its entirety its share of the  
22 RHNA at each income level, primarily through higher-density development within the BECSP.  
23 The BECSP Amendment is also inconsistent with 2013 Housing Element Policies, including but  
24 not limited to Policies 2.1, 2.2, 2.3, 3.1, 3.2, and 3.3, relating to provision of adequate sites for  
25 meeting the City’s RHNA and to promotion of housing affordable to the City’s lower-income  
26 residents.

27 82. Moreover, the BECSP Amendment’s CUP, Zoning Text Amendment, and  
28 Environmental Review provisions—which increase the cost of development by tens of thousands



1 of dollars, require public hearings, and extend development approval time by up to 11 months—  
2 are inconsistent with the 2013 Housing Element’s requirement that the BECSP receive a “non-  
3 discretionary,” “streamlined process for development review,” and that the City, “[b]y 2015,  
4 adopt streamlined review procedures for multi-family development on a citywide basis.”  
5 Housing Element V-27, Ex. B. By imposing additional fees, permits, and processing times, the  
6 BECSP Amendment also conflicts with 2013 Housing Element Policies 4.1, 4.2, and 4.3, which  
7 instruct the City to *remove* governmental constraints on housing production and affordability. *Id.*  
8 at V-16.

9 83. On May 1, 2015, HCD notified the City that the BECSP Amendment would be  
10 “inconsistent with the policies and programs within the City’s adopted housing element.” May 1,  
11 2015 HCD Letter to City at 2, Ex. A. Despite this warning, the City Council voted to enact the  
12 BECSP Amendment on May 4, 2015.

13 84. On June 23, 2015, HCD submitted a second letter to the City, finding that  
14 “Amendments made to the BECSP change the maximum number of allowable units to an amount  
15 less than the City’s remaining regional housing need allocation. . . . The amendments to the  
16 BECSP change the premises upon which the Department’s prior Certification was based, thereby  
17 nullifying that prior Certification.” June 23, 2015 HCD Letter to City, Ex. J. At no time did the  
18 City Council find that the BECSP Amendment was consistent with the City’s Housing Element.

19 85. In voting to enact the BECSP Amendment, the City amended a Specific Plan in a  
20 manner inconsistent with the Housing Element of the City’s General Plan. By taking this action,  
21 the City failed to meet its legal duty to act consistently with its Housing Element, and the BECSP  
22 Amendment is therefore void. Gov. Code §§ 65454, 65583, 65587.

23 86. Respondents at all times relevant to this action had clear mandatory duties and  
24 prohibitions imposed by state Housing Law, and by its General Plan, and have violated those  
25 legal duties and prohibitions as set forth in this Petition and Complaint. Respondents acted  
26 arbitrarily and capriciously in refusing to carry out or discharge their mandatory duties as alleged  
27 herein and in violating the legal prohibitions.

1 87. Respondents, unless compelled by this Court to perform those acts and duties and  
2 to refrain from acts as required by law, will continue to refuse to perform said duties and continue  
3 to violate the law, and Petitioners and other very-low and low-income persons will be injured as a  
4 result.

5 88. Petitioners are directly and beneficially interested in Respondents' compliance  
6 with all applicable provisions of law and with all the legal duties set forth herein. They have  
7 standing to bring this claim for writ of mandate, both on behalf of the public interest and as a  
8 result of their beneficial interest, as set forth above.

9 89. Petitioners have no plain, speedy or adequate remedy, other than the relief sought.  
10 They seek a petition for writ of mandate to compel Respondents to immediately comply with their  
11 mandatory statutory duties and to refrain from violating the statutory provisions set forth herein.

12 **SECOND CAUSE OF ACTION**  
13 **Writ of Mandate – Failure to Implement Housing Element**  
14 **(Gov. Code §§ 65581(b), 65583(c) & (h), 65587, 65588; Code of Civ. Pro. § 1085)**  
15 **[All Defendants]**

16 90. Plaintiffs incorporate by reference herein each and every allegation of paragraphs  
17 1-89, inclusive, above.

18 91. As alleged in paragraphs 31 and 85-87 above, the City has a mandatory duty to  
19 implement the programs and policies in its Housing Element and to take the specific actions  
20 mandated in that element. Failure to implement such actions provided for by the housing element  
21 contravenes mandatory duties the City created by adopting the Element and constitutes acts that  
22 are inconsistent with that Element.

23 92. By adopting the BECSP Amendment, Respondents have made it impossible for  
24 the City to implement the programs and policies of the 2013 Housing Element, including its  
25 allocation of lower-income housing. When the City adopted its 2013 Housing Element, it  
26 committed to implementing the policies and programs therein and to not taking action  
27 inconsistent with the 2013 Housing Element. As alleged above, the City's 2013 Housing Element  
28 provides that the City will accommodate in its entirety its share of the RHNA at each income  
level, including 533 lower-income units. Housing Element IV-5, Ex. B. The 2013 Housing

1 Element explicitly states that the City will “[c]ontinue to implement” the BECSP in order to  
2 “provide expanded capacity for high density residential and mixed use development by right” and  
3 “[e]ncourage the provision of housing affordable to lower income households.” *Id.* at V-23.  
4 Additionally, Policies 2.1, 2.2, and 2.3 create mandatory duties to provide “Adequate Housing  
5 Sites” for all income levels. The BECSP Amendment directly contradicts these mandates by  
6 eradicating the City’s capacity for high-density residential and mixed-use development as of  
7 right. In enacting the BECSP Amendment, the City has failed to implement the 2013 Housing  
8 Element programs and policies that commit the City to meeting the City’s allocation of regional  
9 housing needs.

10 93. The BECSP Amendment also effectively blocks all development of lower-income  
11 units by imposing burdensome and costly permitting and density restrictions that make it  
12 impossible for affordable units to be developed within the BECSP—the principal location  
13 identified for accommodation of lower-income housing needs. *See* Housing Element IV-9, V-4,  
14 Ex. B; May 1, 2015 HCD Letter, Ex. A. The lower building-height limits, 30-foot minimum  
15 setbacks, and increased parking requirements—which were intended to reduce densities by 10-  
16 20%—impose insurmountable barriers to the development of lower-income housing, which,  
17 according to the 2013 Housing Element, requires higher-density development with minimal  
18 development constraints. *See* Mar. 2, 2015 Study Session at 21, Ex. E; Housing Element V-15,  
19 V-23. Thus, by enacting the BECSP Amendment, the City failed to implement the 2013 Housing  
20 Element programs and policies that commit the City to accommodating lower-income housing  
21 needs.

22 94. Furthermore, the CUP, required for all future development within the BECSP, and  
23 the Zoning Text Amendment and Environmental Assessment required for development in excess  
24 of the MAND, impose costly and time-consuming obstacles to the low-cost development that  
25 makes affordable housing feasible, increasing development costs by tens of thousands of dollars  
26 and extending approval time by up to 11 months. These constraints make it impossible for the  
27 City to implement 2013 Housing Element Policies 3.1, 3.2, and 3.3, relating to “Provision of  
28 Affordable Housing,” and Policies 4.1, 4.2, and 4.3, intended to “Remove Governmental

1 Constraints.” See Housing Element V-15-16, Ex. B. Thus, by enacting the BECSP Amendment,  
2 the City failed to implement the 2013 Housing Element programs and policies that commit the  
3 City to increasing affordable housing options and removing governmental constraints to  
4 affordable housing development.

5 95. By adopting the BECSP Amendment, the Respondents have prevented the City  
6 from carrying out its mandatory duties to implement the state-approved Housing Element,  
7 including accommodation of the City’s RHNA for all income levels.

8 96. Respondents at all times relevant to this action had clear mandatory duties and  
9 prohibitions imposed by state Housing Element and Planning Law, and by its General Plan, and  
10 has violated legal duties and prohibitions as set forth in this Petition. Respondents acted  
11 arbitrarily and capriciously in refusing to carry out or discharge their mandatory duties as alleged  
12 herein and in violating the legal prohibitions set forth herein.

13 97. Respondents, unless compelled by this Court to perform those acts and duties and  
14 to refrain from acts as required by law, will continue to refuse to perform said duties and continue  
15 to violate the law, and Petitioners and other very-low and low-income persons will be injured as a  
16 result.

17 98. Petitioners are directly and beneficially interested in Respondents’ compliance  
18 with all applicable provisions of law and with all the legal duties set forth herein. They have  
19 standing to bring this claim for writ of mandate, both on behalf of the public interest and as a  
20 result of their beneficial interest, as set forth above.

21 99. Petitioners have no plain, speedy or adequate remedy, other than the relief sought.  
22 They seek a petition for writ of mandate to compel Respondents to immediately comply with their  
23 mandatory statutory duties and to refrain from violating the statutory provisions set forth herein.

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1 **THIRD CAUSE OF ACTION**  
2 **Unlawful Conflict with State Law (Preemption)**  
3 **(Cal. Const. art. XI, § 7)**  
4 **[All Defendants]**

5 100. Plaintiffs incorporate by reference herein each and every allegation of paragraphs  
6 1-99, inclusive, above.

7 101. The California Constitution art. XI, § 7, provides, “A county or city may make and  
8 enforce within its limits all local, police, sanitary, and other ordinances and regulations not in  
9 conflict with general laws.” Limitations on new development adopted by a local legislature are  
10 preempted if they prevent a city from meeting its obligations under state law to accommodate and  
11 promote the lower-income portion of its share of the RHNA, or make it unlikely or impossible  
12 that the City will be able to accommodate its allocated share of the regional housing need. Such  
13 measures are preempted to the extent that they conflict with state law, and are void. *Building*  
*Indus. Assn. v. City of Oceanside*, 27 Cal. App. 4th 744, 767-72 (1994).

14 102. Under the state Housing Element Law, the City is required to “identify adequate  
15 sites for housing and shall make adequate provision for the existing and projected needs of all  
16 economic segments of the community,” Gov. Code § 65583, including “mak[ing] sites available  
17 during the planning period of the general plan with appropriate zoning and development standards  
18 and with services and facilities to accommodate that portion of the city’s or county’s share of the  
19 regional housing need for each income level,” *id.* at § 65583(c)(1). Under the corollary Least  
20 Cost Zoning Law, the City is required to “designate and zone sufficient vacant land for residential  
21 use with appropriate standards, in relation to zoning for nonresidential use, and in relation to  
22 growth projections of the general plan to meet housing needs for all income categories as  
23 identified in the housing element of the general plan,” *id.* at § 65913.1.

24 103. According to the 2013 Housing Element, the BECSP “represents the City’s  
25 primary mechanism for providing residential sites,” and therefore will continue to be  
26 implemented in order to “[e]ncourage the provision of housing affordable to lower income  
27 households.” Housing Element V-5, V-23, Ex B. The BECSP is the *only* 2013 Housing Element  
28 Program that provides for new development to accommodate the City’s housing needs for lower-

1 income households. *Id.* at V-23. Because the BECSP’s “generous development standards help to  
2 facilitate lower cost development options,” the BECSP permits the City to “identif[y] sufficient  
3 sites at appropriate densities to address Huntington Beach’s regional housing needs.” *Id.* at IV-5.  
4 Accordingly, the 2013 Housing Element identifies the then-effective BECSP as essential to  
5 accommodating the RHNA for lower-income households, and HCD identified the BECSP as the  
6 primary reason for its decision to find the City’s 2013 Housing Element in compliance with state  
7 law. *See* May 1, 2015 HCD Letter to City, Ex. A.

8 104. The BECSP Amendment is in direct conflict with state law because it prevents the  
9 City from accommodating and promoting its RHNA, in particular its allocation for lower-income  
10 housing. By reducing the MAND from 4,500 to 2,100 units, the BECSP Amendment reduced the  
11 number of units available in the BECSP to 28. Thus, the number of allowable units remaining  
12 after the BECSP Amendment is fewer than the unmet portion of the City’s share of the RHNA for  
13 the present planning period. The BECSP Amendment poses an immediate and absolute  
14 numerical barrier that prevents the City from accommodating in full the unmet portion of its share  
15 of the lower-income RHNA for the current planning period, as required by Gov. Code § 65583  
16 and other state statutes.

17 105. Development of housing affordable to lower-income households is also precluded  
18 by the BECSP Amendment’s permitting and fee requirements and density restrictions, including  
19 the height, parking, setback, CUP, Zoning Text Amendment, and Environmental Assessment  
20 provisions. These restrictions eliminate the possibility of any future affordable housing  
21 development within the BECSP, in conflict with state law. By preventing the City from making  
22 sufficient sites with high-density residential zoning available to accommodate the unmet portion  
23 of the City’s share of the RHNA for lower-income housing, the City’s adoption of the BECSP  
24 Amendment is in conflict with Gov. Code §§ 65583, 65913.1 and other state statutes.

25 106. As set forth above, the BECSP Amendment is inconsistent with the requirements  
26 of state law, including, but not limited to, the requirements of the state Zoning and Planning law  
27 (Gov. Code § 65000 *et seq.*), including the Housing Element Law (Gov. Code § 65583), and the  
28 Least Cost Zoning Law (Gov. Code § 65913 *et seq.*). The BECSP Amendment poses an absolute

1 numerical conflict that makes it impossible that the City will accommodate the unmet portion of  
2 its share of the RHNA, including its RHNA for lower-income households, and the BECSP  
3 Amendment's permitting, fee, and density provisions preclude the City from accommodating the  
4 unmet portion of its share of the lower-income RHNA. These provisions conflict with state law,  
5 and are preempted and void to that extent.

6 107. The BECSP Amendment prevents the City from complying with its obligations  
7 under Gov. Code §§ 65583, 65913.1 and other state statutes at this time. Accordingly, this Cause  
8 of Action is ripe for adjudication.

9 108. An actual controversy has arisen and now exists between Petitioners and  
10 Respondents concerning their respective rights and duties. Petitioners contend that Respondent  
11 City has violated California Constitution article XI § 7 and, as set forth below, California  
12 Constitution article I § 7(a), California Housing Element Law, California Fair Employment and  
13 Housing Act, and Government Code § 65008. Respondents disagree and deny that they are  
14 violating these laws. A judicial declaration and determination is necessary at this time so that  
15 Petitioners may ascertain their rights with respect to Respondents' duties and obligations in order  
16 to resolve all controversies between the parties hereto regarding such rights and duties.  
17 Wherefore, Petitioners pray for declaratory relief, as set forth below.

18 109. Petitioners bring this action because the individual Petitioners, Petitioner Kennedy  
19 Commission's members, and the general public will suffer irreparable injury if Respondents'  
20 action is not immediately set aside. Respondents have adopted the BECSP Amendment.  
21 Petitioners and the general public will be irreparably harmed if Respondents are not immediately  
22 enjoined from taking further actions to implement the BECSP Amendment pending resolution of  
23 this lawsuit on its merits. The public interest warrants the issuance of a Writ of Mandate and the  
24 preliminary and permanent injunctions requested by Petitioners.

25 110. Petitioners have no adequate remedy at law for their injuries in that they have  
26 exhausted all administrative remedies, and damages cannot compensate for the harm that the  
27 BECSP Amendment pose to Petitioners and the general public.

1           111. Wherefore, Petitioners pray for preliminary and permanent injunctive relief, as set  
2 forth below.

3                                   **FOURTH CAUSE OF ACTION**  
4                                   **Violation of Due Process Clause of the California Constitution**  
5                                   **(California Constitution article I, § 7(a))**  
6                                   **[All Defendants]**

7           112. Plaintiffs incorporate by reference herein each and every allegation of paragraphs  
8 1-111, inclusive, above.

9           113. The exercise of a city's police powers is invalid under the Due Process Clause of  
10 the California Constitution, art. I, § 7(a), if it is not reasonably related to the public welfare.  
11 Where a city ordinance influences the supply and distribution of housing for a metropolitan  
12 region, it must be "reasonably related to the regional welfare." *Assoc. Home Builders of the*  
13 *Greater Eastbay, Inc. v. City of Livermore*, 18 Cal. 3d 582, 607 (1976).

14           114. The BECSP Amendment, as alleged above, unnecessarily sets a rigid ceiling on  
15 residential development in the primary location identified in the 2013 Housing Element for  
16 meeting the City's share of regional housing needs. By eliminating all but 28 units in the BECSP  
17 and blocking development of any housing affordable to lower-income families, the BECSP  
18 Amendment prevents the City from accommodating the unmet portion of its RHNA at all income  
19 levels, as required by Gov. Code §§ 65583, 65913.1 and other state statutes. Further, the new  
20 density limitations and costly permitting requirements imposed by the BECSP Amendment  
21 prevent the City from accommodating the unmet portion of its share of the lower-income RHNA  
22 for the current planning period. As a matter of law, therefore, the BECSP Amendment is not  
23 reasonably related to the regional welfare.

24           115. The BECSP is located along the City's "two major commercial corridors" with  
25 "easy freeway access," creating important housing stock not only for Huntington Beach but also  
26 for surrounding cities. By drastically reducing residential development and preventing the City  
27 from meeting its RHNA, the BECSP Amendment negatively impacts the supply and distribution  
28 of housing for the Orange County region, and is therefore not reasonably related to the regional  
welfare. To the contrary, the BECSP Amendment adversely impacts the regional welfare by,  
among other things, promoting a severe imbalance of the regional distribution of jobs and



1 housing, disrupting the regional economy, and promoting lengthy commutes that contribute to  
2 severe traffic congestion and unhealthy air quality.

3 116. The BECSP Amendment is an invalid exercise of the City's police power. It is not  
4 valid as an exercise of any municipal power, and is void.

5 117. As alleged above, an actual controversy has arisen and now exists between  
6 Petitioners and Respondents concerning their respective rights and duties. Further, Petitioners,  
7 Petitioner Kennedy Commission's members, and the general public will suffer irreparable injury  
8 if Respondents' action is not immediately set aside, and Petitioners have no adequate remedy at  
9 law for their injuries. Wherefore, Plaintiffs pray for declaratory and injunctive relief, as set forth  
10 below.

11 **FIFTH CAUSE OF ACTION**  
12 **Unlawful Housing Discrimination**  
13 **(California Fair Employment and Housing Act,**  
14 **Gov. Code § 12900 *et seq.*)**  
15 **[All Defendants]**

16 118. Plaintiffs incorporate by reference herein each and every allegation of paragraphs  
17 1-117, inclusive, above.

18 119. The California Fair Employment and Housing Act ("FEHA"), Gov. Code § 12900  
19 *et seq.*, prohibits a city from discriminating through public land-use practices, decisions, and  
20 authorizations (including, but not limited to, any actions authorized under the State Planning and  
21 Zoning Law, Government Code title 7) on the basis of race, color, religion, sex, gender, gender  
22 identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial  
23 status, source of income, disability or genetic information. The Act defines "familial status" as  
24 "one or more individuals under 18 years of age who reside with a parent, another person with care  
25 and legal custody of that individual, . . . or the designee of that parent or other person with legal  
26 custody . . . ." Gov. Code § 12955.2. FEHA prohibits any municipal land-use action that makes  
27 housing opportunities unavailable to members of a protected class at a significantly higher rate  
28 than it does to others.

120. The City's acts and omissions, as alleged herein, including its restriction of, and  
failure to accommodate, promote and approve, very-low and low-income housing development,

1 have a discriminatory effect, including an adverse and disparate impact, on families with children  
2 and on racial and ethnic minorities. The City's failure to designate and zone, and allow  
3 residential development of, sufficient land with appropriate standards to facilitate development of  
4 housing affordable to lower-income households as required by the Housing Element and Least  
5 Cost Zoning laws and by the 2013 Housing Element, which sets forth the original BECSP, has a  
6 discriminatory effect, including an adverse and disparate impact on families with children and  
7 racial and ethnic minorities. Plaintiffs are informed and believe, and on that basis allege, that  
8 persons and households in need of affordable housing in Huntington Beach are disproportionately  
9 racial and ethnic minorities and families with children. This disparity is statistically significant  
10 and did not occur by chance.

11 121. The City's actions, as previously alleged, discriminate against racial and ethnic  
12 minorities and families with children, and have an adverse discriminatory effect on these groups  
13 and individuals in that they deny and artificially suppress housing for households in these groups  
14 to a significantly greater degree than to households that are not within these protected categories  
15 and result in their exclusion from, and/or their segregation within, the community.

16 122. The City's actions, as previously alleged, unlawfully discriminate against  
17 Plaintiffs' enjoyment of residence, property ownership, and tenancy, on the basis of one or more  
18 protected classifications alleged above. The discriminatory acts of the City also have deprived,  
19 and will continue to deprive, Plaintiffs of their statutory rights under FEHA to live in a  
20 community that is free of illegal discrimination against racial and ethnic minorities and families  
21 with children. Plaintiffs have suffered and will continue to suffer irreparable injury unless and  
22 until this Court enjoins the City from its continuing discriminatory policies and conduct that  
23 deprive Plaintiffs of their right to be free from unlawful discrimination.

24 123. The acts and omissions by the City alleged above constitute unlawful  
25 discrimination on the basis of race, national origin, color, and familial status in violation of  
26 FEHA. Plaintiffs are informed and believe, and on that basis allege, that the City knew or should  
27 know of the discriminatory consequences of its acts and omissions, and intentionally proceeded  
28 despite those known consequences.

1           124. Plaintiff Kennedy Commission has been and will be injured by the discriminatory  
2 housing practices undertaken by Defendants, and is therefore an aggrieved person within the  
3 meaning of Gov. Code § 12927(g). In particular, as alleged above, Plaintiff Kennedy  
4 Commission has diverted staff and financial resources to advocate for the provision of affordable  
5 housing on a non-discriminatory basis in the City, on behalf of lower-income families with  
6 children and racial and ethnic minorities residing in Huntington Beach and Orange County more  
7 broadly. The City's challenged actions and omissions have frustrated the mission of Plaintiff  
8 Kennedy Commission to advance environmental, economic and social justice and combat  
9 inequity, exclusion and discrimination throughout Orange County, of which Huntington Beach is  
10 a part.

11           125. As alleged above, an actual controversy has arisen and now exists between  
12 Petitioners and Respondents concerning their respective rights and duties. Further, Petitioners,  
13 Petitioner Kennedy Commission's members, and the general public will suffer irreparable injury  
14 if Respondents' action is not immediately set aside, and Petitioners have no adequate remedy at  
15 law for their injuries. Wherefore, Plaintiffs pray for declaratory and injunctive relief, as set forth  
16 below.

**SIXTH CAUSE OF ACTION**  
**Violation of Gov. Code § 65008**  
**[All Defendants]**

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19           126. Plaintiffs incorporate by reference herein each and every allegation of paragraphs  
20 1-125, inclusive, above.

21           127. Government Code § 65008 mandates that no local agency shall, in the enactment  
22 or administration of planning and land-use ordinances, prohibit or discriminate against any  
23 residential development or emergency shelter because of the method of financing, because of the  
24 race, sex, color, religion, ethnicity, national origin, ancestry, lawful occupation, age, family  
25 status, or disability of the owners or intended occupants of the housing, or because the housing is  
26 intended for occupancy by persons or families of low or moderate income. Plaintiffs are  
27 informed and believe, and on that basis allege, that persons and households in need of affordable  
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1 housing in Huntington Beach are disproportionately racial and ethnic minorities and families with  
2 children.

3 128. The City's adoption of the BECSP Amendment discriminates against residential  
4 development intended for occupancy by persons of low or moderate income, racial and ethnic  
5 minorities, and families with children in violation of Government Code § 65008. The original  
6 BECSP, as enacted at the time the 2013 Housing Element was adopted, sets forth "generous  
7 development standards" intended to facilitate low-cost multi-family development options for the  
8 provision of housing affordable to lower-income households. *See, e.g.,* Housing Element V-15,  
9 V-23, Ex. B. By contrast, the BECSP Amendment's MAND limitations, density restrictions, and  
10 permit requirements obstruct the development of affordable housing at the expense of the City's  
11 lower-income households. Plaintiffs are informed and believe, and on that basis allege, that the  
12 City knew or should know of the discriminatory consequences of its acts and omissions, and  
13 intentionally proceeded despite those known consequences.

14 129. The City's adoption of the BECSP Amendment also has a statistically significant  
15 adverse and disparate impact on residential development intended for occupancy by persons with  
16 very-low and low incomes, racial and ethnic minorities, and families with children, and/or  
17 financed by government resources, in violation of Government Code § 65008. As a result of the  
18 BECSP Amendment, as set forth herein, residential developments in these categories are  
19 disproportionately excluded from Huntington Beach in comparison to residential developments  
20 generally. These disparities are statistically significant and did not occur by chance. The City's  
21 adoption of the BECSP Amendment and its failure to implement its state-approved Housing  
22 Element, and to designate and zone, and allow residential development of, sufficient land with  
23 appropriate standards to facilitate development of housing affordable to lower-income  
24 households, has the effect of maintaining and increasing this exclusionary pattern.

25 130. The City's adoption of the BECSP Amendment has a discriminatory effect,  
26 including a statistically significant adverse and disparate impact, on persons with very-low and  
27 low-incomes, racial and ethnic minorities, and families with children in violation of Government  
28 Code § 65008. Households in each of these groups have a disproportionately greater need for

1 housing affordable to lower-income households in comparison to households in Huntington  
2 Beach and the surrounding area generally. The City's adoption of the BECSP Amendment and  
3 its failure to implement its state-approved Housing Element programs, as well as its failure to  
4 designate and zone, and allow residential development of, sufficient land with appropriate  
5 standards to facilitate development of housing affordable to lower-income households, has the  
6 effect of denying housing opportunities and the enjoyment of residence in the city to households  
7 in these protected groups to a significantly greater degree than to other households.

8 131. The City, by its acts and omissions in exercising its land use and zoning powers as  
9 alleged herein, has acted and failed to act in a manner that has a discriminatory purpose and effect  
10 on the production and siting of housing affordable to very-low and low-income families with  
11 children. Plaintiffs are informed and believe, and on that basis allege, that the City knew or  
12 should have known of the discriminatory consequences of its acts and omissions, and  
13 intentionally proceeded despite those known consequences.

14 132. As alleged above, an actual controversy has arisen and now exists between  
15 Petitioners and Respondents concerning their respective rights and duties. Further, Petitioners,  
16 Petitioner Kennedy Commission's members, and the general public will suffer irreparable injury  
17 if Respondents' action is not immediately set aside, and Petitioners have no adequate remedy at  
18 law for their injuries. Wherefore, Plaintiffs pray for declaratory and injunctive relief, as set forth  
19 below.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiffs/Petitioners pray that the Court grant them the following relief:

- 22 1. For a declaration that:
  - 23 a. The Huntington Beach BECSP Amendment, including the MAND limit  
24 and the CUP, height, parking, setback, use, Zoning Text Amendment and  
25 Environmental Assessment restrictions, is inconsistent with state law, and  
26 is invalid and may be enjoined.
  - 27 b. The Huntington Beach BECSP Amendment, including the MAND limit  
28 and the CUP, height, parking, setback, use, Zoning Text Amendment and

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Environmental Assessment restrictions, is inconsistent with the Policies and Programs in the City’s adopted and state-approved 2013 Housing Element, and is void *ab initio*.

c. The City and its City Council have failed to implement the state-approved 2013 Housing Element of the General Plan, which HCD determined was in actual and substantial compliance with the requirements of applicable state laws, as set forth herein.

d. The BECSP Amendment, including the MAND limit and the CUP, height, parking, setback, use, Zoning Text Amendment and Environmental Assessment restrictions, is in conflict with the City’s ability to meet its obligation to accommodate the RHNA in each income category for the current planning period, and is not reasonably related to the regional welfare.

e. The City’s failure to meet its legal obligations as set forth herein has a discriminatory purpose and/or a discriminatory effect on Plaintiffs and other members of classes protected by the California Fair Employment and Housing Act, and is therefore an unlawful violation of Government Code § 12900 *et seq.*

f. The City’s failure to comply with its legal obligations as set forth herein constitutes an unlawful violation of Government Code § 65008.

2. For a peremptory writ of mandate, and/or preliminary and permanent injunctive relief, commanding the City and the City Council to:

a. Invalidate the provisions of the BECSP Amendment that either violate state law or that are inconsistent with the 2013 Housing Element.

b. Cease enforcing, administering or implementing the BECSP Amendment, including the MAND limit and the CUP, height, parking, setback, Zoning Text Amendment and Environmental Assessment restrictions, and

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otherwise cease utilizing or relying on it in any planning or decision making process.

- c. Implement the state-approved 2013 Housing Element of the General Plan, which was found in actual and substantial compliance with the requirements of applicable state laws, as set forth herein.
- d. Comply with Government Code § 65913, *et seq.*, by implementing the state-approved 2013 Housing Element of the General Plan, which designates land at sufficiently high densities and with appropriate development standards to accommodate the need for very-low and low-income housing.
- e. Cease taking actions with the purpose or effect of discriminating against Plaintiffs and other members of classes protected by the California Fair Employment and Housing Act.
- f. Cease taking actions in violation of Government Code § 65008.

3. For a peremptory writ of mandate and/or preliminary and permanent injunctive relief prohibiting the City and its City Council, and their officers, employees, agents and representatives, until the City reverses its adoption of the BECSP Amendment and implements the state-approved 2013 Housing Element of the General Plan, which meets the requirements of state law and which complies in full with the criteria set forth in Government Code § 65580 *et seq.*, from:

- a. Issuing building permits for, or otherwise approving any construction or development, except housing units affordable to very-low- and low-income households as defined in Government Code § 65589.5(h)(3) and Health and Safety Code § 50079.5, and except as provided in Government Code § 65755(b); and,
- b. Granting zoning changes or variances, or subdivision map approvals, except as provided in Government Code § 65755(b), and except as to housing units affordable to very-low-, low- and moderate-income

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households as defined in Government Code § 65589.5(h)(3) and Health and Safety Code § 50079.5.

- 4. For an award to plaintiffs of their costs of suit;
- 5. For an award to plaintiffs of their reasonable attorneys' fees; and
- 6. For such other and further relief as the Court deems just and proper.

Dated: July 31, 2015

Jones Day

By:  \_\_\_\_\_

Attorneys for Petitioners/Plaintiffs



VERIFICATION

FORM No. 2

**Verification of Pleading (Code Civ. Proc., § 446)  
Declaration under Penalty of Perjury Form (Code Civ. Proc., §§ 446, 2015.5)**

by Party

CASE TITLE The Kennedy Commission, et al. v. City of Huntington Beach, et al.

I, William Adams, declare:

I am a Plaintiff in the above-entitled matter.

I have read the foregoing Petition for Alternative Writ of Mandate and Complaint for Declaratory and Injunctive Relief, ¶¶ 8-14, and know the contents thereof.

The same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and, as to those matters, I believe it to be true.

Executed on July 29, 2015, at City of Orange, Orange County, California.

I declare (or certify) under penalty of perjury that the foregoing is true and correct.

  
\_\_\_\_\_  
(Signature of Party)

VERIFICATION

FORM No. 2

**Verification of Pleading (Code Civ. Proc., § 446)  
Declaration under Penalty of Perjury Form (Code Civ. Proc., §§ 446, 2015.5)**

by Party

CASE TITLE The Kennedy Commission, et al. v. City of Huntington Beach, et al.

I, Jason Puleo, declare:

I am a Plaintiff in the above-entitled matter.

I have read the foregoing Petition for Alternative Writ of Mandate and Complaint for Declaratory and Injunctive Relief, ¶¶ 15-20, and know the contents thereof.

The same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and, as to those matters, I believe it to be true.

Executed on July 29, 2015, at City of Stanton, Orange County, California.

I declare (or certify) under penalty of perjury that the foregoing is true and correct.

  
\_\_\_\_\_  
(Signature of Party)

**VERIFICATION**

FORM No. 2

**Verification of Pleading (Code Civ. Proc., § 446)  
Declaration under Penalty of Perjury Form (Code Civ. Proc., §§ 446, 2015.5)**

by Party

CASE TITLE The Kennedy Commission, Jason Puleo and William Adams  
vs: City of Huntington Beach

I, Cesar Covarrubias, declare:  
(Name)

I am the Plaintiff in the above-entitled matter.

I have read the foregoing  
(pleading, e.g., complaint) and know the contents thereof.

The same is true of my own knowledge, except as to those matters which are  
therein stated on information and belief, and, as to those matters, I believe it to be true.

Executed on 7/28/15, 2015 at Irvine  
Orange County, California.

I declare (or certify) under penalty of perjury that the foregoing is true and correct.

  
(Signature of Party)