

**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).<sup>1</sup> While we recognize the difficulty of SANDAG's task – to prepare the first SCS in the State as required by SB 375<sup>2</sup> – 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.

---

<sup>1</sup> 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).

<sup>2</sup> 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.<sup>3</sup> Pollutants of concern in the San Diego air basin include ozone, the chemical commonly called “smog,” which may permanently decrease lung function;<sup>4</sup> 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.)

---

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

<sup>4</sup> New England Journal of Medicine, vol. 351, no. 11, pp. 1057-1068 (2004).

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.<sup>5</sup>

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 needed to show that the emissions caused by the RTP/SCS at different time points during its life

---

<sup>5</sup> 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.)

Honorable Jerome Stocks  
Chair, Board of Directors  
September 16, 2011  
Page 4

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.)<sup>6</sup> Research in other parts of California has shown that disadvantaged and minority communities are often exposed to unhealthy air more frequently and at higher levels than other groups.<sup>7</sup> 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

---

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

<sup>7</sup> 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.<sup>8</sup>

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,<sup>9</sup> and have been listed by the Air Resources Board (ARB) as a toxic air contaminant.<sup>10</sup> 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.<sup>11</sup>

---

<sup>8</sup> Jacobson, "Enhancement of Local Air Pollution by Urban CO<sub>2</sub> Domes," *Environ. Sci. Technol.* 2010, vol. 44, 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.

<sup>9</sup> Cal. Code Regs., tit. 27, § 27001.

<sup>10</sup> Cal. Code Regs., tit. 17, § 93000.

<sup>11</sup> 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.<sup>12</sup> 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

---

<sup>12</sup> 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.<sup>13</sup> 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.<sup>14</sup> Almost all of the increase is due to human activities (such as fossil fuel use).<sup>15</sup> 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.<sup>16</sup> GHGs persist in the atmosphere for decades and in some cases millennia.<sup>17</sup>

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.)<sup>18</sup> 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.)<sup>19</sup>

---

<sup>13</sup> Hall and Brajer, at 5.

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

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> 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](http://www.ipcc.ch/pdf/assessment-report/ar4/wg1/ar4-wg1-faqs.pdf).

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

<sup>19</sup> 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 32<sup>20</sup>, 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),<sup>21</sup> 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.)<sup>22</sup>

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;

---

<sup>20</sup> Cal. Health and Safety Code, § 38,500, *et seq.*

<sup>21</sup> 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.

<sup>22</sup> Available at [http://www.arb.ca.gov/cc/scopingplan/document/adopted\\_scoping\\_plan.pdf](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 CO<sub>2</sub>e, 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,

/s

TIMOTHY R. PATTERSON  
Supervising Deputy Attorney General

/s

SUSAN DURBIN  
Deputy Attorney General

For KAMALA D. HARRIS  
Attorney General

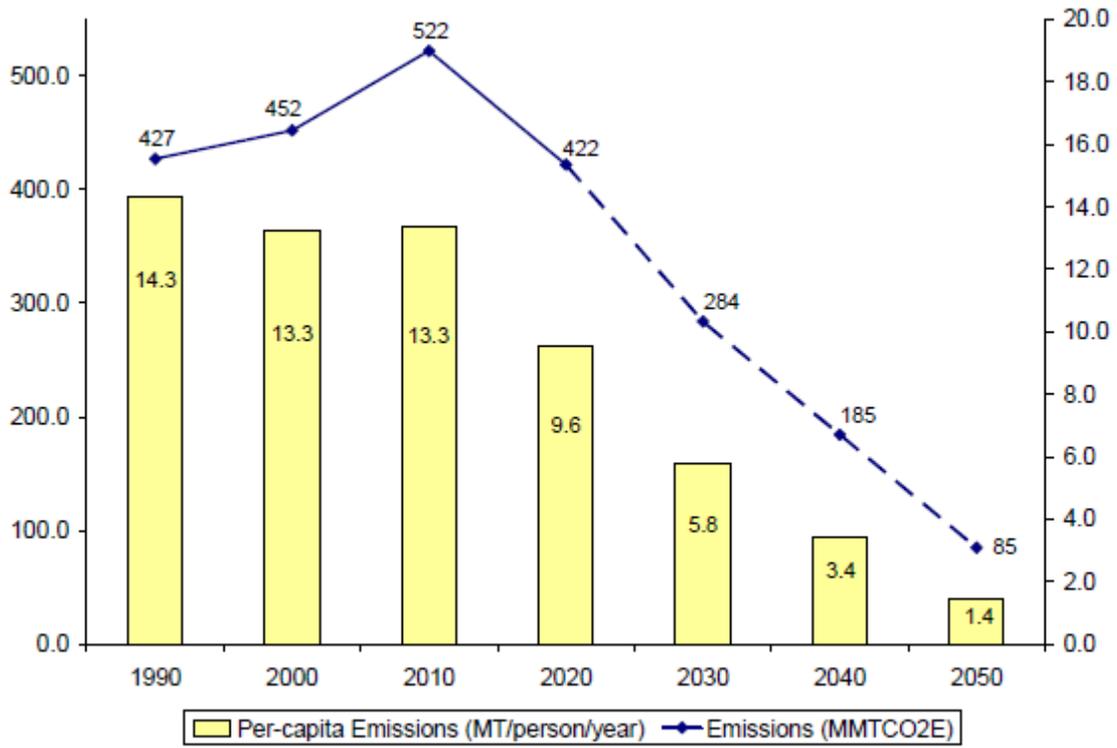
cc: Gary Gallegos, Executive Director, San Diego Association of Governments  
Julie D. Wiley, General Counsel, San Diego Association of Governments

Attachment

AG Letter non legal.rtf

EXHIBIT A

Emissions Trajectory Towards 2050



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