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By Telecopy and Mail

Jessica Kirchner
Southern California Association of Governments
818 W. Seventh Street, 12th Floor
Los Angeles, CA 90017-3435

RE: Comments on the Notice of Preparation for Draft Environmental Impact Report For the 2008 Regional Transportation Plan and 2008 Regional Comprehensive Plan (SCH Number 2007061126)

Dear Ms. Kirchner:

The Attorney General submits these comments to the Southern California Association of Governments ("SCAG") on the Notice of Preparation for the Draft Environmental Impact Report ("EIR") for the proposed 2008 Regional Transportation Plan ("Transportation Plan") and 2008 Regional Comprehensive Plan ("Comprehensive Plan") (jointly "Regional Plans" or "Plans"). Although the deadline for comments on the Notice of Preparation has passed, we request that SCAG consider these comments in preparing the draft EIR.

The Notice of Preparation states that by preparing these Plans simultaneously, SCAG is undertaking "an integrated and innovative approach to land use and transportation planning" and that taken together, the Plans will "provide a long-term comprehensive land use and transportation planning blueprint for the region." We commend SCAG for pursuing this coordinated planning effort. As the California Energy Commission recently noted:

"Opportunities exist at all levels of government for integrated planning that would reduce energy demand and greenhouse gas emissions as well as eliminate redundant or conflicting efforts."¹

We also commend SCAG for the efforts it has already undertaken in the Compass Blueprint to identify smart growth development scenarios that reduce vehicle emissions associated with new development. We encourage SCAG to fully embrace the opportunity it has

¹2007 Integrated Energy Policy Report (California Energy Commission, Draft Committee Report, October 2007) at 248.

in these Regional Plans and the accompanying EIR, to show further leadership by identifying a comprehensive and coordinated land use and transportation strategy to reduce emissions of greenhouse gasses (“GHG”) that cause global warming, one of the most critical environmental challenges facing our communities.

Global Warming in California

The Intergovernmental Panel on Climate Change of the United Nations has found overwhelming evidence that global warming is occurring and is caused by human activity.² The California Climate Change Center reports that temperatures in the State are expected to rise 4.7 to 10.5°F by the end of the century.³ These increases would have serious consequences, including substantial loss of snowpack, an increase of as much as 55% in the risk of large wildfires, reductions in the quality and quantity of agricultural products, exacerbation of California's air quality problems, and adverse impacts on human health from increased heat stress and heat related deaths, and increases in asthma, respiratory and other health problems.⁴ According to NASA's James Hansen, proceeding at the greenhouse gas emissions rate of the past decade will result in “disastrous effects, including increasingly rapid sea level rise, increased frequency of droughts and floods, and increased stress on wildlife and plants due to rapidly shifting climate zones.”⁵ And, the experts tell us, we have less than a decade to take decisive action.⁶ If we continue our business-as-usual emissions trajectory, dangerous climate change will become unavoidable. To avoid this scenario, it is imperative to address GHG emissions from the transportation sector, which is the single largest source of GHG emissions in California. According to a California Energy Commission, transportation accounted for 41.2% of GHG emissions in the state in 2002.⁷

² “Climate Change 2007: The Physical Science Basis, Summary For Policymakers” (Fourth Assessment Report of the IPCC, February 2007).

³ Amy Lynd Luers, Daniel R. Cayan et. al, *Our Changing Climate: Assessing the Risks to California* (July 2006) at p. 2. The report was prepared by the Climate Change Center at the direction of CalEPA pursuant to its authority under Executive Order S-3-5.

⁴ *Id.* at pp. 2, 10; Executive Order S-3-05.

⁵ <http://www.giss.nasa.gov/research/news/20070530/>; see also Hansen et al., *Dangerous human-Made Interference with Climate* (2007) 7 Atmos. Chem. Phys. 2287-2312 http://pubs.giss.nasa.gov/docs/2007/2007_Hansen_etal_1.pdf

⁶ *Id.* For further discussion of dangerous climate change, see IPCC 4th, WG III, Ch. 1 at pp. 6-7 http://www.mnp.nl/ipcc/pages_media/FAR4docs/chapters/CH1_Introduction.pdf

⁷ “Inventory of California Greenhouse Gas Emissions and Sinks: 1990 to 2002 Update.” (California Energy Commission, June 2005) at pp. 6-7.

The Legislature recognized the need to address the threat of catastrophic climate change in adopting Assembly Bill 32, the California Global Warming Solutions Act of 2006, codified at Health and Safety Code Section 38500, et seq. ("AB 32").⁸ AB 32 requires reduction of the state's GHG emissions to 1990 levels by 2020.⁹ This emissions cap is equal to a 25% reduction from current levels.¹⁰ Under AB 32, the California Air Resources Board will adopt comprehensive regulations that will go into effect in 2012 to require the actions necessary to achieve the GHG emissions cap by 2020.¹¹ In addition, the Governor has issued Executive Order S-3-05, which sets an additional target of reducing GHG emissions in California to 80 percent below 1990 levels by 2050.

California Environmental Quality Act

As the legislature recently recognized, global warming is an "effect on the environment" as defined by the California Environmental Quality Act ("CEQA"), and a project's contribution to global warming can be significant. (See Pub. Res. Code section 21083.05, subd. (a); see also Sen. Rules Com., Off. of Sen. Floor Analyses, Analysis of Sen. Bill No. 97 (2007-2008 Reg. Sess.) Aug. 22, 2007.) The projects authorized in the Transportation Plan will result in significant increases in GHG emissions, and any increase in such emissions will make it more difficult to achieve the GHG reductions that are needed to avoid catastrophic climate change.

CEQA was enacted to ensure that public agencies do not approve projects unless they include feasible alternatives or mitigation measures that substantially reduce the significant environmental effects of the project.¹² CEQA requires that "[e]ach public agency shall mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so."¹³ This requirement is extremely important and is recognized as "[t]he core of an EIR"¹⁴ Therefore, an EIR must identify mitigation measures and examine

⁸ Health & Safety Code § 38501.

⁹ Health & Safety Code § 38550.

¹⁰ 9/27/2006 Press Release from the Office of the Governor, available at <http://gov.ca.gov/index.php?/print-version/press-release/4111>.

¹¹ Health & Safety Code § 38562.

¹² Public Resources Code § 21002.

¹³ Public Resources Code §§ 21002.1(b) and 21081; see also, *Mountain Lion Foundation v. Fish and Game Commission*, 16 Cal.4th 105, 134 (1997).

¹⁴ *Citizens of Goleta Valley v. Board of Supervisors of Santa Barbara County* (1990) 52 Cal.3d 553, 564-65.

alternatives that would reduce the emissions of greenhouse gases that contribute to global warming.¹⁵ These requirements of CEQA are consistent with the applicable federal law that requires the Transportation Plan to consider projects and strategies that will “protect and enhance the environment” and “promote energy conservation” and to discuss “potential environmental mitigation activities.” (23 U.S.C.A. §§ 134(h) and 134(i)(2)(B)(i)).

The Proposed Plans and EIR Should Consider Global Warming Impacts, Mitigation Measures and Alternatives to Reduce Global Warming Impacts

As noted above, the projects included in SCAG’s Transportation Plan will contribute cumulatively to the GHG load. The Plan will authorize road construction and improvements that will provide new road capacity, accommodate more vehicles, and allow new development to occur. Implementing the Transportation Plan will also generate large amount of GHG emissions during construction of the authorized projects, which constitutes a significant cumulative impact on global warming. SCAG expects that the Transportation Plan will authorize expenditure of \$413 billion for transportation projects.

Significant opportunities for reducing transportation-related GHG emissions have been identified in the Climate Action Team Report to Governor Schwarzenegger and the Legislature (CalEPA March 2006) and the Climate Action Program at Caltrans.¹⁶ These documents identify two broad strategies: Measures to Improve Transportation Energy Efficiency and Smart Land Use and Intelligent Transportation. (Report at p.57.) Smart land use strategies “encourage jobs/housing proximity, promote transit oriented development, and encourage high-density residential/commercial development along transit corridors.” (*Ibid.*) The Caltrans Climate Action Program also identifies the need to “[m]ainstream energy efficiency and GHG emissions reductions measures into land use and transportation decisions.”¹⁷ Therefore, the EIR should discuss how these strategies for reducing GHG emissions are included in the Regional Plans and whether they are being implemented and funded to the maximum extent feasible.

The way a transportation plan allocates funds among potential transportation projects can make a significant difference in the amount of transportation-generated GHG emissions in the future. Thus, SCAG can directly impact how much transportation-related GHG emissions will increase through its funding decisions. Accordingly, the EIR should discuss whether the Transportation Plan maximizes the use of available funds for public transit, alternative fuel vehicles, carpool, vanpool, rideshare, pedestrian and bicycle projects (including Safe Routes to School programs), and other measures that reduce vehicle travel and/or GHG emissions.

¹⁵Public Resources Code § 21002.1(a); Cal. Code Regs., tit. 14, § 15130, subd. (b)(5).

¹⁶Climate Action Program at Caltrans (California Department of Transportation, Business, Transportation, and Housing Agency, December 2006).

¹⁷*Id.*, p. 6, Table 1.

There are many policies and/or projects that SCAG could consider to help achieve the goal of reducing GHG emissions. While this letter is not intended to provide a complete list, some of the possibilities include: adopt funding priorities that target spending for transportation infrastructure to serve infill and mixed use development located near employment centers and provide incentives for such development, and withhold transportation infrastructure funding from greenfield development at the urban edge; evaluate and adopt policies to direct new residential development to areas that are accessible to employment centers and have access to high capacity public transit, and to require that such development has sufficient density to support use of public transit; implement feasible measures to reduce electricity use in the transportation sector (which is in large part generated from natural gas, thus producing GHG emissions), including replacing all traffic lights, street lights, and railroad crossing lights with LED technology; include on-site generation using solar photovoltaic panels on building roofs or solar carports/parking lots where feasible; convert county and municipal fleets to alternative fuel vehicles; provide incentives for use of public transit, ridesharing and carpools; expand public transit routes and increase frequency of operation; authorize construction of electric vehicle charging stations and alternative fueling stations; require electrification of truck stops and warehouse and distribution facilities; use parking pricing to reduce the number of vehicle trips; and use congestion pricing to reduce vehicle travel in the most congested urban areas.

Another measure that SCAG could include in the Regional Plans is adoption of policies for sustainable airport development, management and airfield design to reduce air pollution and GHG emissions from operations, including cargo operations, ground support and access to and from airports.¹⁸

The EIR should also consider feasible measures to reduce emissions of criteria pollutants (particulate matter and nitrous oxide) from diesel buses, such as replacing diesel buses with the lowest-emitting available alternative fuel buses, and requiring that all new buses have the lowest level of emissions feasible. This is a critical health issue for the region. Another possible mitigation measure that the EIR could evaluate is including a “green construction” policy in the Transportation Plan. A green construction policy could require:

- all off-road construction vehicles should be alternative fuel vehicles, or diesel-powered vehicles with Tier 3 or better engines or retrofitted/repowered to meet equivalent emissions standards as Tier 3 engines¹⁹;

¹⁸See Los Angeles World Airports “Sustainability Vision and Principles.” <http://www.lawa.org/news/newsDisplay.cfm?newsDI=949> and Green LA, An Action Plan to Lead the Nation In Fighting Global Warming, at p.6 (May 2007) <http://www.lacity.org/mayor>

¹⁹Similarly, the South Coast Air Quality Management District has called for the state, in selecting projects that will be funded from Proposition 1B, to impose a condition that requires “use of lowest emitting construction equipment and fuels available.” (Resolution of SCAQMD Expressing Conditions for Funding Projects with Proposition 1B Funds in the South Coast

- use the minimum feasible amount of GHG emitting construction materials (cement, asphalt, etc.)²⁰;
- use cement blended with the maximum feasible amount of flyash or other materials that reduce GHG emissions from cement production;
- use asphalt with light colored additives and chemical additives that increase reflectivity and therefore reduce contribution to the heat island effect;
- require recycling of construction debris to maximum extent feasible;
- incorporate planting of shade trees into construction projects where feasible.

Attached is a list of ways to reduce vehicle miles traveled prepared by the Federal Highway Administration that might be useful for preparing the EIR. In addition, attached is a list prepared by the Attorney General's Office of mitigation measures that can be employed to reduce GHG emissions more broadly from new residential and commercial development. The EIR should discuss whether these are appropriate mitigation measures.

Global warming presents California with one of its greatest challenges. SCAG has the opportunity to continue addressing global warming in a constructive manner while educating the public and decision-makers. We urge SCAG to meet the challenge with these Regional Plans and environmental impact report. Please do not hesitate to contact me if the Attorney General's Office can be of any assistance.

Sincerely,

/S/

SANDRA GOLDBERG
Deputy Attorney General

For EDMUND G. BROWN JR.
Attorney General

District, Resolution No. 07-07, April 6, 2007).

²⁰A new production method known as "warm-mix" asphalt technology that significantly reduces GHG emissions is currently being evaluated and may prove to be a feasible alternative road paving material. See, "Warm-Mix Asphalt (WMA) Potentially Can Provide Important Benefits for Paving Contractors, Reduce Fuel Costs and Diminish Green-House Gases" in Construction Equipment, March 1, 2007 (www.constructionequipment.com/article/CA6421459.html).