

**Metropolitan Transportation Commission
Written Correspondence Received – 2010 Draft Public Participation Plan**

	Name & Title	Affiliation (if any)	Date
1.	BigWayne19		July 19, 2010
2.	Howard Wong		Aug. 1, 2010
3.	John Cunningham		Aug. 6, 2010
4.	Hangston Giles		Aug. 9, 2010
5.	Steve Ly		Aug. 10, 2010
6.	Cheryl O'Connor, Acting Chief Executive Officer	Building Industry Association of the Bay Area	Aug. 18, 2010
7.	David Schonbrunn, President	Transportation Solutions Defense and Education Fund	Aug. 21, 2010
8.	Robert Raburn		Aug. 21, 2010
9.	John Young, Executive Director	Grassroots Leadership Network of Marin	Aug. 23, 2010
10.	John Sighamony, Transportation Planner, VTA		Aug. 23, 2010
11.	Greg Greenway, Executive Director	Threshold2008	Aug. 23, 2010
12.	Marion Taylor, President	League of Women Voters of the Bay Area	Aug. 23, 2010
13.	Nicholas Dewar	Public Policy Collaboration	Aug. 23, 2010
14.	Group letter	50 individuals and organizations	Aug. 23, 2010
15.	Gen Fujioka, Sr. Policy Advocate Shawn Yee, Attorney Lillian Galedo, Exec. Director Terry Valen, Exec. Director	National CAPACD Asian Law Alliance Filipino Advocates for Justice Filipino Community Center	Aug. 23, 2010
16.	Bernardo Huerta	East Palo Alto Public Works and Transportation Commissioner	Aug. 24, 2010

J:\PROJECT\Public Participation Plan\2010 Sept Update PPP\PPP Comments\Comment Letters\Cover log for web posting_Sept7.doc

From: "BigWayne19" <BigWayne19@Comcast.NET>
To: <info@mtc.ca.gov>
Date: 7/19/2010 1:22 PM
Subject: how to ... ? . . .

OAKLAND, CA, July 19, 2010 . . . How can we get more people involved in shaping transportation policies and investment decisions? What will it take for you to participate in planning the region's future?

----- maybe if you would take notice of the 20% of homes in the SF bay area that already owns a motorcycle or scooter ?

maybe if you would notice the 4% of traffic that already IS a motorcycle or scooter ?

maybe if you would start counting on the 1,000,000 registered motorcycles/scooters in CA ? that if they'd start being ridden every day, the effect would be similar to reducing traffic by 15%, and increasing parking by 15%, and reducing gasoline consumption by 15% ! . . .

Big

...freedom isn't free: its price is eternal vigilance . . .

For Immediate Release

MTC Invites Bay Area Residents to Shape Strategy for Expanding Public Involvement

Contacts:

Ellen Griffin - 510.817.5854

Catalina Alvarado - 510.817.5783

OAKLAND, CA, July 19, 2010 . . . How can we get more people involved in shaping transportation policies and investment decisions? What will it take for you to participate in planning the region's future? The Metropolitan Transportation Commission (MTC) has released its 2010 Draft Public Participation Plan and wants advice on these questions.

The plan summarizes MTC's practices for providing the Bay Area's diverse communities with ample opportunity to get involved in the transportation planning process. Key elements of the draft plan include frequent consultation with advisory panels; mail and e-mail notification of upcoming meetings, workshops and other forums; a robust website allowing the public to listen to live or archived meetings, and to comment on issues before the Commission; a team of agency staff dedicated to public outreach and assistance; a range of publications available free of charge; and translation services available upon request for participation by all residents.

Appendix A to the Draft 2010 Plan is the "Public Participation Plan for the Bay Area Sustainable Communities Strategy and Regional Transportation Plan (RTP)." State legislation passed in 2008 calls upon metropolitan planning organizations like MTC in 18 regions in California to develop regional transportation plans that incorporate a Sustainable Communities Strategy

(SCS) - an integrated transportation, land-use and housing plan, with the ultimate goal of reducing greenhouse gas emissions for cars and light-duty trucks.

In the Bay Area, the SCS and RTP will be a joint effort between the Bay Area's regional agencies: MTC, the Association of Bay Area Governments, the Bay Area Air Quality Management District, and the Bay Conservation and Development Commission. An extensive outreach effort is anticipated as part of the process of developing the SCS. In addition to a partnership among local governments (cities, counties, congestion management agencies, and transit agencies), a number of public stakeholders will be consulted. The draft public participation plan for the SCS and RTP provides specifics on when, how and where interested parties may stay informed of and get involved in this critical planning effort.

Members of the public are encouraged to e-mail comments to info@mtc.ca.gov, or submit comments via regular mail to the MTC Public Information Office at 101 Eighth St., Oakland, CA, 94607. All comments must be received by 4 p.m. on August 23, 2010.

To obtain a copy of the 2010 Draft Public Participation Plan, visit the MTC Web site at www.mtc.ca.gov/get_involved/participation_plan.htm, or call the MTC Public Information Office at 510.817.5757.

MTC is the nine-county San Francisco Bay Area's transportation planning, coordinating and financing agency.

http://www.mtc.ca.gov/news/press_releases/rel504.htm

MTC info - Public Participation Plan & Diverse Communities

2

From: <WongAIA@aol.com>
To: <sheminger@mtc.ca.gov>, <aflemer@mtc.ca.gov>, <info@mtc.ca.gov>
Date: 8/1/2010 2:05 AM
Subject: Public Participation Plan & Diverse Communities

Hello MTC:

RE: PUBLIC PARTICIPATION PLAN/ DIVERSE COMMUNITIES

Often contrary to the interests of diverse ethnic/ cultural communities, large infrastructure projects stress economic development, removal of "blight" and "progress", e.g. San Francisco's "redevelopment" of the Fillmore, Jazz Districts, Western Addition, Afro-American/ Japanese-American intact communities etc. The proposed Central Subway Project stresses connectivity to Cal-Train and a commuter market that does not currently exist. Combined with recent urgings for rezoning of Chinatown, the trend is clear---gentrification and displacement. But public agencies, such as the MTC, TA and MTA, have little concern for the cultural impacts. So, hopefully, the MTC's Public Participation Plan changes past outcomes---protecting the communities that it is intended to serve.

Regards,
 Howard Wong, AIA
 SaveMuni.com

* * * * *

SAVEMUNI.COM CALLS FOR MTA TO DIVERT SUBWAY FUNDS & SAVE MUNI**Existing funds are available to save Muni NOW.**

In good economic times, wasteful transportation expenditures might be shrugged off as habitual pork-barreling. But in an economic calamity, transit agencies can't focus only on service cuts and raising riders' fares. Like anyone declaring bankruptcy, one can't take financial assistance while concealing hidden bank accounts and assets.

The Central Subway Project has \$384 million in existing State and Local funds, including \$124 million in Prop K Sales Tax Funds.

City Officials and MTA Management must reallocate these funds to save the Muni system.

Moreover, the MTA is "turning over every rock" for an additional \$164 million in Local funds and \$88 million in State funds for the Central Subway.

These new funds, if found, must be used to save the Muni system.

Muni can choose to have ten years of budget surpluses while fixing the existing system.

Like the reallocation of funds from the equally bad Oakland Airport Connector and Alaska's "Bridge to No Where", existing monies can solve more immediate needs. The Central Subway's \$636 million in State/ Local funds and \$942 million in future Federal funds could revolutionize Muni. In times of economic crisis, priorities must be reevaluated.

The Federal Transit Administrator (FTA) deems the Central Subway a high risk project.

In its letter to the SFMTA, January 7, 2010, the Federal Transit Administration (FTA) requires that **local funding cover all project cost increases**---identifying financing options, funding sources, short-term lines of credit, debt, debt capacity, revenue sources....and notes that:

"The Central Subway Project is a high risk project located in a densely populated urban center. It is the largest, most complex project ever undertaken by SFMTA."

Before approving federal funds, the FTA is demanding that the MTA secure \$164 million more in local funding and \$88 million in state funding. Meanwhile, Muni teeters on a multiyear death spiral of deficits.

Furthermore, the FTA explicitly requires proof that any Central Subway operating costs will not diminish the existing Muni System! But even the T-Line increased operating and maintenance costs, cutting back surface bus service and lacking funds to operate the new Metro East Maintenance Facility.

Tragically, the Central Subway's own EIR projects large reductions in surface buses to offset higher operating costs.

Tens of thousands of riders, north of the Washington Street Subway Station, will have reduced service. Few riders will benefit from the one-half mile subway ride from Washington Street to Union Square. Far worse, from Stockton & Pacific Ave., the Total Travel Time by **Bus** to Market St. is **faster than** the Total Travel Time by **Subway**.

• **In the Central Subway Final SEIS/SEIR, Volume II, Page 3-187:**

"The operational analysis and cost estimates that were conducted for the Central Subway financial feasibility take into account cost savings associated with the reduction in frequency of service on the surface lines operating in the Central Subway Corridor."

• **In the Central Subway Final SEIS/SEIR, Executive Summary, Table S-2, page S-12:**

Table S-2 shows the Subway Alternative as including 76,400 hours fewer bus hours a year than the TSM/No Project Alternative. Contained within Table S-2 for "Annual Operating Statistics", "Total Annual Diesel/Trolley Bus Hours (System wide): subtracting (2,622,030 – 2,545,630) = **76,400 hours of reduced Annual Diesel/ Trolley Bus Hours.**

Like a living organism, the rerouting of major blood vessels/ circulation away from major organs is nonsensical--as is the elimination of public transit to major urban nodes.

South of Market Street, the rerouted T-Line will eliminate direct service to the Embarcadero Station (Ferry Building and ferry services), Montgomery Station (financial district, TransBay Terminal and future High Speed Rail), Powell Station, Civic Center Station and the entire Market Street Corridor---for perpetuity. From northerly Washington Street, the proposed subway goes to a new Union Square Station---requiring that riders walk up 8 stories and 1,000 feet to the existing Powell Station.

The Central Subway **decreases** connectivity to BART, Muni Metro, Ferry, High Speed Rail, crossing bus lines and major employment/ commercial centers.

* * * * *

MTC info - Comments on Public Participation Plan

3

From: John Cunningham <John.Cunningham@dcd.cccounty.us>
To: <info@mtc.ca.gov>
Date: 8/6/2010 10:36 AM
Subject: Comments on Public Participation Plan
CC: Steve Goetz <Steven.Goetz@dcd.cccounty.us>

Please accept these comments on MTC's Public Participation Plan:

1. Page 18: Electronic Access to Information: There is a wide range of online distribution/collaboration technologies now available and can greatly improve upon the current practice of making MTC meetings available **only** through RealPlayer audio. MTC should make use of alternate technologies to provide improved access to meetings which integrate relevant documents, enable interactivity including the use of OS-native software or web-based applications which don't require downloading proprietary software.
2. Page 18: Electronic Access to Information: MTC should provide planning material in formats that the public is already using in their daily lives in order to make them more accessible and meaningful. Information and geographic extent of projects and plans should be disseminated using existing/mainstream online mapping techniques in addition to MTC's FMS system.
3. The MTC library should make public resource materials available for download and licensed material available for check out on digital readers.
4. Please consider including school districts and County offices of education in the dissemination of planning material and requests for comment. Currently, schools are engaged when there is a "problem", as in when a safe routes to school grant becomes necessary. It is the County's belief that schools should be brought more completely in to the "planning fold" rather than in a reactionary fashion. This may be particularly critical in SCS planning as the benefits of compact development can be compromised by local educational agencies developing schools outside an SCS area and even outside urban limit lines or urban growth boundaries.

John Cunningham
Senior Transportation Planner
Department of Conservation and Development
651 Pine St, 4th Floor - North Wing
Martinez, CA 94553
(925) 335-1243
john.cunningham@dcd.cccounty.us

MTC info - MTC's Public Participation Program - Comment

4

From: <Xxjxbxx@aol.com>
To: <info@mtc.ca.gov>
Date: 8/9/2010 7:00 PM
Subject: MTC's Public Participation Program - Comment

Dear Ms. McMillen:

Long presentations, replete with unfiltered and often irrelevant data...followed by highly restricted public comments directed at a bored MTC and often befuddled MTC commission...followed in turn by the sarcastic, patronizing "last word" rebuttals of MTC's insufferably arrogant Executive Director....is not public participation in any meaningful sense of the word.

To render your pp program even marginally acceptable you should:

- a.) stop overwhelming your commissioners with minutia...to the point where they have little choice but to blindly follow the dictates of the MTC staff,
- b.) mix your commissioners in with informed members of the public....who are in fact their counterparts, not as you current assume, merely a pestilent horde to be tolerated,
- c.) insist that your Executive Director come off his dais from time to time as required to engage the Bay Area residents he purports to represent
- d.) stop applying an arbitrary 2 minute cut-off to all public participants. Some people really do have useful ideas to add. At the same time, stop being so polite when people start spouting nonsense.

Hangston Giles,
San Leandro

cc Federal Transportation Administration

5

From: Steve Ly <stevely844@yahoo.com>
To: <info@mtc.ca.gov>
Date: 8/10/2010 9:04 AM
Subject: comment re: MTC's Draft 2010 Public Participation Plan
Attachments: MTC -- Meetings and Events.pdf

Dear Staff:

This communication is a formal comment regarding MTC's Draft 2010 Public Participation Plan. Please add these comments to the formal record.

The MTC's Draft 2010 Public Participation Plan is a 76-page pdf file full of recommendations that are supposed to increase public participation. Unfortunately, the single most action that MTC could take to improve public participation does not appear in the document.

The document points out that "MTC encourages interested persons to attend MTC Commission and standing committee meetings to express their views. Items on the Commission agenda usually come in the form of recommendations from MTC's standing committees. Much of the detailed work of MTC is done at the committee level, and the Commission encourages the public to participate at this stage, either in person or by tracking developments via the web."

Unfortunately, a quick look at the MTC website indicates that these meetings are scheduled during the business day, when most members of the public are at work. For example, in the attached schedule from September 2010, there are 13 meetings scheduled, all of which take place during working hours. This is not conducive to public participation, and makes a mockery of the statement quoted above.

If MTC intends to honor the stated goal of encouraging the public to "participate at this stage," it will need to schedule the commission and committee meetings at a time that is convenient to members of the public.

Thank you.

Steve Ly
Los Altos, CA

Cheryl O'Connor
Acting Chief
Executive Officer

August 18, 2010

MEMORANDUM

To: MTC Public Information Office
101 Eighth Street, Oakland, Ca. 94607
e-mail:info@mtc.ca.gov

From: Cheryl O'Connor

Re: Comment on MTC's Draft 2010 Public Participation Plan

On behalf of the Building Industry Association of the Bay Area, we hereby submit our comments on the MTC Draft 2010 Public Participation Plan. I am the Acting Chief Executive Office of the BIA, an association of 480 members representing the Bay Area homebuilding community.

I also serve on MTC's Policy Advisory Council. This Council was intended to advise MTC on transportation policies in the Bay Area, incorporating diverse perspectives relating to the environment, the economy and social equity. My experience with the Council to date is discouraging in that they do not represent a broad opinion base nor are they knowledgeable enough to even comment on many of these complex and confusing issues. Many of these Council members have been participating in the public input process for many years and know how to work the system. They do not represent the typical Bay Area resident. To ask 27 people to represent the interests of 7,000,000 Bay Area residents seems to be an unfair sampling at best.

The outreach for public input must be thorough, deep and substantial. The people most often heard from are the same people who continue to serve on Advisory Councils and show up for public comment at every hearing. What about the silent majority of Bay Area residents?

Most Bay Area residents do not fully understand all of the planning issues not will they take the time to read all of the information provided. The outreach and feedback needs to be done with a far reaching survey, questionnaire, poll and focus groups. Public hearings and meetings draw the same crowd over and over with the same spin. Most hard working residents do not have the time nor do they want to get up to speak at a podium. But they will tell me what they think when I tell them their new home does not come with a garage.

The outcomes and impacts of the RTP must be described simply so every Bay Area resident fully understands how it will impact them personally. Bay Area residents are

Mailing Address:
101 Ygnacio Valley Rd
Suite 210
Walnut Creek
California 94596

Tel (925) 274-1370
Fax (925) 274-1355

<http://www.biabayarea.org>

usually fine if they believe the impact will be to large corporations and developers, but when you drill down to "what does this mean to me" you will get a very different response. The other important note is that 30% of Bay Area residents are foreign born and surveys must be done in Chinese and Spanish.

People want choices and they do not want someone to tell them what is good for them. We make assumptions that we can penalize them, fine them to force them to consider moving closer to work and to take public transit, which may or may not be convenient and accessible, depending on where they live.

Looking at the Bay Area census information, approximately 80% of Bay Area workers drive to work with 68% of them driving alone. Only 339,000 Bay Area residents take public transportation. 2,645,082 Bay Area residents drive to work.

The MTC scenarios for the future include moving 200,000 people to San Francisco by 2035 to better match jobs with workers. The pricing strategies include a carbon tax or tax on vehicle miles driven, congestion fee for congested freeways and increased parking charges and bridge fares. It also assumes substantial governmental intervention in the land use planning policies in order to get high density homes approved and built.

- Are residents aware that the VMT fee per mile will add \$4,500 to the average household's travel costs?
- Are residents aware that many planners would like to see high rise condo buildings in their Bay Area neighborhood? Do they even know what 60 to the acre means or looks like?
- Are Bay Area residents aware that the most aggressive MTC scenario assumes a 460% increase in auto costs per mile?
- Will all of the region's elected officials who voted for aggressive GHG targets and who ultimately support the SCS that the region adopts, pledge now to support all of the travel pricing policies and development projects necessary to achieve implementation of the SCS?"

I also work with a non-profit housing company in San Francisco and every week, I talk to Bay Area residents looking for affordable housing. When I tell them there will not be a place to park their car in this project, they look at me in disbelief. They wonder how policy makers can make these decisions without consulting the actual person who will be living in these homes in the City. So, the potential residents either choose not to buy or to move to the suburbs where they can park their car in their secure garage. In order to sell the homes that do not come with a garage (it was intentionally not planned as one space for each resident), the prices of the homes will be lowered and will stand vacant until that perfect TOD buyer shows up. It is critically important to truly understand what residents will and won't do, particularly when the philosophy is that we are doing what is right for them and they will agree to it. People have more choices on where they live now more than ever.

It is critically important to consider current economic conditions when undertaking public participation. With the high unemployment rate in the Bay Area, people will consider driving to far reaching places for a job. They will also consider moving to another city for a job. The number of housing permits pulled in the Bay Area for 2010 is the lowest on record, so the other burning issue is how do you get these new TOD's built in our lifetime.

A recent newsletter by Joel Kotkin, author of "The Next Hundred Million, America in 2050" stated, "The problem lies in the evolving nature of the workplace in most parts of

the country, where jobs, outside of government employment, are increasingly dispersed. Transit agencies should be looking at ways to reach farther to the periphery, in part to provide access to inner-city residents to a wider range of employment options. Much more emphasis should be placed on telecommuting. In fact, people who work from home now surpass transit users in 36 out of 52 metropolitan areas with populations over 1 million. Some aspects of suburban life—notably long-distance commuting and heavy reliance on fossil fuels—will have to change. The new suburbia will be far more environmentally friendly—what I call “greenurbia.” The Internet, wireless phones, video conferencing and other communication technologies will allow more people to work from home: at least one in four or five will do so full time or part time, up from roughly one in six or seven today. Also, the greater use of trees for cooling, more sustainable architecture and less wasteful appliances will make the suburban home of the future far less of a danger to ecological health than in the past. Houses may be smaller—lot sizes are already shrinking as a result of land prices—but they will remain, for the most part, single-family dwellings.”

The MTC study called “Choosing a Transit Oriented Neighborhood in the Bay Area” stated “one size does not fit all”. The study found that 33% of the respondents would be classified as “hardest to reach” with a lack of interest in transit. The study suggested that there are groups of Bay Area residents who would consider TOD with six attitudinal dimensions: transit accessibility, travel minimization, SF access, school quality, neighborhood clean and quiet (low crime) and driving orientation.

It also stated “TOD residents have relatively low levels of automobile use in part because TOD’s attract people who want to walk, bike and take transit, a phenomenon known as self-selection”.

A key finding is that new movers to the Bay Area rated the importance of being able to safely walk around at night as critically important in influencing their housing choice. I am currently involved in meetings in San Francisco with homeowners who are angry about break-ins, robberies and security issues in and around their new buildings.

- Is this the trade off they should have known about when the planners thought they should not have cars and garages?
- Will they now be more likely to move out of the city for a safer area to walk around at night?
- What will they tell their friends about living in their San Francisco TOD and how will this influence potential future residents?

My career has spanned 35 years in selling and marketing new homes to home buyers. People make housing choices based on their particular needs and wants. They want to have choices. I recently met with a huge Chinese company who has plans to set up shop in the Bay Area to build solar panels and self sustaining new homes. When choosing their main office location, they chose Cupertino. I asked why and they said Asian home buyers love Cupertino because of the great schools. This company did not choose SF or Oakland or downtown San Jose. They chose a suburb.

Please collect as much information as possible through surveys and polling and do not rely on public hearings and “targeted” groups. You will continue the process of speaking to the same group and not fully understand the ramifications of your suggestions and recommendations in the transportation plans for the Bay Area. We are all eager to make the Bay Area a sustainable region and we must proceed with our eyes wide open.

Transportation Solutions Defense and Education Fund

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P.O. Box 151439 San Rafael, CA 94915 415-331-1982

"Solutions Is Our Middle Name"

August 21, 2010
By E-Mail

Scott Haggerty, Chair
Metropolitan Transportation Commission
101 Eighth Street
Oakland, CA 94607

Re: RTP Public Participation Plan Comments

Dear Mr. Haggerty:

TRANSDEF, the Transportation Solutions Defense and Education Fund, and its colleagues have actively participated in each of MTC's Regional Transportation Plans, starting with the 1994 Plan. Given that experience, we are well-qualified to identify where previous public participation programs have failed.

The number one problem in public participation is the disconnect between the input received from the public and the creation of alternatives to be studied in the environmental review of the RTP. This disconnect results from the insertion of MTC staff in between the input from the public and the creation of alternatives. Instead of the public creating its own alternative(s), staff inserts agency priorities into the creation of alternatives. This results in the policy preferences expressed by the public being filtered and distorted. We commented extensively on this in our April 7, 2009 letter on the Final 2009 RTP.

The solution is simple and straight-forward: A substantial body of non-profits actively participates in the development of the RTP. These groups have sophisticated and coherent foundations in transportation and land use policy. As such, they are especially qualified to provide thoughtful and innovative approaches to regional planning. Many of these groups already work together and share a common vision. The solution is to harvest the collective wisdom of these groups.

This could be accomplished by offering an RTP charrette process to the non-profits that have been involved in past RTPs. Those groups would self-organize into one or possibly more teams with shared values. (It is possible that business-oriented groups might want to form their own team.) Each team would then develop its own consensus goals, objectives and policies, leading to the selection of a project list that would

become the (or one of the) public RTP alternative(s). We believe there is a reasonable probability that the input from these non-profits could be fully captured by one or two RTP alternatives.

A process like this is not unprecedented at MTC. It bears a family resemblance to the Smart Growth/Regional Footprint charrette process that MTC and ABAG conducted a few years ago. The biggest difference would be the self-organization into large teams, so the number of tables would be much smaller--only one or two tables, hopefully. The other thing is that the team(s) would work together on an ongoing basis, until the alternative is fully defined.

Please note that this proposal does not assert that the alternative(s) would represent the wishes of all Bay Area residents. That is the responsibility of the larger Public Participation Program. **The purpose of this proposed process is to translate the suggestions from the most informed members of the public directly into an RTP alternative.** After having created two RTP alternatives in the past, TRANSDEF believes its fellow groups can manage the technical challenges, making the proposal eminently feasible.

A commitment in the Public Participation Plan to a public RTP alternative(s) would have a positive impact on the RTP development process. Knowing that involvement with the process will result in a tangible product that will then be evaluated against other alternatives will greatly encourage participation in the development of the next RTP. Wouldn't that be an excellent outcome for a Public Participation Plan?

Sincerely,

/s/ DAVID SCHONBRUNN

David Schonbrunn,
President

MTC info - Comments on MTC Public Participation Plan

8

From: "Robert Raburn" <robertraburn@covad.net>
To: <info@mtc.ca.gov>
Date: 8/21/2010 1:37 AM
Subject: Comments on MTC Public Participation Plan

Dear MTC Staff and Commissioners:

I appreciate this opportunity to comment on the draft 2010 Public Participation Plan (PPP). My review of the draft PPP finds that the MTC's present resources are capable of creating a viable plan that we can all be proud of. I look forward to the development of meaningful public involvement that helps the commission fulfill federal guidelines to provide equitable transportation allocations to all groups without discrimination based on race, ethnicity, income, geographic local or mode of travel.

Flawed Commission Structure

Public Participation Goals under "Diversity" includes "user (mode) groups" (Appendix A, p. 57), yet the grandfathered structure of the 19-member commission fails to include transit representation from the BART and AC Transit elected bodies. Federal ISTEA legislation changed the requirements for the composition of MPOs to include transit operators. No amount of public representation can overcome the flawed MTC commission structure. It seems unfair to even embark on a Transit Sustainability Project or Sustainable Communities Strategy without correcting this inequitable representation. Transit officials must be at the table to consider and vote on regional transportation allocations and to participate in the seven MTC committees. Even the MTC's Policy Advisory Council does not specify a single transit representative among the 27-member advisory body.

To resolve the inequitable representation of transit operators, the MTC's existing Policy Advisory Council should embark on a review of the federal regulations for MPO composition and gather examples of compliance from other MPOs. Even the newly formed Alameda County Transportation Commission serves as a model for inclusion of elected representatives from BART and AC Transit as "Member Transit Operators."

Meaningful Public Involvement

Public committees must have a voice—both during committee meetings with senior staff and during the full MTC commission meetings. I have only rarely heard mention of public committee positions or recommendation by staff or commissioners during full commission meetings.

As the chair of the Citizens Watchdog Committee (CWC) for the Alameda County Transportation Improvement Authority (ACTIA) over the past 8 years, I hold a unique perspective on meaningful public involvement. At the beginning of every ACTIA board meeting the agenda included an opportunity to publicly report on the CWC discussions and issues. The CWC also authored a *Report to the Public* each year. The MTC can readily provide public committees with a recurring item on the agenda to offer committee reports during the full commission meetings. Meeting minutes of public oversight committees should also be included in the meeting agendas.

Title VI Compliance

Equitable transportation investments should offer equal benefits for all. Transportation is clearly a Civil Right, as shown by the history of Plessey vs Ferguson (1896) and the Montgomery Bus Boycott in 1955. The adoption of the Civil Rights Act of 1964 Title VI explicitly protects minority populations against discrimination and disparate impacts in transportation. The Clinton administration subsequently added protection of low-income groups in Executive Order 12898. The essence of Title VI is that transit investments should lead to equitable access to opportunity for all. Instead, in the Bay Area we often observe a high-budget disparity in rail investments that serve affluent suburban residents, while less money is allocated to address the transportation needs of low income or minority groups.

The draft PPP is unlikely to materially help the MTC meet Title VI requirements (PPP draft p.4). The sections that discuss the Regional Transportation Plan (RTP) and Transportation Improvement Program (TIP) need to identify the processes the MTC proposes to follow to certify compliance with Title VI.

Thanks again for providing this opportunity to discuss needed changes to the MTC's structure and public processes. Please feel free to contact me to clarify or discuss any of the important points I raise.

Sincerely,

-Robert Raburn, PhD
3763 Woodruff Ave
Oakland, CA 94602
510-530-3444

Information from ESET NOD32 Antivirus, version of virus signature database 5383
(20100820)

The message was checked by ESET NOD32 Antivirus.

<http://www.eset.com>



August 23, 2010

Public Information Office, Metropolitan Transportation Commission
info@mtc.ca.gov

Ref.: Public Participation Plan

To Whom It May Concern:

On behalf of our organization, I would like to praise the Metropolitan Transportation Commission for the draft Public Participation Plan released on July 2, 2010, and to share our perspective of potential improvements in the document.

We have been successfully leading collective efforts and working with transportation planning agencies such as TAM (Transportation Authority of Marin) and MTC (Metropolitan Transportation Commission) to involve traditionally under-represented residents in transportation-related public decisions in order to expand transportation access in underserved communities such as the Canal neighborhood of San Rafael. We engaged more than 500 community members transportation events that impacted government planning and initiatives such as the 2020 MTC Transportation Plan for the Bay Area (2004), the approval of Measure A -November 2004 Election, and the Canal neighborhood Community-Based Transportation Plan (2006).

As one of the non-profit organizations previously contracted by MTC to support the engagement of residents in an area of concern, we have a unique perspective about the public participation processes implemented in our County in previous years. The following are our suggestions:

- The grant amount provided to community non-profit organizations in communities of should reflect the real and current costs of engagement efforts based on living wage of the County where the activities will be implemented;
- The engagement of residents in the planning process should be followed by periodic communication about the progress and implementation of the plan created. This would increase participants' satisfaction and facilitate their continued engagement in future processes. As an opposite example, the residents that participated in the Canal Community Based Transportation Plans created in 2006 were not updated on the implementation of the Plan and other opportunities for participation.

Please accept these recommendations and contact me if you need additional information. We look forward to continue working with MTC to ensure a broad and diverse community participation in its planning processes.

Sincerely,

John Young
Executive Director

Catalina Alvarado - Comments on the Draft Public Participation Plan

10

From: "Sighamony, John" <John.Sighamony@vta.org>
To: "JoAnna Bullock" <JoAnnaB@abag.ca.gov>, <calvarado@mtc.ca.gov>
Date: 8/23/2010 3:41 PM
Subject: Comments on the Draft Public Participation Plan
CC: "Augenstein, Chris" <Chris.Augenstein@vta.org>

Joanna,

This email is response to ABAG and MTC is in regards to the Draft Public Participation Plan in the development of the SCS. We will follow this email with a signed letter. Below are basic comments that will have additional information included in the formal letter.

- As part of the public participation plan, it is important to get the message regarding the SCS. However, recognizing that this public participation process will be done for a series of interested parties, there must be a way to get meaningful dialogue. Though many local government staff have some understanding regarding the elements include as part of SB 375, members of the public do not have the same understanding.

There is a lot of detail regarding greenhouse gas emissions and the reduction targets associated with them. Along with that, because the process to allocate housing to many local cities is being included as part of the planning process, the general public may not understand what these things mean. It is very important that when explaining these complex issues that it be presented in terms everyone can understand.

There should be an effort on the part of the Regional Agencies to reach out to local government with ample time to distribute information to elected officials and other interested parties. The material being presented is very complex and the more educated the intended audience is, the better comments that this process will receive.

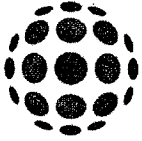
- The public participation plan also consists of meetings designed for local officials, as well as staff from all cities. In dealing with Congestion Management Agencies, the VTA suggests that the Regional Agencies use the existing Board structures that are already in place at each county. These meetings are already in place and it would be easier to reach the desired audience.

For example, the VTA has a Board Meeting process where there is representation from all our Member Agencies within the County. The Board is served by a set of advisory committees that provide input in order to make a decision on transportation related issues. These advisory committees include: local elected officials; city planning staff; city public works staff; advocacy groups; and members of the public. These committees and Board meetings occur every month at set times at regular locations so there would be little effort required to set these meetings up.

- As part of the local government engagement process, there is a mention of corridor working groups along with countywide meetings. VTA is in support of doing countywide meetings and the distribution of the housing allocation at a countywide level. However, having corridor working groups may be a little troublesome. Santa Clara County has many agencies we work with that go beyond county lines on various projects and there may be some conflict. However, the process will move smoothly if each County is dealt with as separate entities when discussing issues such as RHNA.

There will be other comments included within the formal letter. Let us know if there are any questions or comments. Thanks.

John Sighamony
 Transportation Planner, CMA Planning
 Santa Clara Valley Transportation Authority
 3331 North First Street
 San Jose, CA 95134
 p: 408.321.5767
 f: 408.955.9765



August 23, 2010

Metropolitan Transportation Commission
Public Information Office
101 Eighth Street
Oakland, CA 94607

Re: Draft 2010 Public Participation Plan

Dear MTC,

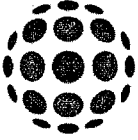
Following are comments on the Draft 2010 Public Participation Plan for the Sustainable Communities Strategy, on behalf of Threshold 2008. Threshold is a nonprofit organization that engages the public around land use and housing issues in San Mateo County.

1. Engage the general public in addition to stakeholders

The PPP should pursue meaningful engagement of the general public, reaching well beyond established and easily recognizable stakeholders. To the extent that the plan includes "interested residents," it should also actively and significantly broaden the range of residents who are interested, informed and engaged. The current draft of the PPP might give the impression (Appendix A, Page 52) that engagement of the general, unorganized public is something of an afterthought.

The acceptance of the SCS by local communities – that is, the belief within the general public that the SCS is legitimate and beneficial – is perhaps the most important factor that will determine whether the strategy mandated by SB 375 will succeed in changing local land use patterns. That acceptance must come not only by residents who are already interested and actively engaged, but also (and especially) by those who do not know anything about SB 375.

After accounting for elected and appointed officials, government staff, and organized stakeholders, the participation target of 3,000 individuals appears to allow for a successful plan evaluation even with very little engagement of the general public.



2. Design the participation strategy with implementation in mind

The Public Participation Plan should seek to lay the groundwork for meaningful public engagement throughout the adoption and implementation cycle of the SCS. The PPP should be designed in a way to improve the capacity of local governments to keep their residents engaged during the implementation of the SCS, after it is adopted, in order to give the SCS itself the best possible chance to achieve its goals. Even with an adopted SCS, land use authority remains local under SB 375.

3. Work closely with local governments to engage communities locally

It follows from the first two points that the PPP should empower local governments to engage their own interested residents, at the local level, in the development and implementation of the SCS. For the SCS to succeed, the regional agencies must work closely with local governments to reach as deeply as possible into local communities during the SCS adoption phase, and they should provide local governments with the tools, resources and guidance to continue to engage their communities throughout the implementation phase. Understanding limitations on resources, this is nevertheless a critical success factor for the SCS in achieving SB 375 goals. Proponents of an effective public participation plan should continue to advocate for state funding to support such an approach.

4. Broaden the techniques used to engage the public

Threshold 2008 encourages you to include techniques that involve dialogue among members of the public themselves, and that give people choices about different growth scenarios. Our organization, among others, has effectively used such techniques to inform and engage the public in San Mateo County, and to increase dramatically the support for the kinds of changes in land use envisioned by SB 375.

Thank you for consideration, and for your important work to address climate change through thoughtful and progressive planning.

Sincerely,

Greg Greenway
Executive Director



August 23, 2010

Scott Haggerty, Chair, and Commissioners
Metropolitan Transportation Commission
101 Eighth Street, Oakland, CA 94607

Dear Chair Haggerty,

Re: Draft Public Participation Plan

Throughout the League of Women Voters' 90-year history, our guiding purpose has been to educate and encourage our fellow citizens to participate in governmental affairs. We have worked diligently to find ways of making information accessible and desirable to all, including publishing an Easy Reader Voter Guide that presents information about candidates and issues in language easily understood by persons with limited knowledge of English. Our comments on the draft Public Participation Plan that follow are based, in part, on this experience.

First: "strive to communicate in plain language" (Strategy #2 for the Plan)

This is one of the most important, and possibly the most difficult strategy of all to accomplish. It is very likely that MTC staff and Commissioners, steeped in acronyms, process, and numerical references to MTC resolutions and legislation, are not among those best equipped to tackle this challenge. We strongly recommend two approaches: 1) enlist the services of a writer from outside the transportation field to draft the communications to potential participants, and 2) find a person in one or more of the targeted communities to read the drafts and point out any words, paragraphs, or thoughts that are incomprehensible to him or her. If communications are difficult to comprehend, participation by the very communities to be targeted will be discouraged.

Second: Explain the basics

Not only the language, but the nuts and bolts of transportation planning must be laid bare and related to the wants and needs of the audiences. It is not sufficient to simply chart the progress from RTP to TIP and STIP – new participants need to know why they should care about this. For example: people need to know that the projects they may

want and need to be funded must be in the RTP. They need to know that the scheduling of projects in the RTP, which is generally relegated to a lengthy and difficult appendix at the end of the plans, is vital information to participants if they are to truly grasp the implications of the plans. To many who need a bus now for work or school, the prospect of a bus in 20 years is not likely to seem adequate.

Third: Gain and maintain the trust of participants

If the Plan is successful, many Bay Area residents will participate for the first time in the planning process. To ensure that misunderstandings do not erode their trust that the process is fair and transparent, we urge that the Plan be modified as follows::

§ Avoid generalizations such as the statement that “minor revisions” to the RTP or TIP, or “technical revisions without significant impact on the cost, scope, or schedule of a project” can be made administratively. The extent of “minor revisions” and the meaning of “significant impact” must be made clear to avoid misunderstandings. MTC should describe, quantitatively and qualitatively, the extent to which revisions are to be considered minor – and where exceptions are to be allowed. For example, the recent exchanges of funding between roads and the Oakland Airport Connector were made without opportunities for public input, and with no realization by the public or by many Commissioners that agreements were in place for such staff actions. Any appearance of back-room deals will quickly erode confidence in the process.

§ Opportunities for participation in decisions made at the CMAs will be important to building trust. In the past, CMA-recommended projects have been made part of the RTP without the kind of public participation discussed in the Plan. Newly- engaged participants will not experience the process as participatory if this way of working continues, and few will be willing or able to follow the development of the RTP in two or more agencies at two or more locations. How will the work of the CMA be incorporated into the Plan for Public Participation, since it is such an integral part of the regional process?

§ In initial meetings with community members, MTC should make clear when, how, and how often they will be asked for their input. The Plan specifies “key decision points,” but does not define these points. It is important that community participants know that they will have opportunities to weigh in on the important decisions that will make a difference to them.

Fourth: Listen, as well as speak to participants

The Plan describes in detail the process of involving new participants. But MTC staff and Commissioners need to learn from, as well as inform, the communities of their constituents. Outreach will be effective to the extent that participants feel that decision-makers hear and understand their transportation needs, and that meeting their needs will be a priority in the planning process. Discussions, as well as surveys, will be vital to this process. Further, MTC should document what has been heard from the public so that all participants have a common understanding.

Fifth: Emphasize outcomes and evaluations

The Plan specifies that written comments will receive responses. But it is likely that community meetings and public comment at MTC meetings will generate a host of comments and recommendations. A method is needed to respond to oral comments, as well as written. Discussions that include both staff and Commissioners are particularly vital when participants' recommendations have not been adopted. The responses should indicate, substantively, why a suggestion from the public is being accepted or rejected. A simple "Thank you for your comment" would be inadequate.

The questions outlined in the draft Plan to survey participants' satisfaction with their involvement in the planning process do not sufficiently take into account their opinions and feelings. We recommend adding questions such as the following:

Do you feel your opinions were taken seriously?

Do you think your needs were well understood?

Do you think good-faith efforts were made to meet your transportation needs?

What recommendations would you make to improve the public participation process for the next update of the Regional Transportation Plan?

Thank you for your work to ensure equity and fairness in both the process and the outcomes of your planning efforts.

Sincerely,

Marion Taylor, President

CC: MTC Advisory Council

Nicholas Dewar MA MS

August 23, 2010

MTC Public Information Office
101 Eighth Street
Oakland, CA 94607

Via e-mail only: info@mtc.ca.gov

RE: 2010 Draft Public Participation Plan

Many thanks for this opportunity to review and respond to the MTC's Public Participation Plan (PPP). I see from the notes of the Regional Advisory Working Group (RAWG) meeting on July 6 that you got very useful help from the RAWG about the PPP. I won't repeat their suggestions but will refer to them.

MTC faces many significant challenges in public participation (PP) in the future, particularly because the pace of change needs to accelerate to deal with the customary issues of growth as well as the climate challenges addressed in SB 375. I'll limit my input to two of these challenges:

1. MTC's planning now includes so many interrelated but distinct topics – how can you (to borrow from the Jeffersonian quote on page 1 of the PPP) “inform [the public's] discretion” on such a broad range of topics?
2. MTC's planning covers such a wide geographic area – how can you engage the whole Bay Area and handle issues that will be perceived very differently by people depending upon their location?

Informing the Public's Discretion

The RAWG participants on July 6 were clear about the importance of discussing the plans of the MTC, including the Sustainable Communities Strategy (SCS), in terms that refer to the community level and to the ways that people's lives will be changed. This is a really significant challenge and, if all agencies involved in this planning process are to truly engage with the public on issues such as the SCS, the quality of PP will have to be lifted a notch or two.

The quality of “public comment” that results from public participation is a good indicator of the quality of the process. The MTC could usefully consider performance measures that track not just the volume of public participation and comment, but also the quality of it. Normally only a tiny minority of comments will include “substantive” information. Often participants believe that they are in some way casting a “vote”, and will limit their comment to saying, essentially, “no freeways” or “no transit”. This sort of low quality public response is largely a reflection of the low quality of engagement that is the norm for public participation (Please don’t take this personally – this is a systemic problem that is built into NEPA and CEQA. It’s not just about the MTC!). Here are some ideas for improving the quality (and the utility) of public participation that focus on improving the quality of public comments:

1. Use a system that reflects and records the full range of information that is provided by the public. This includes not just traditionally “substantive” stuff but also, for example, the emotions, motivation, and location of contributors that are an important part of PP and that inform its significance. This is often left out of the record. See, for example, a report for BLM by a team at University of Colorado that takes a wholistic approach to public comment www.ecr.gov/pdf/learningfrompubliccomments.pdf
2. Provide public participants with a mechanism that permits them to join some sort of conversation about the issue that concerns them rather than just drop a comment in a box. See for example the Collaborative Comment Mapping work of Philip Murphy (www.infoharvest.com) and others (including me) and the writing of Jeff Conklin (*Dialog Mapping*).
3. Tighten the feed-back loop so that participants in the PP process can see what others are saying and receive some useful commentary from experts during the “comment period” and not just as part of the draft NEPA/CEQA document. This will inform participants and probably help them develop their ideas about the issues and improve their contributions to the planning process.

Additionally, in order for PP to be meaningful, and for the comments received to be useful in the planning process, MTC must consider public education to be part of its PPP. I notice that the word “education” appears only once in the PPP (as one of the Performance Measures in the PPP for the SCS). The rarity of this suggests that the MTC is not living up to the goals suggested by the Jeffersonian quotation on page 1 of the PPP. Public education must be a big part of the PPP if the public is to play its required role in policy development concerning such complex and unfamiliar issues. It’s hard, and it’s probably expensive, but the emphasis on PP in SB375 suggests that our legislators are very sensitive to the importance of getting broad community support for California’s response to climate change.

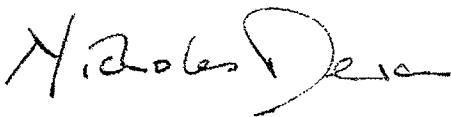
Engaging the Whole Bay Area

It's evident that MTC is well aware of this challenge. However, I couldn't find any response in the PPP to the challenge of conducting a useful public discourse that takes account of the way that different communities within the Bay Area will attach different values to the same issue. How can the public participate in policy development if all they hear are the voices of their neighbors who (almost) all agree with them? In this sort of system, PP risks merely reinforcing local community perspective without helping to develop broader understanding. MTC knows that Bay Area residents select the place where they live because their community suits their lifestyle: they believe that transit is the way to travel so they move near a BART station; or they feel the need to travel everywhere in their pick-up truck so they need parking lots and freeways. Because of this self-segregation, PP activity at a community level often does little more than confirm the participants' beliefs in the supremacy of their own values.

Someone in the RAWG 7/6 meeting referred to the importance of Social Media for the PPP. Social Media will permit MTC to engage with people over any size of geographic area, and would allow participating members of the public to learn about perspectives of those in other parts of the region. However, Social Media typically allows participants to break up into groups where all participants agree with each other. In order to be effective as a tool to help participants learn about the diversity of opinion that affects these public policies, it's valuable if they can all be held together in the same conversation. This can be done using structured on-line dialogues. I've facilitated a couple of these with WestEd (based in San Francisco): one spanned the entire Great Lakes watershed and included those with upstream and downstream perspectives in a single forum; the other spanned the whole USA in a very contentious topic about distribution of influenza vaccines. These allowed participants to engage personally with experts and with those who had significantly different perspectives from their own. I think that the MTC needs something like this. Contact me if you want more information about this.

Thanks again for this opportunity to contribute to your Plan.

Sincerely,

A handwritten signature in black ink, appearing to read "Nicholas Deza". The signature is fluid and cursive, with a large initial "N" and a long, sweeping underline.

August 23, 2010

14

BY ELECTRONIC MAIL

Scott Haggerty, Chair
Jon Rubin, Chair, Legislation Committee
Metropolitan Transportation Commission
101 Eighth Street
Oakland, California 94607

Re: Public Participation Plan for the RTP and SCS

Dear Chair Haggerty and Commissioner Rubin:

The adoption of a Public Participation Plan for the process that will culminate in the adoption of the Bay Area's next Regional Transportation Plan (RTP) and its Sustainable Communities Strategy (SCS), is one of many key decisions that MTC and ABAG will make in the course of implementing SB 375 over the next two to three years. The Public Participation Plan will shape the extent to which SB 375 addresses the needs of all Bay Area residents, especially the region's low-income communities and communities of color – its "Environmental Justice" or EJ Communities.

These communities are at greatest risk from the impacts of climate change. They also face the risk – if we do not address the cumulative impacts of past decades of inequality institutionalized at all levels of government – that we will not only perpetuate the existing exclusion of these communities from opportunity, but will re-segregate the Bay Area in frightening new ways. A just and equitable Public Participation Plan that actively empowers low-income communities of color in these important decisions will mark an important step in moving the Bay Area toward greater inclusion.

The undersigned organizations and individuals write not just to comment on shortcomings in MTC's draft Public Participation Plan, but to offer a positive vision and constructive changes that will move the entire process toward greater fairness, transparency and inclusiveness. With the changes we propose, the Plan will facilitate robust public participation in decision making at every key decision point in the process, through the final adoption of the RTP/SCS in 2013. The Plan we envision will begin by prioritizing the critical transportation needs of the region, including those of its most under-served communities. It will make clear the nature and importance of each of the intermediate decisions along the way. It will describe how a full range of alternative choices will be offered up for public comment at each decision point, after having been evaluated against criteria based on how well each alternative meets the critical needs of the region as a whole, and of its most under-served residents. And it will ensure that MTC lives up to its commitment to evaluate the social equity impacts of each alternative.

In short, the Plan we envision will help ensure both **an open and transparent process** that empowers Bay Area residents – especially EJ communities – to shape important regional decisions, and **substantive fairness in the outcomes** of the SB 375 process.

The goal of SB 375 is to reduce greenhouse gas (GHG) emissions through development of a Sustainable Communities Strategy that integrates transportation and land-use planning across the region. Accordingly, much is at stake for the entire Bay Area in how well MTC and ABAG implement SB 375. The decisions ahead will help determine:

- How our region will invest more than \$200 billion in public funds over 25 years;
- Whether that massive investment will **create a world class transit system for all** and reduce vehicle miles traveled in cars and light trucks;
- How much **affordable housing** local governments will accommodate near jobs and transit;
- Whether we will **prevent additional sprawl** and reduce **lengthy commutes**;
- Whether our **air will be clean and healthy** for our children, obesity rates will improve, and communities will have opportunities to walk and lead active lives;
- Whether our investments will **create quality jobs**; and
- Whether **investment** will **benefit the residents of EJ communities**, rather than result in their displacement to the region's fringes.

While the stakes are high for every resident of our region, they are especially grave for our most under-served communities. These communities are “the ones who are least responsible for climate change,”¹ yet they are at greatest risk of harm from carbon emissions.² Prof. Manuel Pastor, in his recent report, *MINDING THE CLIMATE GAP*, describes the

very real danger that poor neighborhoods and people of color will suffer even worse harms and hazards than the rest of Americans. This “climate gap” is of special concern for California, home to one of the most ethnically and economically diverse populations in the country.³

The climate gap, for instance, “means that communities of color and the poor will suffer more during extreme heat waves, . . . will breathe even dirtier air, . . . will pay more for basic necessities, . . . [and] is likely to mean fewer job opportunities for communities of color and the poor.”⁴

Yet, even as low-income communities of color are at greatest risk from the effects of climate change, they are also at grave risk if the wrong solutions are implemented – solutions that unintentionally exacerbate poverty and segregation. For many decades, low-income communities have been denied a fair share of public investment; when investment finally comes, the principles of Environmental Justice, as embodied in Presidential Executive Order 12898,⁵ dictate that they must benefit from it. They must not be further isolated and displaced by its gentrifying effects,⁶ an outcome which would be tantamount to solving climate change on the backs of the most disadvantaged residents of our region. Preventing displacement begins with a strong community engagement process.⁷

Fortunately, we have ample opportunity to adopt policies that will promote both equity and environmental goals. Among other things, we can prioritize the restoration of lifeline

bus service that suffered draconian cuts ahead of infrastructure expansion projects that will not meet our critical needs; we can plan for more affordable housing near transit and entry-level jobs; we can ensure that investment in the urban core delivers real benefits to disadvantaged residents and protects them from displacement; and we can ensure that any congestion-pricing mechanisms adopted generate funding for local transit service, while mitigating the economic burdens they place on low-income drivers.

Many of the decisions that will determine the success and equity of the RTP and SCS will be made well before MTC votes on the final adoption of the new RTP and its SCS. The important decisions that will be made during earlier stages of the process leading up to final adoption will include:

- Which critical transportation **needs** MTC will prioritize;
- Which RTP **goals and objectives** MTC and ABAG will approve;
- Which **alternative scenarios** MTC and ABAG will develop, and how they will be **evaluated for equity and effectiveness in meeting priority needs**;
- What **jobs and housing target** and other **performance targets** MTC and ABAG will adopt;
- What **transportation investment plan** MTC will draft, what land use scenarios the plan will assume, and whether so-called “**committed**” **projects** will be evaluated against alternatives and included in that plan only if they better meet the region’s priority needs;
- How the **Regional Housing Needs Allocation** will be made; and
- How MTC and ABAG will design and use their modeling tools and other quantitative measures to **ensure that equity impacts are transparent**

The sum total of these decisions will determine whether the RTP/SCS and the Regional Housing Needs Allocation (RHNA) will improve the lives of low-income communities and communities of color who have faced decades of underinvestment, poor planning, inadequate access to services and opportunities, and who have been beset by toxic air.

Each of these key decisions must be **substantively fair** to low-income communities of color, and each must be made in a **fair, inclusive and transparent public process** that results in the robust participation and influence of EJ communities.

MTC does not write on a blank slate with regard to the public participation of low-income communities of color and the analysis of social equity in its decision making. In 2006, at the request of its former Minority Citizens Advisory Committee, the Commission committed to implement two Environmental Justice Principles that are directly relevant to these tasks. Specifically, it committed to:

Principle #1 – Create an open and transparent public participation process that empowers low-income communities and communities of color to participate in decision making that affects them.

Principle #2 – Collect accurate and current data essential to understanding the presence and extent of inequities in transportation funding based on race and income.

The draft Plan, regrettably, does nothing to implement these Principles, and only makes passing reference to one of them. In addition to falling short of MTC’s own commitments, the draft Plan does not even meet the minimum federal requirements to set forth “explicit procedures, strategies, and desired outcomes” in the Plan: It does not provide explicitly for “public review and comment at key decision points”; does not provide for “reasonable access to information about transportation issues,” including information about alternatives and the equity impacts of each; and does not provide for “demonstrating explicit consideration and response to public input.” Above all, it does not lay out explicit procedures, strategies and outcomes for “seeking out and considering the needs of those traditionally under-served by existing transportation systems, such as low-income and minority households.”⁸

Accordingly, we write to provide recommendations and offer our assistance in addressing these critical gaps. Among the most significant changes that are necessary to achieve our robust vision for public participation are the following, each of which is described in greater detail in the Attachment:

1. Start with the Needs: The draft Plan sets forth no process for identifying the “critical transportation needs”⁹ that MTC will be planning to address. The starting place for assessing the needs of EJ communities is readily at hand: MTC’s 2001 Lifeline Transportation Network Report, and the Community-Based Transportation Plans (CBTPs) that MTC has conducted in over 20 disadvantaged communities in the years since then.¹⁰ Yet the role of Lifeline and these CBTPs is not mentioned anywhere in the draft Plan, and there is no discussion of how they will be used in the process of developing alternatives and investment strategies. **The Plan should describe in detail an early process for assessing and prioritizing the critical transportation needs of the region as a whole, and of low-income communities and communities of color in particular.** It should clearly describe how the Lifeline Report and the CBTPs will be used in that process, and how the resulting identified and prioritized critical needs will factor into later analysis and decision making.

2. Get Specific About Key Decision Points: According to MTC’s website, the draft plan “[p]rovides specifics on when, how and where interested parties may . . . get involved in MTC’s key decisions.”¹¹ In fact, however, the draft Plan neither provides specifics on the nature of the key decision points nor sets out a plan for doing so in the future. As a result, it provides at best a plan for allowing the public to participate in a complete vacuum. **The Plan should transparently specify each key decision point in the process, describing the nature and importance of each, including how it will affect future decisions; it should also identify the decision maker, and state the anticipated timeframe for each key decision.**

3. Ensure Transparency in the CMAs and the Partnership Board: In past RTPs, project-selection decisions of the county Congestion Management Agencies (CMAs) have been incorporated into MTC’s regional planning process. MTC remains responsible for ensuring the fairness of the planning process, even – and especially – when it delegates authority to others, or adopts decisions made by them. That is equally the case when MTC adopts a “consensus” forged by an elite advisory group such as the Partnership Board.¹² **The Plan should address how MTC will ensure that the regional planning process will, at every level, comply with civil rights laws and be open and transparent to the meaningful participation of low-income communities of color.** That means that it should describe the decision making role that the CMAs will play in connection with the RTP and SCS, explain how MTC will evaluate, review and/or adopt CMA decisions, and specify how MTC will monitor the processes and decisions of the CMAs ensure that they comply with the Civil Rights Act. It should also provide for meaningful representation of low-income and minority voices in the process by which the Partnership Board reaches a consensus, or create a different process altogether.

4. Describe the Development of Policy and Investment Alternatives for each Key Decision Point: The Plan should not only spell out the key decision points, but also explain the process by which each key decision will be made. This applies to the role of both MTC and ABAG in developing the SCS and RTP as a whole. In particular, transparency about the alternatives, including transportation investments and land use scenarios, that will be considered at each key decision point is critical to the public’s participation in the decision making process. **The Plan should describe the process by which alternatives will be developed and evaluated in connection with each key decision point; it should also specify which boards, committees and advisory groups will play a role in the development and selection among alternatives at each stage, and what the role of each will be.** And the Plan should indicate which intermediate decisions, if any, will be made by staff.

5. Evaluate the Equity Impacts of Each Alternative: A single “equity analysis” of the draft RTP in 2013 will come too late to ensure that inequities are not built into the key decisions at earlier stages of the process. The draft Plan does not implement MTC’s Environmental Justice Principle #2 by explaining how, at each stage, “data essential to understanding the presence and extent of inequities in transportation funding based on race and income” will be gathered, analyzed and made available to the public and to decision makers. **The Plan should provide for an open and transparent public process in which equity criteria and metrics will be developed, should explain how MTC and ABAG will utilize those criteria and metrics in evaluating the equity impacts of each policy or investment alternative at each key decision point, and should provide for making those equity evaluations available to the public in a timely manner at each stage.**

6. Demonstrate Explicit Consideration of Input: The Plan should include specifics that demonstrate the explicit consideration of the input of low-income and minority participants by decision makers. Among other things, **it should ensure that they have**

opportunities to engage directly with Commissioners in their neighborhoods and at convenient times.

In addition, the Plan should set explicit actions and timeframes for outreach efforts (Comment 7), should get specific about linguistic accessibility of limited English proficient residents (Comment 8), and should include a “review of the effectiveness of the procedures and strategies contained in the participation plan to ensure a full and open participation process.”¹³ (Comment 9.)

Conclusion

In view of the importance of the decisions to be made, the unique impact that those decisions will have on low-income communities of color, and the seriousness of MTC’s and ABAG’s commitments and obligations to Environmental Justice communities, a far more robust Public Participation Plan is required.

The Commission should direct staff to respond to the attached comments with appropriate changes to the draft Plan, and to provide a full explanation why any recommendations were rejected. Until an adequate Plan is in place, no actions should be taken to develop, analyze or decide among policy or investment choices. In particular, the development of alternative investment, land use and housing scenarios should not begin until adequate measures are in place to ensure that low-income communities of color can participate in the development of an “Equity, Jobs and Environment” scenario that will meet their pressing needs in a cost-effective manner while also meeting the greenhouse gas reduction goal of our entire region.

We would welcome a public meeting with you and MTC and ABAG staff to discuss our vision for a robust and transparent participation plan that will enable everyone in our region to reap a fair share of the benefits on the new RTP and its SCS.

Sincerely,

Reverend Daniel Buford, Prophetic Justice Ministry
ALLEN TEMPLE BAPTIST CHURCH

Titi Liu, Executive Director
ASIAN LAW CAUCUS

David Levin, Staff Attorney
BAY AREA LEGAL AID

Aaron Lehmer, Network Development Director
BAY LOCALIZE

Rhianna Babka, Network Coordinator
BAYWALKS

Carl Anthony and Paloma Pavel, Co-Founders
BREAKTHROUGH COMMUNITIES

Joshua Arce, Executive Director
BRIGHTLINE DEFENSE PROJECT

Martin Martinez, Policy Director
CALIFORNIA PAN-ETHNIC HEALTH NETWORK

Bob Planthold, Chair
Wendy Alfsen, Executive Director
CALIFORNIA WALKS

Dawn Phillips, Program Director
CAUSA JUSTA: JUST CAUSE

Malcolm Yeung, Public Policy Manager
CHINATOWN COMMUNITY DEVELOPMENT CENTER

Nile Malloy, Program Director
COMMUNITIES FOR A BETTER ENVIRONMENT

Aaron Ableman, Co-Founder
COMMUNITREE

Ruth Morgan, Executive Director
COMMUNITY WORKS

Adam Kruggel, Executive Director
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Roberta Spieckerman

Enclosure: Attachment: Detailed Comments and Recommendations

Cc: MTC Commissioners
Steve Heminger, Executive Director, Metropolitan Transportation Commission
ABAG Board Members
Henry Gardner, Executive Director, Association of Bay Area Governments
MTC Advisory Council Members

Attachment:
Detailed Comments and Recommendations

SUMMARY OF RECOMMENDATIONS

Comment 1: Start with the Needs.

Recommendation 1: Include an early process for assessing the critical transportation needs of the region as a whole, and of low-income communities and communities of color in particular. Describe the needs assessment process and how needs will be prioritized. Describe how the Lifeline Report and the CBTPs will be used and updated in the process, and how the resulting identified critical needs will be used in later analysis and decision making.

Comment 2: Get Specific About Key Decision Points.

Recommendation 2: Specify each key decision point in the process. For each key decision, describe the nature and importance of the decision to be made (including how that decision will affect future decisions), identify the decision maker, describe the process that will be used in reaching that decision (including the role that various boards, committees and task forces will play in that process), and state the anticipated timeframe and sequencing for decisions.

Specify a plan for disseminating the methodology, results, and key assumptions of MTC's travel demand models in a transparent manner that will be useable and understandable to the public.

Comment 3: Ensure Transparency and Inclusiveness in the CMAs and the Partnership Board.

Recommendation 3: Describe the decision making role that the Congestion Management Agencies (CMAs) will play in connection with the RTP and SCS, explain how MTC will evaluate, review and adopt CMA decisions, and specify how MTC will ensure that the process and decisions of the CMAs comply with the Civil Rights Act.

Describe the role that the Partnership Board and other elite advisory groups will play in connection with the RTP and SCS, explain the process for reaching consensus, and provide for meaningful representation of low-income and minority voices in that process.

Comment 4: Describe the Development of Policy and Investment Alternatives for each Key Decision Point.

Recommendation 4: Describe explicitly the process by which alternatives will be developed and evaluated in connection with each key decision point. Specify which boards, committees and advisory groups will play a role in the development and selection among alternatives at each stage, and what the role of each will be.

Comment 5: Evaluate the Equity Impacts of Each Alternative.

Recommendation 5: Provide for an open and transparent public process in which criteria and metrics of equity will be developed based on the expressed priority needs identified by under-served communities. Explain how MTC will utilize those criteria and metrics in evaluating the equity impacts of each alternative policy or investment alternative leading up to each key decision point, and provide for making those equity evaluations available to the public in a timely manner at each stage.

Comment 6: Demonstrate Explicit Consideration of Input.

Recommendation 6: Describe how the public input from each of the varied forums described in the Plan will be used in the development, evaluation and selection among alternatives at each key decision point. Provide specific opportunities for residents of low-income communities of color to meet with decision makers in their communities.

Comment 7: Get Specific about Outreach.

Recommendation 7: Include a program of specific actions for outreach to low-income and minority participants, stating the responsible person(s) and timeframe, and specifying quantified objectives, performance measures and outcomes for each action.

Comment 8: Get Specific About Linguistic Access.

Recommendation 8: Assure meaningful opportunities to participate by Limited English Proficient populations based upon language needs of local communities. Identify the language needs of “communities of concern” where planning and investment decisions may have the greatest impacts. Provide additional assistance reflecting the language needs of the locality in which meetings, hearings, and outreach occurs.

Comment 9: Learn from Past Mistakes.

Recommendation 9: Conduct a review, with full public participation, of the effectiveness of outreach to, participation of, and influence in shaping MTC decisions by minority and low-income residents and their representatives in the development and adoption of the 2009 RTP. Modify the draft Plan to reflect changes to ineffective provisions, address omissions, and build on identified strengths.

BACKGROUND

A. The Regional Legacy of Structural Inequality

The Bay Area is embarking on a planning process that will not only set its transportation policies and allocate its regional housing need (RHNA), but is likely to fundamentally redraw the map of inclusion and equality in our region. This opportunity is coupled with grave risks. It comes against the backdrop of decades of public policy at all levels of government that systematically excluded low-income communities of color from opportunity. National housing and transportation subsidies (like the home mortgage tax deduction and the national highway system), redlining, urban renewal and other public policies infused massive public investment into the suburbs, while uprooting poor and minority communities in order to deliver benefits to relatively more affluent suburbanites.

The cumulative legacy of these decades of inequality and exclusion is today's crisis of concentrated poverty, racial isolation, lack of access to educational and economic opportunity, disparities in access to public services, and weakened institutional capacity in low-income and minority communities.

SB 375 provides a significant opportunity to redraw the regional map of opportunity and exclusion in the Bay Area. The same policies that isolated low-wealth people of color from opportunity also shaped an environment marked by sprawl and a heavy dependence on the automobile. SB 375 now calls upon us to reverse that legacy by bringing transit, housing and jobs closer together, and ensuring they are equally accessible to all economic segments of the population, by means of our planning, development and investment policies.

If we succeed, we will create vibrant mixed-income communities in our urban core, where families of every class and race can live, work, learn and play together in a healthful environment. If we fail, however – if we do not address the cumulative impacts of past decades of institutionalized inequality – there is a grave risk that we will re-segregate the Bay Area in even more exclusive ways, creating a new legacy that we will have to redress for decades to come.¹⁴ Land use changes already threaten to transform American metropolitan regions into a pattern typical of developing countries, where the rich live in the core cities, while the poor live on the periphery of metropolitan regions. A recent report released by the Brookings Institution finds that more impoverished people now live in suburban areas than in the cities they border.

Between 2000 and 2008, the number of poor people living in America rose by 15.4 percent – nearly twice the growth rate in the overall population in the same period. But the growth wasn't even across geographical areas. The poverty rate in American suburbs increased 25 percent during that period – and is growing significantly faster than the national average and urban rate.¹⁵

This re-segregation is, indeed, already well underway in the Bay Area. For example, in the last four decades, the African American population has **fallen** by about the same number in San Francisco – some 40,000 – as it has **grown** in San Joaquin County.

During the same period, San Francisco's poverty rate, which was twice that of Antioch in 1970 (14% vs. 7%), is now almost two percentage points lower (approximately 10% vs. 12%). The region's periphery, where its low-income and minority population is increasingly concentrated, has also been the hardest hit by the foreclosure crisis and lack of jobs.

Unless it is reversed now, the cumulative effects of past inequalities and inadequate participation affecting low-income communities of color will continue to have a spiraling effect. To ensure that it does not result in greater marginalization and fewer benefits to vulnerable communities, we must take this opportunity to put in place a Public Participation Plan that will focus meaningfully on the needs and priorities of those communities that have been left behind, and on overcoming the cumulative impacts of decades of adverse policy.

B. Requirements Governing Public Participation

MTC, as the region's Metropolitan Planning Organization (MPO), is specifically charged by federal law with providing members of the public generally with a full opportunity to participate in shaping regional planning decisions. MTC is also explicitly required to ensure both that residents of low-income communities and communities of color are equal participants in the regional decision-making process, and that the outcomes of that process treat them fairly and equally.

The requirement to adopt a Public Participation Plan is set out in regulations of the U.S. Department of Transportation. Those regulations provide that MTC "shall develop and use a documented participation plan that defines a process for providing citizens . . . and other interested parties with reasonable opportunities to be involved in the metropolitan transportation planning process."¹⁶ They go on to detail that:

The participation plan shall be **developed by the MPO in consultation with all interested parties and shall, at a minimum, describe explicit procedures, strategies, and desired outcomes for:**

- (i) Providing adequate **public notice of public participation activities and time for public review and comment at key decision points**, including but not limited to a reasonable opportunity to comment on the proposed metropolitan transportation plan and the TIP;
- (ii) Providing timely notice **and reasonable access to information about transportation issues and processes**;
- (iii) Employing visualization techniques to describe metropolitan transportation plans and TIPs;
- (iv) Making public information (technical information and meeting notices) available in electronically accessible formats and means, such as the World Wide Web;

(v) Holding any public meetings at convenient and accessible locations and times;

(vi) Demonstrating explicit consideration and response to public input received during the development of the metropolitan transportation plan and the TIP;

(vii) **Seeking out and considering the needs of those traditionally under-served by existing transportation systems, such as low-income and minority households, who may face challenges accessing employment and other services;**

(viii) Providing an additional opportunity for public comment, if the final metropolitan transportation plan or TIP differs significantly from the version that was made available for public comment by the MPO and raises new material issues which interested parties could not reasonably have foreseen from the public involvement efforts;

(ix) Coordinating with the statewide transportation planning public involvement and consultation processes under subpart B of this part; and

(x) Periodically **reviewing the effectiveness** of the procedures and strategies contained in the participation plan to **ensure a full and open participation process.**¹⁷

These requirements, which emphasize the importance of specifically “considering the needs of . . . low-income and minority households,” are rounded out by MTC’s civil rights and Environmental Justice obligations. As the region’s MPO, MTC is required to “**certify . . . that the metropolitan transportation planning process is being carried out in accordance with . . . Title VI of the Civil Rights Act of 1964.**”¹⁸ Title VI prohibits discrimination on the basis of race, color or national origin.

Finally, the Presidential Executive Order on Environmental Justice requires federal agencies, and those who receive funding or approvals from them, to “fully consider environmental justice principles throughout planning and decision-making processes.” MTC must achieve environmental justice

by **identifying and addressing**, as appropriate, disproportionately high and **adverse** human health or environmental **effects** . . . of its programs, policies, and activities on minority populations and low-income populations.¹⁹

The “adverse effects” that MTC must “identify and address” include both a disproportionately high share of the **burdens** of MTC’s decisions, and a disproportionately low share of the **benefits** of its investments.²⁰

The two Environmental Justice Principles that MTC adopted in 2006 flow directly from these requirements of federal law. Principle #1 addresses the voice of EJ participants in shaping decisions by committing MTC to “create an open and transparent public participation process that empowers low-income communities and communities of color

to participate in decision making that affects them.” Transparency, as described by the Global Transparency Initiative, means that decision makers

should clearly describe their decision-making processes. This should include providing a list of upcoming opportunities to provide public input, releasing consultation and communication plans, and identifying decision benchmarks (for example, dates of key meetings in project preparation). The public should be able to anticipate when and how they will be able to access decision-making.²¹

MTC’s Environmental Justice Principle #2 speaks to the requirement to identify and address adverse impacts, committing MTC to “collect accurate and current data essential to understanding the presence and extent of inequities in transportation funding based on race and income.”

SB 375 adds to these federal requirements a new requirement in state law that MTC “adopt a public participation plan, for development of the sustainable communities strategy.”²² That plan is required to include “[o]utreach efforts to encourage the active participation of a broad range of stakeholder groups in the planning process, consistent with the agency’s adopted Federal Public Participation Plan,” and must ensure that MTC will “**provide the public with the information and tools necessary to provide a clear understanding of the issues and policy choices.**”²³

Taken as a whole, these requirements mean that MTC must ensure a fair, transparent and inclusive decision making **process**, while also ensuring **substantive** fairness to low-income and minority communities in its decisions. Fairness in the process requires, among other things, that MTC “seek out and consider the needs” of low-income and minority communities,²⁴ while substantive fairness means that it meets the needs of those communities at least as well as it meets the needs of others.

DETAILED COMMENTS AND RECOMMENDATIONS

Comment 1: Start with the Needs.

Federal law requires the Public Participation Plan to provide “explicit procedures, strategies, and desired outcomes for . . . [s]eeking out and considering the needs of those traditionally under-served by existing transportation systems, such as low-income and minority households, who may face challenges accessing employment and other services.”²⁵

The draft Plan appropriately describes the important role of needs in the process, calling the RTP the comprehensive blueprint for transportation investment that “identif[ies] how much money is available to address **critical transportation needs** and setting the policy on how projected revenues are to be spent.”²⁶ The Federal Transit Administration (FTA)

also emphasizes this focus on needs, noting that a key step in the transportation planning process is:

Identifying current and projected future transportation problems and needs and **analyzing, through detailed planning studies, various transportation improvement strategies to address those needs**[.]²⁷

MTC’s draft Plan, however, includes no discussion of when or how those “critical transportation needs” will be identified, or how identified needs will be taken into account in the decision making process. Nor, as discussed in Comment 4, below, does it link those needs to the analysis of alternatives through “detailed planning studies.”

Identifying needs is critical for a number of reasons. First, setting a regional vision, and goals and objectives, for the RTP and SCS must begin with an assessment of the priority needs to be met.

Second, and of more particular importance to traditionally under-served communities, MTC’s commitment to equity for those communities requires it to identify their critical transportation needs. Measuring the equity of alternative investment scenarios and other decisions depends on knowing how well each of those alternatives will meet the needs of these communities. Without identifying those needs early in the process, MTC cannot meaningfully meet the requirement to conduct an equity analysis of the RTP as a whole, nor can it set meaningful criteria, targets, indicators and benchmarks to evaluate the equity impacts of alternative decisions along the way.

In short, to meet the challenge of climate change for all our region’s residents, while meeting the needs of the communities in our region that have traditionally been left behind, MTC’s Public Participation Plan must begin with a clear assessment of the needs of EJ communities, and must analyze fairness in the allocation of benefits and burdens at each stage of the decision making process.

The draft Plan does not do so. It simply includes the statement that:

To the extent that funding allows, the public participation efforts will include:

. . .

Seek out and consider the needs of those traditionally under-represented in the planning process, including minority, low-income and limited English proficient communities.²⁸

This is inadequate. The federal requirement that MTC seek out and consider these needs is not contingent on the availability of funding. Moreover, the Plan itself must include “explicit procedures, strategies, and desired outcomes for” considering those needs. The draft Plan includes none.

The failure to meet this basic federal requirement is particularly troubling in light of MTC's long history of delaying full funding of its Lifeline Program while awaiting the results of Community-Based Transportation Plans (CBTPs) in disadvantaged communities. MTC has emphasized the assessment of those needs at the community level for nearly a decade, stating that "[p]roject findings are forwarded to . . . MTC, for consideration in planning, funding and implementation discussions."²⁹ With these needs already having been assessed in many low-income communities and communities of color, the time is now for MTC to explain how it will take action to meet them.

The CBTP studies date back to the 2001 RTP, when MTC asked low-income and minority participants these two questions:

- 1) "What are the most vital lifeline transit services?", and
- 2) "What would be the best way to fund lifeline transit services?"

MTC went on to note that:

The input received from this outreach concerning the importance of transit for those without a car is succinctly summarized in one of the Messages (major themes) described in this report:

Message 4: "Transit is vital to low-income individuals, but it takes too long."

For individuals who depend on transit and paratransit to get to work, school and medical services, transit is not a choice; rather it is an essential part of their daily lives. The number one transit issue for those who depend on transit was that trips on transit take too long, sometimes taking 5 to 10 times longer than driving. Participants also spotlighted infrequent service, lack of evening and weekend services, the high cost of transit buses and trains to areas that are not currently served. Specific suggestions included faster bus service by expanding bus-only lanes on streets and freeways, expanding trains and light rail, providing longer hours for transit at night and during the weekend, and subsidizing transit fares for low-income individuals.³⁰

The current draft Plan makes no mention of MTC's Lifeline Transportation Network Report, however, which in 2001 found that 49% of "Lifeline routes" failed to meet MTC's minimal frequency of service objectives.³¹ The Lifeline Report found that 1.5 million additional hours of transit service would be needed yearly to close the identified "gaps in the existing transit network for low-income communities."³² That study should be updated promptly, so that current urgent needs of low-income communities can be identified early and be made part of the decision making process now underway.

Since 2001, more than 20 CBTPs have been completed, some with significant involvement of EJ community members.³³ Yet, like Lifeline, those CBTPs are not mentioned once in the draft Plan, and there is no discussion of how either will be used in the process of developing alternatives and investment strategies.³⁴

Recommendation 1: Include an early process for assessing the critical transportation needs of the region as a whole, and of low-income communities and communities of color in particular. Describe the needs assessment process and how needs will be prioritized. Describe how the Lifeline Report and the CBTPs will be used and updated in the process, and how the resulting identified critical needs will be used in later analysis and decision making.

Comment 2: Get Specific About Key Decision Points.

Meaningful public participation means much more than outreach and providing opportunities for comment. It requires transparency about the nature and sequence of the decisions that will be made, and what is at stake in each decision. For even the simplest decision that MTC makes, the Brown Act requires it to give the public advance notice of the proposed decision in writing. In the multi-year series of complex decisions that will culminate in the adoption of an RTP and SCS, and that will attempt to interweave the RTP with decisions of other regional and local bodies, transparency about the sequencing and nature of the intermediate decisions to be made is all the more essential.

Without setting this context for participation, few will understand the need to participate, and those who do will have no basis for deciding at which points their participation will be worthwhile. The draft Plan discusses a bewildering array of boards, committees, working groups, and advisory groups,³⁵ but provides no clear sense of the role that each one will play in the development of alternatives, in commenting on those alternatives, and on selecting among those alternatives. The chart on page 48 of Appendix A, moreover, illustrates what appears to be a top-down “partnership” in which the input of citizen stakeholders feeds into Congestion Management Agencies, which in turn feed into local government “County/Corridor Dialogues,” and so on up to the MTC and ABAG boards. The chart gives no indication of how participants can hope to be shape the decisions of MTC and ABAG, nor even what role they can hope to play in shaping the county CMA decisions.

The draft Plan also mentions a host of “other key initiatives,” including the FOCUS program and “MTC’s recently launched Transit Sustainability Project,”³⁶ but provides no practical information as to how these initiatives relate to other key decision points or how they fit into the overall RTP/SCS process.

Federal law requires the Plan to include “explicit procedures, strategies, and desired outcomes” that will provide “adequate public notice of public participation activities and time for public review and comment at **key decision points.**”³⁷ Key decision points in the regional transportation planning process, according to FTA,³⁸ break down into concrete phases, including decisions regarding:

- Vision and Goals
- Alternative operating and capital investment strategies

- Evaluation and prioritization of those strategies, based on criteria that select the ones that best meet the goals
- Program development based on the selected strategies
- Project selection and systems operations

On page 45 of Appendix A, the draft Plan includes a chart, entitled “Workplan,” that lists a variety of items that will be “developed” or “approved” in three broad phases leading to the adoption of the RTP’s SCS.³⁹ This chart includes a range of intermediate key decision points, while it is silent as to others. At a minimum, the key decision points that the Plan should address must include:

- Which transportation needs MTC will prioritize;
- Which RTP goals and objectives MTC will approve (including which SCS goals and objectives ABAG and MTC will approve);
- Which alternative scenarios MTC and ABAG will develop, and how they will be evaluated for equity and effectiveness;
- What jobs and housing target and other performance targets MTC and ABAG will adopt;
- What transportation investment plan MTC will draft, and whether so-called “committed” projects will be evaluated against alternatives before MTC includes them in that plan; and
- How the Regional Housing Needs Allocation will be made.
- How will the Joint Policy Committee fulfill its statutory responsibility under SB 849 (2004) to “coordinate the development and drafting of major planning documents prepared by ABAG, MTC, and the Bay Area Air Quality Management District, including reviewing and commenting on major interim work products and the final draft comments prior to action by ABAG, MTC, and the Bay Area Air Quality Management District”?

For each of these key decision points, the draft Plan should, at the very least, clearly describe its nature and importance, identify the decision maker and anticipated sequence and timing in the overall process, and describe the process that will be used in reaching that decision. Where multiple boards, committees and task forces will play a role in that process, the Plan should explain each group’s role and how each will influence MTC’s and ABAG’s ultimate decisions, so that would-be participants can make an informed decision about which of the multitude of meetings to attend.

The draft Plan also must address the technical complexity and opacity inherent in the modeling processes that will be conducted. SB 375 specifically requires that

A metropolitan planning organization shall disseminate the methodology, results, and key assumptions of whichever travel demand models it uses in a way that would be useable and understandable to the public.⁴⁰

And federal law requires MTC to “[e]mplo[y] visualization techniques to describe metropolitan transportation plans.”⁴¹

If this complexity is not to become an excuse for putting the needs of EJ communities last, the Participation Plan must ensure that these complex decisions and layers of process are made transparent. The draft Plan is virtually silent on all of these points.

Recommendation 2:

Specify each key decision point in the process. For each key decision point, describe the nature and importance of the decision to be made (including how that decision will affect future decisions), identify the decision maker, describe the process that will be used in reaching that decision (including the role that various boards, committees and task forces will play in that process), and state the anticipated timeframe and sequencing for key decisions.

Specify a plan for disseminating the methodology, results, and key assumptions of MTC's travel demand models in a transparent manner that will be useable and understandable to the public.

Comment 3: Ensure Transparency and Inclusiveness in the CMAs and the Partnership Board.

If past practice holds true, some of the key RTP decision making will effectively be delegated by MTC to other bodies, particularly the county Congestion Management Agencies (CMAs). The draft Plan mentions the CMAs, but fails to explain the role that they will play. It does not discuss whether CMA decisions (such as project selection) will be made according to regional targets or criteria set by MTC (including targets relating to GHG reduction, cost-effectiveness or social equity), or whether and how MTC will review those decisions for their fairness and appropriateness and for how well they meet critical needs. Above all, it does not discuss how MTC will meet its obligation to certify that the regional planning process, including the decision making at the CMA level, will fully comport with federal civil rights protections.⁴²

In 2007, MTC received comments on its Public Participation Plan that raised these issues about CMA transparency and inclusiveness.⁴³ Yet today's draft Plan, like the Plan MTC adopted in 2007, again neglects to describe specific actions that will be taken in this regard, nor, indeed, does it include any meaningful commitment to ensure that the CMAs adhere to an open, transparent and fair process, and that their decisions are equitable. Instead, it simply states:

As appropriate, MTC will request that county congestion management agencies (CMAs) involve the public in their process for nominating projects for inclusion in the RTP, and show how public comments helped inform their recommendations.⁴⁴

This is not a plan, nor even a promise to provide a plan later. MTC is responsible for ensuring that it can truthfully certify to the U.S. Department of Transportation that the regional planning process was “carried out in accordance with . . . Title VI of the Civil Rights Act of 1964.”⁴⁵ Such a certification may not be made lightly, as Westchester County learned in connection with its false certification to HUD that it had met its obligation to “affirmatively further fair housing” in the County and its local jurisdictions.⁴⁶ MTC must put a plan in place now that describes the decision making that will be conducted by the CMAs in connection with the RTP and SCS, explains how MTC will evaluate, review and/or adopt those decisions, and specifies how MTC will ensure that the process and decisions of the CMAs comply with the Civil Rights Act. It is especially important that the project recommendations of the CMAs be evaluated against alternatives and be ranked based on how well they meet prioritized needs.

In addition, the draft Plan refers to the Partnership Board and other elite advisory bodies. MTC states that the Partnership Board reaches “consensus” on issues that later come before the Commission for decision.

MTC established the Bay Area Partnership in 2002 **to collaboratively assist the Commission in fashioning consensus** among its federal, state, regional, and local transportation agency partners regarding the policies, plans, and programs to be adopted and implemented by the Commission. . . . These meetings are open to the public.⁴⁷

Such a “consensus” – which is often in practice all but a final MTC vote away from becoming adopted policy – must be inclusive and reached in a fully participatory manner. It must not simply be reached in a forum to which the public is invited to attend, but in one that includes adequate representation of minority and low-income voices. The draft Plan, however, provides no specifics about what decisions or recommendations will be reached by such bodies via “consensus,” how consensus will be defined, whether representatives of low-income and minority communities will play a role in reaching consensus, and the steps MTC will take to integrate those representatives into that consensus-forging process

Recommendation 3:

Describe the decision making role that the CMAs will play in connection with the RTP and SCS, explain how MTC will evaluate, review and adopt CMA decisions, and specify how MTC will ensure that the process and decisions of the CMAs comply with the Civil Rights Act.

Describe the role that the Partnership Board and other elite advisory groups will play in connection with the RTP and SCS, explain the process for reaching consensus, and provide for meaningful representation of low-income and minority voices in that process.

Comment 4: Describe the Development of Policy and Investment Alternatives for each Key Decision Point.

In its Public Participation Plan, MTC must ensure that it will “provide the public with the information and tools necessary to provide a clear understanding of the issues and policy choices.”⁴⁸ Understanding the policy choices – that is, the alternatives that are available at each key decision point – is critical to the public’s participation in the decision making process. Indeed, a very significant part of the public participation process is the opportunity to have input into the development of, and selection among, policy alternatives.

The draft Plan, however, is silent on the specific steps by which policy, land use and investment alternatives, and alternative scenarios, will be developed in the period leading up to each key decision point.

Equally important is the evaluation of those alternatives. As pointed out earlier, FTA notes that a key step in the transportation planning process is:

Identifying current and projected future transportation problems and needs and **analyzing, through detailed planning studies, various transportation improvement strategies to address those needs**[.]⁴⁹

Once alternatives have been developed, they must be analyzed to determine how well, and how cost-effectively, each alternative would meet the identified needs. The Public Participation Plan must provide participants with the opportunity to shape the evaluation criteria and targets and indicators, and must also provide them with an understanding of when they will be given the results of the analysis so that they can use it in their efforts to shape the decision making process.

The draft Plan is silent on the development and analysis of alternatives. For instance, the Regional Advisory Working Group (RAWG), as described in the draft Plan, will “be asked to offer feedback on regional targets, . . . the ‘base-case’ or starting point land use, alternative land use and transportation investment scenarios, and SCS-related public outreach.”⁵⁰ RAWG will provide this input to staff only, with no evident access to decision makers.⁵¹ Yet even in that limited function, it will have no clear role to play in the **development** of the scenarios and other formulations on which it will be asked to comment, nor on how they will be **evaluated**.

Recommendation 4: Describe explicitly the process by which alternatives will be developed and evaluated in connection with each key decision point. Specify which boards, committees and advisory groups will play a role in the development and selection among alternatives at each stage, and what the role of each will be.

Comment 5: Evaluate the Equity Impacts of Each Alternative.

MTC's past approach to meeting its obligation to "identify and address" disproportionate adverse impacts⁵² has been to conduct a single RTP equity analysis **after** the RTP has been developed and shortly before it comes before the Commission for approval. That practice must be discontinued. In a complex process in which later decisions build upon earlier ones, it is too late to analyze equity right before the final decision to adopt the RTP.

Moreover, the criteria and metrics for the evaluation of equity impacts must be developed in an open and transparent process, in which the voices of low-income and minority residents are heard. Those criteria and metrics, as noted previously, must be based on the expressed priority needs of under-served communities.

MTC's commitment, in its EJ Principle #2, to analyze equity is, in fact, a necessary accompaniment to MTC's commitment, in EJ Principle #1, to create an open and transparent participation process that empowers EJ communities. For the process to empower traditionally under-served participants, the analysis of equity impacts must be ongoing throughout the process. Ensuring an adequate flow of information about the equity impacts of the alternatives at each decision point, of course, will also benefit the general public, as well as decision makers.

The draft Plan is silent on the evaluation of equity impacts at each key decision point, and is silent on the participation plan for the development of equity criteria and metrics.

Recommendation 5: Provide for an open and transparent public process in which criteria and metrics for evaluating the equity of alternatives will be developed based on the expressed priority needs identified by under-served communities. Explain how MTC will utilize those criteria and metrics in evaluating the equity impacts of each alternative policy or investment alternative leading up to each key decision point, and provide for making those equity evaluations available to the public in a timely manner at each stage.

Comment 6: Demonstrate Explicit Consideration of Input.

Federal regulations require MTC's participation plan to "[d]emonstrat[e] explicit consideration and response to public input received during the development of the" RTP."⁵³

The draft Plan states that "[t]he feedback received through this Public Participation Plan should be analyzed and provided to policy makers wherever appropriate."⁵⁴ While it is a start to set a goal that "100 percent of written correspondence received is logged, analyzed, summarized and communicated in time for consideration by staff or policy board members,"⁵⁵ a log summarizing comments is not adequate in so complex a process

to ensure that decision makers have explicitly considered, and are responsive to, the needs, priorities and views of low-income and minority participants. Moreover, such a log should be accompanied by reasons for the Commission's adoption or rejection of significant comments.

In addition, the Plan should provide opportunities for EJ participants to engage directly with Commissioners in their neighborhoods and at convenient times.

Finally, the Plan should explain transparently how the input given in each of the many forums described will be used in the process. In fact, the decisions MTC has made to date have not always demonstrated transparency in this regard. For instance, in the GHG target-setting recommendation process, it was not clear how the discussion of the Regional Advisory Working Group (RAWG) was presented to Commissioners. This was disconcerting for those of our organizations participating in the RAWG who have assumed that RAWG input would inform MTC's and ABAG's decisions.

And, as noted earlier, the Plan should explain how the identification of critical needs will drive the entire process. (See Comment 1.)

Recommendation 6: Describe how the public input from each of the varied forums described in the Plan will be used in the development, evaluation and selection among alternatives at each key decision point. Provide specific opportunities for residents of low-income communities of color to meet with decision makers in their communities.

Comment 7: Get Specific about Outreach.

The federal requirement of “**explicit** procedures, strategies, and desired outcomes” means that the Plan must include a specific program of outreach actions that will be taken, and must specifically describe the strategies to be used and the desired outcomes. The draft Plan does not meet these requirements.

The entire section of the Appendix headed “Participation Techniques” begins with the statement that “**To the extent that funding allows**, the public participation efforts will include. . . .”⁵⁶ It is troubling that an agency that controls the expenditure of billions of dollars in public funds would make its entire public participation action plan contingent on this qualification. It is also inconsistent with federal law.

It is equally unsatisfactory that the potential actions are simply listed in bullet points, with no description of the action to be taken, the responsible parties, the desired outcomes or the timeframe for action.

Among those bullet points, the draft Plan includes, for instance, “[p]rovide grants to community non-profit organizations in communities of concern for assistance in engaging their residents.”⁵⁷ The only specific mention of the potential involvement of a

non-profit in its outreach efforts, however, is vague, and again contingent on funding. Without adequately involving organizations that work with and represent low-income residents of color, adequate outreach and involvement of their communities cannot succeed.

The goals and outcomes are also insufficient. The performance measures for “diversity” are vague, and those for “reach” do not include any specific measures of the participation of low-income and minority residents.

The Plan should, in particular, target participation efforts on communities experiencing gentrification and displacement and suburban places experiencing growth in poverty.

Recommendation 7: Include a program of specific actions for outreach to low-income and minority participants, stating the responsible person(s) and timeframe, and specifying quantified objectives, performance measures and outcomes for each action.

Comment 8: Get Specific About Linguistic Access.

Title VI of the Civil Rights Act of 1964 requires federal fund recipients to take reasonable measures to remove linguistic barriers to participation that would have a disproportionate adverse effect on Limited English Proficient (LEP) persons. Executive Order 13166 and federal agency guidance extend that obligation to specifically require MPOs and other recipients to develop plans to identify and reasonably address the needs of LEP populations. The draft Plan does not meet those standards.

For the most part, the draft Plan offers only vague guidance and little commitment to the inclusion of limited English proficient communities. Most critically, the draft Plan does not state in which languages outreach will be conducted, nor even how MTC will determine what those languages will be.

The accompanying memorandum does refer to a web page that presently offers what is described as “MTC’s Draft Plan for Assisting Limited English Proficient Populations.”⁵⁸ The draft LEP plan in turn only makes a commitment to provide language assistance in Spanish and Chinese. That is inadequate, particularly in those portions of the Bay Area where there are significant numbers of other linguistically isolated communities (e.g., Vietnamese). The obligation to provide language assistance in those areas is heightened where MTC’s planning may result in great burdens or impacts, such as increased traffic, density or development—areas that MTC elsewhere identifies as “communities of concern.” But neither the draft Plan nor the LEP policy commit to providing the additional language assistance that will be necessary to ensure an inclusive process.

Also of concern is the lack of clarity about the relationship between the draft Plan and the draft LEP plan. Standing alone, the draft Plan fails to adequately address what language assistance will be provided and in what languages. If MTC intends to incorporate the

provisions of its LEP Plan as an integral part of the Public Participation Plan, it should re-open the comment period for the LEP plan, which was closed on July 26.

The one clear commitment contained in the document sets the goal that meetings are “linguistically accessible to 100 percent of participants with 3 working days’ advance request for translation.”⁵⁹ While positive, such a commitment is not meaningful unless MTC identifies the LEP communities that will be most impacted by the plans and then provides in advance and in an accessible language the context for the meetings and a mechanism to engage in the process leading up to the meetings (e.g., opportunity to review summaries of documents, to make inquiries, etc.).

Furthermore, the offer of 100% accessibility is meaningless unless that offer itself is made in a language that is accessible to the populations in need. As previously noted, aside from perhaps Spanish and Chinese, the draft Plan does not state in what languages the offer of translation will be published or how that offer will be broadcast.

Finally, the draft Plan does not offer a meaningful performance measure that will gauge the effectiveness of the language outreach that will be conducted. Presently “diversity” of “participants” is only measured in terms of “interests, places of residence, and primary modes of travel.” Performance should also be measured in terms of the primary languages of the participants.

Recommendation 8: Assure meaningful opportunities to participate by Limited English Proficient populations based upon language needs of local communities. Identify the language needs of “communities of concern” where planning and investment decisions may have the greatest impacts. Provide additional assistance reflecting the language needs of the locality in which meetings, hearings, and outreach occurs.

Comment 9: Learn from Past Mistakes.

Federal regulations require MTC to “[p]eriodically revie[w] the effectiveness of the procedures and strategies contained in the participation plan to ensure a full and open participation process.”⁶⁰ The process that MTC conducted in developing this draft Plan, however, included no apparent review of the effectiveness of the prior Plan. Nor did the development of the draft Plan include any ostensible public participation, as required by federal law, which provides that “[t]he participation plan shall be **developed by the MPO in consultation with all interested parties. . .**”⁶¹

Recommendation 9: Conduct a review, with full public participation, of the effectiveness of outreach to, participation of, and influence in shaping MTC decisions by the public – including minority and low-income residents and their representatives – in the development and adoption of the 2009 RTP. Modify the draft Plan to reflect changes to ineffective provisions, address omissions, and build on identified strengths.

NOTES

¹ California Department of Justice, “Global Warming’s Unequal Impacts” (accessed at <http://www.ag.ca.gov/globalwarming/unequal.php>).

² “As the Chair of the Intergovernmental Panel on Climate Change for the United Nations has stated, ‘[i]t is the poorest of the poor in the world, and this includes poor people even in prosperous societies, who are going to be the worst hit.’ The adverse impacts often will fall hardest on people of color and poor people because they are concentrated in areas that will bear the brunt of climate change, and because they are often the least able financially to deal with its impacts. They are also the ones who are least responsible for climate change.” California Department of Justice, “Global Warming’s Unequal Impacts,” quoting Dr. Rajendra Pachauri, Chair of the Intergovernmental Panel on Climate Change (accessed at <http://www.ag.ca.gov/globalwarming/unequal.php>).

³ Manuel Pastor, Rachel Morello-Frosch, James Sadd, and Justin Scoggins, MINDING THE CLIMATE GAP: WHAT’S AT STAKE IF CALIFORNIA’S CLIMATE LAW ISN’T DONE RIGHT AND RIGHT AWAY (April 2010), accessed at <http://college.usc.edu/pere/documents/mindingthegap.pdf>.

⁴ Manuel Pastor, et al., MINDING THE CLIMATE GAP: WHAT’S AT STAKE IF CALIFORNIA’S CLIMATE LAW ISN’T DONE RIGHT AND RIGHT AWAY (April 2010), accessed at <http://college.usc.edu/pere/documents/mindingthegap.pdf>.

⁵ Accessed at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=1994_register&docid=94-3685-filed.

⁶ See RECOMMENDATIONS OF THE REGIONAL TARGETS ADVISORY COMMITTEE (RTAC) PURSUANT TO SB 375: A REPORT TO THE CALIFORNIA AIR RESOURCES BOARD, pp. 34-35:

Land use based greenhouse gas reduction strategies, however, could have beneficial or adverse effects on social equity concerns such as housing affordability (increased land prices), transportation access and affordability, displacement, gentrification, and a changing match between jobs, required skill levels and housing cost ("jobs-housing fit"). . . .

Adverse social consequences of changing land use patterns, such as displacement, gentrification and increased housing costs should be addressed and specifically avoided to the extent possible in the SCS/ACS submitted by MPOs. . . .

Accessed at <http://www.arb.ca.gov/cc/sb375/rtac/report/092909/finalreport.pdf>.

⁷ See ABAG, DEVELOPMENT WITHOUT DISPLACEMENT, p. 60 (Dec. 2009), available at <http://www.bayareavision.org/initiatives/dwd-final.pdf>.

⁸ US DOT requirements for public participation plans are found in the Code of Federal Regulations, 23 C.F.R. § 450.316.

⁹ Draft Plan, p. 22.

¹⁰ See http://mtc.ca.gov/library/2001_rtp/downloads/lifeline/Lifeline_Network.pdf and <http://www.mtc.ca.gov/planning/cbtp/>

¹¹ Accessed at http://www.mtc.ca.gov/get_involved/participation_plan.htm (emphasis added).

¹² According to the draft Plan, “The Bay Area Partnership collaboratively assists the Commission in fashioning consensus among federal, state, regional, and local transportation agency partners regarding the policies, plans, and programs to be adopted and implemented by the Commission.” Draft Plan, p. 9.

¹³ 23 C.F.R. § 450.316 (a) (1) (emphasis added).

¹⁴ Carl Anthony, “The City We all Want to Live In,” Yes Magazine, Spring, 2010, pp. 38-39.

¹⁵ Brookings Institution, The Suburbanization of Poverty, Jan 20, 2010.

¹⁶ 23 C.F.R. § 450.316 (a).

¹⁷ 23 C.F.R. § 450.316 (a) (1) (emphasis added).

¹⁸ 23 C.F.R. § 450.334 (a) (3).

¹⁹ U.S. DOT Order 5610.2, §§ 1 (a), 4 (a) (implementing presidential Executive Order 12898 on Environmental Justice (1994).)

²⁰ FHWA, Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, Order 6640.23, §§ 2(f).

²¹ Global Transparency Initiative, Transparency Charter for International Financial Institutions: Claiming our Right to Know, accessed at http://www.ifitransparency.org/doc/charter_en.pdf.

²² California Government Code §65080 (b) (2) (F).

²³ California Government Code §65080 (b) (2) (F) (i) & (iii). See also 2010 Regional Transportation Plan Guidelines, pp. 62-67, available at http://www.dot.ca.gov/hq/tpp/offices/orip/rtp/index_files/2010_RTP_Guidelines_4-27-10.pdf.

²⁴ 23 C.F.R. § 450.316 (a) (1) (vii).

²⁵ 23 CFR § 450.316 (a) (1) (vii).

²⁶ Draft Plan, p. 22.

²⁷ Accessed at http://www.fta.dot.gov/planning/planning_environment_4160.html.

²⁸ Draft Plan, App. A, pp. 53, 55.

²⁹ Accessed at <http://www.mtc.ca.gov/planning/cbtp/>.

³⁰ 2001 RTP Equity Report, pp. 2-1 to 2-2.

³¹ MTC, Lifeline Transportation Network Report, p. 22. (Accessed at http://mtc.ca.gov/library/2001_rtp/downloads/lifeline/Lifeline_Network.pdf.)

³² Lifeline Report, pp. 6, 26.

³³ See links at <http://www.mtc.ca.gov/planning/cbtp/>.

³⁴ A recent example of this shortcoming illustrates why this issue is so important. MTC has sought new funding for BART’s Oakland Airport Connector project, following FTA’s withdrawal of funds based on civil rights concerns, despite the fact that the CBTP conducted in East Oakland did not find any community support or need for that project.

³⁵ Draft Plan, App. A, pp. 46-51 mentions, among other things, County/Corridor Meetings that MTC will convene with CMAs; an SCS Executive Working Group that appears to provide

for no EJ participation; a Regional Advisory Working Group that provides input only “to regional staff,” but has no apparent access to decision makers; the Joint Policy Committee of the four regional agencies; MTC’s Policy Advisory Council; and the ABAG Regional Planning Committee.

³⁶ Draft Plan, App. A, p. 44.

³⁷ 23 CFR § 450.316 (a) (1) (i) (emphasis added).

³⁸ “Transportation planning includes a number of steps:

- Monitoring existing conditions;
- Forecasting future population and employment growth, including assessing projected land uses in the region and identifying major growth corridors;
- *Identifying current and projected future transportation problems and needs and analyzing, through detailed planning studies, various transportation improvement strategies to address those needs;*
- *Developing long-range plans and short-range programs of alternative capital improvement and operational strategies for moving people and goods;*
- Estimating the impact of recommended future improvements to the transportation system on environmental features, including air quality; and
- Developing a financial plan for securing sufficient revenues to cover the costs of implementing strategies.”

Accessed at http://www.fta.dot.gov/planning/planning_environment_4160.html.

³⁹ Draft, App. A, p. 45.

⁴⁰ Government Code § 14522.2 (a).

⁴¹ 23 C.F.R. § 450.316 (a) (1) (iii).

⁴² See 23 C.F.R. § 450.334 (a) (3).

⁴³ See public comments in Appendix E (July 20, 2007), accessed at http://mtc.ca.gov/get_involved/Revised%20Draft%20PPP%20Appendix%20E.pdf.

⁴⁴ Draft Plan, p. 23.

⁴⁵ 23 C.F.R. § 450.334 (a) (3).

⁴⁶ *See United States ex rel. Anti-Discrimination Center of Metro New York, Inc. v. County of Westchester*, 668 F. Supp. 2d 548 (S.D.N.Y. Feb. 24, 2009).

⁴⁷ Draft Plan, p. 35. The draft Plan also explains the role of this “consensus”: “MTC staff summarizes comments heard by various parties so that the Commissioners and the public have a clear understanding of where there is consensus on a given issue and where there is not.” Draft Plan, p. 3.

⁴⁸ California Government Code §65080 (b) (2) (F) (iii).

⁴⁹ Accessed at http://www.fta.dot.gov/planning/planning_environment_4160.html.

⁵⁰ Draft Plan, App. A, p. 50.

⁵¹ Draft Plan, App. A, p. 47.

52 Executive Order 12898; US DOT Order 5610.2; FHWA Order 6640.23.
53 23 CFR § 450.316 (a) (1) (vi).
54 Draft Plan, App. A, pp. 57.
55 Draft Plan, App. A, pp. 58.
56 Draft Plan, App. A, pp. 53-55.
57 Draft Plan, App. A, pp. 55.
58 Accessed at http://www.mtc.ca.gov/get_involved/lep.htm.
59 Appendix A, p. 58.
60 23 C.F.R. § 450.316 (a) (1) (x).
61 23 C.F.R. § 450.316 (a).



national **CAPACD**
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August 23, 2010

Scott Haggerty, Chair
Jon Rubin, Chair, Legislation Committee
Metropolitan Transportation Commission
101 Eighth Street, Oakland, California 94607

Re: Public Participation Plan for the Regional Transportation Plan and Sustainable Communities Strategy – Compliance with the Civil Rights Act of 1964

Dear Commissioners Haggerty and Rubin:

The Asian Law Alliance, Filipino Advocates for Justice, and the National Coalition for Asian Pacific American Community Development submit the following comments in response to MTC's draft Public Participation Plan published on July 9, 2010 with specific attention to the proposed policies relating to limited English proficient (LEP) residents of the region.

The Asian Law Alliance, a non-profit law office located in San Jose, California, was founded in 1977 and has been providing legal services to the Asian and Pacific Islander communities in Santa Clara County in the areas of housing law, public benefits, immigration law, domestic violence, voting rights and civil rights. Language access has been one of our major areas of concerns and we regularly represent low income non-English speaking residents of Santa Clara from Asian Pacific Islander communities that only speak Vietnamese, Tagalog, Korean, or other languages.

Filipino Advocates for Justice, formerly Filipinos for Affirmative Action, was established in 1973 in response to the discrimination and alienation faced by the influx of immigrant newcomers from the Philippines. Our mission is to build a strong and empowered Filipino community in the Bay Area by organizing constituents, developing leaders, providing services, and advocating for policies that promote social and economic justice and equity for all.

National CAPACD is a nonprofit community based coalition representing over one hundred organizations in cities across the country, including the Bay Area. Our coalition's purpose is to support social justice and equitable development principles with particular attention to the unaddressed needs of low and moderate income Asian American and Pacific Islander communities.

General comments

The San Francisco Bay Region is one of the most diverse in the nation with a significant population of immigrants from around the world and the highest concentration of Asian Americans outside of Hawaii. The cosmopolitan character of the region has contributed to the region's economic prosperity and rich cultural life making the region an international destination for business, tourism, and continued immigration. As with other racial minorities, Asian Americans are not evenly distributed throughout the region but are concentrated in Bay Area subregions. In the two largest cities in the region, San Jose and San Francisco, Asians are the largest minority population, exceeding 30% of the residents of both cities. In contrast, for three Bay Area counties and number of cities, the percentage of Asians is in the single digits.¹

Across the Bay Area, the concentrations of specific nationalities and linguistic populations also vary significantly. According to MTC's own analysis of Census data, over half of the region's over Chinese Americans reside in San Francisco and Alameda Counties while over two-thirds of the region's over 96,000 LEP Vietnamese speakers reside in Santa Clara County—a population the size of a small city. The regions more than 76,000 LEP Tagalog speakers are more evenly distributed and exceed both Chinese and Vietnamese speakers in Solano County.

Despite the very significant total numbers of limited English proficient Asian Americans in the Bay Area and their diversity in language and location, MTC's proposed public participation policies only seek to serve only one Asian language population: Chinese. MTC's conclusions ignore its own data showing significant need for language assistance in Vietnamese, Tagalog, and Korean. Moreover, with respects to the one Asian language need it acknowledges an obligation to address, MTC's policies fail to assure that even Chinese speakers will be provided with adequate access to information to enable them to fully participate in the public process. The failure to address the language assistance needs of the Bay Area's Asian American communities seriously undermines the public participation process and the rights of the region's largest racial minority population.

Over the next twenty-five years, the MTC will play an unprecedented role in re-directing tens of billions of dollars of federal, state, and local transportation dollars and steering hundreds of thousands of housing units into increasingly dense urban areas where low and moderate income minority communities already are concentrated. The process will decide which neighborhoods and small business districts are provided with access to transit and which will be left behind. Given the stakes in the upcoming public policy discussion, it is therefore essential that MTC substantially revise and enhance its policies to enable limited English proficient communities to have the opportunity to voice their concerns in the process—an obligation that is imposed by federal civil rights laws. .

¹ Unless otherwise noted, data is from the Census's American Community Survey, 2006-08.

MTC's Public Participation Plan is severely deficient in its LEP outreach and participation techniques and does not meet the requirements of Title VI of the Civil Rights Act of 1965 and more specifically of the U.S. Department of Transportation's, "Policy Guidance Concerning Recipient's Responsibilities to Limited English Proficient (LEP) Persons" (79 C.F.R. 239, p. 74087) ("DOT LEP Guidance").

MTC's Obligations Under Federal Law

Title VI of the Civil Rights Act of 1964 has been interpreted to require federally assisted programs to take reasonable measures to remove linguistic barriers to participation that would have a disproportionate adverse effect on Limited English Proficient persons. Executive Order 13166 and guidance by both DOT and HUD further extend that obligation and specifically require MPOs and other assisted agencies to develop plans to identify and reasonably address the needs to LEP populations.

Of particular importance is the four factor LEP analysis set forth in the DOT LEP Guidance. In summary, these four factors are:

- The number or proportion of LEP persons served or encountered in the eligible service population.
- The frequency with which LEP individuals come in contact with the program, activity, or service.
- The nature and importance of the program, activity, or service provided by the program.
- The resources available to the recipient and costs.

DOT provides guidance on how to apply these four factors in addition to a "safe harbor" for entities seeking a bright line compliance test. MTC misapplies both the four factor test and the safe harbor test, resulting in a deficient LEP outreach and public participation in the PPP.

MTC's Public Participation Plan (and LEP Plan by Reference) Fails to Mandate LEP Outreach or Public Participation Techniques

Within the PPP, there is little meaningful discussion of public participation and outreach techniques to ensure meaningful LEP public participation. On page 6, the MTC mentions conducting an LEP public participation focus group. There is no further discussion, however, of what feedback was generated from this focus group and how it was incorporated either in this section or anywhere else in the PPP. Presumably, the feedback generated from this group was incorporated on page 20 under the section titled "Techniques for Involving Limited English Proficient Populations." The section lists a number of techniques. But rather than mandating use of any of these techniques, MTC makes clear that these techniques are recommended *options* when describing them as "a menu of public participation techniques" (PPP, p. 17).

In fact, MTC only mandates one LEP public participation technique, which is the provision of oral interpretation at Sustainable Communities Strategy related meetings for anyone who requests at least three days prior to the meeting (PPP, p. 55). Because this mandate was included within a separate SCS Public Participation Appendix (ie, Appendix A), it is also unclear whether the required provision of interpretation upon request is applicable to meetings not relating directly to a separate SCS. Furthermore, within the PPP itself there is also no substantive discussion of the languages in which outreach must be provided, a list of or description of the types of vital documents that must be translated, or a method of identifying the LEP communities to which outreach needs to be targeted. Without adequate outreach and notice to communities regarding the opportunity to request interpretation at meeting, the offer of language assistance at the meeting is meaningless.

The LEP Plan is Severely Deficient in its Analysis of Mandatory Languages into Which Documents Must Be Translated and Affirmative LEP Outreach Techniques: The LEP Plan Must Be Amended As Part of the PPP Comment Process

In a curious and somewhat confusing process, the draft Public Participation Plan references to the "Plan for Special Language Services for Limited English Populations" ("LEP Plan") a document that was itself in draft form but, as we discovered after the fact, was published for a comment period that expired in July. Given the PPP's almost total reliance on the LEP Plan (and the relative lack of LEP public participation discussion or analysis throughout the document) to address LEP outreach methodology and techniques, it is impossible to comment on the LEP outreach and public participation techniques in the PPP without also commenting on the LEP plan. In fact, the PPP's heavy reliance on the LEP plan is either an intended or a *de facto* incorporation of the LEP Plan into the PPP. As a result MTC must re-open (and we argue in effect has re-opened) the LEP Plan for comment.

As with the PPP, the LEP Plan is also deeply deficient in numerous aspects. The LEP Plan grossly misinterprets the plain language of the "Safe Harbor" policy in determining the languages into which vital documents need to be translated. In fact, the four factor analysis set forth in the DOT LEP Guidance strongly favors translation of documents into Vietnamese and Tagalog.

MTC Should Require Translation of Vital Program and Service Documents into at least Vietnamese and Tagalog: MTC Cannot Rely on the "Safe Harbor" To Avoid This Obligation

MTC's misapplies the DOT's safe harbor test and thus fails to include Vietnamese and Tagalog as languages into which documents must be translated. MTC analysis of factor 1 yields statistical data on LEP populations which demonstrate substantial numbers of Spanish, Chinese, Vietnamese, Filipino and Korean LEP individuals throughout MTC's 9 Bay Area County service area. Table 1 in MTC's LEP Plan shows a significant concentration of LEP Vietnamese individuals in Santa Clara County and a moderate concentration of Filipino LEP persons spread throughout the Bay Area in Alameda, San Francisco, San Mateo, Santa Clara, and Solano counties. In aggregate, Table 1 shows approximately 96,000 Vietnamese LEP and 75,000 Filipino LEP individuals in the 9 Bay Area counties.

Despite these significant county by county concentrations, the LEP Plan states that "providing language assistance in Spanish and Chinese would give population groups that are identified as not speaking English very well and that represent greater than 5 percent of the county population access to information and services in their language spoken at home" (LEP Plan, p. 3). The 5% standard traces back to the DOT policy that creates a bright line "safe harbor" for agencies that provide "written translations of vital documents for each eligible LEP language group that constitutes 5% of 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered." (DOT LEP Guidance, 70 CFR 239, p. 74095).

Given that MTC has selected the county level as the "eligible service population" for analysis, MTC clearly cannot rely on the safe harbor test to justify their failure to translate documents into Vietnamese and Tagalog. In fact, given that the safe harbor policy sets a floor of 1,000 LEP individuals, the fact that numerous counties far exceed this number in both Vietnamese and Filipino LEP persons mitigates heavily in favor of a necessity to translate into at least Vietnamese and Tagalog. MTC should also strongly consider mandatory translation into Korean.

The Four Factor Analysis Strongly Favors Translation of Documents into at least Vietnamese and Tagalog

Setting the safe harbor policy aside, the four factor analysis, on its face, strongly favors translating documents into additional languages including Vietnamese and Tagalog. The county level demographic analysis, as stated above, shows significant numbers of Vietnamese and Filipino LEP individuals in at least five Bay Area counties. This is particularly true for Vietnamese LEP's in Santa Clara County (approximately 66,000). MTC provides no other data on number or proportion of LEP persons served or encountered. Given this, the demographic data provided by MTC provides the only indication of the number of persons served or encountered on a county by county basis – which is MTC's self-selected area of service for the purpose of the four factor analysis. This data, as discussed above, demonstrates significant numbers of Vietnamese and Filipino LEP individuals both within and across the Bay Area counties.

MTC's also uses factor 2 in the LEP Plan to further rationalize translating only into Spanish and Chinese. MTC states that "Spanish and Chinese are the two languages most often requested, although translators have been provided for Vietnamese and Lao speakers" (LEP Plan, p. 4) the implication being that there is only frequent contact with Spanish and Chinese LEP individuals.

MTC, however, should not reach this conclusion until it has demonstrated that it has conducted affirmative, in language outreach to LEP communities to actually inform LEP individuals of their right to request translation. The DOT LEP Guidance requires such a demonstration: "[I]n applying this standard [Factor 2], recipients should consider whether appropriate outreach to LEP persons could increase the frequency of contact with LEP language groups" (DOT LEP Guidelines, p. 74092). This requirement makes eminent sense. The outreach to inform LEP communities of their rights is critical to LEP communities actually acting on those rights. No analysis of frequency of contact can be assessed accurately without such affirmative outreach as a first step.

Finally, DOT LEP Guidance Factor 4 strongly encourages large entities like MTC to allocate resources for LEP programs where necessitated by Factors 1, 2, and 3. MTC uses Factor 4 to justify translation only into Spanish and Chinese ("the cost to implement multiple-language programs is significant and not currently funded," LEP Plan, p. 4). The DOT LEP Guidance makes clear, however, that Factor 4 is not intended to "reduce the costs of LEP requirements on small businesses, small local governments, or small nonprofit organizations that receive Federal financial assistance" (DOT LEP Guidance, p. 74090). In fact, the DOT LEP Guidance goes the other way: "[l]arge entities and those entities serving a significant number or proportion of LEP persons should ensure that their resource limitations are well substantiated before using this factor as a reason to limit language assistance" (*ibid*, p. 74092). MTC fails to substantiate its resource limitations, stating only that the cost of providing multiple language programs is "not currently funded" (LEP Plan, p. 4).

MTC Must Conduct Affirmative Outreach to LEP Communities and MTC must do so in the Language of That Community

The DOT LEP Guidance mitigates in favor of affirmative outreach to underserved LEP communities. MTC, in both the PPP and LEP Plan, acknowledges this need but fails to affirmatively require such outreach and fails to require that such outreach be conducted in the language of the targeted community.

In addition to the strong inference under Factor 2, which we previously discussed, the notification requirements of the DOT LEP Guidance also requires in-language, affirmative outreach.

Once an agency has decided, based on the four factors, that it will provide language services, it is important that the recipient notify LEP persons of services available free of charge. Recipients should provide this notice in languages LEP persons would understand. (DOT LEP Guidance, p. 74096)

This affirmative outreach is particularly critical for LEP communities classified as “communities of concern” by MTC. The Regional Transportation Plan and Sustainable Communities Strategy will invariably impact such communities. MTC has a heightened duty to conduct outreach to these communities as a result. When outreaching, moreover, such outreach must be conducted in the language of that community, even if these communities speak languages other than Spanish, Chinese, Vietnamese, and Tagalog. This is particularly true if application of the four factor analysis to these communities yields an outcome strongly in favor of in-language outreach.

While MTC has acknowledged repeatedly that such outreach may be conducted through partnerships with advocates from such communities, we strongly recommend that MTC prioritize or even require this outreach technique. Meetings in LEP communities conducted directly by MTC (or “agency staff” in general) using interpretation typically do not yield meaningful outcomes. First and foremost, LEP attendees have little to no background in the subject matter. This is layered on top of the additional barriers posed by interpretation and the resulting communication disconnect from cultural differences. This is further layered on top of technological barriers posed by simultaneous translation.

Put simply, LEP participants must be prepared to engage coming into meetings to ensure meaningful engagement. MTC must work with community based advocates to ensure such preparation.

Summary of Recommendations

- MTC should amend its PPP and LEP to clarify that the suggested LEP public participation and outreach techniques are mandatory in nature or that use of some combination of the suggested techniques are mandatory.
- MTC should amend its PPP to clarify that interpretation at meetings upon request applies to all services and programs covered under the PPP, not just the public participation involving the SCS.
- MTC should amend its LEP Plan and PPP to mandate translation of documents vital to its programs and services at least into Vietnamese and Tagalog in addition to Spanish and Chinese. This is particularly true of vital documents and notices pertaining to the RTP and Sustainable Communities Strategy.
- MTC should conduct a four factor analysis to assess whether it must require mandatory translation into Korean.

- MTC should amend its LEP Plan and PPP to mandate affirmative identification and outreach of LEP “communities of concern” impacted by MTC’s programs and services. MTC should mandate that such outreach is conducted in languages understood by these communities.
- When such advocate groups exist, MTC should prioritize LEP outreach techniques that engage community based advocates who have a track record of working with and engaging LEP persons within that particular community.

Sincerely,

Gen Fujioka, Senior Policy Advocate
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Cc: Steve Heminger, Executive Director, MTA
Henry Gardner, Executive Director, ABAG
Dorval Carter, Chief Counsel, FTA

MTC info - To the point summeries

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From: <bnaudnaud@aol.com>
To: <info@mtc.ca.gov>
Date: 8/23/2010 4:26 PM
Subject: To the point summeries

MTC,

I want to see in your plan a greater involvement with all local government transportation boards and staff. Almost every little city has one of some sort. I am the Chair of the East Palo Alto Public Works and Transportation Commission and have to keep reminding Commission members who you are. And they do not know about your projects. I would include our public works and engineering staff also. Ether by mail to City staff to distribute at meetings or direct to local transportation board member emails. All our members have email. I feel the current messages sent to me is fine, as I can search for greater detail by fallowing to your web site. I also feel that to catch the attention of this greater list of MTC listeners your messages should also be more to the point summaries, as some members will not check into your web site. Thank you.

Bernardo Huerta
East Palo Alto Public Works and Transportation Commission,Chair
East Palo Alto Planning Commission
One East Palo Alto Neighborhood Initiative
Nuestra Casa