September 22, 2010

VIA EMAIL AND REGULAR MAIL

Clerk of the Board
Air Resources Board
1001 I Street
Sacramento, California 95814

Re: Comments on ARB's Draft CEQA Functional Equivalent Document (SCH #2010081021) for Proposed Regional Greenhouse Gas Emission Reduction Targets for Automobiles and Light Trucks Pursuant to Senate Bill 375

I. Introduction

The California Building Industry Association (CBIA) submits these comments on the Air Resources Board's (ARB) Functional Equivalent Document (FED) for Proposed Regional Greenhouse Gas (GHG) Emission Reduction Targets for Automobiles and Light Trucks (Regional Targets or Project) Pursuant to Senate Bill 375 (SB 375) on behalf of its 3,500 member companies throughout the state. We have serious concerns regarding the adequacy of the FED's environmental analysis under the California Environmental Quality Act (CEQA), as detailed below, and the unintended, and unevaluated, environmental impacts that result from these proposed Regional Targets, as well as the procedure for adopting the Regional Targets under the Administrative Procedure Act (APA), and the lack of evidence supporting the Regional Targets indicates that it would be arbitrary and capricious for ARB to adopt them.

II. Executive Summary

Though the FED was prepared pursuant to ARB's certified regulatory program, it must still fulfill CEQA's substantive requirements. FED at 1. However, the FED completely fails to provide any meaningful environmental analysis in its shockingly brief *two-page* consideration of environmental impacts. Rather than make a good faith effort to investigate potential impacts, the FED concludes that all impacts are speculative and defers any analysis of the Project's potential environmental impacts to metropolitan planning organizations (MPOs), cities and counties. In addition, the information that is provided is vague, unclear and cursory. ARB's failure to use its best efforts to analyze the Regional Targets is unacceptable given that the Targets sets up mandatory transportation funding criteria for GHG reductions that must be met by sustainable community strategies (SCSs) and alternative planning strategies (APSs), allowing no regional flexibility to achieve targets, thus making impacts from changed development patterns reasonably foreseeable. Further, the FED's inadequacies are particularly disappointing given that ARB has had two years to adopt targets under SB 375 and analyze impacts under CEQA. Some of the FED's fundamental failures are summarized below:

- ARB has inappropriately deferred all analysis of environmental impacts on grounds of speculation even though the FED admits there will be significant impacts. The Regional Targets impose mandatory transportation funding criteria which has reasonably foreseeable consequences that must be analyzed, not "tiered off" future environmental review;

- While those impacts that are addressed in the FED lack any meaningful analysis, other impacts, including the shifting of development into non-MPO areas, loss of federal transportation funding, and conflicts with existing laws created by unrealistically high Targets are not addressed at all;

- The FED's inclusion of "possible compliance measures" defers the formulation of mitigation and fails to demonstrate that mitigation will be effective and enforceable;

- The alternatives analysis is misleading and vague and fails to satisfy CEQA's mandate to consider a reasonable range of alternatives; and

- ARB has not allowed sufficient time for review, comment and response to comment on the FED.

In failing to proceed according to CEQA, ARB's decision to approve the Regional Targets is subject to legal challenge. Because the document is procedurally flawed, ARB will not be afforded a deferential standard of review if the Regional Targets are challenged in court. In fact, the FED's failures are so fundamental that it could risk de-certification of ARB's certified regulatory program.

Additionally, ARB has violated the California Administrative Procedure Act (APA) by failing to follow rulemaking procedures in adopting the Regional Targets. ARB's proposal to adopt Targets as "guidance" unlawfully avoids meaningful public participation in the rulemaking process as required by the APA. Govt. Code §§ 11340 et. seq.

Beyond the procedural failing, regulations are also invalid if an agency fails to provide support for the regulation adopted. ARB's selection of the Regional Targets is arbitrary and capricious as the Targets lack evidentiary support, and are inconsistent with state and regional analyses and recommendations made by the state Scoping Plan, by regional MPOs, by regional air districts, and by the Regional Targets Advisory Committee (RTAC). In fact, the largest MPO in the state has outright rejected ARB's Targets as inconsistent with what modeling indicates is achievable.

Based on the analysis contained herein, we request that ARB revise the FED to address the many inadequacies. Notably, we request that ARB modify the Regional Targets to a more feasible level consistent with the targets that the evidence available to ARB shows is achievable and that have been under consideration during preparation of the FED. Once achievable targets are selected, ARB must prepare a FED that actually considers the environmental impacts of those targets. The FED must present the targets and explain the environmental impacts in a manner that the public can understand, consistent with the fundamental purpose of CEQA.

Citizens of Goleta Valley v. Board of Supervisors (1990) 52 Cal. 3d 553, 564 (CEQA "protect[s] not only the environment but also informed self-government"); *Mountain Lion Foundation* 16 Cal. 4th 105, 133 (CEQA ensures that agencies "fully consider the information necessary to render decisions that intelligently take into account the environmental consequences. It also promotes the policy of citizen input underlying CEQA.")

III. ARB's FED Does Not Meet the Requirements of the Certified Regulatory Program under CEQA.

A. CEQA Exempts Certified Regulatory Programs from Procedural Requirements, But Not from CEQA's Policy Goals and Substantive Requirements.

As noted above, CEQA contains an exemption for certain state agencies' regulatory programs that have been certified as meeting criteria for conducting environmental review independent of CEQA's documentation requirements. Pub. Res. Code §21080.5; 14 C.C.R §§ 15250-15253. However, this is not an absolute exemption from CEQA. Certified regulatory programs are required to comply with CEQA's substantive requirements to analyze and mitigate a project's environmental impacts. 14 C.C.R. §15252(a)(2); *Ebbetts Pass Forest Watch v. Dep't. of Forestry & Fire Protection* (2008) 43 Cal.4th 936, 943. CEQA requires government agencies to consider the environmental consequences of their actions before approving plans and policies or committing to a course of action on a project. Pub. Res. Code §21002. Accordingly, documents prepared under certified regulatory programs are still subject to these important policies and requirements.

Courts have characterized certified agencies' environmental documents as the functional equivalents of EIRs because the information required essentially duplicates that required for an EIR or negative declaration. *Citizens for Non-Toxic Pest Control v. Dep't. of Food & Agric.* (1986) 187 Cal.App.3d 1575, 1586. ARB's regulations for plans or documents prepared under its certified regulatory program (ARB's regulations) mirror CEQA's requirements. 15 C.C.R. §6005(b). As discussed below, the FED fails to satisfy ARB's own regulations and CEQA's policy goals and substantive requirements.

B. ARB Has Deferred All Analysis of Environmental Impacts on Grounds of Speculation Even Though the FED Admits There Will Be Significant Impacts.

ARB defers all analysis of environmental impacts, even though it acknowledged there would be significant impacts (FED at 1, 13), based on its unsupported claim that determining impacts is speculative at this time (FED at 1). However, the FED is required to provide detailed information on the Project's potential significant effects on the environment and a thorough investigation is required. 14 C.C.R. §§15145 and 15252(a)(2); *see Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1214, 1236 (board failed to proceed in manner prescribed by CEQA in evaluating and approving a timber harvest plan in the absence of analysis regarding impacts on old growth trees). The CEQA Guidelines recognize that conducting environmental analysis "necessarily involves some degree of forecasting" and requires an agency to "use its best efforts to find out and disclose all that it reasonably can." 14 C.C.R. §15144; *Vineyard Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 428. An agency "cannot

reach the question of what is reasonably foreseeable and what is speculative until that investigation has been completed." *Ass'n. for a Cleaner Env't. v. Yosemite Community College* (2007) 2007 WL 2687418; *see also, Muzzy Ranch v. Solano County Airport Land Use Comm'n.* (2005) 41 Cal.4th 372, 382-384. That investigation cannot be avoided merely because the impact is difficult to analyze or involves some uncertainty. *See Laurel Heights Improvement Ass'n. v. Regents of the Univ. of California* (1988) 47 Cal.3d 376, 399 ("The fact that precision may not be possible, however, does not mean that no analysis is required."); *Stanislaus Audubon Soc'y, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 158 ("The fact that the exact extent and location of such growth cannot now be determined does not excuse the County from complying with CEQA.").

Courts have repeatedly rejected agencies' conclusions that impacts are too speculative for analysis. For example, courts have rejected the argument that the preparation of an EIR for a rezoning is speculative. In *Carmel-by-the-Sea v. Monterey Cty.* (1986) 183 Cal.App.3d 229, 249-52, the County argued that no EIR was required for a rezoning decision by the County as environmental impacts would be too speculative and mitigation measures could not be given meaningful consideration. The County further argued that a later EIR at the development stage would adequately address environmental issues and would avoid "needless delay and redundancy." The court rejected this argument, stating that "[t]he fact that the environmental consequences of a rezoning may be more amorphous than those flowing from a precise development plan does not compel the conclusion that no EIR is required," and held that the County's adoption of the zoning ordinance without preparing an EIR violated CEQA. The court in this case relied on *Bozung v. Local Agency Formation Comm'n.*, (1975) 13 Cal.3d 263, 282, in which the California Supreme Court rejected the argument that preparing an EIR at the annexation approval stage is premature and wasteful. The court stated that such an argument "misses the entire thrust of CEQA.... It is desirable that the precise information concerning environmental consequences which an EIR affords be furnished and considered at the earliest possible stage." Similarly, ARB cannot wait for MPOs to analyze impacts later based on the claim that impacts are speculative; it must analyze the reasonable foreseeable impacts of adopting the Regional Targets now.

Courts have also found flaws in CEQA documents that fail to sufficiently analyze indirect effects. In *Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3d 433, 445-46, a non-profit organization challenged the City's approval of an amendment to its General Plan that would rezone a 25-acre parcel of undeveloped land consisting primarily of wetlands to allow commercial and controlled manufacturing uses. The EIR acknowledged that the project may pose a significant economic problem for existing businesses, but offered little analysis of the issue and claimed that economic effects of the project were beyond the scope of CEQA. Plaintiffs argued that the City failed to consider how these economic problems would translate into physical effects on the City's central business area. Citing CEQA Guidelines 15064(d) & (f), the Court concluded that economic problems caused by the proposed project could conceivably result in business closures and physical deterioration of the downtown area, and thus on remand, the City should consider these problems to the extent that potential is demonstrated to be an indirect environmental effect of the project. Similarly, ARB must analyze the impacts of changed development patterns that will result from the adoption of the Targets.

Further, courts have indicated that the determination of whether an impact is speculative cannot be determined by a bright line rule. Rather, the determination depends on evidence available to the agency analyzing impacts. In *County Sanitation Dist. No.2 of Los Angeles v. Kern Cty.* (2005) 127 Cal.App.4th 1544, 1558, 1585-87, Kern County contended that potential adverse environmental impacts of its ordinance restricting application of sewage sludge on land were too remote and speculative to justify preparing an EIR. The County argued, *inter alia*, that it could only speculate regarding which alternative biosolids generators would adopt under the new ordinance. The court stated that "[d]etermining whether alternative methods of compliance with a new ordinance re reasonably foreseeable or speculative depends on the facts in the record rather than a bright line rule of law.... Consequently, regardless of whether the situation concerns a new rule, regulation or ordinance, whether one or more methods of future compliance are reasonably foreseeable depends on the quality and quantity of evidence in the administrative record." In this case, various entities affected by the ordinance submitted comments to the County, predicting how they would respond to the ordinance. The court concluded that commenters' predictions and information on which those predictions were based constituted substantial evidence concerning reasonably foreseeable alternatives. Here also, the discussion of potential impacts contained herein, in addition to the potential impacts raised by those who have commented on the draft GHG reduction targets, demonstrates that ARB has adequate information with which to analyze impacts.

Here, ARB did not conduct any investigation as to impacts and did not demonstrate that impacts are too uncertain. To the contrary, the FED acknowledges there may be a potential for significant adverse impacts on the environment (*see, e.g.,* FED at 1, 13). These impacts include potential impacts from air quality, traffic congestion, population growth, displacement of residents, utilities and services, noise, light and glare, and aesthetic/visual effects. FED at 14-15. The inadequacy of this impact analysis is discussed in further detail below.

Despite these acknowledged impacts, the FED fails to analyze those impacts, conclusorily claiming that "[s]peculation on the adverse impacts within each region...is not reasonable at this time." FED at 2. ARB continues to state throughout the FED without support that it cannot speculate as to the impacts of the Regional Targets at this time (FED at 1, 2, 7, 14, 15). The FED's repeated assertion that ARB lacks the type of information necessary to prepare a properly robust environmental analysis is belied by the mountain of data, analyses, charts, figures, and reports either posted on ARB's web site, referenced in the material posted on ARB's web site, or readily available to ARB. For example, several months ago, the four largest MPO's jointly submitted information to ARB showing in fine-grain detail the different types of housing units that would likely be developed throughout each region based on meeting different GHG-reduction targets. See Attachment A, Memorandum to ARB from the Executive Directors of the 4 Largest MPOs (File No. 8000130), May 18, 2010, p. 18. Individual MPO's submitted additional similar information. See Attachment B, MTC Alternative Scenario Data Request, Follow up Baseline Data Previously Provided. Readily available information from ABAG and MTC even projects the type and number of individual dwelling units for each city and county in the Bay Area. See Attachment C1 ABAG Housing Statistics, 2007; Attachment C2 ABAG Housing Statistics, 2009. This information demonstrates the massively different demographic,

transportation investment, development intensity and location, implications based on meeting different GHG-reduction targets.

Another specific example is that the FED fails to consider the impact of pushing growth into urban areas when there are known constraints on development. For example, in SACOG, the Sacramento Blue Print called for development in the Natomas basin due to its proximity to downtown. See Attachment D. However, it did not take into consideration that the basin is in a flood plain and building there is currently subject to a FEMA moratorium due to its failure to meet the 100-year floodplain requirements. This information is available and shows that it is reasonable foreseeable that by setting Regional Targets that directing more growth to this urban area will increase flood related impacts.

Rather than fulfilling its statutory obligation to analyze and discuss readily available information and its foreseeable environmental impacts, ARB has forced the public to comb through literally hundreds of documents and tens of thousands of pages of highly technical information to gain a basic understanding of the environmental implications associated with approval of the Project.

Although it purports to analyze "Project-Level Adverse Impacts," the FED devotes just *two pages* of discussion to such impacts. The discussion below demonstrates that it is in fact possible to identify potential impacts that can be anticipated as a result of setting the Regional Targets. This is particularly true given that ARB's adoption of the Targets will impose mandatory criteria that must be met by SCSs and APSs, without providing regional flexibility in achieving statewide goals for GHG reductions, making impacts from changed development patterns reasonably foreseeable. ARB is required to investigate potential impacts, and disclose, analyze and mitigate any foreseeable, significant impacts; ARB cannot hide behind a claim of "speculation."

C. Even When Considering ARB's History of Failing to Meet Requirements of Environmental Analysis Under Certified Regulatory Programs, the Record Demonstrates the Degree to Which The Regional Targets FED Fails to Provide the Required Analysis.

1. ARB Has a History of Avoiding Required Impact Analysis in FEDs.

ARB cannot avoid analyzing potentially significant adverse environmental impacts simply because this project is intended to create an environmental benefit. Under CEQA, *all* impacts must be analyzed regardless of the intent of the project. Challenges to air districts on other undertakings suggest that air districts in particular have a history of violating CEQA by avoiding environmental review of their projects they claim benefit the environment and are exempt from CEQA. While these cases involve the use of exemptions, they demonstrate a pattern by agencies, and air districts in particular, of avoiding review and disclosure of environmental impacts in cases where the agency believes the project will benefit the environment. They also demonstrate ARB's error in failing to analyze potentially significant environmental impacts associated with this project. Notably, many of the defects found in the

rules and regulations overturned in the cases discussed above are similar to the defects in ARB's FED.

For example, in *Dunn-Edwards Corp. v. Bay Area Air Quality Mgmt. Dist.* (1992) 9 Cal.App.4th 644, the Bay Area Air Quality Management District amended its regulations in order to reduce volatile organic compounds (VOCs) in paint and other architectural coatings. The air district claimed the reductions would have an environmental benefit and, therefore, the amendment did not require an environmental review under CEQA - the project was exempt according to the air district. The court disagreed and overturned the amendments for failure to comply with CEQA. The court found evidence in the record that the new regulations would require lower quality products that would increase net VOC emissions. In this case, the project was not exempt from environmental review because there was a reasonable possibility that the rule would have a significant effect on the environment. Here, ARB identifies potential impacts but claims they are too speculative to analyze. Like *Dunn-Edwards,* ARB provides absolutely no evidence to support this conclusion.

Similarly, in another air district case, *California Unions for Reliable Energy v. Mojave Desert Air Quality Mgmt. Dist.* (2009) 178 Cal.App.4th 1225, the court considered whether a rule adopted by the Mojave Desert Air Quality Management District ("MDAQMD") that allowed for road paving to offset air pollution from future projects was exempt from environmental review. MDAQMD believed the paving rule was not subject to CEQA's environmental review because the rule would reduce air pollution in the district. The court disagreed, holding that there was evidence in the record that air pollution may increase from road paving and that wildlife may be adversely impacted as well. Based on this evidence, the court held that the rule must undergo a full environmental review pursuant to CEQA. In so holding, the Court rejected MDAQMD's argument that the environmental impacts would be *de minimis* or too speculative to analyze, explaining the rule was intended to result in some paving and the environmental impacts from that paving needed to be disclosed. Here, ARB's adoption of the Regional Targets will impose mandatory transportation funding criteria for GHG reductions, which will result in changed development patterns and other foreseeable impacts. Thus, ARB must actually analyze the environmental impacts instead of deferring analysis by claiming they are too speculative like MDAQMD attempted to do in *California Unions. Id.* at 1245.

Likewise, in *International Longshoremen's & Warehousemen's Union v. Bd. of Supervisors* (1981) 116 Cal. App.3d 265, the board of supervisors, acting as the governing board of the county air pollution control district, amended certain rules to raise the allowable levels of nitrogen oxide (NOx) emissions for certain facilities in the county. In adopting the rule change, the board determined that its action was not subject to environmental review under CEQA because the action was taken for the protection of the environment and of natural resources. The Court of Appeal disagreed, holding that where there is a reasonable possibility that a project or activity may have a significant effect on the environment, the agency needed to conduct environmental review of the project. Notably, the court found that the Board provided no evidence that the rule would benefit the environment. Indeed, since there was a reasonable possibility that doubling the NOx emissions allowed into the air might have a significant effect on the environment, the court reversed the board's determination and ordered the board to

conduct further proceedings in conformity with the requirements of CEQA. *Id.* at 276-277. Similarly, ARB's FED simply ignores the environmental impacts associated with the project like increased urban density, increased sprawl in non-MPO or small MPO jurisdictions, and other impacts missing from the FED's review. The missing components of the FED's review are discussed more thoroughly below.

These air district cases, and CEQA more generally, require ARB to thoroughly analyze the environmental impacts from this project -- not ignore them under the guise that the project is environmentally beneficial and impacts are speculative. 14 C.C.R. §15063(b)(1) and *County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1580; *see also Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170, 1197 ("[a]ny potential significant environmental effect triggers the EIR requirement (Pub. Res. Code §21080(c), (d)) even if the plan provides 'net' benefit for the environment."); *County Sanitation Dist. No. 2 v. County of Kern* (2005) 27 127 Cal.App.4th 1544,1558 (holding that "[t]he positive effects of a project do not absolve the public agency from the responsibility of preparing an EIR to analyze the potentially significant negative environmental effects of the project, because those negative effects might be reduced through the adoption of feasible alternatives or mitigation measures analyzed in the EIR."); *Building Code Action v. Energy Resources Conserv. & Dev. Comm'n.* (1980) 102 Cal.App.3d 577 (overturning negative declaration for new energy conservation standards for windows because resulting increase in glass production could have significant air quality impacts). As discussed further below, even if the Regional Targets would achieve benefits, these benefits would not excuse ARB from performing a meaningful analysis of potential adverse impacts.

2. In Some Instances ARB Has Conducted More Thorough Impact FED Analysis, Demonstrating the Degree to Which the Regional Target Fails to Provide Meaningful Analysis in this FED.

ARB has conducted a more thorough environmental analysis in FEDs prepared for other ARB recent undertakings also related to long-term regulation of GHG emissions. For example, in the Scoping Plan FED, ARB evaluated how each sectors' implementation of the Scoping Plan's recommended measures could impact resource areas identified in the CEQA Appendix G Checklist, and described the potential ways that individual projects could mitigate impacts. See Attachment E, ARB, California Environmental Quality Act Functional Equivalent Document, App. J to the Scoping Plan, Ch. IV (December 2008). The alternatives analysis for this document is also much more extensive than the Regional Targets FED; the Scoping Plan FED analyzes five alternatives that took very different approaches to meeting AB 32's goals: no project, adoption of a subset or different mix of implementation measures, and alternatives relying primarily on adoption of cap-and-trade system only, adoption of a carbon fee, or adoption of source-specific regulatory requirements. *Id.* at 74-90.

Similarly, the FED for the 33 Percent Renewable Electricity Standard, also a programmatic document, which numbers almost 500 pages, identifies seven areas of the state where renewable energy projects are likely to be built if the standard is imposed, reviews reasonably foreseeable impacts of those projects, and establishes meaningful and enforceable

mitigation measures such as lighting design, species protections and water quality measures. See Attachment F, ARB, Functional Equivalent Document Renewable Electricity Standard (June 2010).

In these instances, ARB did not attempt to simply say that impacts were speculative even though the programs similarly addressed long term GHG reductions. The same type of information was equally available in those instances and ARB did analyze the information. In these documents ARB at least undertook some effort to analyze, disclose and mitigate foreseeable impacts. The FED's two-page analysis is so lacking that it does not represent a good faith effort to analyze the impacts at all even though ARB had two years to meet the September 30, 2010 deadline.

D. The FED Violates CEQA's Requirements for a Stable, Accurate Project Description.

The FED fundamentally mischaracterizes the proposed Project by setting the Regional Targets at wholly unrealistic levels. They are inconsistent with the GHG reductions envisioned by the Scoping Plan, and do not reflect the careful, thoughtful, and supported analyses initially prepared by the MPOs as discussed in Section IV(B)(2) below. This results in a fundamental mischaracterization of the potential GHG benefits that will result from the Project. Because the Regional Targets are not realistically achievable, the asserted benefits will not be realized and there will be unintended environmental impacts that are not analyzed in the FED.

A stable project description is critical in order to intelligently evaluate a project's potential environmental impacts. *San Joaquin Raptor/Wildlife Rescue Ctr. v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 730. As explained above, the FED must include all substantive components of an EIR. Thus, the FED must include a description of the proposed activity, and this project description must comply with the substantive requirements of CEQA. 14 C.C.R. §15252(a)(1). By setting forth unrealistic and unachievable Regional Targets, the FED fundamentally mischaracterizes the Project; because the Regional Targets cannot be achieved, the environmental analysis that flows from the Project description – cursory as it is – is wholly undermined.

The Regional Targets were developed on the fly only days before ARB released the FED. During the time the FED was prepared, the Regional Targets under consideration found to be achievable by the MPOs were much lower, as discussed below, and therefore would result in smaller environmental impacts, as admitted in the FED. FED at 20. The purpose of a stable project description is to review the complete project with the most significant environmental impacts. *See Desuk v. Redevelopment Agency* (1985) 173 Cal.App.3d 1029. The ARB and MPOs did not move to more aggressive targets, which would have greater impacts, until after the FED was prepared as these more aggressive targets were only developed days before release of the FED. The FED could not have analyzed the actual extent of the Project because the more intensive project with higher Regional Targets was not the proposed Project when the FED was being prepared.

E. The FED Fails to Analyze the Reasonably Foreseeable Environmental Impacts of the Proposed GHG Regional Targets.

1. ARB Inappropriately Tiers Off Future Environmental Analysis of SCSs.

ARB inappropriately defers analysis of impacts to future environmental review to be conducted by MPOs, cities and counties. FED at 7, 8. A significant environmental impact is ripe for evaluation in a first-tier EIR when it is a reasonably foreseeable consequence of the action proposed for approval. *Los Angles Unified Sch. Dist. v. City of Los Angles* (1997) 58 Cal.App.4th 1019, 1028. Future environmental review does not excuse the lead agency from adequately analyzing reasonably foreseeable significant environmental effects of the project and does not justify deferring such analysis to a later environmental review document. *See Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 440 ("To the extent the FEIR attempted, in effect, to tier from a future environmental document, we reject its approach as legally improper under CEQA."). ARB's cursory analysis of impacts and deferral of any meaningful analysis to future environmental review to be conducted by MPOs, cities and counties is inadequate under CEQA.

As ARB itself recognizes, setting the Regional Targets too high will have the likely result of forcing MPOs to develop APSs, as they will be unable to develop SCSs – at least defensible SCSs – that truly achieve the Regional Targets. *See* FED at 20 (describing likely outcomes of selecting an alternative with Regional Targets set too high). MPOs have also indicated to ARB that unreasonably high targets will likely undercut SB 375's integrated planning intent by making development of SCSs difficult. See Attachment G, Letter from Hasan Ikhrata, SCAG, to Mary Nichols, ARB, Aug. 4, 2010 (SCAG Aug. 4 letter). As the FED recognizes, this would result in consequences to SB 375's efforts to integrate land use planning and GHG reduction.

It should be noted that that the FED wrongly claims that APSs are apparently exempt from CEQA. FED at 20. This assertion appears to be based on SB 375's statement that: "For the purposes of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), an alternative planning strategy shall not constitute a land use plan, policy, or regulation, and the inconsistency of a project with an alternative planning strategy shall not be a consideration in determining whether a project may have an environmental effect." Exemptions from CEQA must be express and not implied unless there is a clear legislative intent to the contrary. *Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 201-203. The language of SB 375 mirrors the language in the Appendix G (IX)(b) CEQA Checklist under Land Use: "Does the project... Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?" SB 375 does not exempt an APS document but rather allows local agencies to approve projects without analyzing if a project is consistent with an APS or make a finding of overriding consideration for inconsistency with an APS. The regional transportation plan (RTP), SCS and APS all require compliance with CEQA. The FED's statement reflects the haste in which the FED was prepared, its inconsistency with CEQA, and

the confusion that surrounds preparation of the Regional Targets and FED. It also shows the lack of clear explanation provided to the public during this process.

As discussed in Section IV below, the evidence shows that ARB knowingly set very aggressive levels for the Regional Targets that the MPOs indicated are not achievable. A variety of consequences can be anticipated to result from setting the Regional Targets at unsupportable levels, as the FED itself acknowledges. FED at 13. As discussed further below, the FED's alternatives analysis affirms that setting the targets too high will result in environmental impacts that are not considered in the FED. The FED makes the unsupported decision that the proposed Regional Targets are just right and dismisses the acknowledged impacts as too speculative. ARB therefore undermines both the SB 375 framework and CEQA's intent to require consideration of the environmental impacts of agencies' actions.

2. The Regional Targets Will Have Significant Environmental Impacts Not Considered in the FED.

a. Targets That Are Set Unrealistically High Will Drive Development Out of MPO Jurisdictions and Into Non-MPO Areas of California or Outside the State.

Development in California – and throughout the world – is driven by immigration and birth rates, neither of which can be legally "stopped" by any democratic government entity. Regardless of where the Regional Targets are set, California is expected to continue to experience population growth, and these people must live somewhere. Developers will look for creative alternatives to provide this housing, even if it means looking outside of their traditional development zone, particularly given the predevelopment costs associated with small-scale infill development.

SB 375 does not apply to the 21 counties in California that are not included within MPO jurisdictions. These areas are not subject to the Regional Targets adopted by ARB, and will not experience the same development limitations as the MPO jurisdictions. If the Regional Targets are set at levels that preclude development sufficient to absorb California's housing needs, development will be driven out to these more rural, sparsely populated areas of the state.

In some cases, development will occur in non-MPO jurisdictions that are adjacent to areas that would be subject to Regional Targets. For example, SACOG's jurisdiction is located within commuting distance to non-MPO counties for jobs located in areas such as Roseville and Rancho Corodova. See Attachment H, City of Roseville, Office of Economic Development, Demographic, Development and Employment Profile 2007 at 16 ("Roseville is a net importer of labor and has been for the past several years as the number of jobs has surpassed the number of employable residents in the City"); see also Attachment I, City of Rancho Cordova, General Plan: Economic Development Element at 6 ("Rancho Cordova has a strong job market (approximately 3 jobs to every 1 household)"). By shifting development to these areas not within SACOG's jurisdiction, the Regional Targets could result in precisely the type of sprawl SB 375 was intended to discourage. In other cases, the Regional Targets could fundamentally shift development patterns outside of urban, developed areas to more rural, sparsely populated

parts of the state. Rather than eliminate environmental impacts associated with development, this would simply shift the location of certain impacts – such as GHG emissions – as well as create new impacts – such as agricultural conversion – in previously undeveloped, or sparsely-developed areas, and conflict with California's preservation priorities.

Similarly, because of the disparities between the Regional Targets set for the four largest MPOs and those recommended for the smaller ones, development will likely be driven away from the larger, more densely populated MPOs in favor of the smaller ones. This is particularly true for MPOs like Santa Barbara County Association of Governments (SBCAG) and Association of Monterey Bay Area Governments (AMBAG), which are currently allocated net increases in per capita GHG emissions by ARB. ARB has not appropriately analyzed the likelihood that the infeasible Regional Targets for the largest MPOs will accelerate growth within these smaller MPO areas.

And, development may even be driven outside the state. Some businesses and developers are already leaving California because of GHG regulations and increasing challenges related to development cost and delays caused by CEQA review. See, e.g., Attachment J, Varshney, S. and Tootelian, D., Cost of AB32 on California small businesses – summary report of findings (a report to California Small Business Roundtable) (June 2009). The Regional Targets will likely provide an additional push outside the state for many developers. Because California currently has extremely low per capita GHG emissions, and development in this state is subject to stringent environmental and efficiency standards, shifting development outside the state will result in greater net environmental impacts, particularly with respect to GHG emissions which is a global, not local, impact. See Attachment K, Per Capita Energy Statistics by Statemaster citing National Priority Project data (showing that California ranks 48th in the U.S. in per capita GHG emissions). This paradox is noted in a Harvard study:

> The environmental movement includes both a push to limit development and a movement to make energy less harmful. Californians have embraced both elements of environmentalism. The sad impact of that, however, is that while California has become the least emissions intensive area of the country, that state has also reduced its growth. As a result, fewer new households are locating in that energy conserving state and more households are locating in places that are far less environmentally friendly.

Attachment L,The Greenness of Cities, E. Glaeser and M. Kahn, John F. Kennedy School of Government, Harvard University, March 2008, p. 6-7. Setting regional targets that exceed what can reasonably be achieved only exacerbates the movement of growth to areas outside California.

Such consequences are precisely the opposite of what was intended to result from implementation of SB 375. By setting the Regional Targets at overly aggressive levels, ARB will perversely create greater environmental impacts than might otherwise occur, as acknowledged in the FED. FED at 20. In addition to the environmental impacts that could result

from adopting unsupportable Regional Targets, these types of fundamental development changes could impact the quality of life in many rural, largely undeveloped areas.

b. Setting Regional Targets Too High will Likely Result in Loss of Federal Funding for Transportation Projects.

SB 375 ties the provision of federal funding to the Regional Targets by including the SCS as an element of an MPO's regional transportation plan (RTP). Govt. Code § 65080(b)(2). The federal Clean Air Act requires RTPs in areas either not in attainment, or that have recently achieved attainment, with national ambient air quality standards, to demonstrate the RTP conforms with (i.e., supports the purpose and goals of) the relevant state implementation plan (SIP). 42 U.S.C. §7506(c). In order to receive federal funding for transportation projects included in an RTP, the U.S. Environmental Protection Agency (EPA) must determine that the RTP conforms to the SIP for the relevant region. This process is known as a "conformity determination." Because SCSs that achieve the Regional Targets will now be included in RTPs, the assumptions that underlie SCSs will be considered in EPA's conformity determination. Govt. Code §65080(b)(2).

The conformity regulations require use of reasonable assumptions regarding the distribution of employment and residences in the area. 40 C.F.R. §93.122(b)(1)(iii)). The EPA has further specified that it and the U.S. Department of Transportation "believe that historical trends and recent data should be considered primary sources of information from which land use assumptions should be based and evaluated." *See* Attachment M, EPA Guidance: Improving Air Quality Through Land Use Activities (EPA Guidance) at 57. In addition, "land use, population, employment, and other network-based travel model assumptions must be based on the best available information." 40 C.F.R. §93.122(b)(1)(ii); *see also* EPA Guidance at 58. And, conformity determinations "must be based on the most recent planning assumptions in force at the time of the conformity determination." 40 C.F.R. §93.110(a). The EPA Guidance also explains that EPA expects land use assumptions used in a conformity determination "would be generally consistent with the trends assumed in the previous conformity determination or those included in a recently submitted SIP," and if the conformity documentation does not provide a "reasonable explanation" for deviating from these assumptions," the conformity determination will be closely scrutinized, and may not be approved." EPA Guidance at 59.

Additionally, federal law requires RTPs to include a financial plan demonstrating how the adopted RTP can be implemented and to identify public and private sources that are "reasonably expected" to be available to carry out the RTP. 23 U.S.C. §§134(i)(2)(C), 134(j)(2)(B); *see also* 23 C.F.R. §450.104 (RTP must include "sufficient financial information for demonstrating that projects in the [RTP] can be implemented using committed, available or reasonably available revenue sources, with reasonable assurance that the federally supported transportation system is being adequately operated and maintained.").

Two outcomes will likely result from unachievable Regional Targets. First, as explained further below, in order to justify the Target levels, ARB and the MPOs have adopted a variety of highly questionable assumptions regarding population concentrations, and pricing and land use strategies. The Regional Targets also reflect assumptions about the impact of the recession that

may not be justified. Because the RTPs undergoing a conformity determination will contain extremely different assumptions than have been previously employed, EPA will likely closely scrutinize the conformity documentation. Similarly, the major transit investments required to achieve the Regional Targets will require commitment of funds that MPOs are unlikely to be able to demonstrate satisfies federal constraint requirements.

Given the questionable assumptions reflected in the Regional Targets, and the evidence supporting much lower targets, it is likely that EPA would not approve a conformity determination, putting federal funding requested in the RTP in jeopardy. This will include jeopardizing funding for fixing existing health and safety problems, or completing long-planned transit and roadway improvements. And, the inability to make the requisite financial constraint demonstration will violate federal transportation law. This will not have the intended effect and will hinder the ability of California to reduce GHG emissions because it will drive federal transportation dollars to other states, thereby discouraging growth in our state, and investment in its clean energy grid.

Nor would the preparation of an APS, rather than an SCS, relieve an MPO of the threat of losing federal funding. Although, unlike SCSs, APSs are not part of the RTP, they still have implications for federal funding. *See* Govt. Code §65080(b)(2)(H). As an initial matter, any alternative development plan included in an APS must itself undergo a conformity determination. Govt. Code §65080(b)(2)(H)(4). Thus, an alternative development plan based on faulty assumptions could jeopardize federal funding. Moreover, an APS that is prepared to demonstrate the ability to achieve the proposed Regional Targets, as would be required by SB 375 (Govt. Code §56808(b)(2)(H)), would suffer from the same flawed assumptions of an SCS, described above. The APS would either not be based on the best available information and most recent planning assumptions that have to be used in the RTP or, if not used because presumably not supported, the APS information would be conflicting and undermine the analysis that was included in the RTP. Either way the APS would provide strong reasoning to reject the MPO's conformity determination.

Second, in order to develop SCSs that have any chance of satisfying the Regional Targets, MPOs will be forced to focus their spending nearly exclusively on infill-related transit projects. This will come at the expense of transportation projects outside the urban core. Projects such as investment in high occupancy toll (HOT) or high occupancy vehicle (HOV) lanes, and regional transit extensions will likely not be included in SCSs and, therefore, will not receive federal funding as part of the MPO's RTPs. Lack of funding for these types of projects could result in increased GHG emissions, relative to what would otherwise occur. And, as discussed above, even with respect to these projects, MPOs will be unlikely to make the requisite demonstration of financial constraint.

The FED does not consider any of the likely consequences to California's development patterns described above, and the associated environmental impacts of these changes. Given the significance of this potential impact, it is imperative that ARB further study the potential impact on the MPOs ability to receive federal funding.

c. Additional Environmental Impacts Not Considered in the FED.

Various other specific categories of environmental impacts that can be anticipated to result from the proposed Project are not addressed *at all* in the FED. For example, as a result of increased urban density, and increased sprawl in non-MPO or small MPO jurisdictions, impacts can also be expected to occur with respect to: agricultural resources, biological resources, and cultural resources by development shifting to less developed areas of California as described above, as well as hydrology/water quality from intensifying urban development in the state's most highly developed areas. Unless mitigation measures are established, such as standards requiring new communities to be sustainable and conservation-oriented, this shifting of development to previously undisturbed areas will have environmental impacts including fragmentation of habitat, disturbance of archeological and cultural resources, and conversion of agricultural lands. Impacts to agricultural lands, such as those in the Central Valley where prime agricultural land is within and adjacent to existing city boundaries, could also result from increasing the intensity of existing town centers which could allow water and air quality impacts from neighboring dense residential areas. The FED must provide some analysis, or explain why such analysis is not necessary, of the impacts the proposed Project will have on all of these environmental resources.

d. The FED Fails to Consider Additional Impacts Due to Conflicts with Existing Laws.

In many cases, the extreme densification required by the Regional Targets will actually create conflicts with existing state law mandates relating to the protection of these resources. CEQA requires consideration of impacts due to conflict with any applicable policies and regulations. CEQA Guidelines, Appendix G, IX(b). The FED fails to consider impacts from the Project's conflict with several existing state and regional laws, as follows.

(1) State and Local Air Quality Laws

ARB's Regional Targets will create conflicts with existing state air quality laws. Increased density of existing urban areas will require additional schools and childcare facilities to serve the increased population. However, siting new schools in extremely dense urban areas runs contrary to state air quality laws, which require separation of sensitive receptors such as schools from busy roadways and other mobile sources of hazardous emissions. California law is clear about separating schools from sources of hazardous emissions, particularly those from mobile sources such as heavy traffic areas, idling diesel vehicles, and freeways. *See* Pub. Res. Code §21151; Attachment N, South Coast Air Quality Management District, Health Risk Assessment Guidance for Analyzing Cancer Risks from Mobile Source Diesel Emissions (August 2002); Attachment O, ARB, Air Quality and Land Use Handbook: A Community Health Perspective (April 2005); Attachment P, California Department of Education, School Site Selection and Approval Guide. The extreme density required by the Targets runs contrary to these air quality mandates because it requires more sensitive receptors to be located near increasingly congested roads in the urban core.

Additionally, ARB's Regional Targets will create a conflict with local air quality guidelines. As discussed below, the new air quality standards adopted by BAAQMD created stringent new local community risk and hazard thresholds that will likely result in a disinvestment in infill development within the Bay Area. Specifically, infill will require extensive environmental review where it would otherwise have been exempt. For example, the figure in Attachment Q shows that there are high levels of cancer risk in downtown Oakland. Attachment Q, BAAQMD Screening Tool: Cancer Risk. The existing conditions will result in the likelihood that projects proposed in these areas are likely to require EIRs under BAAQMDs new significance thresholds due to proximate sources of toxic air emissions. This disincentive conflicts with the development patterns Regional Targets. These two competing legal mandates raise substantial questions about the feasibility of complying with ARB's targets and BAAQMD's new significance thresholds.

(2) State Education Laws

In addition to state air quality laws, intense urban development could also run afoul of state safety and child welfare requirements for child care facilities and schools, simply because the extreme density required by the Regional Targets will not allow sufficient space for new schools to meet state requirements. For example, state regulations set minimum acreage requirements for school sites based on enrollment, including outdoor playgrounds and fields and building areas, and prohibit schools from being sited adjacent to certain existing uses such as railroad and power line easements, pipelines and storage tanks. 5 C.C.R. §14010. In addition, licensed day care facilities must provide at least 75 square feet of outdoor activity space (22 C.C.R. §101238.2(a)) and at least 35 square feet per child of indoor activity space (22 C.C.R. §101238.3(a)), and physically separated indoor and outdoor activity areas must be provided for school-aged children (22 C.C.R. §101538.2, 101538.3). These space requirements and siting restrictions mean that in areas with an extreme density of population, children may end up being bussed or driven to distant schools, contrary to the safety and welfare goals of California education laws, and contrary to SB 375's goal of promoting walking and bicycling instead of vehicle trips.

(3) State Cultural, Biological, and Agricultural Resources Laws

In addition, if development is forced to areas outside of MPOs, development in previously undisturbed areas could conflict with state laws protecting archaeological, Native American and other cultural and historic resources. California laws protect these cultural resources by requiring projects to either avoid these resource, incorporate the resource through parks or open space, or create permanent conservation easements. (See 14 C.C.R. §15126.4(b)(3); 14 C.C.R. §15064.5(e); Govt. Code §65352.3(b).)

The shifting of development to rural, less developed areas could also create conflicts with state laws that protect biological resources, such as the California Endangered Species Act which promotes biological diversity by establishing protections for the conservation and enhancement of specified species and their habitat. See Fish and Game Code §§2050 et seq.

Similarly, shifting development outside of MPOs would result in conversion of agricultural lands, in conflict with state mandates to protect agricultural resources. The Land Conservation Act, commonly known as the Williamson Act, was adopted by the Legislature to maintain the agricultural economy of the state, to assure sufficient food supplies, to discourage the premature and unnecessary conversion of agricultural lands, to discourage discontiguous urban development patterns, and to preserve the open space and aesthetic values of agricultural lands. Gov't. Code §§51200 et seq.; see also *Kelsey v. Colwell* (1973) 30 Cal. App. 3d 590, 594-95 (discussing the purpose of the Williamson Act set forth in Gov't. Code section 51220). As discussed elsewhere, ARB's Targets will push new development to areas not subject to SB 375 and the MPOs' forthcoming sustainable communities strategies. In turn, new development in relatively unpopulated, non-MPO areas of the state will subvert the intent of the Williamson Act, requiring the conversion of agricultural lands to residential, commercial and industrial uses. The State's open space will be reduced dramatically as a result, and the discontiguous urban development urban development will become more common. This result directly contradicts the purpose of the Williamson Act, yet is not considered by ARB's FED. Compare Govt. Code §15120.

(4) State Stormwater Laws

The dense development required to meet the Regional Targets will struggle to comply with new stormwater regulations, which increasingly encourage and require space-consuming, low-impact development treatment systems to protect water quality and watersheds and stream processes. For example, new development in the San Francisco Bay Area region is required to incorporate site design features that require space for vegetated, unpaved areas. Specifically, new projects must minimize impervious surfaces, protect natural drainages, direct runoff from roofs and sidewalks to vegetated areas, and establish minimum surface areas for biotreatment systems. See Attachment R, San Francisco Bay Regional Water Quality Control Board, Municipal Regional Stormwater NPDES Permit, Order No. R2-2009-0074, §C.3.c (2009). Similarly, the State Water Board stormwater permitting scheme is aimed at maximizing natural runoff by requiring dischargers to use non-structural controls (e.g. good housekeeping practices and employee training) and structural controls (e.g. detention and infiltration basins, rain gardens) controls to replicate pre-project conditions for even large storm events. See Attachment S, State Water Resources Control Board, General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2009-0009-DWQ, §XIII.A.3. The extreme density required by the Targets conflicts with these goals to manage stormwater by designing projects with enough space for vegetated and bioswale areas to allow natural runoff.

(5) State Social Equity Laws

As recognized in RTAC's report titled Recommendations of the Regional Targets Advisory Committee (RTAC) Pursuant to Senate Bill 375 (September 2009) (RTAC Report), land use based GHG reduction strategies could have adverse impacts to social equity concerns, including displacement and gentrification, which the Regional Targets should avoid. *See* Attachment T, RTAC Report at 28. The RTAC's focus on social equity is consistent with

requirements in SB 375, which require SCSs to consider land use patterns to meet the housing needs of all economic segments of the population (Govt. Code §65080(b)(2)(B)) and specify that the feasibility of meeting ARB's targets depends on economic and social factors, as well as environmental goals (Govt. Code §65080.01). As explained above, the high density urban development required to meet the Regional Targets may have the unintentional consequence of displacing low-income, urban communities with higher-priced urban development. Thus, these social equity concerns may be yet another reason that the MPOs will be unable to design defensible SCSs. In addition, ARB is required to consider the economic and social considerations the feasibility of meeting the Targets. The economic impacts will be significant in that one MPO calculated that the pricing necessary to reach the Targets would impose 460% per year transportation cost increases. Such extreme cost increases have a disproportionate impact on lower income families. Attachment U, Memorandum to MTC from S. Heminger, May 17, 2010, at 2 (MTC May 17 Memo). Though the evidence is very clear in the information the MPOs submitted to ARB, the FED does not consider this impact in its analysis.

(6) State Urban Park Laws

The Quimby Act, Govt. Code §66477, provides that cities and counties may require the dedication of land or payment of in-lieu fees for neighborhood and community park facilities or community gardens as a condition of tentative map or parcel map approval. However, by necessitating extremely dense development, the Regional Targets will inhibit the ability of cities and counties to ensure that urban development is balanced with parklands and urban open space. This runs contrary to the Quimby Act, which gives cities and counties the ability to prioritize urban green spaces. Moreover, the Act requires that the dedicated land or funds have a reasonable relationship with the use of the parks or facilities by the future residents of the subdivision. Govt. Code §66477(a)(5). The Regional Targets will create a direct conflict with the Quimby Act's mandate that dedicated parkland or in-lieu fees create a benefit the residents of the subdivided area.

(7) State Power Line Setback Laws

By increasing urban density, the Targets will likely require additionally power lines, posing new or increased risks to the increasingly urbanized communities. Since the new Targets will increase density, and thereby require additional power, the FED must comply with state and local requirements and consider whether the targets and increased power transmission will pose health risks to impacted communities. According to research by the California Electric and Magnetic Fields Program, a project of the California Department of Health Services and the Public Health Institute (1999), electromagnetic fields (EMFs) drop to background levels at between 100 feet and 350 feet from the transmission line, depending on the size of the line. See Attachment V. This is consistent with setbacks required for safety reasons at schools throughout the state. See 5 C.C.R. §14010(c) (requiring setbacks between 100-350 feet depending on the voltage of the lines). Indeed, EMFs and the siting of power lines more generally continue to raise health concerns that complicate project approval processes.

(8) State Traffic Congestions Laws

As part of a legislative effort to limit fragmented transportation planning and reduce traffic congestion, state law requires county transportation agencies are required to develop, adopt and update congestion management programs that establish level of service (LOS) standards applicable, at minimum, to all state highways and principal arterials in the county. Govt. Code §65089. The statute provides that LOS standards cannot be below LOS E or the existing conditions, with an exemption for only a very restricted definition of "infill opportunity zones." Govt. Code §65089(b). If LOS standards are not achieved, local jurisdictions are required to adopt and implement deficiency plans. Govt. Code §§65089(b), 65089.4. Transportation projects competing for federal dollars are also required to be consistent with the adopted congestion management program, and the congestion management program in turn must be consistent with the regional transportation plan. By requiring intense urban development in some areas, and encouraging sprawl in others, the Regional Targets will likely increase LOS impacts on regional highways and arterials, frustrate the successful implementation of congestion management programs and interrupt federal transportation funds.

(9) State Housing Laws

The Regional Targets conflict with state housing law mandates. Under state law, each local jurisdiction is legally obligated to meet its fair share of regional housing needs. Govt. Code §§65584 et seq. The Regional Targets will force all growth to occur within dense urban areas, which will likely mean that all but the densest communities will not be able to achieve their allocated housing requirements. While SB 375 calls for Housing Elements to be reconciled with RTPs, by setting unrealistically high Regional Targets, ARB will force MPOs to violate state housing law – including SB 375's amendments to it – because the allocated housing needs will not be able to be satisfied if regions are to achieve their Regional Targets. In failing to achieve Department of Housing and Community Development (HCD) Regional Housing Needs Allocation Plan (RHNA Plan) allocations, local jurisdictions will be faced with invalidated general plans and disqualification from affordable housing funding opportunities. The potential impact on population growth is discussed further below.

3. The FED's Analysis of Environmental Impacts That It Claims to Consider Utterly Fails to Comply with CEQA's Mandates.

Putting aside the FED's failure to give any consideration to important, reasonably foreseeable impacts of the Regional Targets, the FED also fails to provide a legally adequate analysis of those impacts it did consider by deferring all meaningful analysis of the Project's potential environmental impacts.

The FED suggests that, because the Regional Targets will result in an overall net benefit to the environment – *i.e.*, a reduction in GHG emissions – an abbreviated environmental analysis is acceptable. *See, e.g.*, FED at 1 ("Further, the overall effect of setting Regional Targets will be beneficial for the environment."), 24 ("While there is a potential for adverse impacts based on subsequent regional and local decisions, the net benefit to the environment from minimizing long-term transportation-related greenhouse gas emissions is potentially substantial."). However, as explained above, the FED fundamentally mischaracterizes the likely impact of the Regional Targets. Rather than achieving substantial reductions in GHG emissions, or other

environmental benefits associated with smart land use decisions, because the Regional Targets are set at unrealistically high levels, they will not achieve their intended benefits and will likely result in substantial unintended environmental impacts.

Indeed, ARB acknowledges that there may be a potential for significant adverse impacts on the environment (*see, e.g.,* FED at 1), but conclusorily states that impacts are too speculative to consider at this time. *See, e.g.,* FED at 2. The FED identifies significant impacts but does not mitigate them, as required by CEQA, leaving them as significant unavoidable impacts. CEQA provides that agencies should not approve projects as proposed if there are feasible alternatives or mitigation measures available that would substantially lessen the significant environmental effects of such projects. Pub. Res. Code §§ 21001, 21081. Accordingly, in approving the Regional Targets, ARB will need to make specific findings to support their overriding considerations as to why each significant impact is acceptable in approving the Regional Targets. Pub. Res. Code §21002; *City of Arcadia v. State Water Resources Control Bds* (2006) 135 Cal. App.4th 1392, 1426. As discussed below, ARB has not made any evaluation of impacts such that it can defensibly claim that it has made an analysis to support a statement of overriding consideration in adopting the Regional Targets because the FED fundamentally fails to consider the impacts of the Regional Targets.

a) The FED's Analysis of Potential "Beneficial Impacts" Overstates and Mischaracterizes the Likely Benefits from the Proposed Project.

The FED mischaracterizes and overstates potential beneficial impacts of the Regional Targets. The FED asserts the proposed Project will result in various benefits with respect to: Increased Mobility (Reduce Commute Time and Increased Productivity); Economic Benefits; and Healthier, More Equitable and Sustainable Communities. FED at 11-13. These benefits are copied from the RTAC Report, indicating that ARB did not use its independent judgment in developing the FED and analyzing potential impacts. These are not, however, "environmental" benefits. The FED misleadingly suggests that the public and decision-makers should weigh these potential benefits against the potential negative environmental impacts of the Regional Targets.

In addition, the FED's description of these alleged benefits is extremely vague, and the FED does not demonstrate how they will be achieved. Moreover, many of these claimed benefits are counter to the evidence. For example, with respect to increased mobility, if development is forced outside of MPOs as discussed above, the Regional Targets will actually result in more cars on the road, and increase commute times. And, if RTPs are forced to forego funding requests for transportation projects such as HOV/HOT lanes and train extensions, the Regional Targets will actually reduce transportation choices. Although the FED suggests the proposed Project will result in economic benefits such as taxpayer savings and lower transit costs, these benefits are not likely to be realized given the substantial taxpayer investments likely to be required to fund transit projects that would be required to achieve the Regional Targets.

The FED also claims the Regional Targets will promote more equitable communities. However, increasing the cost of driving, which will unquestionably be required within all MPOs'

jurisdictions to come anywhere close to achieving the Regional Targets, hits economically distressed communities the most. Targets that are set unrealistically high could result in displacement of urban residents, and drive up prices of infill development because no other options exist. And, if the Regional Targets are implemented, California may not be able to sufficiently provide for affordable housing given the limitations on development ability that would result. Lower income residents may be forced into areas suffering from the greatest impacts resulting from increased urban density (e.g., air quality, noise, etc.). Many of these concerns were conveyed to ARB in a July 20, 2010 letter re: Social Equity in SB 375 Target Setting (July 20 Letter), Attachment W. The coalition of environmental justice advocates who submitted this letter appropriately suggested ARB conduct a social equity analysis on the Regional Targets to be included in the environmental review document. Attachment W, July 20 Letter at 2. Despite this request, and an indication that the information necessary to conduct this analysis is available, ARB has not conducted such an analysis. Thus the environmental justice impacts of the Project remain unexplored by ARB and must be studied.

Even with respect to the asserted benefits that are environmental, the FED mischaracterizes the potential impacts the proposed Regional Targets will likely have. For example, the increased density that would result from attempting to implement the Regional Targets will result in serious air quality consequences associated with extremely dense development. And, despite the FED's claimed improvements to water supply and quality, placing all development in dense, urban areas limits the ability to conduct natural treatment (*e.g.*, bioswales, vegetated buffers, etc.). The alleged benefits to "Conservation of Open Space, Farm Land and Forest Land" are also mischaracterized. Because the Regional Targets are set unrealistically high, development likely will be pushed out of urban areas, to smaller MPOs and non-MPO areas. This would result in conversion of farming and forest lands, rather than preservation of it. And, the type of extremely dense urban development that would be required under the proposed will not leave room for urban parks as described.

Finally, as discussed above, even if the Regional Targets were likely to achieve the environmental benefits suggested by the FED, these benefits would not excuse ARB from performing a meaningful analysis of the potential adverse environmental impacts of the proposed Regional Targets. The FED fails to provide a meaningful analysis of the potential environmental impacts of the proposed Regional Targets, as discussed below.

b) The FED's "Analysis" of Adverse Impacts Unlawfully Defers Meaningful Analysis of All Project Impacts.

As discussed above, even though it acknowledges significant environmental impacts, the FED fundamentally fails to comply with CEQA because it defers all substantive analysis of the potential environmental impacts of the proposed Regional Targets. Although it purports to analyze "Project-Level Adverse Impacts," the FED devotes less than *two pages* of discussion to such impacts, and suggests that any more detailed analysis is not possible at this point. Further, it appears that the environmental impacts are mostly taken from those identified in the RTAC Report (RTAC Report at 28-31), again indicating that ARB did not use its independent discretion in developing the FED and analyzing impacts.

Further, CEQA requires a holistic analysis that considers the potential environmental impacts of a project at the earliest possible stage. 14 C.C.R. §15004(b). It is precisely at this point that a meaningful analysis of the potential impacts of the Regional Targets should be conducted, when the combined result of all of the Regional Targets can be analyzed. Waiting to analyze potential impacts at the individual MPO level would result in a piecemeal analysis of only individual Regional Targets, rather than consideration of the Project as a whole, in violation of CEQA. *See Orinda Ass'n. v. Bd. of Supervisors* (1986) 182 Cal.App.3d 1145, 1171. As discussed above, despite the FED's oft-stated concerns about conducting speculative analysis, there is much more information available to be analyzed regarding the impacts of the Regional Targets. Again, since the Regional Targets are being adopted as mandates, without allowing any regional flexibility, making impacts from changed development patterns and other impacts reasonably foreseeable. This information can be applied to perform a substantive analysis of potential environmental impacts from the proposed Project. The following is an overview of the inadequacies in the FED's analysis.

(1) Air Quality

The FED acknowledges the proposed Regional Targets would likely result in placing sensitive receptors close to high traffic areas, with associated health hazards. FED at 14. However, the FED makes no attempt to analyze where or to what extent such impacts are likely to occur. For example, the FED does not discuss the diesel particulate matter (DPM) emissions likely to impact sensitive receptors as a result of placing them close to roads and transit hubs. In addition, the FED does not discuss the impacts of pollution on sensitive receptors associated with non-motor vehicle emissions likely to result from extremely concentrated urban development. Given the density that will be required to attempt to achieve the Regional Targets, residences will be forced to be sited closer to stationary sources of emissions. This can be seen, for example, in Attachment Q, which shows the existing cancer risk in downtown Oakland, precisely the type of dense, urban environment in which the Regional Targets encourage additional growth. *See* Attachment Q, BAAQMD Screening Tool: Cancer Risks.

The FED fails to consider air quality in densely populated areas and completely fails to consider and analyze the likely impacts that pushing development into the less populated areas of the state will have. These changed development patterns will mean increased impacts in areas that currently enjoy relatively good air quality. For urban areas, the impacts of dense development will be acute and will disproportionately affect lower income areas of the large MPOs, as discussed above. The environmental justice implications are dramatic and must be further studied by ARB.

(2) Traffic Congestion

Although the FED acknowledges that traffic congestion could result from the concentration of development likely to occur under the proposed Project, it makes no effort to analyze these potential impacts. FED at 14. Given the extreme density that would result from attempting to implement the Regional Targets, a detailed consideration of the congestion it will create – and the associated impacts this congestion will have on GHG emissions, air quality, noise and other impacts – is especially important. By pushing development into densely

populated areas, the Level of Service on local roadways will get much worse. Even if successful at keeping commuting distance shorter, which we disagree will be the outcome, the emissions caused by cars sitting in gridlocked urban streets will offset potential benefits of reduced commute lengths. In particular, if funding for transportation projects is jeopardized, as discussed above, the Regional Targets could result in a substantial increase in urban traffic and more GHG emissions from idling. The FED also fails to consider how traffic patterns will be affected throughout the state if development is pushed into other regions.

(3) Population Growth

Once again, although the FED recognizes that attempting to implement the Regional Targets will result in substantial growth in urban, infill areas, it makes no attempt to analyze these potential impacts within each MPO's jurisdiction. FED at 14. The FED must provide more detail about this potential growth, and describe the associated strains on resources it will create. In addition, the FED must consider the population growth that will occur in small MPOs and non-MPO areas as a result of setting unrealistically high Regional Targets. The FED must also consider whether the Regional Targets will preclude construction of housing sufficient to absorb anticipated population growth throughout the state.

Under state law, each local jurisdiction is legally obligated to meet its fair share of regional housing needs. Govt. Code §§ 65584 et seq. Existing and projected housing needs are determined by HCD. Govt. Code §§ 65584(a)(1), 65584.01. The regional share allocation must be based on population projections produced by the Department of Finance and regional population forecasts used in preparing RTPs. Govt. Code §65584.01(b). This determination by HCD must occur at least 2 years prior to the scheduled revision of a local jurisdiction's housing element. Govt. Code §65584(b). Then, the appropriate council of governments determines each city's and unincorporated area's fair share of that regional housing need in a RHNA Plan. Govt. Code §§65584(b), 65584.04. The RHNA Plan must be adopted at least one year prior to scheduled revision of the housing element. Govt. Code §65584(b). Each locality's share of regional housing need is distributed among four income categories to ensure planning for all income levels. Govt. Code §§65584(a)(1), (e).

SB 375 requires that allocations to local jurisdictions created by the RHNA Plan must be consistent with the development pattern included in an SCS, as included in the RTP. Govt. Code §65584.04(i). Thus, HCD must provide housing allocations to MPOs, which are then incorporated into a RHNA Plan, which in turn must be consistent with the SCS incorporated into the RTP. See Govt. Code §65584.04(i)(3).

As discussed herein, Regional Targets will force all growth to occur within dense urban areas, which will likely mean that all but the densest communities will not be able to achieve their allocated housing requirements. HCD has allocated housing, based on current population projections, to unincorporated areas throughout the state indicating that existing housing allocations rely on construction of residential projects outside existing urban centers. These regions will not be able to satisfy both housing allocations and Regional Targets concurrently. While SB 375 calls for Housing Elements to be reconciled with RTPs, by setting unrealistically high Regional Targets, ARB will force MPOs to violate state housing law – including SB 375's

amendments to it – because the allocated housing needs throughout the region will not be able to be satisfied if MPOs are to achieve their Regional Targets, which direct residential growth to only the densest, urban areas. In other words, achieving Regional Targets will occur at the expense of satisfying regional housing needs.

In failing to achieve HCD RHNA Plan allocations, local jurisdictions will be faced with invalidated general plans and disqualification from affordable housing funding opportunities. Specifically, general plans must contain in a housing element an assessment of the jurisdiction's existing and projected housing needs. It also must contain an inventory of resources and constraints relevant to meeting those needs. Govt. Code §65583(a)(3). If the inventory does not demonstrate adequate site capacity to accommodate the city's regional housing need for all income groups, the element must contain actions that will be taken to address the shortfall. Govt. Code §65583(c)(1). The Regional Targets will render a local jurisdiction's ability to achieve, or to even create a plan to achieve, housing allocations infeasible, thereby invalidating the jurisdiction's general plan. Further, several affordable housing, community development and infrastructure funding programs include housing element compliance as a pre-requisite; inadequate housing elements will preclude such funding.

(4) Displacement of Residents

While the FED notes that infill development demands resulting from the Regional Targets could result in displacement of existing residents, it makes no attempt to analyze these likely impacts. FED at 14. As discussed above, the proposed Project could have major environmental justice implications if existing housing stock is torn down in favor of newer, denser development, often in economically challenged areas. In addition, the proposed Project could make urban living unaffordable by eliminating non-urban core options. Ultimately, many people may be pushed outside of urban areas to small MPOs or non-MPO areas. Despite requests from the EJ community, ARB declined to conduct a social equity analysis as part of the environmental review process. These potential impacts must be analyzed in the FED.

(5) Utilities and Services

The FED casually notes that new or modified utilities and services will be required to accommodate new growth in urban areas, but provides no detail about the type of expansions that will be required, and whether such utility and service additions are feasible. FED at 14. The FED needs to analyze the *major* demands that will be placed on existing utility service, and the need for substantial investment in additional utilities in already-developed and, therefore, spatially constrained areas. Throughout the state, infrastructure is already aging and funding for expanding capacity is limited. The tragic example of the explosion and fire in San Bruno is all too graphic evidence of the result of aging, overburdened infrastructure in densely populated areas. The FED must also consider how substantial increases in urban populations will impact the availability of public services, such as schools, libraries and parks. And, once again, the FED fails entirely to consider the impacts of setting unachievably high Regional Targets on small MPO and non-MPO areas; the increased development that will occur in these areas will bring associated demands for major new utilities and services in areas not currently able to accommodate this level of growth.

In addition, the impacts of constructing and operating these major utilities and services must be considered. For example, building the type of waste-water treatment facilities, schools and other services that would be required to accommodate the level of density required to comply with the Regional Targets would create substantial associated impacts, including to air quality, water quality, and noise.

(6) Noise

The FED again recognizes that increased growth in urban areas could result in increased noise pollution, but makes no effort to describe or quantify these potential impacts. FED at 15. Substantial concentrations of development in dense, urban areas could create major new sources of noise, affecting both existing and future residents. The FED needs to analyze the impact of placing sensitive receptors near noise sources – both existing sources and future sources that will result from attempting to implement the Regional Targets. And, development forced outside of the large MPO areas would create new sources of noise in currently quiet, rural areas.

(7) Light and Glare

Similarly, while the FED recognizes that the proposed Project would increase light pollution in areas surrounding new development, it includes no analysis of where such impacts would be likely to occur, or the likely extent of them. FED at 15. The FED must analyze new sources of light and glare, as well as the placement of sensitive receptors near existing sources. And again, development forced outside of the large MPO jurisdictions would create new sources of light and glare in sparsely developed areas.

(8) Aesthetic/Visual Effects

The FED refers to generalized aesthetic changes that could result from attempting to implement the proposed Regional Targets, but includes no details about where such impacts might occur, or how they will impact the visual character of communities throughout the state. FED at 15. The FED must analyze the likely impacts of greatly intensified density in urban areas. The proposed Project could significantly change the character of some urban areas characterized by single-family, low-density development. *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 936-939. For example, accommodating the necessary growth in the Bay Area to achieve MTC's Regional Targets (*i.e.,* approximately 40,000 to 200,000 people in San Francisco, 50,000 people in Oakland, and 55,000 to 60,000 people in San Jose) will require significant redevelopment of currently developed areas and, therefore, greatly change the visual character of these cities. *See* Attachment X, MTC Presentation July 9, 2010, Slide 19; Attachment Y, MTC Presentation July 28, 2010, Slide 11. The proposed Project is also likely to impact urban open space, as more and more urban area must get developed. And, the visual character of small MPO and non-MPO jurisdictions will likely change dramatically as a result of development that is pushed into these areas.

(9) Growth Inducing Impacts

CEQA requires analysis of whether a project will lead to economic or population growth or encourage development or other activities, including the construction of housing in the surrounding environment, which could affect the environment. Pub. Res. Code §2100(b)(5); 14 C.C.R. §15126.2(d). This discussion should include analysis of how a project can indirectly lead to development by overburdening existing community service facilities, which could in turn require construction of new facilities. 14 C.C.R. §15126.2(d). In particular, as recognized by the court in *Muzzy Ranch Co. v. Solano County Airport Land Use Comm'n.*, this analysis should consider how limiting development in one area can have consequences of displacing development to other areas. (2007) 41 Cal.App.4th 372, 383. Given the major development and population distribution consequences of the proposed Regional Targets, described throughout this letter, the FED's two-paragraph discussion of growth-inducing impacts is wholly inadequate.

The FED asserts the proposed Project will not create growth-inducing impacts "because it will not influence the amount or rate of population growth in the State," and the Project "will have no effect on demographics, population growth rates, or external factors such as immigration policy that might influence the rate of growth in the State." FED at 15. Yet, by this logic, essentially no development projects would ever need to consider growth-inducing impacts, because few projects, by themselves, influence these types of factors. This argument is completely contrary to CEQA. Moreover, it is ironic that the FED makes this conclusion because, as it elsewhere states, the purpose of the Regional Targets is to influence demographics and shift growth patterns. *See* FED at 19-22.

The FED must consider how the proposed Regional Targets will impact growth patterns. Attempting to implement the Regional Targets will draw many more people to urban areas, where virtually all new development within MPO jurisdictions would be concentrated. And, the FED must also consider the population growth that will occur outside of the large MPO jurisdictions, which would result in the need for supporting infrastructure, and various associated impacts.

F. The FED's Inclusion of Possible Compliance Measures Defers Meaningful Analysis and Fails to Demonstrate that Mitigation will be Effective and Enforceable as Required under a Certified Regulatory Program.

Documents prepared under certified regulatory programs must describe mitigation measures that could reduce the project's significant environmental impacts. Pub. Res. Code §21080.5(d)(3)(A); 14 C.C.R. §15252(a)(2). CEQA provides that "agencies should not approve projects if there are feasible alternatives or feasible mitigation measures available which would substantially lessen significant environmental effects of such projects..." Pub. Res. Code §21002; *see also* Pub. Res. Code §21081(a). The FED must therefore propose and describe mitigation measures to minimize the significant environmental effects cause by the Project.

Rather than adopt measures to mitigate impacts, the FED includes a menu of "possible regional target compliance measures" that MPOs "may choose to employ." FED at 8-10. ARB improperly defers formulation of mitigation measures to MPOs, cities and counties. Similarly, The FED's discussion of these measures is unacceptably vague and mirrors its inadequate analysis of Project impacts. None of the significant impacts discussed above are mitigated

through clearly defined, implementable mitigation. Although ARB may not have jurisdiction to impose many of the necessary mitigation measures, it still has an obligation to analyze them. *See, e.g. Citizens for Quality Growth v. City of Mt. Shasta* (1988)198 Cal.App.3d 433, 422 (court held that city could not defer mitigation of wetland impacts to Army Corps of Engineers as "[*e*]*ach* public agency is required to comply with CEQA and meet its responsibilities, including evaluating mitigation measures and project alternatives."); *City of Marina v. Board of Trustees of the California State University* (2006) 39 Cal.4th 341 (holding that lead agency could only disclaim responsibility for mitigation where the responsibility for implementation was exclusively under the jurisdiction of another agency). The MPO's RTP EIRs, attached to this letter, provide information related to mitigation measures used by MPOs in preparing RTPs provide the basis for developing specific mitigation measures. See Attachments Z.

For example, the FED should discuss how setbacks should be imposed to address air quality impacts likely to result from dense urban development. This analysis should consider the feasibility of including setbacks for sensitive receptors from roadways carrying a certain volume of traffic given the level of development anticipated to achieve the Regional Targets in areas where congestion will only be further exacerbated. As the agency regulating both air emissions and volume of traffic, mitigation measures such as this are clearly within the agency's authority to recommend. This is also true for noise and aesthetic impacts from transportation corridors and other impacts.

As another example, the FED should discuss how criteria should be established for the development of new town centers to address environmental impacts from shifting development to previously undisturbed areas. This analysis should include the feasibility of imposing criteria for new towns that would include a jobs/housing balance through the creation of significant employment opportunities along with a range of housing products including affordable housing; and conservation-oriented infrastructure systems such as reclaimed water and transit; integrated open space including preserves; and similar features such as those described in *Conservation Communities: Creating Value with Nature, Open Space, and Agriculture*, a recent publication from the Urban Land Institute.

Further, in adopting mitigation measures, lead agencies must have a reasonable basis to conclude that a mitigation measure will be effective with support in the record. *See San Franciscans for Reasonable Growth v. City & County of San Francisco* (1989) 209 Cal.App.3d 1502, 1522; *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1116 (rejecting proposed mitigation measures related to well use by neighboring landowners because the record lacked support for the agency's conclusions). The FED does not include any evidence to demonstrate that inclusion of the menu of "possible regional target compliance measures" will actually mitigate impacts. On the contrary, the FED has failed to identify and analyze several impacts and has similarly failed to adopt corresponding mitigation measures.

The FED does not commit any funding or resources to creating or enforcing a program for mitigating impacts. The FED should create a program, similar to a mitigation monitoring and reporting program that will ensure implementation of mitigation measures, as required by CEQA. Pub. Res. Code §21081.6*; see also Fed'n. of Hillside & Canyon Ass'ns. v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261 (an agency must take steps to ensure that mitigation

measures will be implemented). Instead, the FED defers the formulation and enforcement of mitigation measures to MPOs, cities and counties, and provides no funding or resources for such mitigation, and fails to demonstrate that impacts will actually be mitigated.

G. The FED's Vague and Cursory Alternatives Analysis is Inconsistent with the Purpose of CEQA and Fails to Identify Any Alternative that Reduces or Avoids Significant Environmental Impacts as Required Under a Certified Regulatory Program.

The FED must also include a meaningful alternatives analysis because certified regulatory programs remain subject to CEQA's substantive standards for the evaluation of alternatives. Pub. Res. Code §21080.5(d)(3); *see Friends of the Old Trees v. Dep't. of Forestry and Fire Protection* (1997) 52 Cal.App.4th 1383, 1403-1405 (department abused discretion for not discussing project alternatives). CEQA requires a discussion of a reasonable range of alternatives that would feasibly obtain most of the basic objectives of the Project, but would avoid or substantially lessen its potentially significant environmental impacts in sufficient detail to allow evaluation, analysis, and comparison with the proposed project. 14 C.C.R. §15126.6. As the FED contains no mitigation for any impact, impacts remain significant; thus the FED must consider alternatives to avoid these significant impacts. *Citizens for Quality Growth v. City of Mt. Shasta* (1988) 198 Cal App.3d 433 (error for failing to consider alternatives when only means to avoid impacts).

The FED's analysis of alternatives to the proposed Project does not satisfy CEQA's requirements. The FED does not identify any alternative that reduces or avoids the significant environmental impacts that the project will cause – the fundamental purpose of an alternatives analysis under CEQA. Pub. Res. Code § 21002; 14 C.C.R. §15126.6(a). None of the alternatives is identified as reducing any significant impact and therefore the FED's alternatives analysis is pointless and fails to consider a reasonable range of alternatives. In addition, the FED fails to identify the environmentally superior alternative, as is required by CEQA, because no alternative was found to reduce any significant impact. 14 C.C.R. §15126.6(e)(2).

As described below, of those alternatives presented, the analysis is inadequate. The FED must analyze an alternative of setting realistic Regional Targets that are consistent with the Scoping Plan and the MPOs' demonstrations of achievable targets.

1. The FED's Analysis of Alternatives 2 and 3 is Vague and the Consideration of Each Shows ARB Failed to Meaningfully Consider Either Alternative.

According to the FED, Alternative 2 would "Increase Proposed Targets Substantially." FED at 20. The FED does not describe in "meaningful detail" what a "substantial increase" would involve, or how it would be divided amongst the MPOs; it merely notes three potential implications of such an alternative in extremely broad terms. This type of vague alternative and cursory analysis fails to provide decision makers with the information necessary to select between alternatives, and does not comply with CEQA. 14 C.C.R. §15126.6(d); *Laurel Heights, supra,* 47 Cal.3d at 406.

Alternative 2 essentially reflects the proposed Project. As detailed throughout this letter, the proposed Regional Targets are set unrealistically high and the proposed Project will result in precisely the type of negative consequences described in the FED for Alternative 2. The FED correctly recognizes that an important consequence of setting Regional Targets too high is that many MPOs will use an APS, rather than an SCS. FED at 20.

As ARB recognizes, setting the targets too high will likely backfire and result in status quo development. FED at 20. However, ARB's analysis of Alternative 2 fails to consider the important impact that will result from infeasible Regional Targets of pushing development outside of major MPO jurisdictions, and even outside of California, to less regulated areas. Regional Targets that are set too high will result in fundamental changes to development patterns, including substantial sprawl in currently sparsely-populated regions. The cursory discussion fails to give meaningful consideration to the environmental impacts of this alternative.

Just like the FED's discussion of Alternative 2, the half-page description of the generic implications of Alternative 3, which will "Decrease Proposed Targets Substantially" does not provide the public or decision-makers with meaningful information as required by CEQA. FED at 21. This alternative is also poorly defined – no definition is given for a "substantial decrease" – and the FED suggests a nonexistent draconian choice between the proposed Regional Targets and those that are so low that they result in no change in planning policy.

However, as well-articulated in Alternative 2, Regional Targets set at a level that can actually be achieved would enable MPOs to develop implementable SCSs, thereby ensuring comprehensive CEQA review and achieving SB 375's goals of integrating land use planning and GHG reductions. Thus, the consequences described (albeit vaguely) for Alternative 3 would not occur under an alternative that sets ambitious, but achievable Regional Targets, as envisioned by SB 375.

ARB's consideration of Alternatives 2 and 3 together shows that ARB actually failed to truly consider any alternative. ARB considered both Alternatives 2 and 3 to have more significant impacts than the proposed project. Like Goldilocks, ARB decided that Alternative 2 would be too high and Alternative 3 would be too low because the proposed Regional Targets are just right. Dismissing Alternatives 2 and 3 on the assumption that the proposed Project are "in theory" just right indicates the lack of real analysis done for the Project and for the alternatives because ARB is assuming the Regional Targets are feasible when in fact analysis from the MPOs indicate this is not true. As such, the record reflects that Alternative 2 - the alternative that would actually be achievable - would have less impact that the proposed Project.

2. Alternative 4 and 5 Do Not Represent Alternatives that Would Eliminate or Reduce the Project's Environmental Impacts.

Alternative 4 and Alternative 5 are not alternative Regional Targets. They are alternative methods of describing the same targets and as such are not actually alternatives, within the meaning of CEQA, that would reduce or eliminate the environmental impacts of the proposed Regional Targets. FED at 21-23. Rather, they simply represent mathematic means of to achieving the same result. Because neither is actually an alternative, the FED fails to describe a

reasonable range of alternatives that actually reduce or eliminate any environmental impact. 14 C.C.R. §15126.6(a).

3. The FED Must Consider an Alternative of Targets That Are Consistent with the Scoping Plan and That Are Consistent With Targets That the MPOs Indicated Are Achievable.

An alternative that reflects assumptions about achievable reductions must be analyzed. For example, as discussed below, MTC's technical analysis demonstrates an aggressive, but realistic target would be a 5% reduction in 2020 and a 5% reduction in 2035 and the Southern California Association of Governments' (SCAG) analysis shows a 7 to 8% 2020 target and 5 to 6% 2035 target is appropriate. Regional Targets should also reflect the regional transportation-related GHG reductions envisioned under the Scoping Plan. As discussed above, the proposed Regional Targets – if they could be achieved – would result in *four times* the reductions envisioned by the Scoping Plan. The Targets should be adjusted to be consistent with ARB's previous determination of an appropriate and realistic goal for GHG reductions from land use.

Setting realistic, achievable targets would result in development occurring where and how it is intended to occur – within the large MPO jurisdictions, with a realistic focus on infill development. This would avoid or lessen the impacts ARB acknowledges will occur under both Alternatives 2 and 3. Moreover, because this alternative would not result in *all* development being concentrated in existing dense, urban areas, fewer of the environmental impacts described above would result, and fewer strains would be placed on urban infrastructure. This alternative would also help to ensure federal transportation funding, as EPA would be much more likely to accept the assumptions incorporated in a conformity analysis.

The FED must be revised to include a legally-sufficient analysis of alternatives, including an alternative that sets the Regional Targets at realistic, achievable levels consistent with the Scoping Plan's determination of the appropriate level of GHG reductions to be achieved from regional transportation-related measures.

H. ARB Has Violated Procedural Requirements and Has Not Allowed Sufficient Time for Review, Comment, Response to Comment and Recirculation.

1. ARB Has Allowed Insufficient Time for Review and Comment.

Documents prepared by a certified program must be available for review and comment by the public and other agencies. Pub. Res. Code §21080.5(d)(3)(B); *see Ultramar, Inc. v. South Coast Air Quality Mgmt. Dist.* (1993) 17 Cal.App.4th 689, 700 (air district's failure to make document regarding new rule available to the public for comment period required by CEQA was abuse of discretion). CEQA requires a 45-day review period for projects in which a state agency is lead agency and for projects that are of statewide, regional, or areawide significance. Pub. Res. Code §21091(a); 14 C.C.R. §15205(b). As ARB is a state agency and since the Regional Targets are of statewide significance, a 45-day review and comment period is required.

ARB has allowed an insufficient amount of time for review and comment. The FED was released on August 9, 2010. The FED states that "written and e-mail statements must be filed at least 10 days prior to the [September 23, 2010] meeting so that ARB staff and Board members have time to fully consider each comment." This means that comments must be submitted by September 13, 2010 in order to be "fully considered" by the ARB staff and Board, leaving only 35 days for review and comment. As the Regional Targets will result in lasting impacts on statewide land use planning and a myriad of other impacts, ARB has abused its discretion by providing the public less than the statutorily required time for public review.

2. ARB's Schedule Does Not Allow Time for Meaningful Response to Comments.

A certified regulatory program must consult with all agencies that have jurisdiction concerning the proposed activity (Pub. Res. Code §21080.5(d)(2)(C)) and its environmental documents must respond to concerns raised by such agencies. The agency's final action must contain its written responses to significant environmental points raised during the evaluation process. Pub. Res. Code §21080.5(d)(2)(D). ARB's regulations specify further that prior to taking action on any proposal for which significant environmental issues have been raised, the decision maker shall approve a written response to each significant environmental issue raised during the public comment period. 17 C.C.R. §60007(a).

ARB's schedule for responding to comments indicates that it will be very difficult for the agency to conduct a meaningful review of public comments and even more unlikely that ARB will be able to prepare adequate responses to public comments. As mentioned above, the FED states that comments should be submitted 10 days before ARB's September 23, 2010 meeting. The FED also states in underlined text that comments must be received "no later than 5:00 P.M., September 22, 2010." ARB is scheduled to consider the Regional Targets at its September 23, 2010 meeting and is required, by statute, to adopt targets by September 30, 2010. Govt. Code §65080(b)(2)(A). This allows ARB little more than a week's time to review, consider and respond to all public and agency comments. This extremely compacted timeline indicates that it will be difficult for ARB to review the comments in a meaningful manner, and all but impossible for ARB to respond to such comments as required by CEQA and its own regulations. This is especially true in light of the number of comments anticipated to be submitted regarding the Regional Targets and the FED. As of [date], xxx comments on the Regional Targets and xxxx comments on the FED had already been posted to ARB's website. It is anticipated that many more comments will be posted before the close of the comment period. Accordingly, ARB has abused its discretion in failing to provide an adequate time to review and respond to comments.[1]

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[1] Statutory deadlines do not relieve an agency from complying with CEQA. For example, under Permit Streamlining Act, Gov't Code § 65920 *et seq.*, local agencies must comply with statutory deadlines for processing and reviewing development permit applications. If the local agency does not comply, the project may be deemed "approved" as long as public notice was provided to the public. Gov't Code § 65956(b). The automatic "approval" under the Permit Streamlining Act does not apply to compliance with environmental review under CEQA, however. *See Land Waste Mgmt. v. Board of Supervisors* (1990) 222 CA3d 950, 961-62 (holding that the Permit Streamlining Act does not require approval of an EIR). In other words, the independent statutory deadlines under the Permit Streamlining Act do not trump CEQA's substantive requirements. More generally, independent statutory deadlines

3. ARB Has Not Allowed Time for Recirculation of a Revised FED with More Feasible Regional Targets and Actual Analysis of the Reasonably Foreseeable Environmental Impacts.

Based on the analysis contained herein and the numerous comments submitted by others, ARB will need to revise the FED to address its many inadequacies. Notably, ARB must modify the Regional Targets to a more feasible level and provide a stable project description that can be adequately analyzed. Once the project description is stable, ARB can actually consider the foreseeable environmental impacts that could result from the targets as suggested in this letter and as evidenced through the information contained in the EIRs prepared for the RTPs. The revised FED will be required to be recirculated for additional public review and comment. 14 C.C.R. §15088.5; *see Joy Road Area Forest & Watershed Assn. v. California Department of Forestry and Fire Protection* (2006) 142 Cal.App. 4th 519, 533-535. ARB's statutory deadline of September 30, 2010 cannot be met if this is to occur. Recirculation is legally necessary under CEQA because the FED is fundamentally insufficient. *Mountain Lion Coalition v. Fish & Game Comm'n.* (1989) 214 Cal.App.3d 1043, 1050-1052.

I. As a Procedurally Flawed Document, the FED Will be Subject to Legal Challenge Under a De Novo Standard of Review and Could Result in Decertification of ARB's Certified Regulatory Program.

In failing to proceed according to CEQA, ARB's decision to approve the Regional Targets is subject to legal challenge. Pub. Res. Code §21080.5(g). While courts accord great deference to an agency's substantive and factual conclusions, whether an agency has complied with applicable procedural requirements is reviewed under the de novo standard. *See e.g. Communities for a Better Env't. v. City of Richmond* (2010) 184 Cal.App.4th 70, 83 (concluding that the claimed deficiencies in the EIR were procedural issues and were therefore subject to de novo review). Accordingly, ARB's failure to proceed according to CEQA, including the FED's failure to include a stable project description, to only conduct a cursory and conclusory analysis, and not provide adequate time for review will be subject to the de novo standard and will not be afforded deference. As the document is procedurally flawed, the court's review of the document will be subject to a lower standard of review.

The FED's failures could also risk de-certification of ARB's certified regulatory program. The Secretary of the Natural Resources Agency must withdraw certification from a program if it no longer meets the criteria for certification. Pub. Res. Code §21085.5(e). The certification criteria requires that documents prepared under the regulatory program do the following: (1) include a description of the proposed activity with alternatives to the activity, and mitigation measures to minimize any significant adverse effect on the environment of the activity; (2) are available for a reasonable time for review and comment by other public agencies and the general public. Pub. Res. Code §21085.5(d)(3). The FED fails to meet the criteria and ARB risks de-certification.

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do not exempt agencies from CEQA's mandates. *See Natural Res. Defense Council v. Arcata Nat. Corp.* (1976) 59 Cal.App. 3d 959, 971-73. Here, ARB's September 30th deadline does not relieve ARB from complying with CEQA's requirement that ARB conduct a thorough environmental review of the Project.

J. ARB's Regulatory Program Exemption to Regulate Ambient Air Quality Does Not Extend to the Regulation of GHG Emissions.

ARB has exceeded its authority in preparing the FED for the reduction of GHG emissions, as such activity is outside ARB's certified regulatory program exemption. The fact that some agency activities come under a certified regulatory program does not exempt the agency from the requirement that an EIR or a negative declaration be prepared for other activities outside the scope of the certified program. *See Californians for Alternatives to Toxics v. Dep't. of Food & Agric.* (2005) 136 Cal.App.4th 1, 16 (pesticide regulation program does not cover disease control program).

ARB's certified regulatory program allows functionally equivalent documents for "that portion of the regulatory program of the Air Resources Board which involves the adoption, approval, amendment, or repeal of standards, rules, regulations, or plans to be used in the regulatory program for the protection and enhancement of ambient air quality in California." 40 C.C.R. §15251. The fact that the exemption explicitly states that it only applies to a "portion" of ARB's regulatory program illustrates that the exemption is intended to be narrowly construed. *See Mountain Lion Found. v. Fish & Game Comm'n.* (1997) 16 Cal.4th 105, 130 (referring to ARB's exemption as one that is "narrowly defined and restrictive in scope.").

ARB's regulation of GHG emissions does not fall within the scope of ARB's exemption for the protection and enhancement of "ambient air quality." Under State law, ARB's air pollution control programs are required to meet state ambient air quality standards and attain ozone, carbon monoxide, sulfur dioxide, nitrogen dioxide and particulate matter standards. 1988 Cal. Stats., ch. 1568, §1; Health & Safety Code §40911(a); *see* 2003 Cal. Stats., ch. 738. These standards form the basis of ARB's air quality planning and associated regulatory programs. Notably, ARB's air quality standards regulatory program does not extend to the regulation of GHG emissions (defined as carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, nitrogen trifluoride). Health & Safety Code §38505(g). Thus, while the certified regulatory program may allow a "functional equivalent" document for regulatory actions related to air quality pollutants regulated by ARB's ambient air quality standards, it does not extend to regulation of GHG emissions. The FED, therefore, falls outside the scope of ARB's certified regulatory program exemption.

Since the Legislature has specified exemptions for certified regulatory programs, other exemptions may not be implied. *City of Coronado v. California Coastal Zone Conservation Comm'n.* (1977) 69 Cal.App.3d 570, 581. Here, ARB's regulatory program has never been approved to allow functionally equivalent documents for the regulation of GHG emissions. While ARB may be moving towards regulating GHG as part of its ambient air quality program, it was not part of the program when the certified regulatory program was approved. Accordingly, since the Legislature has specified an exemption for ARB's regulation of ambient air quality, an exemption to regulate GHG emissions cannot be implied. ARB must prepare an EIR and otherwise comply with CEQA's environmental review requirements.

IV. ARB Has Violated the California Administrative Procedure Act.

ARB's proposed Targets are politically-driven, arbitrary goals that lack any credible evidentiary support. In fact, the largest MPO in the state, the SCAG, recently voted to outright reject ARB's Targets for the region, based on SCAG's careful modeling and analysis of what is reasonably achievable for the region. See Attachment AA, September 2, 2010 SCAG Regional Council Meeting. ARB's proposal to adopt these arbitrarily high Targets violates the California Administrative Procedure Act (APA) because the Targets lack any evidentiary support, and because the Targets are significant mandatory transportation funding criteria that should be adopted as regulations, not as "guidance" thereby avoiding meaningful public participation in the rulemaking process as required by the APA. Govt. Code §§ 11340 et. seq.

A. In Failing to Follow Rulemaking Procedures in Adopting Regional Targets, the Targets will be Invalid for Failure to Comply with the APA.

ARB has committed procedural errors as it appears that ARB will adopt the Regional Targets as guidance rather than as regulations. The APA applies to the exercise of quasi-legislative power and to the adoption of regulations. Govt. Code §§11346, 11340.5. In taking such actions, the APA requires agencies to meet the basic minimum procedural requirements set forth in Govt. Code §§11346-11347.3. The APA was designed in part to prevent the use by administrative agencies of "underground" regulations. *California Advocates for Nursing Home Reform v. Bonta* (2003) 106 Cal.App.4th 498, 506. The APA defines regulations very broadly to include "every rule, regulation, order or standard of general application ....adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure." Govt. Code §11342.600.

The Regional Targets are clearly standards of general application as they will mandate GHG reductions throughout the State. Further, the Regional Targets implement SB 375, a law that is administered by ARB in the adoption of the Scoping Plan, the adoption of targets for GHG reductions, and the review of future SCSs. Accordingly, the Regional Targets should be adopted as regulations. However, ARB has not given any indication that it intends to adopt the Regional Targets pursuant to necessary procedures. For example, ARB has not provided notice of rulemaking in accordance with the APA requirements set forth in Govt. Code §11346.5(a). As such, ARB's adoption of the Regional Targets will be invalid for failure to comply with the provisions of the APA. Govt. Code §11350(a).

B. ARB's Selection of the Regional Targets is Arbitrary and Capricious and Lacking in Evidentiary Support.

ARB's selection of the Regional Targets is arbitrary and capricious and lacking in evidentiary support. *Western Oil & Gas Ass'n. v. Air Resources Bd.* (1984) 37 Cal.3d at 509. Courts have invalidated regulations when an agency fails to provide support for the regulation adopted. In *California Hotel & Motel Ass'n. v. Industrial Welfare Comm'n.* (1979) 25 Cal.3d 200, 212-213, the court considered an agency's order fixing wages, hours and conditions in the public housekeeping industry. The court clarified that in reviewing the validity of an administrative regulation, "a court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice

made, and the purposes of the enabling statute." The court held that the statement of basis, a statement required by the Labor Code to "reflect the factual, legal, and policy foundations for the action taken" issued by the commission simply recited the statutory authority for the commission's action, and included none of the facts or policy choices that supported the order. The court held that the statement of basis was inadequate, and invalidated the order. Similarly, in *Shapell Industries, Inc. v. Governing Bd.* (1991) 1 Cal.App.4th 218, 237, the court invalidated a school facilities fee that a school board imposed on a developer. The court held that the imposition of fees, through a resolution, was a quasi-legislative act that was reviewed for whether it was arbitrary, capricious or completely lacking in evidentiary support. *Id.* at 230. The supporting documentation for the fee resolution did not attempt to determine what percentage of the increase in student population was attributable to new development, and what proportion should be allocated to the developer, resulting in imposition of a fee that was insupportable. Similarly, ARB has acted arbitrarily in selecting the Regional Targets without providing evidentiary support, as discussed below.

1. The Regional Targets Should Be Set at a Level Consistent with What the Scoping Plan Determined Is a Realistic Goal for Regional Transportation-Related GHG Reductions.

As ARB is well aware, the *Climate Change Scoping Plan: A Framework for Change* (Scoping Plan) represents the State's plan for achieving the GHG reductions required by AB 32. Attachment BB. The Scoping Plan sets forth a variety of measures, intended to target all emission-producing sectors within California that will, collectively, achieve these GHG emission reductions. With respect to GHG reductions associated with land use patterns, the Scoping Plan recognizes the final SB 375 reductions will be determined through the SB 375 process; however, it estimates five million metric tons of CO_2 equivalent (MMTCO2E) as the recommendation for regional transportation-related GHG reductions. Scoping Plan at 51. This reflects the reduction from business as usual (BAU) 2020 projections, not from the 2005 base year, as is reflected in the Regional Targets. *Compare* Scoping Plan at 11-14 (describing use of BAU metric) *with* Attachment CC, ARB, Staff Report: Regional Greenhouse Gas Emission Reduction Targets for Automobiles and Light Trucks Pursuant to Senate Bill 375, Aug. 9, 2010 (Staff Report) at 8 (explaining Regional Targets are set relative to 2005 base year).

In addition, the Scoping Plan recognized that its 5 MMTCO2EE target reflects a recognition that absolute GHG emissions from passenger vehicles will increase from current levels. Specifically, the Scoping Plan and related documents state that ARB's BAU projection for land use and transportation was based on an assumed annual vehicle miles traveled growth in aggregate of 2.2% per year, and an assumed annual population growth of 1.2% per year. *See* Attachment BB, Climate Change Proposed Scoping Plan Appendices, page H-7; Attachment DD, Comments on the ARB's Updated Economic Impacts Analysis, page 5-6; Attachment BB, Scoping Plan at 50-51. Notwithstanding these stated assumptions (which would necessary result in an exponential increase in per capita emissions assuming static fleet efficiency and fuel standards), the Scoping Plan also includes a graph depicting a BAU projection which is wholly unrelated to the Scoping Plan's stated assumptions – Figure 4 at 50. The graph shown on the Scoping Plan's Figure 4 does not depict an exponential equation, but instead reflects two

seemingly randomly-chosen, connected straight lines to depict the BAU projection from 2010 to 2030 and from 2030 to 2050.

No matter which 2020 BAU projection is used (i.e., one based on the Scoping Plan's stated assumptions, which indicates exponential growth, or the other based upon the seeming random equation depicted in the Scoping Plan's Figure 4), the Scoping Plan, taking into account the 5 $MMTCO_2E$ placeholder target, aims for a moderate reduction from a 2020 BAU, but also assumes that there will be an absolute growth in GHG emissions between 2005 and 2020. The Regional Targets would instead *reduce* absolute GHG emissions between 2005 and 2020 by three MMTCO2E, notwithstanding the need to accommodate ongoing population growth. Accordingly, while ARB estimates that the Regional Targets will result in a three $MMTCO_2E$GHG reduction by 2020 (FED at 6; *see also* Attachment EE, Proposed SB 375 Greenhouse Gas Targets: Documentation of the Resulting Emission Reductions Based on MPO Data), and the Scoping Plan envisions a five MMTCO2E GHG reduction from some BAU projection (Attachment BB, Scoping Plan at 51), the Regional Targets' reductions in fact call for far more dramatic reductions than envisioned by the Scoping Plan. The lower figure reflected in the Regional Targets' projections is the result of measuring against a 2005 baseline, rather than the 2020 BAU projection reflected in the Scoping Plan.

The Scoping Plan's target of regional transportation-related GHG reductions was based upon a U.C. Berkeley study that considered GHG reductions achievable from a combination of land use and enhanced transit policies, and reflects a 4% per capita vehicle miles traveled (VMT) reduction over a 10-year period. See Attachment BB, Scoping Plan at 50. In contrast to the Scoping Plan's estimates, achieving even just a 6% reduction in per capita GHG by 2020, which is lower than the overall Regional Targets, would result in a cumulative reduction of approximately 20 $MMTCO_2E$ relative to the 2020 BAU projection (relative to the Scoping Plan's stated assumption, not the Scoping Plan's unsupported Figure 4 BAU projection). *See* Attachment FF, July 16, 2010 Memorandum from Andy Henderson, BIA of Southern California, Inc., to Terry Roberts, ARB.[2] This is *four times* higher than the reduction envisioned by the Scoping Plan and included in the Scoping Plan's accompanying economic analysis. Even if one were to compare the Regional Targets to a 5 $MMTCO_2E$ reduction from the 2020 BAU projection shown on the Scoping Plan's Figure 4 (without support), the Regional Targets still exceed the Scoping Plan placeholders target by a factor greater than three in terms of $MMTCO_2E$ reductions achieved in 2020.

Like the Scoping Plan's other emission-reduction measures, the five $MMTCO_2E$ recommended action reflects the balance ARB previously struck between recognizing the difficulties of regulating land use, which is governed at the local level, while still calling for meaningful GHG reductions to be achieved as a result of changes in land use patterns. *See* Attachment BB, Scoping Plan at 26-27. Unfortunately, the Regional Targets represent a retreat from this balance, and instead are based upon purely aspirational goals, and is arbitrary and

[2] As explained in the attached memorandum, this analysis is based upon the five scenarios analyzed by the Southern California Association of Governments (SCAG). The per capita VMT reductions, and associated GHG reductions, considered by SCAG were extrapolated to a state-wide level to determine the likely effect of the type of Regional Targets being considered by ARB.

capricious. Moreover, despite grossly exceeding the reduction called for in the Scoping Plan, ARB falsely implies that the Regional Targets are necessary to meet AB 32 goals: "When these reductions are applied to the most recent statewide 2020 emissions forecast, the emissions target for passenger vehicles in California's 2008 Climate Change Scoping Plan is met." Attachment CC, Staff Report at 22 (emphasis added). This is highly misleading given that the Regional Targets exceed what the Scoping Plan envisions by at least several times over.

ARB should revise the Regional Targets to be consistent with the analysis the agency previously employed in the Scoping Plan. Such an approach would result in an accurate project description that permits a meaningful analysis of potential project impacts.

2. The Regional Targets Should Be Consistent with What MPOs Determined Was Feasible.

As mandated by SB 375, in developing the Regional Targets, ARB sought technical input from each of California's MPOs. The MPOs were asked to develop various GHG emission reduction scenarios. Most MPOs, in turn, provided scenario analyses representing various levels of GHG emission reduction aggressiveness and achievability. Many MPOs also provided follow-up analysis, including in response to additional questions asked by ARB.

As a threshold matter, given the short timeframe during which MPOs were providing information to ARB, and that ARB was developing its proposed Regional Targets and the FED, it is impossible that ARB had time to sufficiently analyze and consider the substantial information provided by the MPOs and consider the associated environmental impacts. For example, the Sacramento Area Council of Governments (SACOG) did not even recommend adoption of Regional Targets prior to release of the FED. Attachment CC, Staff Report at 27. And, as discussed in more detail below, within days of ARB making its recommendations on Regional Targets, one MPO, the Metropolitan Transportation Commission (MTC), submitted evidence that substantially undermines the proposed Regional Targets.

Although ARB purports to have relied upon these analyses in setting the Regional Targets (*see, e.g.,* Attachment CC, Staff Report at 23), rather than taking the time to truly understand the initial information submitted by the MPOs, it appears ARB cherry picked from the information provided, and some MPOs reverse engineered numbers to satisfy the desired outcomes. Using the MTC and the SCAG) as examples, the discussion that follows demonstrates the Regional Targets are not realistic and were not under consideration when the FED was prepared.

Although MTC and SCAG are described in more detail below, the Regional Targets developed for other MPOs suffer from similar analytical flaws. Moreover, the Targets are not consistent with what any of the MPOs considered feasible and are grossly inconsistent with what was considered in the latest Regional Transportation Plans and the EIRs prepared for adoption of those plans. This information is attached; ARB must analyze how these Targets will affect each MPOs RTP and the environmental impacts considered in adopting the RTPs. Attachments Z. The change from the current RTPs to the RTPs that will be required to actually meet the

Regional Targets provide the basis of the environmental impacts that a properly prepared FED should analyze.

a) The Regional Targets for MTC Are Not Supported by MTC's Analysis.

ARB proposes Regional Targets for MTC of 7% in 2020 and 15% in 2035. The analysis submitted by MTC demonstrates these Regional Targets are wholly unrealistic and were not what was considered by the MPO or ARB during the time in which ARB was preparing the FED. MTC provided ARB with a memorandum, dated May 17, 2010 (MTC May 17 Memo) that set forth eight different scenarios for land use patterns within the Bay Area. See Attachment U. These scenarios incorporated varying assumptions regarding the degree of emphasis on building new infrastructure versus maintaining existing facilities, and incorporating various pricing and land use planning strategies. MTC's analysis demonstrates that a 5% 2020 reduction in per capita GHG emissions and a 3% 2035 reduction are the most achievable targets, based on realistic land use and pricing assumptions; nevertheless, based upon this analysis, MTC determined it could achieve a 5% per capita GHG reduction by 2020 and a 5% reduction by 2035. Attachment U, MTC May 17 Memo at 3.

In considering scenarios resulting in higher per capita GHG reductions, MTC recognized that implementing the necessary pricing and land use assumptions to achieve reductions in line with the proposed Regional Target would not be realistic "by any stretch of the imagination." Attachment U, MTC May 17 Memo at 2; *see also* Attachment HH, Transportation 2035 Plan Final Environmental Impact Report, Findings and Facts in Support of Findings at A-68; A-74 to A-75 (describing infeasibility of implementing RTP with aggressive pricing or land use assumptions included). For example, the information provided by MTC shows that the Most Aggressive Scenario assumes an astronomical 460% increase in auto costs per mile. Attachment U, MTC May 17 Memo at 2. Not only is imposing such aggressive measures wholly unrealistic, but MTC also lacks the legislative authority to implement the pricing structures necessary to achieve reductions. Gov't. Code §§ 66500 - 66536.2; Attachment II, MTC Presentation dated August 13, 2010 at 14.

Further, only a portion of MTC's funds are available to be used for the new infrastructure necessary to support the new land use models. MTC's budget for new projects is severely constrained as a majority of the budget is reserved by law for certain types of infrastructure or has already been allocated by MTC to identified projects. The MTC Transportation 2035 Plan for the San Francisco Bay Area (T-2035 Plan), adopted on April 22, 2009, Attachment JJ, includes a $218 billion budget that was developed to determine the revenue anticipated to be available during the T-2035 Plan period. The T-2035 Plan budget dedicates approximately $177 billion (81% of total funds) to maintenance and operation/efficiency and approximately $41 billion (18% of total funds) to expansion of transit systems, highways, and local roads. With respect to construction of new infrastructure, $30 billion (14% of total funds) dedicated to expansion will be spent on transit projects, and $7 billion (3% of total funds) will be used for road projects. T-2035 Plan at 35-37. Further, the total T-2035 Plan budget dedicates $186 billion (85%) to "Committed Funds," which are funds that have been reserved by law for specific uses or allocated by MTC action prior to development of the plan, and $32 billion (15%) to

"Discretionary Funds," which may be allocated to projects through the T-2035 Plan planning process. *Id.* at 38. This fiscal situation leaves no money to accomplish the aggressive changes necessary to meet these inflated targets.

Thus, MTC's originally-prepared, technically-supportable analysis demonstrates MTC's determination that ambitious, but achievable Regional Targets for the Bay Area are 5% in 2020 and 5% in 2035, and record evidence shows the impossibility of achieving the more ambitious scenarios MTC analyzed. However, apparently responding to pressure from ARB to recommend higher targets, and without understanding the consequences of doing so, MTC later submitted additional data suggesting the originally-proposed 5%/5% target may not be achievable because these targets are based on flawed data and are grossly unrealistic. See Attachment Y,MTC Presentation dated July 28.

After submitting the carefully-reasoned scenario analysis described above, MTC responded to ARB's June 2010 request to each MPO for additional information. See Attachment LL, MTC Follow-up Questions Revised: 6/1/10. One of the questions asked MPOs to explain whether its scenario analysis accounted for the impacts of the recession. In response, MTC stated that updated projections suggest the Bay Area will have approximately 157,000 fewer employed residents in 2035; incorporating this projection would result in an approximately 5% reduction in weekday pounds of GHG emissions per capita in 2020 and 2035 compared to what was analyzed in MTC's May 17 Memo. *Id.* at 1. This appears to be a key basis – as no other evidence is included in the record – for increasing the GHG reduction targets so substantially over MTC's original recommendations. Thus, while many observers thought that taking the recession and poor economy "into account" in target setting would result in incorporating realistic assumptions about the ability of regions to invest in land use strategies and employ pricing strategies to reduce GHG emissions, the opposite has occurred. MPOs are now actually *planning for* fewer jobs and less economic growth as a principal GHG reduction "strategy."

Notwithstanding the questionable use of employment projections as a GHG emission-reduction strategy, MTC later determined it made factual errors resulting in vastly overstating the potential GHG reductions it could achieve. *Id.* Even when incorporating these extremely aggressive assumptions regarding potential effects of the recession on potential emissions (*i.e.,* assuming substantial reduction in employment levels), MTC determined the scenario recommended in its May 17 Memo would result in just a 3.3% per capita reduction in 2020 and 1.5% reduction in 2035, and the most aggressive (*i.e.,* unrealistic) scenario would result in just 10.5% reductions in 2035. *Id.*

Disregarding both this analysis, and the originally-submitted scenario analysis, on July 28, 2010, MTC adopted "Bay Area Principles for Establishing Regional Greenhouse Gas (GHG) Targets," which included endorsement of a 7% per capita GHG reduction by 2020 and a 15% reduction by 2035. See Attachment MM. These targets were adopted without any evidence of their feasibility. Indeed, MTC Commissioner Sue Lempert essentially acknowledged these goals were based more upon aspiration than technical feasibility: "...and then lastly, it's a goal and I really can't see the downsides of having a more aggressive goal and then for some reason not being able to make it. This was all thrashed out in the legislature and that's why there's an

alternative strategy. I don't see what we have to lose in upping the ante in 2035 and I would support the higher thing..." Attachment NN, Audio file from July 28, 2010 MTC Hearing.

Even more compelling evidence that the numbers were shifting during preparation of the FED, On August 5, 2010 MTC sent a memorandum demonstrating that its scenarios will achieve even less GHG reduction than MTC had previously represented to ARB. Attachment OO, MTC Memorandum to ARB, August 5, 2010. In fact, the information as of August 5, 2010 shows essentially *zero* GHG (and VMT) reductions in 2020 and 2035. *Id.* Thus, all evidence suggests that even MTC's originally-recommended targets of a 5% per capita GHG reductions in 2020 and 5% reduction in 2035 would be difficult to achieve. MTC's recommendation appears to have been politically – not empirically – driven. MTC's recommendation, and ARB's adoption of it, are arbitrary and capricious, and not supported by the factual record. In order to achieve the 2035 goal, the following highly implausible events would need to occur: (1) increase the population of San Francisco by 40,000-200,000; (2) increase the population of Oakland by 50,000; (3) increase the population of San Jose by 55-60,000; and (4) double round-trip auto commute costs from Fairfield to Oakland from and reduce the speed limit to 55 mph. Attachment X, July 9 ARB presentation slide 19 and Attachment Y, July 28 presentation slide 11, 12.

b) The Regional Targets Suggested for SCAG Are Not Supported by SCAG's Analysis, and Were Consequently Rejected by a Vote of SCAG's Regional Council on September 2, 2010.

ARB has proposed Regional Targets for SCAG of 8% in 2020 and 13% in 2035. Like MTC, in response to ARB's request for information from the MPOs, SCAG provided detailed analysis of five scenarios. This analysis demonstrates that "ambitious and achievable" targets are between 7 and 8% for 2020 and 5 and 6% for 2035. Attachment PP, SCAG Scenario Exercise at 1-2; Attachment GG, Appendix 4-3. SCAG also considered two other scenarios – Scenarios 4 and 5 – which reflect "the most aggressive improvements in transportation infrastructure and policy," and for Scenario 5, "optimization of land uses *beyond what has been vetted or supported by local jurisdictions*." Attachment PP, SCAG Scenario Exercise at 2 (emphasis added). These scenarios would result in per capita GHG reductions between 9% and 10% in 2020, and 10 to 12% for 2035 – still shy of the 15% 2035 Regional Target recommended by ARB. Attachment GG at Appendix 4-3.

SCAG's analysis clearly demonstrates that the assumptions in Scenarios 4 and 5 are not currently achievable. *See, e.g.,* Attachment GG at Appendix 4-2 ("In brief, scenarios 2 and 3 represent ambitious and achievable GHG reductions for the SCAG region, while scenarios 4 and 5 are ambitious but not achievable for this cycle given funding constraints and other feasibility considerations."); Attachment PP, SCAG Scenario Exercise at 5 ("many assumptions [reflected in Scenario 5] are not feasible within the current political and financial climate."). SCAG also provided additional justification to ARB, defending the assumptions used – and the ambitious goals reflected – in the scenarios it submitted. See Attachment G, SCAG Aug. 4 letter. And, as

noted, Scenarios 4 and 5 would still result in lower GHG reductions than the recommended 2035 Regional Target.

In addition, as explained in response to ARB's follow-up questions, SCAG's scenarios fully account for the impacts of the recession. Attachment LL, SCAG Follow-up Questions Revised: 6/1/10 at 1. Thus, unlike in the case of MTC, discussed above, it cannot be said that SCAG needed to adjust its targets to reflect reduced employment levels likely to result from the economic downturn. This material also explains that the reason for the lesser reduction in 2035 relative to 2020 under SCAG's Scenarios 2 and 3 is the assumptions of future vehicle mix embedded in the modeling methodology. *Id.* at 2. Although SCAG recognized the model's assumptions regarding vehicle mixes may be flawed, it appropriately declined to engage in speculative analysis of how to change these assumptions. *Id.*

Despite SCAG's detailed analysis, including its additional justification, ARB arbitrarily and capriciously selected a 2035 target that does not reflect SCAG's assessment of what is actually achievable; and ARB provided no evidence refuting SCAG's analysis. The Staff Report acknowledges as much, noting that ARB staff selected a GHG reduction target of 13% because it is "more in line with the other major MPOs." Attachment CC, Staff Report at 24-25. However, the other targets are also set too high and, as ARB itself recognizes throughout the FED and Staff Report, what is an appropriate target for one region is not necessarily appropriate for another. *See, e.g.,* FED at 3 (explaining that Regional Targets account for different growth rates between MPO regions, and different early actions being taken to reduce GHG emissions). In addition, SB 375 builds in the ability to revisit Regional Targets at the appropriate time. Thus, if assumptions underlying the models used to project 2035 reductions need to be revised, this will occur at the appropriate time, based on supportable assumptions. In contrast, arbitrarily setting a target now, without support, is not appropriate and will result in significant environmental impacts.

SCAG's Regional Council apparently agrees that CARB's Targets are inappropriate, and on September 2, 2010, SCAG's Regional Council voted to reject CARB's proposed Targets. Instead, SCAG voted to recommend lower targets of 6% by 2020 and 8% by 2035. Although SCAG's staff had recommended supporting ARB's higher proposed Targets (SCAG Staff Report re: SB 375 Final Draft Regional Targets, September 2, 2010, prepared after ARB released the Targets but before the SCAG Regional Council voted on the Targets, and referred to herein as SCAG Staff Report), the SCAG Staff Report contains an analysis that was reverse engineered to support those Targets, and reflects a reluctance to change SCAG's original analysis. The SCAG Staff Report refers to the "new analysis" which simply reflects a retroactive manipulation of SCAG's original, unbiased analysis in an effort to demonstrate that the Targets are now "possibly achievable." Attachment QQ, SCAG Staff Report at 2; *see also* Attachment QQ, SCAG Staff Report, Attachment 1. Indeed, staff appears to have been reluctant to amend its initial, analytically supported characterization of scenarios that would achieve GHG emission reductions in line with the Regional Targets; unlike SCAG's original recommendation, which it determined was "ambitious and achievable," the SCAG Staff Report still refers to the higher targets as simply "ambitious." Attachment QQ, SCAG Staff Report at 2, 5.

As demonstrated in the SCAG Staff Report, staff employed a number of assumptions that, collectively, make enough changes to the reasonable assumptions SCAG previously

employed in its scenarios analysis to enable SCAG to demonstrate a 13% reduction in 2035. Attachment QQ, SCAG Staff Report at 5; *see also* Attachment QQ, SCAG Staff Report, Attachment 1. These assumptions are wholly unrealistic and demonstrate the 2035 target cannot be attained. For example, in order to achieve the 2035 Regional Target, travel demand management measures would have to be imposed that result in a 174% increase in vanpools, a 144% increase in carpools, and a 20% increase in walking and biking, from the previous levels SCAG assumed; SCAG acknowledges that these goals come, not from its own region's analysis, but are based on analysis performed by the San Diego Association of Governments. Attachment QQ, SCAG Staff Report at 5. And, an additional 2.5% reduction in non-motorized transportation VMT would be required, along with an additional automobile operating cost of $0.02/mile. *Id.* The Staff Report includes no demonstration of the feasibility of these changes, or any explanation of why the analysis in the original scenarios documentation was flawed. In fact, the SCAG Staff Report recognizes that achieving the Regional Targets would require SCAG's "partners and the State and Federal governments . . . to show commitment to implement and fund the underlying measures, or measures that achieve equivalent results." Attachment QQ, SCAG Staff Report at 5. However, SCAG's Staff Report provides no evidence demonstrating the "significant funding" and policy changes that would be required are actually realistic. *Id.* And, as discussed in further detail below, SB 375 provides no independent source of funding or policy making authority. Apparently SCAG's Regional Council agreed that these assumptions are unrealistic and cannot support the higher Targets when it voted to reject ARB's Targets. ARB's proposed adoption of the Regional Targets is arbitrary and capricious, and not supported by the original, well-supported analysis provided by SCAG.

Even with respect to achieving ARB's higher 2020 target of 8%, SCAG's analysis suggests this would require major investment that may not be realistic in the current economic climate. For example, to achieve Scenario 3, an additional $15 billion must be invested in transit. Attachment QQ, SCAG Scenario Exercise at 3. In addition, this scenario assumes substantial investment in travel demand management, including non-motorized transportation systems. *Id.* Whether funding for these improvements will be available is highly questionable. The unreasonableness of these assumptions is reflected in SCAG Regional Council's vote to reject ARB's proposal and recommend a lower 6% target for 2020.

Thus, as with MTC, the original analysis and recommendations provided by SCAG to ARB reflect "ambitious but achievable" targets. Unfortunately, the ARB process that followed preparation of this sound analysis was driven by politics, not analytical integrity. ARB cites to no evidence demonstrating the Targets are feasible and therefore likely to achieve SB 375 goals. As a result, SCAG's Regional Council was forced to take the dramatic step of rejecting the Targets. The record reflects that the proposed Regional Targets are in excess of what is achievable, demonstrating that ARB's selection of the Targets is arbitrary and capricious.

3. There is No Evidence to Support the Targets Selected for Each Region.

There is no evidence in the FED to support the rationale for adopting ARB's Targets. There is no indication that the characteristics of each region, including regional climate change

patterns, existing land development patterns, existing and feasible new transit services, and other relevant characteristics, have been taken into consideration in selecting the Regional Targets.

ARB's failure to consider the regional characteristics in selecting GHG reduction targets is particularly well illustrated in the case of regions that face numerous development constraints, yet have been allocated increases in regional GHG emissions. For example, in Monterey growth is limited by the lack of water supply and continued litigation challenging the general plan. Attachment RR, Board of Supervisors Reviews Latest Version of Monterey County General Plan. In Santa Cruz and Santa Barbara, a number of growth control ordinances and organizations have limited growth for decades. Attachment SS, Santa Cruz Housing Forum Kicks Off; Attachment TT, 'Slow Growth' Has Come at a Cost in Santa Barbara. Despite significant growth constraints, the MPOs associated with these jurisdictions have been allocated GHG increases.

Further, the Staff Report acknowledges that certain GHG reduction targets were selected based on comparisons with the GHG reduction targets. In selecting the GHG reduction target for SCAG, the Staff Report notes that ARB staff selected a GHG reduction target of 13% because it is "more in line with the other major MPOs." Attachment CC, Staff Report at 24-25.

Accordingly, there is no indication that ARB has considered the characteristics of each region in selecting the Targets. ARB's selection of Regional Targets lacks evidentiary support and is arbitrary and capricious in light of the fact that ARB failed to consider the GHG reduction targets recommended, and supported by evidence, by the MPOs.

4. The Regional Targets Are Not Consistent with the Methodology and Goals of GHG CEQA Guidance Being Developed by Air Districts.

ARB's methodology in developing the Regional Targets is also inconsistent with the GHG CEQA guidance being developed by various air districts. Despite ARB's early indication that it would take a leadership role and develop guidance that could be used by lead agencies throughout the state in evaluating GHG impacts under CEQA, ARB has failed to follow through with this effort. Thus, air districts throughout the state struggling to fill this vacuum have been developing CEQA GHG guidance. Not surprisingly, the result of this disjointed effort has been a hodge podge of inconsistent approaches. However, ARB has ignored the work by air districts in setting the targets.

Some districts, like the San Joaquin Valley Air Pollution Control District (SJVAPCD) have adopted guidance that utilizes methodology and goals consistent with the Scoping Plan. *See* Attachment UU, Guidance for Valley Land Use Agencies in Addressing GHG Emission Impacts for New Projects Under CEQA at 5 (describing use of BAU metric and 29% below BAU significance threshold). In contrast, as detailed above, the Regional Targets reflect neither the goals, nor the methodology utilized in the Scoping Plan.

Other agencies, like the Bay Area Air Quality Management District (BAAQMD) employed a wholly different methodology and attempted to determine what level of emission

reductions must be achieved within a particular air basin, and structured the significance threshold to achieve these reductions. *See* Attachment VV, California Environmental Quality Act: Air Quality Guidelines (BAAQMD Guidelines), Appendix D at D-14 to D-16. The Regional Targets do not reflect BAAQMD's goals or methodology either.

In fact, the Regional Targets would produce contradictory results to the BAAQMD Guidelines. As many interested parties have noted, the BAAQMD Guidelines will likely result in a disinvestment in infill development within the Bay Area. *See* Attachment WW, Letters submitted to BAAQMD re BAAQMD Thresholds. Specifically, the "Community Risks and Hazards" threshold places such extreme limitations on potential exposure to TACs that the cost of infill development will become prohibitive, especially for affordable housing. Attachment WW. The type of dense, urban development that would have to occur to comply with MTC's Regional Target would preclude inclusion of mitigation measures such as setbacks and tree-planting that would ordinarily be imposed to address TAC risks. In addition, the new thresholds, therefore, are not compatible with the type of extremely intense urban development that would be required to comply with MTC's Regional Target.

Thus, the Regional Targets are not consistent with the goals of these various guidance documents, and the methodology utilized by ARB is not aligned with the approaches employed by the air districts. The Regional Targets do not employ the sound, Scoping Plan-derived approach utilized by the SJVAPCD, and are at odds with the requirements of the BAAQMD Guidelines. ARB's failure to align the Regional Targets with CEQA guidance being developed by air districts leads to questions about the methodology and goals employed by ARB and highlights the agency's failure to take a leadership role in developing statewide CEQA GHG guidance.

5. Regional Targets are Inconsistent with the Recommendations of the Regional Targets Advisory Committee.

As noted above, the FED duplicated analysis from the RTAC Report regarding potential beneficial impacts and other potential significant impacts, demonstrating ARB's abdication of responsibility to consider the actual environmental impacts of the Regional Targets in the FED.

In contrast, the Regional Targets themselves are inconsistent with the recommendations of the RTAC. The RTAC Report was compiled after many months of stakeholder collaboration and public input to guide ARB's development of the Regional Targets. The RTAC Report thoughtfully laid out the process and methodology that ARB should undertake in developing the Regional Targets. There are several items that ARB did not consider consistent with the RTAC Report. For example, the RTAC Report called for consideration of regional variation in the level of sophistication in modeling and use of BMPs. Attachment T, RTAC Report at 8. The RTAC report did not call for varying the Targets themselves based on levels of MPOs sophistication - the Targets should be based on what is achievable in each region and the Regional Targets do not explain how the variation correlates to achievability. The RTAC Report also called for flexibility in achieving Targets. Attachment T, RTAC Report at 23. The flexibility included development creditable strategies and accurate methods. *Id.* The grossly inflated pricing that is

necessary to meet the Regional Targets is just one example of how means to achieve the Targets are neither creditable nor accurate, and are therefore arbitrary and capricious.

Further, the RTAC recommendations stress the need for a transparent, public participation and making the underpinnings of the Targets clear and understandable to the public. Attachment T, RTAC Report at 9, 16, 31. The Targets are not clear even to development experts, let alone the public. The process that RTAC laid out included seven steps, including a step for ARB and MPOs to work together to understand the MPOs final recommendations. It does not appear that meaningful coordination occurred given the MPOs submitted their recommendations days before or even after ARB's publication of the Targets. ARB's failure to follow the RTAC recommendations is yet another example of its failure to consider relevant factors and demonstrate a rational basis for selecting Targets. ARB's selection of the Targets is therefore arbitrary and capricious.

V. Conclusion

For all of the foregoing reasons, CBIA suggests that ARB not adopt the proposed Regional Targets because to do so would violate numerous state laws and subject ARB to significant litigation risk. ARB should review the information provided by the MPOs, select achievable Regional Targets and then consider the environmental impacts of those targets and alternatives to those targets, consistent with the requirements of CEQA and the APA.

Sincerely,

Richard Lyon
California Building Industry Association

CBIA Letter to ARB

Index of Attachments

Attachment x	Title	Link	Saved to System?
Attachment A	Memorandum to ARB from the Executive Directors of the 4 Largest MPOs, May 18, 2010, p. 18	www.arb.ca.gov/cc/sb375/mpo/prelimreport.mtc.sacog.sandag.scag.pdf	**Yes**
Attachment B	MTC Alternative Scenario Data Request	http://www.arb.ca.gov/cc/sb375/mpo/mtc_abag/alt_scenario_mtc72710.pdf	**Yes**
Attachment C1 and C2	ABAG Housing Statistics, 2007 & 2009	Sent via email	**Yes**
Attachment D	Sacramento Blueprint	http://www.sacregionblueprint.org/implementation/pdf/blueprint-book.pdf	**Yes**
Attachment E	California Environmental Quality Act Functional Equivalent Document, App. J to the Scoping Plan, Ch. IV	http://www.arb.ca.gov/cc/scopingplan/document/appendices_volume3.pdf	**Yes**
Attachment F	Functional Equivalent Document Renewable Electricity Standard	http://www.arb.ca.gov/regact/2010/res2010/res10e.pdf	**Yes**
Attachment G	Letter from Hasan Ikhrata, SCAG, to Mary Nichols, ARB, Aug. 4, 2010	http://www.arb.ca.gov/cc/sb375/mpo/scag/ghg_measures_scag8410.pdf	**Yes**
Attachment H	City of Roseville, Office of Economic Development, Demographic, Development and Employment Profile 2007	http://www.roseville.ca.us/civica/filebank/blobdload.asp?BlobID=10267	**Yes**
Attachment I	City of Rancho Corbova, General Plan: Economic Development Element	http://www.cityofranchocordova.org/Index.aspx?page=298	**Yes**
Attachment J	Cost of AB 32 on California's Small	http://www.sbaction.org/get_resource.php?table=resource_kmqap4_18z4ys&id=kmqaq1	**Yes**

	Businesses	1ed1wo.	
Attachment K	Per Capita Energy Statistics	http://www.statemaster.com/graph/ene ele pow ind emi co2 percap-industry-emissions-co2-per-capita	**Yes**
Attachment L	Greenness of Cities	http://www.hks.harvard.edu/rappaport/downloads/policybriefs/greencities_final.pdf	**Yes**
Attachment M	EPA Guidance: Improving Air Quality	http://www.epa.gov/OMS/stateresources/policy/transp/landuse/r01001.pdf.	**Yes**
Attachment N	Health Risk Assessment Guidance for Analyzing Cancer Risks from Mobile Source Diesel Emissions	http://www.aqmd.gov/ceqa/handbook/mobile_toxic/mobile_toxic.html.	**Yes**
Attachment O	Air Quality and Land Use Handbook: A Community Health Perspective	http://www.arb.ca.gov/ch/handbook.pdf	**Yes**
Attachment P	California Department of Education, School Site Selection and Approval Guide	http://www.cde.ca.gov/ls/fa/sf/schoolsiteguide.asp.	**Yes**
Attachment Q	BAAQMD Screening Tool: Cancer Risk	(Sent by Nicholas)	**Yes**

Attachment	**Title**	**Link**	**Saved to System?**
Attachment R	San Francisco Bay Regional Water Quality Control Board, Municipal Regional Stormwater NPDES Permit, Order No. R2-2009-0074	http://www.swrcb.ca.gov/public notices/petitions/water quality/docs/a2057n sanmateo cnty/a2057npetitionpart2.pdf	**Yes**
Attachment S	State Water Resources Control Board, General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2009-0009-DWQ	http://www.waterboards.ca.gov/water issues/programs/stormwater/docs/constpermits/wqo 2009 0009 complete.pdf	**Yes**
Attachment T	Recommendations of the Regional Targets Advisory Committee (RTAC) Pursuant to Senate Bill 375 (RTAC Report)	http://www.arb.ca.gov/cc/sb375/rtac/report/092909/finalreport.pdf	**Yes**

Attachment U	Memorandum to MTC from S. Heminger, May 17, 2010	**Sent via email**	**Yes**
Attachment V	California Electric Magnetic Fields Program, a project of the California Dep't of Health Services and the Public Health Institute (1999)	http://www.ehib.org/emf/shortfactsheet.PDF	**Yes**
Attachment W	July 20, 2010 letter re: Social Equity in SB 375 Target Setting	**http://www.climateplanca.org/CARB%20Social%20Equity%20Letter_FINAL.pdf**	**Yes**
Attachment X	MTC Presentation July 9, 2010, Slide 19	**http://apps.mtc.ca.gov/meeting_packet_documents/agenda_1521/7_9_10_PC Targets Presentation.ppt**	**Yes**
Attachment Y	MTC Presentation July 28, 2010, Slide 11	**http://apps.mtc.ca.gov/meeting_packet_documents/agenda_1531/7_28_10_Commission_GHG_Targets_Presentation_v1.pdf**	**Yes**
Attachment Z	MPO RTP and EIRs	**SACOG** 1) MTP "MTP2035": http://www.sacog.org/mtp/2035/final-mtp/ • There is not a single pdf file with the entire MTP. The link takes you to a webpage where all of the chapters and appendices are separated into individual links. 2) EIR (156 Pages): http://www.sacog.org/mtp/2035/finaldocs/eir/Final%20EIR.pdf Website Link: http://www.sacog.org/mtp/2035/final-eir/ **MTC** 1) RTP "T2035" (160 Pages): http://www.mtc.ca.gov/planning/2035_plan/FINAL/T2035_Plan-Final.pdf Website Link: http://www.mtc.ca.gov/planning/2035_plan/ 2) EIR (483 Pages): http://www.mtc.ca.gov/planning/2035_plan/EIR/final/MTC_FEIR-web.pdf Website Link: http://www.mtc.ca.gov/planning/2035_plan/EIR.htm	**Yes**

		SANDAG 1) RCP "Regional Comprehensive Plan 2004" (426 Pages): http://www.sandag.org/uploads/publicationid/publicationid_1094_3362.pdf • RCP only goes out to 2030 and development is underway on 2050 RTP. Website Link: http://www.sandag.org/index.asp?projectid=1&fuseaction=projects.detail 2) EIR (352 Pages): http://www.sandag.org/uploads/publicationid/publicationid_1083_3275.pdf Website Link: Same as above. **SCAG** 1) RTP "2008 RTP" (220 Pages): http://www.scag.ca.gov/rtp2008/pdfs/finalrtp/f2008RTP_Complete.pdf Website Link: http://www.scag.ca.gov/rtp2008/index.htm 2) EIR(655 Pages): http://www.scag.ca.gov/RTPpeir2008/pdfs/final/2008Final_RTPpeir_addendumSections1-7.pdf Website Link: http://www.scag.ca.gov/environment/eir.htm	

Attachment	Title	Link	Saved to System?
Attachment AA	SCAG Regional Council Meeting	http://www.scag.ca.gov/spotlight/sep10.htm	Yes
Attachment BB	Climate Change Scoping Plan: A Framework for	http://www.arb.ca.gov/cc/scopingplan/document/adopted_scoping_plan.pdf	Yes

	Change		
Attachment CC	ARB, Staff Report: Regional Greenhouse Gas Emission Reduction Targets for Automobiles and Light Trucks Pursuant to Senate Bill 375	http://arb.ca.gov/cc/sb375/staffreport_sb375080910.pdf	Yes
Attachment DD	Comments on the ARB's Updated Economic Impacts Analysis	http://www.climatechange.ca.gov/eaac/documents/eaac_reports/2010-03-23_EAAC_REPORT_Appendix.pdf	Yes
Attachment EE	Proposed SB 375 Greenhouse Gas Targets: Documentation of the Resulting Emission Reductions Based on MPO Data	http://arb.ca.gov/cc/sb375/mpo.co2.reduction.calc.pdf	Yes
Attachment FF	July 16, 2010 Memorandum from Andy Henderson, BIA of Southern California, Inc., to Terry Roberts, ARB	email	Yes
Attachment GG	MTC Memo dated May 17, 2010	Sent by email	Yes
Attachment HH	Transportation 2035 Plan Final Environmental Impact Report, Findings and Facts in Support of Findings	http://www.mtc.ca.gov/planning/2035_plan/EIR/final/MTC_FEIR-web.pdf	Yes
Attachment II	MTC Presentation dated August 13, 2010	Sent via email	Yes
Attachment JJ	MTC Transportation 2035 Plan for the San Francisco Bay Area (T-2035 Plan)	http://www.mtc.ca.gov/planning/2035_plan/FINAL/T2035_Plan-Final.pdf	Yes
Attachment KK	MTC July 28 Presentation	July 28 presentation	No
Attachment LL	MTC Follow-up Questions Revised: 6/1/10	http://www.arb.ca.gov/cc/sb375/mpo/mtc_abag/mtc.abag.responses.pdf	Yes
Attachment MM	Bay Area Principles for Establishing Regional Greenhouse Gas (GHG) Targets	http://apps.mtc.ca.gov/meeting_packet_documents/agenda_1531/7a_Res-3970_Revised_7-28-10.pdf	Yes

Attachment NN	Audio file from July 28, 2010 MTC Hearing	http://www.mtc.ca.gov/meetings/archive/	Yes
Attachment OO	MTC Memorandum to ARB, August 5, 2010	http://www.arb.ca.gov/cc/sb375/mpo/mtc_abag/mtc.email0801510.pdf	Yes
Attachment PP	SCAG Scenario Exercise	http://www.scag.ca.gov/pptac/pdfs/agendas/051110/pptac051010-5-1-handout.pdf	Yes
Attachment QQ	SCAG Staff Report re: SB 375 Final Draft Regional Targets	Sent via email	Yes
Attachment RR	Johnson, J *Board of Supervisors Reviews Latest Version of Monterey County General Plan*	http://www.montereyherald.com/growth/ci_15949157?source=pkg.	Yes
Attachment SS	Lussenhop, J., *Santa Cruz Housing Forum Kicks Off.* SantaCruz.com	http://news.santacruz.com/2010/01/13/santa_cruz_housing_forum_kicks_off	Yes
Attachment TT	Rabin, J.L. and Kelley, D. *'Slow growth' Has Come at a Cost in Santa Barbara*	http://articles.latimes.com/2006/mar/06/local/me-slowgrow6.	Yes
Attachment UU	Guidance for Valley Land Use Agencies in Addressing GHG Emission Impacts for New Projects Under CEQA	http://www.valleyair.org/programs/CCAP/12-17-09/3%20CCAP%20-%20FINAL%20LU%20Guidance%20-%20Dec%2017%202009.pdf.	Yes
Attachment VV	California Environmental Quality Act: Air Quality Guidelines (BAAQMD Guidelines)	http://www.baaqmd.gov/~/media/Files/Planning%20and%20Research/CEQA/BAAQMD%20CEQA%20Guidelines_June%202010.ashx.	Yes
Attachment WW	Letters submitted to BAAQMD re BAAQMD Thresholds	Sent by email	Yes