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By Telecopy and E-mail

Debra Jones, Project Manager
Sacramento Area Council of Governments
1415 L Street, Suite 300
Sacramento, CA 95814

RE: Comments on the Notice of Preparation for Draft Environmental Impact Report
For the Metropolitan Transportation Plan for 2035

Dear Ms. Jones:

The Attorney General submits these comments to the Sacramento Area Council of Governments ("SACOG") on the Notice of Preparation for the Draft Environmental Impact Report for the Metropolitan Transportation Plan for 2035 ("MTP" or "MTP for 2035"). The Notice indicates that SACOG will prepare a draft Environmental Impact Report ("EIR") for the MTP and is seeking comments regarding environmental issues to address that SACOG did not already identify in the Notice; additional alternatives to evaluate; and types of mitigation measures that would help avoid or minimize potential environmental effects.

Under the California Environmental Quality Act, Public Resources Code § 21000, et seq. ("CEQA"), SACOG has an obligation to consider global warming impacts in the draft EIR. The projects and priorities identified in the MTP could result in significant increases in emissions of greenhouse gases that cause global warming, and any increase in such emissions will make it more difficult for the state to meet the greenhouse gas reduction requirements of Assembly Bill 32. The draft EIR must evaluate the global warming impacts of the projects and priorities adopted in the MTP and discuss feasible alternatives and mitigation measures to avoid or reduce those impacts.

Global Warming in California

The Intergovernmental Panel on Climate Change of the United Nations recently published its finding that overwhelming evidence establishes that global warming is occurring and is caused by human activity.¹ With respect to impacts in the state, the

¹ "Climate Change 2007: The Physical Science Basis, Summary For Policymakers" (Fourth Assessment Report of the IPCC, February 2007).

California Climate Change Center reports that temperatures are expected to rise 4.7 to 10.5°F by the end of the century.² These increases would have serious consequences, including substantial loss of snowpack, an increase of as much as 55% in the risk of large wildfires, and reductions in the quality and quantity of agricultural products.³ Additionally, the report predicts increased stress on the state's vital resources and natural landscapes.⁴ Global warming will also slow the progress toward attainment of the ozone air quality standard by increasing the number of days that are meteorologically conducive to the formation of ozone.⁵

In June 2005, the California Energy Commission reported that California produced 493 million metric tons of carbon dioxide-equivalent greenhouse gas ("GHG") emissions in 2002.⁶ Of those emissions, 82% were emissions of carbon dioxide from fossil fuel combustion.⁷ Fossil fuel consumption in the transportation sector was the single largest source of California's GHG emissions in 2002. According to the report, transportation, which includes emissions from automobiles and planes, accounted for 41.2% of GHG emissions in the state.⁸

California's Actions to Address Global Warming

On June 1, 2005, Governor Schwarzenegger issued Executive Order S-3-05. The Order recognized California's vulnerability to global warming and the need for implementation of mitigation measures to limit the impacts to the state. The Order specifically found that global warming results in increased temperatures that threaten to greatly reduce the Sierra snowpack, one of the State's primary sources of water, threaten to further exacerbate California's air quality problems, and adversely impact human health by increasing heat stress and heat related deaths, and the risk of asthma, respiratory and other health problems.

² 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.

³ *Id.* at pp.2, 10.

⁴ *Ibid.*

⁵ Climate Action Team Report, Executive Summary, p.xii (CalEPA March 2006).

⁶ "Inventory of California Greenhouse Gas Emissions and Sinks: 1990 to 2002 Update."

⁷ Gerry Bemis and Jennifer Allen, *Inventory of California Greenhouse Gas Emissions and Sinks: 1990 to 2002 Update* (June 2005) at p.5.

⁸ *Id.* at pp. 6-7.

To counteract the warming trend, the Governor set GHG emission reduction targets for California: by 2010, reduce GHG emissions to 2000 levels; by 2020, reduce emissions to 1990 levels; by 2050, reduce emissions to 80 percent below 1990 levels.

Assembly Bill 32, the California Global Warming Solutions Act of 2006, codified at Health and Safety Code Section 38500, et seq. ("AB 32"), was signed into law by the Governor on September 27, 2006. The bill demonstrates that the Legislature recognizes the serious threats that global warming poses to California.⁹

To combat these threats, AB 32 requires reduction of the state's GHG emissions to 1990 levels by 2020.¹⁰ This emissions cap is equal to a 25% reduction from current levels.¹¹ The bill directs that by June 30, 2007, the California Air Resources Board ("CARB") shall publish a list of discrete early action GHG emission reduction measures that will be implemented by 2010.¹² CARB must then adopt comprehensive regulations that will go into effect in 2012 to require the actions necessary to achieve the GHG emissions cap by 2020.¹³ The legislation also encourages entities to voluntarily reduce GHG emissions prior to 2012 by offering credits for early voluntary reductions.¹⁴

California Environmental Quality Act

CEQA and its implementing Guidelines provide that in any of the following situations, a finding must be made that the project may have a significant effect on the environment:

- (1) A proposed project has the potential to degrade the quality of the environment, curtail the range of the environment, or to achieve short-term, to the disadvantage of long-term, environmental goals.
- (2) The possible effects of a project are individually limited but cumulatively considerable. As used in this paragraph, "cumulatively considerable" means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

⁹ Health & Safety Code § 38501.

¹⁰ Health & Safety Code § 38550.

¹¹ 9/27/2006 Press Release from the Office of the Governor, available at <http://gov.ca.gov/index.php?/print-version/press-release/4111>.

¹² Health & Safety Code § 38560.5.

¹³ Health & Safety Code § 38562.

¹⁴ Health & Safety Code §§ 38562(b)(3), 38563.

(3) The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.¹⁵

As part of the analysis carried out in an EIR, the agency must formulate mitigation measures and examine alternatives to the proposed project. CEQA mandates that public agencies refrain from approving projects with significant environmental effects if there are feasible alternatives or mitigation measures that can substantially lessen or avoid those effects.¹⁶

As the Court of Appeal concluded in *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 720 [internal quotation omitted]:

"[o]ne of the most important environmental lessons evident from past experience is that environmental damage often occurs incrementally from a variety of small sources. These sources appear insignificant, assuming threatening dimensions only when considered in light of the other sources with which they interact. Perhaps the best example is air pollution, where thousands of relatively small sources of pollution cause a serious environmental health problem. CEQA has responded to this problem of incremental environmental degradation by requiring analysis of cumulative impacts."

The Metropolitan Transportation Plan

The MTP is a long-range regional transportation plan that will include policies and goals to guide transportation decisions and will include a list of proposed transportation projects needed by 2035. Transportation projects must be contained in, or consistent with, the MTP to qualify for federal or state funding.

The MTP is required to provide for consideration of projects and strategies that will, among other things: "protect and enhance the environment"; "promote energy conservation"; and "improve the quality of life." (23 U.S.C.A. § 134(h)). The MTP also "shall include a discussion of types of potential environmental mitigation activities and potential areas to carry out these activities, including activities that may have the greatest potential to restore and maintain the environmental functions affected by the plan." (23 U.S.C.A. § 134(i)(2)(B)(i)). Based on these provisions and the facts about causes and impacts of global warming discussed above, the MTP should include projects to reduce global warming impacts on the environment, and also discuss mitigation activities to avoid or reduce global warming impacts of the projects and priorities identified in the MTP.

¹⁵ Public Resources Code § 21083(b); see also Cal.Code Regs., tit. 14 § 15065.

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

The Notice of Preparation for the MTP for 2035 includes a proposed list of potentially significant adverse environmental impacts that could result from the MTP. However, the Notice does not mention global warming or greenhouse gas emissions at all.

The Draft EIR Must Consider Global Warming Impacts

The Governor's Executive Order and AB 32 inform agencies' obligations under CEQA. The existence of global warming is indisputable; it is causing significant environmental impacts in California and will cause future catastrophic impacts if emissions levels are not substantially reduced; and many incrementally small but cumulatively significant sources of emissions are being approved and permitted every day.

Although the comprehensive regulations implementing AB 32 will not be in place until 2012, many projects could be included in the MTP for 2035 that will contribute cumulatively to the GHG load. Once permitted, these projects will continue to have environmental implications far beyond 2012. Accordingly, SACOG has a current obligation under CEQA to analyze potential global warming impacts and evaluate alternatives and mitigation measures that would avoid or reduce any unavoidable adverse global warming impacts from the actions included in the MTP. These measures will help California meet its statutory requirements for GHG reductions.

The Climate Action Team Report to Governor Schwarzenegger and the Legislature (CalEPA March 2006) has identified strategies for reducing GHG emissions. The Report recommends two broad strategies relevant to regional transportation planning that could achieve significant GHG emission reductions by 2010 and 2020 -- Measures to Improve Transportation Energy Efficiency and Smart Land Use and Intelligent Transportation. (Report at p.57.) Measures to Improve Transportation Energy Efficiency includes: "Incorporating energy efficiency and climate change emissions reduction measures into the policy framework governing land use and transportation, including framework for developing energy element in state transportation and regional planning documents." (*Id.* at p.58.) Smart land use strategies generally "encourage jobs/housing proximity, promote transit oriented development, and encourage high-density residential/commercial development along transit corridors." (*Ibid.*) Intelligent Transportation Systems is "the application of advanced technology systems and management strategies to improve operational efficiency of transportation systems and movement of people, goods and services." (*Ibid.*) These strategies for reducing GHG emissions should be addressed in the draft EIR and, where appropriate, included in the MTP for 2035.

There undoubtedly are numerous specific alternatives and mitigation measures to reduce GHG emissions that SACOG could identify and evaluate in the draft EIR and include in the MTP for 2035. It is beyond the scope of this letter to attempt to identify fully those measures, but they may include the following: infrastructure for the "California Hydrogen Highway Network" such as private vehicle and fleet hydrogen refueling stations; construction of electric vehicle charging facilities; electrification at

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truck stops; measures to reduce idling time; measures to increase carpooling, vanpooling, and ridesharing; measures to increase use of public transit; increased public transit routes and times of operation; other transportation demand management measures; requiring use of limestone or blended cement where possible; planting trees; and adoption of funding priorities that target spending toward population and employment centers and withhold infrastructure funding from greenfield development at the urban edge.

Global warming presents California with one of its greatest challenges. SACOG has the opportunity to begin addressing global warming in a constructive manner while educating the public and decision-makers. We urge SACOG to begin meeting the challenge with this Plan and environmental impact report.

Thank you for considering these comments.

Sincerely,

/S/

SANDRA GOLDBERG
Deputy Attorney General

For EDMUND G. BROWN JR.
Attorney General

cc: Theodora Berger, Senior Assistant Attorney General
Tom Greene, Chief Assistant Attorney General
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