



**VENTURA COUNCIL
OF GOVERNMENTS**

AGENDA

Thursday, November 10, 2011
5:00 p.m.
City of Camarillo
Council Chambers
601 Carmen Drive
Camarillo, CA 93010

1. **CALL TO ORDER**

2. **FLAG SALUTE**

3. **ROLL CALL**

4. **PUBLIC COMMENT**

At this time, members of the public may comment on any item not appearing on the agenda upon completion of a speaker card. Individual Board Members may briefly respond to Public Comments or ask questions for clarification.

5. **BOARD MEMBER COMMENTS**

6. **CONSENT CALENDAR**

A. **Minutes** – Adopt the Minutes of the September 8, 2011 meeting. – pg.3

B. **Quarterly Budget** – Receive and File – pg. 5

C. **Regional Housing Needs Assessment (RHNA) Update** - Receive and File – pg. 9

MEMBERS

City of Camarillo
Michael Morgan, Member
Don Waunch, *Alternate*

City of Fillmore
Patti Walker, Member
Gayle Washburn, *Alternate*

City of Moorpark
Janice Parvin, Member
Keith Millhouse, *Alternate*

City of Ojai
Carlton Strobel, Member
Paul Blatz, *Alternate*

City of Oxnard
Tim Flynn, Member
Irene Pinkard, *Alternate*

City of Port Hueneme
Sylvia Muñoz Schnopp, Member
Douglas Breeze, *Alternate*

City of San Buenaventura
Carl Morehouse, Member
Brian Brennan, *Alternate*

City of Santa Paula
Jim Tovias, Member
Rick Cook, *Alternate*

City of Simi Valley
Bob Huber, Member
Barbra Williamson, *Alternate*

City of Thousand Oaks
Tom Glancy, Member
Jacqui Irwin, *Alternate*

County of Ventura
Linda Parks, Member
John Zaragoza, *Alternate*

7. **ORDER OF BUSINESS**

- A. **VCOG/VCTC UPDATE** – Receive and File – pg. 11
- B. **LEGISLATIVE PROGRAM** - Approve 2012 Legislative Program – pg. 15
- C. **REGIONAL TRANSPORTATION PLAN/SUSTAINABLE COMMUNITIES STRATEGY (RTP/SCS) UPDATE** – Receive and File – pg. 23

8. **AGENCY REPORTS**

- A. Southern California Association of Governments
- B. Ventura County Transportation Commission
- C. League of California Cities
- D. Other Agencies

9. **REQUESTS FOR FUTURE AGENDA ITEMS**

Any Board Member may propose items for placement on a future agenda. Members may discuss whether or not the item should be agendaized and the description of the agenda item.

10. **ADJOURNMENT TO JANUARY 12 , 2012 MEETING**

Copies of staff reports or other written documentation relating to each item of business referred to on this agenda are on file at the Ventura County Transportation Commission and are available for public inspection. If you have any questions regarding any agenda item, contact the Executive Director at (805) 642-1591.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Executive Director. Notification 48 hours before the meeting will allow VCOG to make reasonable arrangements to ensure accessibility to this meeting (28 CFR 35, 102-35. 104 ADA Title II).



MEETING SUMMARY

Thursday, September 8, 2011
5:00 p.m.
City of Camarillo
Council Chambers
601 Carmen Drive
Camarillo, CA 93010

7. **CALL TO ORDER**

8. **FLAG SALUTE**

9. **ROLL CALL**

Janice Parvin, City of Moorpark
Tim Flynn, City of Oxnard
Michael Morgan, City of Camarillo
Patti Walker, City of Fillmore
Carl Morehouse, City of San Buenaventura
Carlton Strobel, City of Ojai
Linda Parks, County of Ventura

Absent: Cities of Santa Paula, Port Hueneme, Thousand Oaks, Simi Valley

10. **PUBLIC COMMENT**

11. **BOARD MEMBER COMMENTS**

12. **CONSENT CALENDAR**

D. **July 14, 2011 Meeting Minutes** – *Approved*

E. **Legislative Update** – *Approved*

1. Oppose AB 122- (Alejo) – Housing Element Statue of Limitations
2. Consider position on SB 791 (Steinberg), a bill to provide funding for the Sustainable Communities Strategy, with a staff recommendation to be presented the meeting.

7. **ORDER OF BUSINESS**

D. **VCOG/VCTC UPDATE** – *Received and Filed*

- E. **PRESENTATION BY NAVAL BASE VENTURA COUNTY AND POTENTIAL FOR JOINT LAND USE STUDY** – *Received and Filed*
- F. **REGIONAL HOUSING NEEDS ASSESSMENT (RHNA) UPDATE** - *Received and Filed*
- 8. **AGENCY REPORTS** - *None*
- 9. **REQUESTS FOR FUTURE AGENDA ITEMS** - *None*
- 10. **ADJOURNMENT TO NOVEMBER 10 , 2011 MEETING**



**VENTURA COUNCIL
OF GOVERNMENTS**

Item #6B

MEMORANDUM

TO: Board of Directors
FROM: Sally DeGeorge, Finance Director
SUBJECT: Quarterly Budget Report
DATE: November 10, 2011

Recommendation: Receive and file.

Discussion:

The Ventura Council of Governments (VCOG) and the Ventura County Transportation Commission (VCTC) entered into a cooperative agreement on July 10, 2009 for the VCTC to administer the functions and activities of VCOG which included the financial reporting responsibilities.

The September 30, 2011 quarterly budget report indicates that revenues were approximately 99.3% of the adopted budget while expenditures were approximately 77.4% of the adopted budget. Although the percentage of the budget year completed is shown, be advised that neither the revenues nor the expenditures occur on a percentage or monthly basis.

The Council is utilizing VCTC's investment policy, whose investment objectives are safety, liquidity, diversification, return on investment, prudence and public trust with the foremost objective being safety. Below is a summary of the Council's investments that are in compliance with VCTC's investment policy:

Institution	Investment Type	Maturity Date	Interest to Date	Rate	Balance
Wells Fargo – Checking	Government Checking	N/A	\$4.39	0.09%	\$63,262.98

The Council's checking accounts is maintained separately from VCTC's funds in a government checking account. The interest earnings are deposited at the end of the month. The first \$250,000 of the combined deposit balance is federally insured and the remaining balance is collateralized by Wells Fargo Bank.

**VENTURA COUNCIL OF GOVERNMENTS
BALANCE SHEET
AS OF SEPTEMBER 30, 2011**

Assets:	
Cash and Investments – Wells Fargo Bank	\$63,263
Receivables	<u>13,213</u>
Total Assets:	<u>\$76,476</u>
Liabilities:	
Accrued Expenses	\$ 0
Total Liabilities:	<u>\$ 0</u>
Fund Balance:	
Fund Balance	<u>\$76,476</u>
Total Liabilities and Fund Balance:	<u>\$76,476</u>

**VENTURA COUNCIL OF GOVERNMENTS
STATEMENT OF REVENUES, EXPENDITURES AND CHANGES IN FUND BALANCES
FOR THE THREE MONTHS ENDING SEPTEMBER 30, 2011**

Revenues	Year to Date		Variance	% Year to
	Actual	Budgeted	Over/(Under)	Date
Local Contributions	\$65,000	\$65,000	\$ 0	100.0%
Local Fees	0	500	(500)	0.0%
Other Revenues	0	0	0	0.0%
Interest	<u>15</u>	<u>0</u>	<u>15</u>	<u>.</u>
Total Revenues	<u>65,015</u>	<u>65,500</u>	<u>(485)</u>	<u>99.3%</u>
Expenditures				
Accounting Services	500	2,500	(2,000)	20.0%
Dinner Meeting	0	3,000	(3,000)	0.0%
Executive Administration	50,000	50,000	0	100.0%
Miscellaneous	209	5,000	(4,791)	4.2%
Special Projects	<u>0</u>	<u>5,000</u>	<u>(5,000)</u>	<u>0.0%</u>
Total Expenditures	<u>50,709</u>	<u>65,500</u>	<u>(14,791)</u>	<u>77.4%</u>
Net Change in Fund Balance	<u>14,306</u>	<u>0</u>	<u>14,306</u>	
Beginning Fund Balance	<u>62,170</u>	<u>60,000</u>	<u>2,170</u>	
Ending Fund Balance	<u>\$76,476</u>	<u>\$60,000</u>	<u>\$16,476</u>	

THIS PAGE INTENTIONALLY LEFT BLANK



**VENTURA COUNCIL
OF GOVERNMENTS**

Item #6C

MEMORANDUM

TO: Board of Directors
FROM: Steve DeGeorge, Planning Director
SUBJECT: Regional Housing Needs Assessment (RHNA) Update
DATE: November 10, 2011

Recommendation:

- Receive and File

Discussion: As reported at the September meeting, the Southern California Association of Governments (SCAG) had published the proposed Regional Housing Needs Assessment (RHNA) allocation methodology for a sixty day review and comment period. Two public hearings were held in October and SCAG received very few comments. The comment period is set to close on November 3rd and as of the writing of this item, the RHNA allocation methodology remains as originally as proposed.

On November 3rd SCAG will be holding a joint meeting of the Community, Economic, and Human Development (CEHD) Committee, Energy and Environment Committee (EEC), Transportation Committee (TC) and the Regional Council (RC) to move forward elements of the Regional Transportation Plan and Sustainable Communities Strategy (RTP/SCS) as well as to approve the proposed RHNA allocation methodology.

With the Regional Council's approval of the RHNA allocation methodology, SCAG staff will begin the process of developing local housing allocations of the 409,060 – 438,030 dwelling units allocated to the region by the Department of Housing and Community Development (HCD). Delivery of local housing need allocations is anticipated in the first two weeks of December.

THIS PAGE INTENTIONALLY LEFT BLANK



**VENTURA COUNCIL
OF GOVERNMENTS**

Item #7A

MEMORANDUM

Date: November 10, 2011
To: Board of Directors
From: Darren M. Kettle, Executive Director
Subject: VCTC/VCOG Organization Update

RECOMMENDATION:

Receive update from Executive Director and VCOG Administrative Committee members related to joint meeting of VCOG and VCTC Administrative Committees.

DISCUSSION:

In the Fall 2009, the Ventura Council of Governments (VCOG) Board of Directors approved a management and administrative services agreement with the Ventura County Transportation Commission (VCTC) through which the Executive Director of VCTC would serve as the Executive Director of VCOG and as necessary utilize VCTC staff to perform VCOG related duties. Besides the Executive Director, VCTC staff performing VCOG responsibilities include the Clerk of the Board, Director of Planning and Technology, Director of Programming (who convenes the member staff Legislative Committee) and Finance Director. Since the agreement was approved by both Boards, the two entities have continued as separate public entities but have enjoyed several shared successes and have benefitted from the knowledge of a single staff most notably the completion of Phase II of the Compact for a Sustainable Ventura County in cooperation with Ventura County Civic Alliance, and a joint meeting between VCOG and VCTC to provide input in to the Southern California Association of Governments (SCAG) SB 375 Sustainable Communities Strategy. VCOG has continued to perform in its role as a forum to discuss more discretionary regional issues that are non-transportation or planning related such as holding a forum to discuss the impacts on local communities of the State's expanded release of inmates, discussions on real estate fraud, and the required every 5 year review of the County Integrated Waste Management Plan.

In November 2010, at the request of the Executive Director, the VCOG Board performed a performance review of the Executive Director and staff. The consensus of the Board was that the staff was performing well in its service to VCOG. The VCOG Board did go beyond the discussion of a classic review, however, and requested that the Executive Director come back with a vision or future for VCOG and its arrangement with VCTC vis-a-vis' regional issues and planning. In response to that request, and recognizing that VCOG is a voluntary joint powers

authority consisting of its eleven members (10 cities, each with one elected member-appointee, and the County, with one elected member-appointee), staff suggested that it might be best to meet with the city managers of the county and the county executive officer to work toward a consensus vision that could be presented to the VCOG Board and potentially a recommendation to VCTC.

In the conversations with the city managers and county executive officer several common themes arose. Many of the managers recognized that with the challenging financial times, an increased focus on developing regional solutions to regional challenges and the value and importance of public outreach and engagement, now is probably the best time to seriously discuss a single entity in the interest of good government and good integrated planning. For the purpose of public/elected officials there would be less confusion as to which entity was responsible for what work and, should the public become more engaged in regional issues, a single regional planning entity reduces confusion in the public participation process. It was recognized that a single entity made sense from a government efficiencies perspective although much of that has been realized through the existing management agreement.

It seemed as though there was general consensus that the timing may now be right to move in the direction described above, though there were some issues raised that could present challenges to merging the two entities. The size and make-up of the two governing boards are different. VCTC has a 17 member board (10 city members, 5 County Supervisors, and two citizen appointees) established by State law while VCOG has an 11 member board (10 city members and 1 County Supervisor) with alternates as defined in a joint powers agreement. In an effort to start the discussion and recognizing the VCTC membership is set in state law and is fully representative, staff suggested that what might make the most sense would be for VCTC absorb the VCOG duties.

In May of this year both the Commission and the VCOG Board of Directors voted unanimously to move forward with the merging or restructuring the two bodies to become one with VCTC serving as the VCOG Board, and directed staff and legal counsel to develop the necessary legal instruments to implement the change. The initial concept drafted by legal counsel was a simple designation process that would have required independent actions by each city and the county approving a resolution modeled after the current VCOG Joint Powers Agreement designating VCTC to act as VCOG as appropriate and necessary. Concurrently, the Commission was to be asked to approve a similarly structured resolution accepting the designation to act in the capacity of VCOG upon 2/3rd (or 8) local jurisdictions approving the local resolution.

Over the course of the summer both staff and legal counsel from several cities have reviewed the documents from both a legal and governance perspective. As part of that review, a legal issue was identified that negates the approach of each local jurisdiction adopting a resolution designating VCTC to serve in the capacity of VCOG and maintain VCOG as a legal and separate public entity. This latest development was reported to both the VCOG Board of Directors and the Commission at their September 2011 governing board meetings. Given the unanimous action of both governing boards to proceed with the merger/restructuring of VCTC and VCOG the Executive Director requested that the Chairs of the two boards call a joint meeting of the Administrative Committees of VCTC and VCOG to discuss how to proceed.

The joint meeting of the two Administrative Committees occurred on October 6th. Also in attendance at the meeting were most of the City Managers and the County Executive Officer. Listed below are the next step alternatives that were considered by the participants in the meeting.

1. Amend existing VCOG Joint Powers Agreement (JPA) to conform to the governance structure of VCTC. This alternative is the simplest administratively as it would require minor changes to in two paragraphs of the existing JPA. In order for the governing board membership of VCOG to be consistent with that of VCTC, the changes would include eliminating alternates for cities and the county **and** including the five members of the county Board of Supervisors along with the 2 public members. With this alternative the two VCTC citizen members would not be eligible to vote on VCOG specific items. An amendment to the JPA requires the consent of all members. It was recognized that this approach may be the “simplest” approach to a full merger however the requirement of unanimous consent of the eleven members presents complications as at least one city has formally voted to not amend the current JPA and city managers from other cities have indicated that a decision to amend the JPA is no “sure-thing” either.
2. Draft new Joint Powers Agreement to create a “new” VCOG with a governance structure consistent with VCTC. Assuming that there is no need to make any other substantive changes to the existing JPA, this alternative would be necessary only if one or more of the parties to the existing JPA opts to not approve an amendment. This option was considered undesirable as it is really counter to the cooperative intent of a JPA inclusive of all local general purpose governments.
3. Have VCOG contract with VCTC to manage and carry out VCOG duties on its behalf. In effect, VCOG would take a single action to “contract” with VCTC and delegate voting on VCOG items to the members of the Commission. In this scenario, the two VCTC citizen members would be entitled to vote on VCOG items. Also, this approach would permit all city and county members of the Commission regardless of whether the local jurisdiction endorsed the concept and/or continued to pay annual VCOG dues. This alternative was dismissed as being too convoluted and/or shifty to be considered a practical solution
4. Proceed with “designation by resolution” approach. The VCOG Joint Powers Authority would continue to exist as a legal entity on paper but its duties and responsibilities would shift to VCTC. However, this approach would require that VCTC accept the potential legal risks for conducting programs beyond those already in statute or permitted under existing law. The general feeling of the Joint meeting participants was that no desire to expose either agency to additional legal exposure as a result of a merger of the two agencies.
5. Lastly, given the limited VCOG work program, specifically the fact that key decisions related to VCOG’s role in accepting delegation of development of the Sustainable Communities Strategy and the Regional Housing Needs Assessment as well as completing its responsibilities of the 5-year review of the County Integrated Waste Management Plan, have been concluded, now may be the time to consider a substantially reduced VCOG meeting schedule. The VCOG JPA dictates that the VCOG Board shall set the Board meeting schedule as part of the VCOG Bylaws. Currently the

bylaws require that “regular meetings of the Governing Body shall be held not less than four times in a calendar year or as other determined by a vote of the Governing Body.” This language would seem to provide the VCOG Board significant flexibility in setting a meeting schedule.

As there were a variety of options discussed and worthy of further consideration, the consensus of the participants in the joint meeting was to request that the City Managers and County Executive Officer add this item to Ventura County City/County Managers (VCCM) meeting agenda. VCCM has convened one time since given the request and continued the dialogue that began at the Joint meeting but as yet have not developed a final recommendation.



MEMORANDUM

TO: Board of Directors
FROM: Peter De Haan, VCTC Programming Director
SUBJECT: 2012 Legislative Program
DATE: November 10, 2011

Recommendation: Approve 2012 Legislative Program

Discussion:

Each year VCOG adopts a Legislative Program for the upcoming year, setting in general terms the Board's overall priorities. As the year progresses, staff will return to the Board to request positions on specific legislative issues as they arise. The VCOG Legislative Committee, consisting of legislative staff of member agencies, met on September 29th, and reviewed the proposed 2012 Legislative Program. The program, incorporating changes discussed by the Legislative Committee, is attached for the Board's consideration.

The recommended 2012 Program is largely the same as approved for 2011. However, some of the items recognize the continuation of issues which VCOG has taken up during 2011, including redevelopment agencies status and the Southern California Association of Governments Economic Strategy.

The attached Meeting Summary provides information from the Legislative Committee meeting and the updated bill matrix. AB 631 (Ma) regarding electric vehicle charging stations regulatory jurisdiction, on which VCOG took a support in concept position, has been signed into law. AB 1220 (Alejo) regarding extension of the Housing Element statute of limitations, which VCOG opposed, was vetoed by the Governor.

Attachments

Attached for information are the following items for the Committee's consideration:

- Attachments: A: 2012 Legislative Program
- B: Meeting Summary of September 29th Legislative Committee
- C: Updated Bill Matrix

THIS PAGE INTENTIONALLY LEFT BLANK

**VENTURA COUNCIL OF GOVERNMENTS
2011 LEGISLATIVE PROGRAM**

- A. SB 375** – Work with other agencies and stakeholders as appropriate to support guidance, follow-up actions, or legislation to utilize the SB 375 regional plan environmental analysis to reduce the analytical requirements for individual transportation projects.
- Support legislation to extend CEQA streamlining provisions for transportation projects.
 - Advocate for local authority and flexibility in climate change legislation and State agency policies.
 - Seek adequate funding to fulfill the requirements of SB 375 through dedicated State funding sources.
 - Ensure that any future funding for SB 375 implementation include funding for public transit operations, as public transit is critical to implementation of SB 375.
- B. LOCAL AGENCY FUNDING** – Support stable state and federal funding for local agencies including cities and counties, special districts, and countywide agencies.
- Support legislation requiring the state and federal governments to provide full cost reimbursement to agencies for all unfunded and underfunded mandated programs and for all programs resulting in revenue losses.
 - Maintain the State Constitutional protections that are provided in Proposition 1A and Proposition 22 to protect local revenues from seizure by the State, opposing any further raids to fund the State General Fund shortfall.
 - Retain local redevelopment agencies and support reform of redevelopment law to ensure that redevelopment is targeted only to improve areas that are truly blighted, and to provide affordable housing.
- C. ECONOMIC AND ENVIRONMENTAL POLICIES** - Address areas of common concern regarding economic and environmental issues, including environmental streamlining where processes can be shortened without negatively impacting the environment.
- Support legislation that streamlines the environmental review process for mixed-use infill development without compromising environmental quality standards.
 - Support legislation that streamlines the State’s environmental review process and maintains public participation without compromising environmental quality standards.
 - Work to ensure that any climate change legislation that establishes a “cap and trade” program includes a substantial set aside for transit, as transit is critical to achievement of greenhouse gas emission reduction.

- Support state and federal funding legislation for local storm water and NPDES programs as well as incentives for the use of reclaimed water. Support regulations and full reimbursement for local agencies to carry out the NPDES mission that are practical and capable of being implemented including taking into account economic considerations.
- Support funding legislation for the designation and preservation of open space, and preservation, restoration and enhancement of natural resources.
- Support legislation and/or programs that provide money to local governments for energy efficiency and conservation programs.
- Support the retention of Naval Base Ventura County.
- Support the Economic Strategy adopted by the Southern California Association of Governments.

D. TRANSPORTATION INFRASTRUCTURE FUNDING – Support stable, adequate, and long-term funding for transportation infrastructure, including highways, transit, rail, local roads, and transportation demand management, to meet increased population, capacity, safety, and goods movement needs.

- Support full protection of transportation funds from State General Fund raids as intended by voter-approved initiatives.
- Work with Caltrans, SCAG, VCTC and other appropriate parties to advocate for California Consensus Principles and Priorities and the Southern California Transportation Authorization Policy Priorities in the next federal surface transportation authorization. Include the preservation of long-range transportation planning and adequate funding to maintain the existing system and expand and improve transportation systems consistent with regional plans.

E. SOLID WASTE - Support legislation pertaining to VCOG's responsibility for approval of the regional solid waste plan update.

- Oppose legislation that would restrict or limit local government's ability to franchise refuse and recycling collection services, to direct municipal or county solid waste flow (flow control), to contractually require haulers to guarantee achievement of AB 939 goals, or to local government's ability to protect landfill capacity.
- Support legislation that streamlines AB 939 tracking and reporting requirements.

F. OTHER ISSUES - Based on Board direction, consider other legislation as it affects regional needs, particularly issues raised by the California Association of Councils of Governments, the League of California Cities, and the California State Association of Counties.

**MEETING SUMMARY
LEGISLATIVE COMMITTEE**

Camarillo City Hall
601 Carmen Drive
Camarillo

Thursday, September 29, 2011, at 3:30 p.m.

Attendees: Roger Pichardo, Camarillo; Mina Layba, Thousand Oaks; Alex Dearana, Ventura; Peter De Haan, staff

1. MAY 26, 2011 MEETING SUMMARY

The summary of the May 26, 2011 meeting was approved as submitted.

2. REVIEW SEPTEMBER 8, 2011 BOARD MEETING

The Committee reviewed the actions taken at the previous Board meeting. Although there had not been a committee meeting, staff brought to the Board a recommendation to oppose AB 1220 (Alejo) which would greatly extend the statute of limitations for actions against locally-adopted Housing Elements. The committee members noted that this bill would place a significant burden on local jurisdictions. VCOG has sent a letter to the Governor requesting a veto. Staff had also placed SB 791 on the agenda after it was gutted and amended to address authority to bring a county fuel charge supporting SB 375 to the voters. Staff had not yet made a recommendation due to the short timeframe. However, the bill was gutted and amended again to address a different issue, and the bill was pulled from the agenda.

3. STATUS OF VCOG/VCTC MERGER

The Committee discussed the status of the VCOG/VCTC merger, noting that legal concerns had arisen regarding the process that was to be used. Those present at the meeting noted that their cities were holding off on further action pending further discussion of the process issue, which was to be taken up at a future meeting of the Managers.

4. BILL STATUS

The Committee reviewed the legislative matrix, noting that the Legislature adjourned after passing two of the bills on the VCOG matrix, AB 631 (Ma) and AB 1220 (Alejo), both of which still await gubernatorial action. The remaining bills on the matrix have now become two-year bills, with further legislative action possible in 2012.

5. 2012 LEGISLATIVE PROGRAM

Peter De Haan, VCOG staff, presented the draft 2012 Legislative Program, noting that the Program is similar to what was approved for 2011, and summarizing the changes. The Committee discussed the language regarding redevelopment agencies, and developed revised wording as follows: "Retain local redevelopment agencies and support reform of redevelopment law to ensure that redevelopment is targeted only to improve areas that are truly blighted, and to provide affordable housing." The Committee recommended approval of the draft 2012 Legislative Program as presented, with this change.

6. NEXT MEETING

The next meeting was set for Thursday, December 1, 2011, at 4:00 p.m. at the Camarillo City Hall, Administrative Conference Room.

VENTURA COUNCIL OF GOVERNMENTS STATE LEGISLATIVE MATRIX BILL SUMMARY October 10, 2011			
BILL/AUTHOR	SUBJECT	POSITION	STATUS
AB 231 V.M. Perez	Reforms enterprise zones.	Support in Concept	In Assembly Jobs, Economic Development, & the Economy Committee.
AB 441 Monning	Requires inclusion of health issues in the guidelines for Regional Transportation Plans, and directs that optional advice be prepared for inclusion of health issues in local General Plans.	Oppose	In Assembly Appropriations Committee.
AB 631 Ma	Stipulates that electric vehicle charging stations do not fall under Public Utilities Commission jurisdiction as a public utility.	Support in Concept	Passed Senate 35-0. Signed by Governor.
AB 1220 Alejo	Extends Housing Element statute of limitations.	Oppose	Passed Assembly for amendment concurrence 49-27. Vetoed by Governor.
AB 1308 Miller	Appropriates Highway Users Tax Account (HUTA) funds to continue flowing absent an adopted State Budget.	Support	In Assembly Appropriations Committee.
SB 49 Strickland	Restricts local agency ability to levy fees for emergency response to car crashes.	Watch	Rejected by Senate Public Safety Committee, 1-4.
SB 214 Wolk	Broadens local authority to establish infrastructure finance districts.	Support	In full Assembly.
SB 515 Corbett	Requires battery manufacturers to create programs to manage battery disposal.	Support	In Senate Appropriations Committee.
SB 653 Steinberg	Provides authority for various local taxes.	Oppose	Passed Senate Government & Finance Committee 6-2. Passed

**VENTURA COUNCIL OF GOVERNMENTS
STATE LEGISLATIVE MATRIX BILL SUMMARY
October 10, 2011**

BILL/AUTHOR	SUBJECT	POSITION	STATUS
AB 231 V.M. Perez	Reforms enterprise zones.	Support in Concept	In Assembly Jobs, Economic Development, & the Economy Committee.
AB 441 Monning	Requires inclusion of health issues in the guidelines for Regional Transportation Plans, and directs that optional advice be prepared for inclusion of health issues in local General Plans.	Oppose	In Assembly Appropriations Committee.
AB 631 Ma	Stipulates that electric vehicle charging stations do not fall under Public Utilities Commission jurisdiction as a public utility.	Support in Concept	Passed Senate 35-0. Signed by Governor.
AB 1220 Alejo	Extends Housing Element statute of limitations.	Oppose	Passed Assembly for amendment concurrence 49-27. Vetoed by Governor.
AB 1308 Miller	Appropriates Highway Users Tax Account (HUTA) funds to continue flowing absent an adopted State Budget.	Support	In Assembly Appropriations Committee.
			Senate Appropriations Committee 6-2. In full Senate.



**VENTURA COUNCIL
OF GOVERNMENTS**

Item 7C

MEMORANDUM

TO: Board of Directors

FROM: Steve DeGeorge, Planning Director

SUBJECT: Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS) Update

DATE: November 10, 2011

Recommendation:

- Receive and File

Discussion: On November 3rd the Southern California Association of Governments (SCAG) will be holding a joint meeting of the Community, Economic, and Human Development (CEHD) Committee, Energy and Environment Committee (EEC), Transportation Committee (TC) and the Regional Council (RC) to recommend the release of the 2012 Regional Transportation Plan and Sustainable Communities Strategy (RTP/SCS) for forty-five day public review and comment period and is receiving the outline for the accompanying Program Environmental Impact Report (PEIR). The combined RTP/SCS is designed to meet the goals of Federal conformity, sustainability as defined under SB 375 including the goals for per capita greenhouse gas reductions and being fiscally constrained.

Through a two year process of working with local jurisdictions, public outreach and technical work and review by committees, SCAG staff has developed a preferred alternative that meets or exceeds the criteria set forth in the new Federal and State regulatory requirements. SCAG's preferred RTP alternative specifically focuses on:

- Implementing LA Metro's 30/10 initiative
- Narrowing East-West Clean Freight Corridor Alignment from 60 miles to Five miles for further study
- Implementation of a strategic HOT Lane Network
- Consideration of Cordon Pricing in Los Angeles as a demonstration/study project
- Tripling funding for Active transportation to ensure expansion of the bike/pedestrian network from the current 4,300 miles to 10,200 miles
- Significant increases in funding for Transportation Demand Management (TDM) and Transportation System Management (TSM) programs and strategies, including "First Mile/Last Mile" strategies that would enhance connectivity with existing and planned transit services

- Targeted Expansion of existing and planned fixed guideway systems to close gaps
- Add BRT Services on targeted corridors
- Add express bus services on proposed HIT lane networks
- Expansion of Metrolink services

While the preferred alternative achieves the mandated goals, the funding shortfall for implementation is significant. To fund all of the projects contained within the RTP an additional \$125 to \$155 billion dollar increase in revenues is needed. SCAG has therefore included a variety of alternative revenue options in the preferred alternative that when used in combination, could fund the plan. Those revenue options include an increase in gas tax, a Vehicle Miles Traveled (VMT) tax, additional toll roads and possible cordon pricing in Los Angeles.

SCAG will be holding two workshops for elected officials in Ventura County on the RTP/SCS on January 19, 2012. The workshops will be held at the Camarillo Library, the first at 12:00 PM to 2:00 PM and the second at 5:00 PM to 7:00 PM. Additionally, SCAG's Executive Director, Mr. Hasan Ikhata, will present the RTP/SCS to the Ventura County Transportation Commission on January 6, 2012. VCTC will be extending an invitation to all local officials to attend the meeting.

As mentioned earlier in this item, SCAG's joint committees will also be receiving the Program Environmental Impact Report outline for the RTP/SCS. This element of the RTP/SCS process has taken on much greater significance in light of the State Attorney General's Office comments on the San Diego Association of Governments' (SANDAG's) Draft Environmental Impact Report (DEIR) for their RTP/SCS. The Attorney General's Office was highly critical of the SANDAG's DEIR in identifying air quality impacts and mitigations, especially on sensitive communities that might be disproportionately impacted. The State Attorney General's comment letter is attached for your review.

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE



110 WEST "A" STREET, SUITE 1100
SAN DIEGO, CA 92101

P.O. BOX 85266
SAN DIEGO, CALIFORNIA 92186-5266

Public: (619) 645-2001
Telephone: (619) 645-2013
Facsimile: (619) 645-2012
E-Mail: tim.patterson@doj.ca.gov

September 16, 2011

Honorable Jerome Stocks
Chair, Board of Directors
San Diego Association of Governments
401 B Street, Suite 700
San Diego, CA 92101

**RE: Draft Environmental Impact Report for 2050 Regional Transportation Plan
and Sustainable Communities Strategy**

Dear Chairman Stocks and Honorable Members of the Board:

Attorney General Kamala D. Harris submits the following comments on the Draft Environmental Impact Report (DEIR) prepared for the San Diego Association of Governments' (SANDAG) 2050 Regional Transportation Plan and Sustainable Communities Strategy (RTP/SCS).¹ While we recognize the difficulty of SANDAG's task – to prepare the first SCS in the State as required by SB 375² – our review of the DEIR for the RTP/SCS has revealed some significant legal problems, as set forth below. We believe that SANDAG has the ability to correct these problems and improve the RTP/SCS, which will benefit not only the San Diego region, but will help to set the standard for other Metropolitan Planning Organizations across California.

¹ The Attorney General submits these comments pursuant to her independent power and duty to protect the environment and natural resources of the State from pollution, impairment, or destruction, and in furtherance of the public interest. (See Cal. Const., art. V, § 13; Gov. Code, §§ 12511, 12600-12612; *D'Amico v. Bd. of Medical Examiners* (1974) 11 Cal.3d 1, 14-15.) This letter is not intended, and should not be construed, as an exhaustive discussion of the DEIR's compliance with the California Environmental Quality Act (CEQA).

² Senate Bill 375 (Chapter 728, Statutes of 2008).

Comments on the DEIR

Localized Air Pollution

The SANDAG region has some of the most serious local air quality problems in the State and the nation – in substantial part caused by vehicle emissions. The harm from these pollutants is not necessarily distributed equally throughout the region, but may be more concentrated in communities immediately adjacent to large-scale industrial and commercial development and major transportation corridors, and may more particularly affect certain segments of the population. As discussed below, our review of the DEIR indicates that SANDAG has set too low a bar for determining whether the air quality impacts of its RTP/SCS are significant, and, further, has failed to analyze the impacts of projected increases in pollution on communities that are sensitive or already overburdened with pollution, in violation of CEQA.

Background: Pollutants of Concern in the San Diego Air Basin

It is well established that “[t]he significance of an activity depends upon the setting.” (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 718 [citing Cal. Code Regs., tit. 14, § 15064, subd. (b)]; see also *id.* at 721.) Accordingly, the significance of any added pollutant emissions must be judged in the context of an air basin that already exceeds health-based federal air quality standards. (See *ibid.*) The San Diego area was ranked by the American Lung Association this year as having the seventh worst ozone problem, and the fifteenth worst particulate pollution problem, in the nation.³ Pollutants of concern in the San Diego air basin include ozone, the chemical commonly called “smog,” which may permanently decrease lung function;⁴ and particulate matter, which impairs lung function and can exacerbate asthma. Small particulate matter (2.5 microns in size or less), a component of diesel exhaust, is of particular concern, because it can penetrate deeply into the lungs, bypassing the body’s defenses, and can carry carcinogens on the surface of the particles.

The seriousness of the localized air pollution problem as it exists today in the region can hardly be overstated. The area exceeded the health-based federal ozone standard on 24 days in 2009, and it exceeded the federal particulate standard on 4 days. The basin exceeded the more stringent California standard for ozone on 127 days in 2009, and the fine-particulate standard on 78 days. The area has a history of failing to meet applicable air quality objectives. The San Diego Air Pollution Control District (APCD) stated in its 2009 Regional Air Quality Strategy (RAQS) that it has not consistently met the Health and Safety Code’s 5% per year ozone reduction target during any year during the 2003-2006 time period, and that the APCD expects reductions of only about 3% per year during the 2006-2009 time period. (San Diego APCD 2009-RAQS, p. 2.)

³ American Lung Association, *State of the Air 2011*, at pp. 11, 13.

⁴ Gauderman, et al., *The Effects of Air Pollution on Lung Development from 10 to 18 Years of Age* (Sept. 9, 2004) 351 *The New England Journal of Medicine* 1057-1068.

SANDAG's Focus on "Conformity" with the State Air Pollution Plans Fails Adequately to Address the Region's Serious Air Quality Problems.

Where an area exceeds federal air quality standards for air pollutants, federal law allows funding of the individual transportation projects listed in an RTP only if the RTP "conforms" to a federally approved state plan to meet those federal standards. The DEIR's analysis of whether localized air pollution resulting from the RTP/SCS is significant under CEQA focuses almost exclusively on whether such conformity is achieved. There are significant problems with this limited approach, which substitutes a determination of whether certain federal laws are met for SANDAG's obligation under CEQA to conduct a thorough analysis of the actual effects on the air and on public health that will result from the addition of the many hundreds of miles of highway expansion and extensions that are in the RTP/SCS.

California's most recent federally approved plan was prepared in 2007, and therefore does not reflect current conditions. The DEIR acknowledges that the federal EPA is expected to soon reclassify the San Diego Air Basin as in "serious" nonattainment of the federal ozone standard, a designation that requires attainment of the federal standard by June of 2013. (DEIR, p. 4.3-6.) Demonstrating conformity with the 2007 plan emissions budgets does not, by itself, show that relevant health effects created by the new pollution generated by the RTP/SCS have been analyzed and disclosed, or even that the relevant federal standards will be met. Instead, EPA's reclassification of the air basin as having worse air quality, and the imposition of such a short deadline for meeting the federal ozone standard, indicates a more serious air pollution problem that may require more stringent control measures to protect the public health.⁵

In addition, the DEIR fails to analyze whether the California standard for ozone, more stringent than the federal standard, will be met during the life of the RTP/SCS, or what the RTP/SCS's contribution to current or future violations of that standard will be. The DEIR appears to rely solely on the RAQS to meet the state ozone standard. (See DEIR at p. 4.3-29-30.) Yet, as noted, the region has not consistently met the RAQS 5% per year ozone reduction target. The fact that U.S. EPA is expected to reclassify the Basin as in "serious" nonattainment of the less stringent federal ozone standard would indicate that the RAQS standards have not been enough to prevent deteriorating air quality. Thus, any assumption that the RAQS will consistently achieve the 5% reduction target in the future is unsupported, and any assertion that the RAQS will attain the state ozone standard at a time certain unfounded. A full analysis is

⁵ Even if conformity with federal standards in state-approved plans were an appropriate benchmark for significance under CEQA, the DEIR does not contain a quantitative analysis, using the most recent available air quality measurements as the baseline, to determine whether the federal air quality standards will actually be met, and what the public health consequences would be of adding the expected pollutant load from the RTP/SCS to existing conditions. (DEIR, at p. 4.3-14.)

needed to show that the emissions caused by the RTP/SCS at different time points during its life will not contribute significantly to violations of the state ozone standard in the San Diego Air Basin.

SANDAG Has Failed Adequately to Address Impacts to Public Health and Communities Already Burdened with Pollution.

We commend SANDAG for including in its DEIR a chapter entitled "Environmental Justice." (DEIR, ch. 4.06.) That section appears to focus primarily on the RTP/SCS's effect on access to transit by traditionally underserved communities. SANDAG has, however, failed to analyze other equally, if not more, significant effects of the RTP/SCS on communities currently experiencing environmental injustice. The principal omission of the DEIR is the lack of any discussion of the impacts of the increased air pollution that will result from carrying out the RTP/SCS on communities already severely impacted by air pollution. As noted, CEQA requires that the significance of environmental impacts be considered in context. (*Kings County Farm Bureau, supra*, 221 Cal.App.3d at 718.) Such context may appropriately include (1) whether the region includes communities or subpopulations that may be particularly sensitive to increases in pollution; and (2) whether such communities or groups are already at or near their capacity to bear any additional pollution burden.

The DEIR does not identify whether the area affected by the RTP/SCS includes particularly sensitive communities that will be affected disproportionately by the acknowledged increase in pollution. "[A] number of studies have reported increased sensitivity to pollution, for communities with low income levels, low education levels, and other biological and social factors. This combination of multiple pollutants and increased sensitivity in these communities can result in a higher cumulative pollution impact." (Office of Environmental Health Hazard Assessment, *Cumulative Impacts: Building a Scientific Foundation* (Dec. 2010), Exec. Summary at p. ix.)⁶ Research in other parts of California has shown that disadvantaged and minority communities are often exposed to unhealthful air more frequently and at higher levels than other groups.⁷ Identifying these communities is an essential part of describing the relevant CEQA setting.

Once such communities are identified, SANDAG must analyze how the health of the residents in these communities would be expected to be particularly affected. As discussed, residents already are experiencing serious air pollution that is impacting health and welfare, and it is reasonable to assume that these effects currently are more concentrated in certain areas of the region, for example, in communities adjacent to large-scale industrial or commercial operations or transportation corridors used by heavy-duty trucks. In addition, viewed at the individual community scale, there may be synergistic adverse effects. For example, research

⁶ Available at <http://oehha.ca.gov/ej/cipa123110.html>.

⁷ Hall and Brajer, *The Benefits of Meeting Federal Clean Air Standards in the South Coast and San Joaquin Valley Air Basins* (2008) at 22-23.

has shown that increases in greenhouse gas emissions may result in localized ozone increases; such increases have been observed in California.⁸

We believe that particulate pollution may be of special concern to already burdened communities. As discussed, diesel particulate emissions have serious health effects, since they impact respiratory function and can exacerbate asthma. Further, diesel particulates are known to the State of California to cause cancer,⁹ and have been listed by the Air Resources Board (ARB) as a toxic air contaminant.¹⁰ The DEIR shows that particulate matter pollution will increase over the life of the RTP/SCS. (DEIR, Table 4.3-5, p. 4.3-25.) It also reports that the ARB estimated in 2000 – over a decade ago – that a subset of particulate pollution, fine particulates emitted by diesel vehicles, created an additional cancer risk of 720 cancer cases per one million persons exposed in the San Diego Air Basin. (DEIR, p. 4.3-8.) For comparison purposes, a private business must provide a warning if it exposes individuals to a chemical that poses an increased cancer risk of ten cases in one million people exposed. (Cal. Code Regs, tit. 27, § 25703(b).)

Despite this high cancer risk, and the DEIR's own recognition that particulate pollution will increase over the life of the RTP/SCS, the DEIR does not analyze what public health effects the increase in particulate matter will cause. Nor does it estimate what portion of the increase in particulate pollution will be carcinogenic diesel particulate matter, and disclose the public health effects that increase may cause. Such an analysis is required under CEQA, so that both the decision maker and the public can know the full consequences of the decision being made. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1219-1220.) We are especially concerned that no analysis is presented either of the current risk from particulate pollution, nor of the impact of the projected increase in particulate pollution, on already overburdened or sensitive communities. Given the increase in particulate emissions shown in the DEIR, given the emphasis in the RTP/SCS on the Goods Movement Strategy for the San Diego region (RTP/SCS, Chapter 6), and given the DEIR's recognition that much of this goods movement will be accomplished by diesel trucks (DEIR, p. 4-16-8; see, also, RTP/SCS, Tech. Appdx. 4, p. 4 [estimating that roads and truckways will carry 90% by volume of goods through the region]), it is incumbent on SANDAG to fully analyze the public health consequences of the RTP/SCS in general, and of the Goods Movement Strategy, in particular.¹¹

⁸ Jacobson, *Enhancement of Local Air Pollution by Urban CO2 Domes* (2010) Environ. Sci. Technol. 2497-2502. This phenomenon is of concern because, as discussed, under the RTP/SCS, vehicle miles travelled (VMT) trends up as the total number of vehicles on the road increases. (DEIR, pp. 4.12-16, 4.12-21, 4.12-24; contrast with Table TA 3.1, showing an overall decrease of 1% in VMT by 2050.) Increases in VMT cause increased emissions of greenhouse gases, which may in turn exacerbate localized pollution.

⁹ Cal. Code Regs., tit. 27, § 27001.

¹⁰ Cal. Code Regs., tit. 17, § 93000.

¹¹ See *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1219-1220, cited above.

The goal of an RTP/SCS is a sustainable community, and no community can be sustainable unless its public health is protected. Thus, while the inclusion of a separate chapter of the DEIR on environmental justice is commendable, the current analysis is deficient, and should be redone and expanded to disclose the full scope of the air pollution and public health consequences of the RTP/SCS, and to propose mitigation measures for those consequences that are proportional to the seriousness of the impacts. (*City of Marina v. Board of Trustees of the California State University* (2006) 39 Cal.4th 341, 361-62.) We would be happy to work with SANDAG in making this part of the DEIR more meaningful.

SANDAG Has Failed Adequately to Consider Feasible Mitigation for Localized Air Quality Impacts.

Although it finds the RTP/SCS's impacts on localized air pollution to be significant, the DEIR proposes almost no mitigation measures to reduce or offset these impacts. Instead, the DEIR states that "mitigation measures at the program level is [sic] infeasible" for ozone precursors and carbon monoxide, and defers all mitigation for these pollutants to individual project-level CEQA processes. (DEIR, pp. 4.3-46, 4.3-47, 4.3-48.) CEQA requires that project changes or mitigation either be adopted or shown through substantial evidence to be infeasible; the DEIR, however, does not make such a showing.

The DEIR offers virtually no evidence that program-level mitigation is actually infeasible, and the mitigation measures it does propose lack certainty and are incomplete. For example, compliance with future local land use plans (the scope of which is not now known) is identified as the only feasible mitigation for ozone-related impacts. (DEIR, p. 4.3-48.) Mitigation for fine particulate matter is not discussed separately from mitigation for coarse particulates, despite their different sizes, health impacts, and sources. The dust control measures in the DEIR are not shown to be effective against fine particulates, which come more from industrial processes and fuel combustion than from ground disturbance. The DEIR's treatment of mitigation for conventional air pollution does not comply with CEQA's substantive mandate to mitigate all significant impacts. (Pub. Resources Code, §§ 21002, 21081(a).)

It is vital for the health of the San Diego region's public that all feasible mitigation be adopted and carried out to prevent further deterioration of the already unhealthy air, and it is also vital for the region's economy. Research shows consistently that the costs of reducing pollution are far outweighed by clean-air benefits such as increased worker productivity, increased agricultural outputs, and reductions in mortality and illness that result from cleaner air.¹² The research cited above -- finding minority communities more severely affected by air pollution -- also calculated the significant costs associated with polluted air in other air basins. Costs ranged

¹² On a nationwide basis, the Office of Management and Budget has estimated that the benefits of clean air regulations outweigh the costs by a ratio of about four to one. OMB, "Informing Regulatory Decisions: 2003 Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities."

from \$1,250 per person per year in the South Coast Air Basin to \$1,600 per person per year in the San Joaquin Valley Air Basin, due to increased health care costs and emergency room visits, missed work and school days, and even premature deaths.¹³ CEQA mandates that SANDAG improve its analysis of the feasibility of localized air pollution mitigation, and the economic benefits of cleaner air and healthier communities must be considered in the feasibility calculus.

Climate Change Impacts: Greenhouse Gas Emissions

Before discussing the DEIR's treatment of GHG emissions, it is important first to establish the relevant context for evaluating significance. The climate is affected by the concentration of GHGs in the atmosphere. The concentration of carbon dioxide, the primary GHG, has increased from approximately 280 parts per million (ppm) in pre-industrial times to well over 380 ppm, according to the National Oceanic and Atmospheric Administration's (NOAA) Earth Systems Research Laboratory.¹⁴ Almost all of the increase is due to human activities (such as fossil fuel use).¹⁵ The current rate of increase in carbon dioxide concentrations is about 1.9 ppm/year; present carbon dioxide concentrations are higher than any time in at least the last 650,000 years.¹⁶ GHGs persist in the atmosphere for decades and in some cases millennia.¹⁷

The atmosphere and the oceans are reaching their capacity to absorb GHGs without significantly (and perhaps abruptly) changing the Earth's climate. California is already seeing the effects of climate change. As the Resources Agency observed in its 2009 report, we already are experiencing sea level rise, coastal erosion, increased average temperatures, more extreme hot days and increased heat waves, fewer shifts in the water cycle, and increases in the frequency and intensity of wildfires. (Resources Agency, *2009 Climate Adaptation Strategy* at p. 3.)¹⁸ These effects are expected to increase with rising GHG levels in the atmosphere.

The burdens of climate change will not be shared equally. Future climate scenarios are expected to disproportionately affect, for example, the urban poor, the elderly and children, traditional societies, agricultural workers and rural populations. (Office of Environmental Health Hazard Assessment, *Indicators of Climate Change in California: Environmental Justice Impacts* (Dec. 2010) at p. 2.)¹⁹

¹³ Hall and Brajer, at 5.

¹⁴ See <http://www.epa.gov/climatechange/science/recentac.html>.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Intergovernmental Panel on Climate Change, *Frequently Asked Questions*, FAQ 10.3 (2007), available at www.ipcc.ch/pdf/assessment-report/ar4/wg1/ar4-wg1-faqs.pdf.

¹⁸ Available at <http://www.climatechange.ca.gov/adaptation/>.

¹⁹ Available at <http://oehha.ca.gov/multimedia/epic/epic123110.html>.

In order to stabilize the climate and avoid the most catastrophic outcomes of climate change, we must substantially reduce our annual GHG emissions over time, achieving a low-carbon future by midcentury. California has memorialized this overarching environmental objective in law. Under AB 32²⁰, by 2020, California must reduce its total statewide greenhouse gas emissions to the level they were in 1990. (Health & Saf. Code, § 38550). To achieve AB 32's 2020 target, total statewide greenhouse gas emissions must be reduced by approximately 15 percent from current (2008) levels. AB 32 implements Executive Order S-03-05 (2005),²¹ which set the statewide 2020 target as an interim step to reducing statewide emission levels, by 2050, to 80 percent below 1990 levels. "The 2020 goal was established to be an aggressive, but achievable, mid-term target, and the 2050 greenhouse gas emissions reduction goal represents the level scientists believe is necessary to reach levels that will stabilize climate." (Air Resources Board (ARB), Scoping Plan at p. 4.)²²

The emissions reductions required to reach our statewide climate objective are substantial. In the longer term, we must reduce our total GHG emissions by approximately four percent per year between 2020 and 2030, and our per capita emissions by slightly less than five percent per year during the 2020 to 2030 period, with continued reductions required through midcentury. (These reductions required are graphically illustrated by the chart from ARB's Scoping Plan, attached to this letter as Exhibit A.) One of the prime objectives of SB 375, a law supporting and complementary to AB 32, and of the requirement for Sustainable Communities Strategies, is to create a long-term downward trajectory for GHG emissions in California through transportation and land use strategies.

Given the seriousness of the climate change problem, and the enormity of our GHG reduction task, we are greatly concerned that, when viewed in context, the RTP/SCS seems to be setting the region on a course that is inconsistent with the State's climate objectives. Specifically, per capita GHG emissions from cars and light-duty trucks increase as compared to the previous year after 2020 (see RTP, Table 301 at p. 3-3), while AB 32 requires that we must aggressively and steadily reduce total per capita GHG emissions during this time period. (See Exhibit A.) Moreover, the total number of vehicle miles travelled (VMT) driven in the San Diego region will steadily increase over the life of the RTP/SCS over the 2010 baseline by 10%, 32% , and 51% in 2020, 2035, and 2050, respectively. (DEIR, pp. 4.12-16, 4.12-21, 4.12-24;

²⁰ Cal. Health and Safety Code, § 38,500, *et seq.*

²¹ The DEIR states that the Executive Order "does not constitute a 'plan' for GHG reduction, and no state plan has been adopted to achieve the 2050 goal." (DEIR, pp. 4.8-29 to 4.8-30.) The DEIR therefore does not find the RTP/SCS's failure to meet the Executive Order's goals to be a significant impact. This position fails to recognize that Executive Order S-3-05 is an official policy of the State of California, established by a gubernatorial order in 2005, and designed to meet the environmental objective that is relevant under CEQA (climate stabilization). SANDAG thus cannot simply ignore it.

²² Available at http://www.arb.ca.gov/cc/scopingplan/document/adopted_scoping_plan.pdf. The Scoping Plan was readopted by ARB on August 24, 2011.

contrast with Table TA 3.1.) Under the most optimistic figures presented in the DEIR, total VMT will drop only 1% over current levels by 2050. Moreover, the DEIR predicts that the 14.33 million metric tons of greenhouse gases (expressed as MMT of carbon dioxide equivalent) emitted by cars and light duty trucks in 2010 (DEIR, p. 4.8-5) will fall to 12.04 MMT in 2020 (DEIR, p. 4.8-20), based largely on statewide tailpipe and fuel standards, but will then begin rising again, to 12.94 MMT in 2035 and 14.74 MMT in 2050. (DEIR, pp. 4.8-23, 4.8-25, respectively.) Thus, although SANDAG will meet the SB 375 goals for per capita GHG targets for cars and trucks set for it by ARB in 2020 and 2035, the DEIR shows that total GHG emissions from cars and light-duty trucks in 2050 will increase over the 2010 emissions level.

The DEIR finds the impact of the RTP/SCS on GHG emissions to be not significant in 2020 (DEIR, p. 4.8-20), significant in 2035 (DEIR, p. 4.8-23), and significant in 2050 (DEIR, p. 4.8-25). SANDAG must, however, make a determination whether the project as a whole has significant climate change impacts. We believe strongly that it does. What the DEIR shows is that the suite of strategies relied on by SANDAG, which include a heavy reliance on roadway expansion projects, does not deliver GHG reductions that are sustainable in the long term. In fact, infrastructure and land use decisions made in the early years of the RTP/SCS may lock in transportation inefficiencies and preclude any realistic possibility of meeting the Executive Order's goal of an 80% reduction in GHG emissions. The DEIR states that "[t]otal land-use based GHG emissions in 2050 are projected to be 21.85 MMT CO₂e, or 50 percent greater than GHG emissions in 2010 (Table 4.8-11)." (DEIR at p. 4.8-24.) The DEIR should address the impact of the draft RTP/SCS on this important long-term policy in greater detail.

The DEIR is legally deficient for the additional reason that it does not analyze potential changes to the project design or specific mitigation measures for the GHG emissions impacts from land use; it makes only a generalized promise to prepare future RTPs "to incorporate policies and measures that lead to reduced GHG emissions." (DEIR, p. 4.8-35.) Further, the DEIR proposes some mitigation measures for GHG emissions attributable to transportation, but does not include any transportation mitigation that relates to land use, nor does it show that any such measures would be infeasible. We believe that CEQA requires much more analysis of potential mitigation measures, and that postponing this discussion and analysis until future RTP/SCS's and individual projects is a violation of CEQA's substantive provisions. (Public Res. Code §§ 21002, 21081(a); see *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 89-96.) SANDAG has the authority to approve the RTP/SCS even if it will have substantial environmental impacts, and CEQA will not second-guess the wisdom of that choice, so long as substantial evidence supports SANDAG's findings. (Public Res. Code § 21081(b).) However, SANDAG may not approve an environmentally damaging project until and unless it has adopted all feasible mitigation measures or shown that further mitigation – including land use mitigation – is infeasible. The DEIR does not yet do so.

We recognize that this is the first SCS prepared in California, and that SANDAG is charting new territory. However, the legal requirements of CEQA, including the requirement to mitigate significant impacts to the extent feasible, are not satisfied simply because the RTP/SCS meets the targets contained in SB 375 for 2020 and 2035. CEQA demands a full analysis and all

Honorable Jerome Stocks
Chair, Board of Directors
September 16, 2011
Page 10

feasible mitigation of every significant impact resulting from the implementation of the RTP/SCS, throughout the full life of the Plan. The DEIR does not now provide this for GHG emissions.

Comments on RTP/SCS

Although we are not commenting directly on the legal adequacy of the RTP/SCS under SB 375, we concur in the comments submitted to SANDAG by the California Office of Planning and Research (OPR). As discussed above, we are particularly concerned that per capita greenhouse gas (GHG) emissions associated with cars and light-duty trucks (and associated co-pollutants like particulate matter) begin to rise after 2020. (See OPR comment letter at pp. 3-4; Draft RTP at p. 3-3, Table 3.1; see also DEIR at Tables 4.3-5, p. 4.3-25.) As OPR notes, this “implies that future growth will be unavoidably less transportation efficient, which counters SB 375’s underlying purpose.” (OPR comment letter at p. 3.) If the RTP/SCS in fact runs counter to SB 375’s purpose to reduce transportation-related GHG emissions over time, this would bear on whether the effects of the plan should be considered significant under CEQA.

In addition, OPR’s comments discuss a failure of the DEIR and RTP/SCS to fully disclose the methodology by which VMT was projected, making it difficult or impossible for the lay public to determine for itself whether the information presented in the two documents is accurate and supported by substantial evidence. This lack of transparency is also a crucial flaw under CEQA, a statute whose purposes include accountability as to governmental decisions that affect the environment. (*Laurel Heights Improvement Ass’n v. Regents of the University of California* (1989) 47 Cal.3d 376, 392 [holding that “the EIR . . . is a document of accountability” for the public officials who certify it].)

Conclusion


We appreciate the difficulty of preparing the first SCS in California. We believe that SANDAG has not yet prepared a DEIR on the RTP/SCS that fully satisfies CEQA’s requirements, and urge SANDAG to redo several parts of the DEIR, as described in our comments herein. This RTP/SCS presents SANDAG with an opportunity to integrate transportation and land-use planning in a way that reduces GHG emissions and harmful air pollution, and that produces other benefits such as increased mobility and better public health for all the region’s residents, particularly its sensitive and already overburdened communities. We

Honorable Jerome Stocks
Chair, Board of Directors
September 16, 2011
Page 11

would be happy to work with SANDAG to take the additional steps needed to take full advantage of this opportunity. We appreciate your consideration of our comments.

Sincerely,


TIMOTHY R. PATTERSON *by SLD*
Supervising Deputy Attorney General


SUSAN DURBIN
Deputy Attorney General

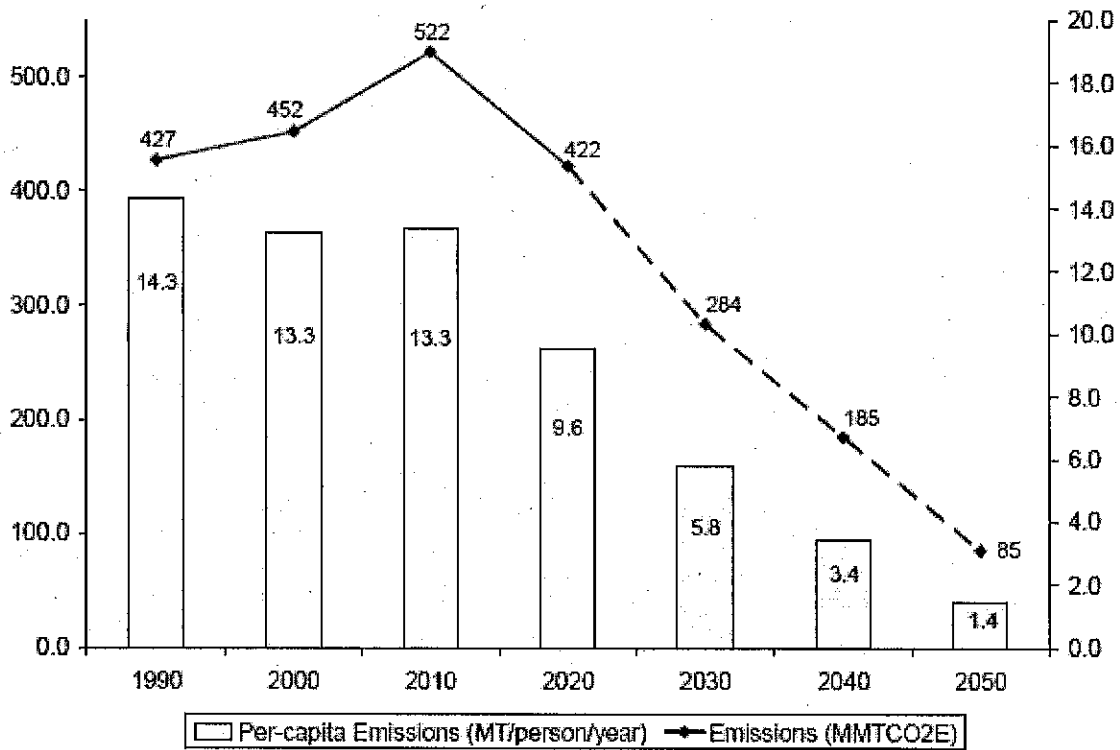
For KAMALA D. HARRIS
Attorney General

cc: Gary Gallegos, Executive Director, San Diego Association of Governments.
Julie D. Wiley, General Counsel, San Diego Association of Governments

Attachment

EXHIBIT A

Emissions Trajectory Towards 2050



(ARB, Scoping Plan, Figure 6, at p. 118.)