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January 30, 2009

Ms. Cynthia Bryant  
Director  
Governor's Office of Planning and Research  
P.O. Box 3022  
Sacramento, CA 95812-3044

RE: Comments on Draft CEQA Guideline Amendments for Greenhouse Gas Emissions

Dear Ms. Bryant:

The Metropolitan Transportation Commission is the metropolitan planning organization (MPO) for the nine-county San Francisco Bay Area, and the Association of Bay Area Governments (ABAG) serves as the regional planning agency whose mission is to strengthen the cooperation and coordination among local governments. As such, MTC is responsible for regularly updating the Regional Transportation Plan (RTP), a comprehensive blueprint for the development of mass transit, highway, airport, seaport, railroad, bicycle and pedestrian facilities. We also serve as the lead agency in preparing the programmatic Environmental Impact Report for the RTP. Similarly, as the state-designated clearinghouse for reviewing state and federal projects, ABAG coordinates local proposals with state, regional and local plans as well as manages specific planning programs.

MTC and ABAG are responsible for implementing SB 375, and we embrace the challenge of forging a sustainable communities strategy (SCS) for the region. We look forward to the engagement and debate, the analysis and the policymaking, and the creation of the common ground that will be the foundation of the SCS. Furthermore, our two agencies will continue to collaborate with the Bay Area Air Quality Management District (BAAQMD) and Bay Conservation and Development Commission (BCDC) to develop a holistic regional response and complementary set of regional strategies to reduce greenhouse gas emissions and advance California's climate protection efforts.

We are writing to express our appreciation of the OPR's efforts to amend the CEQA guidelines to provide guidance on how state and local agencies should analyze, and when necessary, mitigate greenhouse gas emissions. We have reviewed the *Preliminary Draft CEQA Guideline Amendments for Greenhouse Gas Emissions*, and overall, we support the amendments proposed by OPR with the exception of a few technical clarifications as outlined below.

1. **15064. Determining the Significance of the Environmental Effects Caused by a Project**

Under (h)(3), consider inserting “or State Implementation Plan” following references to the air quality attainment or maintenance plan to be consistent with 15125(d).

2. **15064.4 Determining the Significance of Impacts from Greenhouse Gas Emissions**

Under (a)(1), the guideline states a project may help attainment of greenhouse gas emissions by being consistent with a statewide greenhouse gas emissions limit or by plans, programs, or regulations to implement the Global Warming Solutions Act of 2006. Consider adding to this provision a statement wherein a project that results in lower greenhouse gas emissions compared to existing conditions may also help attainment of the state’s goal of reducing greenhouse gas emissions.

The proposed revisions to (a)(1) read as follows:

The extent to which the project could help or hinder the attainment of the state’s goals of reducing greenhouse gas emissions to 1990 levels by the year 2020 as stated in the Global Warming Solutions Act of 2006. A project may be considered to help attainment of the state’s goal by (a) being consistent with an adopted statewide 2020 greenhouse gas emissions limit or the plans, programs, and regulations adopted to implement the Global Warming Solutions Act of 2006 and/or by (b) resulting in a lower level of greenhouse gas emissions compared to existing conditions.

Under (a)(4), the phrase “any threshold of significance that applies to the project” may be problematic for EIR preparers. Over time, there may be a number of thresholds of significance promulgated by State and local agencies (including CARB, local air districts, metropolitan planning organizations, and other local agencies). It may be argued that the threshold of significance recommended by one agency may trump the one selected by the lead agency for purposes of the environmental assessment.

To avoid confusion and potential litigation, consider revising (a)(4) to read as follows:

The extent to which the impacts from greenhouse gas emissions exceed any the threshold of significance that applies to the project as established by the lead agency.

Under (b), we appreciate OPR providing discretion to lead agencies to choose among quantitative and qualitative approaches for describing greenhouse gas emissions given that to date there are no established or standardized methodologies. To further tighten this provision, consider adding the phrase “latest planning assumptions and reasonably

available information in force at the time the environmental assessment begins”<sup>1</sup> to not only ensure that approach used represents the latest, or most current, set of planning assumptions but also specify time parameters so that lead agency is not required to switch its methodology during the course of the assessment when a *new* methodology, information, or model become available. The suggested phrase is modeled after the guidance issued by U.S. EPA to agencies responsible for preparing transportation conformity analysis for Regional Transportation Plans and Transportation Improvement Programs.

In addition, consider striking “vehicular traffic” and replacing it with “fossil fuel burning.” Because greenhouse gas emissions are primarily associated with the burning of fossil fuel and energy consumption from a number of sectors (such as industrial/commercial, residential fuel combustion, electricity generation, off-road equipment, agricultural and farming, and transportation sector), it is proper to reference the two primary causes of greenhouse gas emissions rather than vehicular traffic.

The proposed revisions to (b) read as follows:

A lead agency should make a good-faith effort, based on the *latest planning assumptions and reasonably available information in force at the time the environmental assessment begins*, to describe, calculate or estimate the amount of greenhouse gas emissions associated with a project, including emissions associated with energy consumption and ~~vehicular traffic~~ *fossil fuel burning*. Because the methodologies for performing this assessment are anticipated to evolve over time, a lead agency shall have discretion to determine, in the context of a particular project, whether to:

- (1) Use a model or methodology to quantify greenhouse gas emissions associated with a project, and which of any available model or methodology to use. The lead agency may include a qualitative discussion or analysis regarding the limitations of the particular model or methodology selected for use.
- (2) Rely on qualitative or other performance based standards for estimating the significance of greenhouse gas emissions.

### 3. **15126.4 Consideration and Discussion of Mitigation Measures Proposed to Minimize Significant Effects**

Under (c)(1), while we support the intent of the phrase “all feasible means” to cover a wide range of mitigation measures, this phrase has a much different connotation and introduces a more expansive scope and meaning than the phrase “feasible measures which could minimize significant adverse impacts” as described under (a)(1). To ensure

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<sup>1</sup> The suggested wording is modeled after §93.110 as cited in U.S. EPA, *Transportation Conformity Regulations* (January 2008), which is available at: <http://www.epa.gov/otaq/stateresources/transconf/regs/420b08001.pdf>

consistency throughout the guideline and avoid potential litigation, consider revising this provision to read as follows:

Lead agencies should consider ~~all feasible means of mitigating greenhouse gas emissions~~ feasible measures which could minimize significant adverse impacts of greenhouse gas emissions including but not limited to emissions associated with the project's energy and fossil fuel consumption, ~~including fossil fuel consumption.~~

Under (c)(2), consider providing examples of what other mitigation measures may mean. We suggest adding transportation/transit improvements that facilitate alternatives to driving such as more ride sharing, walking, biking or taking transit as the example. The proposed revisions read as follows:

Mitigation measures may include project features, project design, or other measures (including but not limited to transportation improvements that facilitate shared rides or pedestrian, bicycling or transit use) which are incorporated into the project to substantially reduce energy or fossil fuel consumption ~~or greenhouse emissions.~~

#### 4. 15130. Discussion of Cumulative Impacts

Under (b)(1)(B), consider adding "sustainable communities strategy" to the list of local or regional plan. The proposed revision reads as follows:

This may include: a general plan, sustainable communities strategy/regional transportation plan, regional blueprint climate action plan, or regional housing allocation plan.

Also under (b)(1)(B), the words "most accurate" is too subjective and subject to different interpretations, and if unresolved, may lead to legal challenges. Similar to our Comment #2 above where we take the suggested language from U.S. EPA's transportation conformity regulations, the proposed revisions read as follows:

...It may also include an adopted or certified prior environmental document for such a plan, or a regional computer modeling program reflecting the latest planning assumptions ~~most accurate~~ and reasonably available information in force at the time the environmental assessment begins.

Under (d), clarify that regional transportation plans are not land use plans per se but the sustainable community strategies required per SB 375 would qualify as such.

Previously approved land use documents such as general plans, specific plans, ~~regional transportation plans~~, regional blueprint plans, climate action plans, sustainable community strategies as included as the land use elements in regional

transportation plans, and local coastal plans may be used in cumulative impact analysis....

**5. 15183. Projects Consistent with a Community Plan or Zoning**

Under (g)(1), consider striking "Parking ordinances" to be consistent with amendments to Section XVI of Appendix G.

**6. Appendix G: Initial Study Checklist**

Under VII(a), consider clarifying this question to acknowledge the project's incremental contribution to greenhouse gas emissions (similar to the existing language under III. Air Quality (a)) and to better reflect the CEQA discretion for local agencies to establish thresholds of significance based on individual circumstances (consistent with OPR's introductory remarks and our Comment #2 above). The proposed revisions read as follows:

a) ~~Generate~~ Result in a cumulatively considerable net increase in greenhouse gas emissions, either directly or indirectly, that may have a significant adverse impact on the environment, based on ~~any applicable~~ the threshold of significance established by the lead agency?

Under XVI (a), we support OPR's move away from the traditional level of service and parking capacity standards and its new focus on vehicle trip generation, volume and miles driven. However, to make a finer point about cumulatively considerable impacts, consider clarifying this question to recognize the project's incremental contribution to transportation impacts, particularly vehicle miles traveled (VMT). VMT growth is influenced by a number of external factors, including future population and job growth that would occur with or without the project; and so in this case, it would be appropriate to assess whether the project's impact results in cumulatively considerable net increase in VMT. Furthermore, to make VMT more descriptive, consider presenting this as VMT per capita rather than total VMT. Note the total VMT values correspond to the total number of miles driven by all vehicles within a given time period and geographic area while a more tangible measure of car use may be per capita VMT, which is the number of miles driven by the average car per day.

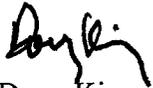
The proposed revision read as follows:

a) Result in a ~~substantial~~ a cumulatively considerable net increase in the number of vehicle trips, roadway vehicle volume or vehicle miles traveled per capita?

Overall, MTC and ABAG favor OPR's straight forward approach to include greenhouse gases as part of the CEQA review –assessment of data, analysis of environmental impacts and mitigation – without prescribing specific data sets, analytical tools or mitigation measures. We urge OPR to resist efforts to make the guideline more prescriptive. We also commend the OPR staff for their work.

Thank you for the opportunity to provide you with early feedback on the *Preliminary Draft CEQA Guideline Amendments for Greenhouse Gas Emissions*. Please consider our comments as you prepare your final CEQA guideline amendments for review and adoption by the Natural Resources Agency. Please feel free to contact either Doug Kimsey, MTC Planning Director, at 510.817.5790 or Kenneth Kirkey, ABAG Planning Director, at 510.464.7955 if you have any questions.

Sincerely,



Doug Kimsey  
MTC Planning Director



Kenneth Kirkey  
ABAG Planning Director

cc: Terry Roberts, OPR

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