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Sent Via Email [matt.fell@mcagov.org]

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**Re: 2018 Regional Transportation Plan & Sustainable Communities Strategy For  
Merced County; Draft Program Environmental Impact Report**

Dear Mr. Fell:

Thank you for the opportunity to provide comments on the Draft 2018 Regional Transportation Plan (RTP) for Merced County.

The undersigned organization work alongside the most impacted communities in Merced, to advocate for sound policy and equitable transportation investments in low-income communities overburdened by air quality impacts. Community residents from South Merced, Delhi, and South Merced actively engaged throughout the RTP process to seek equitable transportation investments in their community as required by law. The recommendations set forth in this letter reflect the priorities expressed by community residents during this process and resulted from numerous community meetings and individual conversations pertaining to the 2018 RTP process.

We would like to thank the Merced County Association of Governments (MCAG) for selecting Leadership Counsel as one of the environmental justice organizations to serve on the Regional Transportation Advisory Committee and for establishing ongoing meetings to discuss new strategies and policies brought up by Advisory Committee members. Further, we appreciate that MCAG adopted the policy recommendations identified in the 2014 RTP process regarding infill development in existing communities rather than in new communities. We also thank MCAG for including Planada as an additional workshop site and for developing additional materials based on committee input.

Through these comments and our continued participation in this RTP/SCS update process, Leadership Counsel aims to ensure that MCAG considers and develops sustainable and equitable policies based on the priorities identified by community leaders from disadvantaged communities. These community-driven recommendations will allow for an integrated and comprehensive multimodal transportation system that affirmatively addresses the adverse conditions impacting low-income communities as required by state and federal law.

MCAG has made some progress in developing comprehensive policies that consider the needs of low-income communities. However, the Draft falls short of legal mandates and guidance that requires MCAG to give “explicit consideration” to public input, which includes input provided by residents of disadvantaged communities. (California Department of Transportation’s (CalTrans’) 2017 RTP Guidelines, p. 87.) Additionally, the Draft fails to sufficiently advance access to active modes of transportation in low-income and/or disadvantaged communities. MCAG must revise the Draft to address transportation equity issues in low-income disadvantaged communities in order to improve SCS policies, address transportation deficiencies throughout Merced, and demonstrate compliance with state and federal mandates.

The following recommendations and analysis are provided to assist MCAG in the development of the Final RTP.

## **I. Legal Background**

All metropolitan planning organizations (MPOs) in California must comply with Senate Bill 375 (2008). In passing SB 375, the legislature recognized that “[w]ithout improved land use and transportation policy, California will not be able to achieve the [GHG reduction] goals of AB 32.” To improve land use and transportation policy, SB 375 requires, among other things, that every MPO to adopt a sustainable communities strategy (SCS) as part of its RTP. The SCS must be designed to meet greenhouse gas reduction (GHG) targets for automobiles and light trucks in the region, if it is feasible to do so.

The RTP and SCS must additionally be “action-oriented and pragmatic, considering both the short-term and long-term future, and shall present clear, concise policy guidance to local and state officials.” (Gov. Code § 65080(a).) The RTP as a whole, including the SCS, must be an “internally consistent document.” (Gov. Code § 65080(b).) Further, the RTP must set forth a “coordinated and balanced regional transportation system, including, but not limited to, mass transportation, highway, railroad, maritime, bicycle, pedestrian, goods movement, and aviation facilities and services.” (Gov. Code § 65080(a).)

Transportation agencies have legal obligations to environmental justice communities to ensure equitable investments and establish processes that prevent discriminatory practices. Title VI and its implementing regulations bar both intentional discrimination and “disparate impact” discrimination (i.e., a neutral policy or practice that has an unjustified disparate impact on protected groups). (See 49 CFR § 21.5(b)(2) [“A recipient...may not... utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin”].)

Certain acts are expressly deemed discriminatory under 49 CFR §§ 21.5(b)(1): “A recipient to which this part applies may not, directly or through contractual or other arrangements, on the grounds of race, color, or national origin ... Provide any service, financial aid, or other benefit to a person which is different, or is provided in a different manner, from that provided to others under the program [or] ... Subject a person to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program.”

Once the MPO has adopted the RTP and SCS, it “shall submit a sustainable communities strategy...to the state [Air Resources] board for review, including the quantification of the greenhouse gas emission reductions the strategy would achieve and a description of the technical methodology used to obtain that result.” (Gov. Code § 65080(b)(2)(J)(ii).)

## **II. Lack Of Transparency In RTP/SCS Process**

Several provisions of SB 375, as well as the relevant public participation plans, require that MCAG meaningfully involve the public in development of the RTP and SCS, and that it inform the public of the impacts of the chosen SCS scenario and available alternatives.

During SCS development, the MPO must “...provide the public with the information and tools necessary to provide a clear understanding of the issues and policy choices.” (Gov. Code § 65080(b)(2)(F)(iii).) Similarly, an MPO “shall disseminate the methodology, results, and key assumptions of whichever travel demand models it uses in a way that would be useable and understandable to the public.” (Gov. Code, § 14522.2(a).)

Additionally, CalTrans’ 2017 RTP Guidelines (“RTP Guidelines”) require that MPOs “demonstrate explicit consideration and response to public input on the RTP” and “seek out and consider the needs of those traditionally underserved by transit,” including low-income households and households of color. (p. 87.) In reviewing RTPs for compliance with Title VI of the Civil Rights Act, the U.S. Department of Transportation (“DOT”) considers what

mechanisms are in place to ensure that the issues and concerns raised by low-income populations and people of color are appropriately considered and what evidence exists to show that such consideration has occurred. (U.S. DOT, Memorandum, Implementing Title VI Requirements in Metropolitan and Statewide Planning.)<sup>1</sup>

Furthermore, SB 375 requires that the MPO adopt a public participation plan “to encourage the active participation of a broad range of stakeholder groups in the planning process, consistent with the agency’s adopted Federal Public Participation Plan...” (Gov. Code § 65080(b)(2)(F)(i).) Federal regulations similarly require that the MPO “develop and use” a public participation plan. (23 CFR 450.316.)

MCAG adopted two public participation plans in 2016, both of which are applicable here. First on September 22, 2016, MCAG adopted the “2016 Public Participation Plan” (2016 Public Participation Plan). In the 2016 Public Participation Plan, MCAG commits to “[d]emonstrate explicit consideration and response to public input received during the development of the RTP and FTIP” and “[f]orward all formal public comments to the MCAG Governing Board or appropriate committee for consideration during decision making.” (p. 3.) MCAG further acknowledges that the Fixing America’s Surface Transportation (FAST) Act requires that it provide a “reasonable opportunity to comment on transportation plans and programs.” (*Id.*)

Then, on November 17, 2016, MCAG adopted the “2018 Regional Transportation Plan Public Outreach Strategy & Sustainable Communities Strategy Public Participation Plan” (2018 Public Participation Plan.) In the 2018 Public Participation Plan, MCAG states that the “goal of the public outreach effort is to ensure that stakeholders, elected officials and interested members of the community have ample opportunity to understand and provide meaningful input into the region’s transportation planning process.” (p. 1.) It further states that pursuant to 23 CFR Section 450.316, the Participation Plan must define “a process for providing citizens...representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, and other interested parties with reasonable opportunities to be involved in the metropolitan transportation planning process.” (p. 2.)

As currently drafted, the 2018 RTP does not adequately plan for a regional transportation system that satisfies the needs of low-income communities of color throughout Merced. The identified preferred scenario and investment allocations in the plan must be revised to ensure a process that is transparent and equitable.

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<sup>1</sup> Available at [https://www.fhwa.dot.gov/environment/environmental\\_justice/legislation/ej-10-7.cfm](https://www.fhwa.dot.gov/environment/environmental_justice/legislation/ej-10-7.cfm)

**A. Individual GHG Reduction Targets For All Scenarios Must Be Available To The Public.**

As noted above, MCAG must provide the public during RTP/SCS development with the “information and necessary to provide a clear understanding of the issues and policy choices” and the “methodology, results, and key assumptions” of its travel demand model. (Gov. Code §§ 65080(b)(2)(F)(iii); 14522.2(a).) Further, every RTP must include a description of the performance measures and performance targets used in assessing the performance of the transportation system in accordance with Government Code §450.306(d), which requires that the long-range planning process provide for the establishment and use of a performance-based approach to transportation decision-making to support national goals. (23 CFR § 450.324(f)(3).)

MCAG presented four SCS scenarios to the public during workshops and Advisory Committee meetings. These scenarios identified various growth patterns and transportation investments for the City and County of Merced. Multiple performance metrics were used to analyze the impacts of all four scenarios including mobility and accessibility, system preservation, sustainable development patterns, economic and community vitality, social equity, health and safety, and environmental quality, and environmental justice. Based on this information the Advisory Committee and the MCAG governing board selected scenario two as the preferred scenario.

However, during the development and selection of the scenarios, vital information such as greenhouse gas reductions, methodology for calculating reductions, and the financially constrained project list were not presented to the public. Due to the lack of transparency, along with corresponding lack of investment in low-income disadvantaged communities, Leadership Counsel abstained from the Advisory Committee vote on scenario selection. Without this information and lack of transparency in this process, neither the public nor the Advisory Committee could make an informed decision.

Moreover, the purpose of an RTP as established by SB 375 is to reduce transportation-related greenhouse gas emissions. As such, the draft must include the projected GHG reductions associated with all four scenarios. This information is vital to ensuring that the best scenario is selected to meet GHG goals and maximize reductions consistent with principles of equity. MCAG indicates in the draft that “[t]he four land use scenarios presented in Chapter 8 were compared across several performance indicators to help evaluate the impacts between each scenario. These indicators were also presented to the public, the RTP Advisory Committee, and the MCAG Governing Board.” (p. 61) Presentation of indicators without revealing MCAG’s methodology and results is statutorily insufficient.

As information regarding GHG reductions was absent from the draft RTP and appendix, MCAG must revise the draft RTP to list the GHG reductions for every scenario to ensure transparency in the selection process and to comply with SB 375 and relevant regulations.

**B. MCAG Must Include The Hybrid Scenario In The Scenario Discussion Chapter And Develop Clear Public Participation Guidelines For Advisory Committee Meetings.**

Several of the Advisory Committee members felt that there was no clear guidance or opportunity to introduce additional recommendations for board approval during the advisory meetings. For instance, several of the Advisory Committee members felt that all of the presented scenarios lacked sufficient active transportation and transit investment in low-income disadvantaged communities as well as an adequate job and housing distribution in areas outside of cities. Collectively, Committee members, residents, and community based organizations drafted a hybrid scenario to highlight opportunities and deficiencies in the presented scenarios. MCAG was responsive to our request to meet to discuss our propositions, however no real effort was made to ensure that the Hybrid Scenario, which combined several elements of Scenario Two and Scenario Four (Appendix #1) was presented to the MCAG governing board as a viable option that could be modeled in the Environmental Impact Review analysis. MCAG's dismissal of the proposal without bringing it to the governing board for meaningful consideration does not meet the standards Sb 375 or MCAG's own public participation plan of "explicit consideration" of the concerns of low-income communities of color.

The hybrid scenario alternative generated by community and the advisory committee provided sustainable and equitable solutions for the regional transportation system. Given the increased investment in active transportation and transit in the proposed hybrid, it is likely that the proposed alternative would have avoided many environmental impacts and increased investment in disadvantaged communities. We remain disappointed that MCAG chose not to include the hybrid scenario alternative in the DEIR, and request that the RTP and DEIR be modified to respond to community and Advisory Committee recommendations.

## **II. Recommended Changes To Public Participation Plan And RTP Public Engagement Process**

### **A. A Minimum Of 50% Of Workshop Locations Must Be Located In Isolated Rural Unincorporated Areas To Ensure Planning Process Is Accessible And Transparent**

MCAG must ensure that there is an equitable percentage of all workshops accessible to residents of rural unincorporated communities. We recommend that a minimum of 50% of the established workshops be located in EJ communities to ensure that all of the sites participate throughout the what remains of the 2018 RTP process, and in all future RTP processes.

The public outreach goals outlined in the RTP draft include the following: (1) To engage the broadest cross-section of Merced County residents, businesses, and transportation providers for our future transportation needs; and (2) To make the planning process accessible, interactive and engaging. The draft states that in order to achieve these goals several outreach efforts were identified including public workshops, community-based outreach events, and advisory committee presentation in efforts to maximize participation form all population groups.

While we appreciate MCAG's collaboration in establishing additional workshops in Planada and their continued efforts to engage advisory committee members outside regularly scheduled meetings, we do not believe that public participation efforts were maximized to engage all populations in Merced as called for by the draft. For instance, as part of the public participation process MCAG only identified three workshop sites, all of which were located in cities Merced, Los Banos, and Livingston. Due to community advocacy efforts, Planada was included as an additional workshop location during the first round of workshops. No other unincorporated community was identified as a site for 2018 RTP workshops. Furthermore, although the second phase of the RTP process included the dissemination of vital information including scenario selection, finalized project list description, and GHG reduction targets, Planada was not originally identified as a workshop location for the second phase of workshops. Access to information and consistent outreach efforts are essential in developing sustainable and equitable transportation investment in low-income, disadvantaged communities who are often left out of many decision-making processes and who are disproportionately burdened by air quality impacts.

The goals established and adopted by MCAG in accordance with regulatory requirements including the FAST Act, the Clean Air Act, Title VI of the Civil Rights Act, SB 375, the California Complete Street Act, and the California Environmental Quality Act highlight the importance of an integrated regional transit system that promote social equity and environmental

justice. Holding community meetings in isolated geographic locations and offering limited public participation opportunities for environmental justice communities contradicts the established goals and further imposes barriers for many low-income residents who do not have access to transportation or reliable transit options.

**B. Adopt Policy Commitments In The Public Participation Plan To Ensure Adequate Language Access And Effective Public Engagement**

While we appreciate MCAG's partnership and ongoing collaboration to develop various Spanish materials for community meetings, we do not believe that adequate resources were designated and prioritized to ensure that all documents including presentations, handouts, methodology, and growth patterns were translated during public meetings. MCAG failed to provide meaningful language access to facilitate public participation during all workshops. Failure to translate all workshop materials into Spanish posed a substantial barrier to a region which is primarily comprised of Spanish-speaking residents. This, in turn, prevented many from meaningful participating in the RTP/SCS planning process.

The 2018 RTP Public Participation Plan states that at public workshops, "[s]panish translation services and materials will be provided." (p. 5.). It further states that "MCAG is committed to using visualization tools and techniques such to help participants develop a clear understanding of the issues and policy choices." (*Id.*) In addition, state law requires public agencies to take appropriate steps to ensure that translation services are available to intended beneficiaries of any programs that receive state funds, such as many of the projects included in the RTP. (Gov. Code § 11135; 2 C.C.R. § 11162.) However, many of the exhibits presented at the workshops were only presented in English and consequently ineffective to many participants, in conflict with MCAG's Public Participation Plan and Government Code § 11135.

Furthermore, state law SB 375 requires that "[a] metropolitan planning organization shall disseminate the methodology, results, and key assumptions of whichever travel demand models it uses in a way that would be usable and understandable to the public." (Gov. Code § 14522.2.) As the chosen method of dissemination was exhibits and powerpoint presentations, and as untranslated exhibits will not be "usable and understandable" to a large segment of the public, MCAG is not in compliance with state law. A clear commitment is needed from MCAG to ensure language access will be prioritized for future workshops and other public participation processes. We recommend the following policies to be integrated into the Public Participation Plan and future RTP public participation processes, as applicable:

1. A minimum of 25% set-aside for processes that require Public Participation. These funds will be used to ensure that residents from unincorporated areas have opportunity to participate in workshops, meetings, etc.
2. All materials must be translated into Spanish and other commonly spoken languages in Merced. A translator or multiple translators (depending on size of meeting) must be present for all workshops and related events.
3. Jurisdictions will host multiple workshops in various locations that are accessible to the public, including isolated unincorporated areas throughout Merced.
4. Transit services should be available at no cost to residents who do not have access to transportation services but wish to attend workshops.
5. Advisory board members will have the opportunity to present new information and feedback at any stage of the process. These recommendations should be analyzed and presented to the MCAG board for consideration.
6. Establish a Mini-Grant Outreach Program that will facilitate partnership with local CBO's who can assist with public participation efforts.

**C. Establish A Mini-Grant Outreach Program To Facilitate Public Engagement**

The RTP public participation process can be strengthened through ongoing collaboration and partnership with community-based organizations with direct connection with residents. For example, Fresno COG established the Mini-Grant Outreach Program which provided 5,000 dollars to community-based organizations to assist in the RTP outreach efforts. In the past, these funds have been used to facilitate community engagement in unincorporated communities, translation services, food, and childcare. The Mini-Grant Outreach program can serve as a model for future RTP plans and current plans like the Public Participation Plan to ensure effective outreach through ongoing collaboration with organizations.

**III. Environmental Justice Definition Must Be Revised To Ensure Adequate Investment In EJ Communities.**

MCAG defines Environmental Justice as, “the fair treatment and meaningful involvement of all people in the development, implementation, and enforcement of environmental laws, regulations, and policies.” While this definition tracks the definition used by the Environmental Protection Agency, it omits the heart of the definition, which specifies that environmental justice is the fair treatment and meaningful involvement of all people *regardless of race, color, national origin, or income...*” (italics added)

It is imperative that this portion of the definition be added to accurately address the transportation needs of all populations and to comply with existing law. The US Department of Transportation defines Environmental Justice communities as the following:

*“For the purpose of this strategy, fair treatment means that no population, due to policy or economic disempowerment, is forced to bear a disproportionate burden of the negative human health and environmental impacts, including social and economic effects, resulting from transportation decisions, programs and policies made, implemented and enforced at the Federal, State, local or tribal level.”*

We recommend that the language above is adopted in the final RTP to address this inconsistency with the law and to emphasize the importance of environmental justice communities in this process.

#### **IV. MCAG Should Recognize That Roadway Expansion Induces More Driving Demand And Prioritize Strategies That Better Meet Air Quality And Climate Goals.**

The draft discusses and highlights the expansion and widening of highway projects as an opportunity to alleviate congestion and a direct benefit to disadvantaged communities. While in some instances, road expansion might have the potential to temporarily decrease congestion and emissions, this is not always true and is unlikely to present an effective long-term strategy as required by SB 375. Table 7.1 on page 50 of the Draft includes eight proposed widening projects, all of which cut across disproportionately communities of color including the communities of Delhi, Livingston, and South Merced. Although MCAG identifies 78% of the total projects as direct benefits to EJ areas, it fails to analyze the negative impacts associated with road expansion including exacerbated air quality impacts and disproportionately health impacts to low-income environmental justice communities. Gov. Code Sec. 12955(k) prohibits land use decisions that have a discriminatory impact based on race, country of origin, or other protected class. A road widening policy that disproportionately adversely impacts protected groups risks violating Sec. 12955.

MCAG fails to look at the current needs for existing transportation infrastructure for local roads and the health impacts disproportionately impacting low-income communities of color due to the proximity to major highways. In fact, research has found that expanding roadway capacity expansion is counterproductive and fails to alleviate congestion, instead leading to both short and long-term increases in vehicle miles traveled and associated air pollution. “A capacity expansion

of 10% is likely to increase VMT by 3% to 6% in the short-run and 6% to 10% in the long run.”<sup>2</sup>  
We, therefore, suggest that MCAAG include a policy that reads:

*“except where needed to serve existing communities that currently lack paved road networks, limit roadway expansion and instead prioritize alternative solutions to reduce congestion by promoting alternatives to single-occupancy driving including public transit, telecommuting, car-and van-pooling, cycling and walking, and a job/housing balance that ensures access and connectivity to transit networks.”*

On this note, the linear length in lane miles associated with new or expanded transportation improvements is approximately 420 according to the DEIR. Resources used for road expansion could be better allocated to transit and active transportation projects, especially given the significant and unavoidable impacts to air and water quality from road expansion and construction. Additionally, residents from low-income disadvantage communities disproportionately lack access to vehicles and rely on public transit as their primary form of transportation. As such, residents from these areas are less likely to benefit from road widening project. In fact, funding allocation for widening projects appears to outstrip spending that will directly benefit disadvantaged communities. By increasing funding allocation for active transportation and transit investment, MCAAG would take a significant step towards fulfilling its duty to affirmatively address the effects of past and present discrimination due to disinvestment in communities of color.

**V. Increase Active Transportation Investment To Reduce Greenhouse Gas Emissions and Respond to the Priorities of Disadvantaged Communities.**

**A. Ensure a Minimum of 20% Investment for Active Transportation Projects and 20% for Transit.**

Increased Investment in active transportation modes that promote walkability and bicycle options in a community is an essential element in lowering transportation-related greenhouse gas emissions and VMT across the region. According to the Institute for Transportation and Development Policy, the use of active transportation modes such as bicycle in cities has the

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<sup>2</sup> See Handy, Susan (2015). Increasing Highway Capacity Unlikely to Relieve Traffic Congestion. [http://www.dot.ca.gov/newtech/researchreports/reports/2015/10-12-2015-NCST\\_Brief\\_InducedTravel\\_CS6\\_v3.pdf](http://www.dot.ca.gov/newtech/researchreports/reports/2015/10-12-2015-NCST_Brief_InducedTravel_CS6_v3.pdf); see also Vedanthm, Ram, et al. (2012), Combining Continuous Near-Road Monitoring and Inverse Modeling to Isolate The Effect of Highway Expansion on a School in Las Vegas; Font, Anna, et al. (2014) Degradation in Urban Air Quality from Construction Activity and Increased Traffic Arising from a Road Widening Scheme; Brown, Steven, et al. (2014) Changes in Air Quality at Near-Roadway Schools After a Major Freeway Expansion in Las Vegas, Nevada.

potential to help reduce energy use and CO2 emissions worldwide by as much as 11 percent.<sup>3</sup> A strong commitment from transportation agencies is needed to promote bicycle travel and reduce car dependency to achieve significant GHG reductions nationwide.

The draft states that Scenario Two investments “help[s] reduce congested lane miles and vehicle hours of delay for all users of the transportation system while increasing the amount of funding available for alternative modes of transportation, including transit, bicycling and walking – which benefit low-income and minority populations to a greater degree.” However, the current 2018 RTP/SCS only secures 9% of the total funds for active modes of transportation with most of the extensive bike paths systems located in the City of Merced and other major cities. This investment is grossly inadequate to meaningfully address Merced’s active transportation needs, given the lack of basic active transportation and pedestrian and bicycle safety infrastructure such as sidewalks, street lights, stormwater drainage, traffic calming, bicycle lanes, and more in many of Merced’s disadvantaged communities and neighborhoods.

Additionally, the RTP must create a "coordinated and balanced regional transportation system" Gov Code 65080(a). To this end, the lack of investment in active transportation is not coordinated or balanced, since it will leave many communities disconnected and reliant on crumbling or absent active transportation infrastructure while massive investments in roadway expansions proceed. We recommend that this number be increased to a minimum of 20% for both active transportation and transit to meet the needs and priorities of disadvantaged communities in Merced.

**B. Include Pedestrian And Cyclist Safety And Infrastructure Policy Goals In Final Draft**

We recommend that additional policies be included to address the value of pedestrian and cyclist safety infrastructure, such as improved lane striping and protected bike lanes, the installation of stop signs and traffic signals. These goals will help meet the overarching requirements for a planning, comprehensive, and integrated Multi-Modal Transportation Networks and for the RTP to maximize the safety of people as identified in state and federal law. (23 CFR § 450.324(f)(5) (requiring RTPs to include “Operational and management strategies to improve the performance of existing transportation facilities to relieve vehicular congestion and maximize the safety and mobility of people and goods”).)

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<sup>3</sup> <https://www.itdp.org/2015/11/12/a-global-high-shift-cycling-scenario/>

**C. Adopt A Ten-Year Target And Identify Near-Term Investments To Contribute To Caltrans' Statewide Goals Of Tripling Biking And Doubling Walking By 2020**

Caltrans released a Strategic Management Plan that includes policy priorities and performance targets to increase active transportation with the goal of “improving the quality of life for all Californians by providing mobility choice and increased accessibility to all modes of transportation.”<sup>4</sup> The plan includes statewide goals to triple bicycle mode share and double walking and transit mode share by 2020. Caltrans has identified five strategic management goals which include: (1) Safety and Health; (2) Stewardship and Efficiency; (3) Sustainable, Livability, and Economy; (4) System Performance; and (5) Organizational Excellence. Each goal is accompanied by specific objectives, performance measures, and targets that will be used to guide staff in the process of reaching their ten year target. We encourage MCAAG to adopt the same Strategic Management Plan to achieve the same goal in Merced. Given the relatively low rates of walking and biking and plans for infill investment in a number of communities, this target is likely well within reach.

**VI. Revise The Draft's Equity Metrics To Accurately Reflect The Housing and Transportation Inequities in Environmental Justice Communities.**

Pursuant to Government Code Section 65080(b)(2)(B), the SCS must “(ii) identify areas within the region sufficient to house all the population of the region, including all economic segments of the population, over the course of the planning period of the regional transportation plan taking into account net migration into the region, population growth, household formation and employment growth”; and (iii) “identify areas within the region sufficient to house an eight-year projection of the regional housing need for the region pursuant to Section 65584...”

Housing obligations specified in state law require that jurisdictions implementing a regional transportation plan must “*consider the state housing goals*” including a suitable living environment for all economic segments of the populations including farmworkers. Government Code Section 65581(a) states that, “[t]he availability of housing is of vital statewide importance, and the early attainment of decent housing and a suitable living environment for every Californian, including farmworkers, is a priority of the highest order.” This is specifically important because Scenario Two *includes infill housing in existing rural communities* and provides an opportunity to develop affordable housing in low-income areas.

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<sup>4</sup> Caltrans (2015) Strategic Management Plan.  
[http://www.dot.ca.gov/perf/library/pdf/Caltrans\\_Strategic\\_Mgmt\\_Plan\\_033015.pdf](http://www.dot.ca.gov/perf/library/pdf/Caltrans_Strategic_Mgmt_Plan_033015.pdf)

As currently drafted, MCAG does not include goal-oriented policies that promote affordable housing throughout the region. To comply with these obligations, MCAG must coordinate with local planning agencies to encourage compliance with federal fair housing requirements. MCAG must ensure that local agencies are effectively implementing their affordable housing program before allocating funding to projects proposed by local agencies. This is also necessary to mitigate displacement impacts caused by road widening planned by for this RTP and that will encourage further migration by bay areas and Sacramento residents.

Turning to the quantitative housing analysis in the draft RTP, Merced County's population is expected to increase by approximately 107,000 persons, 23,000 jobs, and 34,000 households by 2042. The draft acknowledges that the median income in Merced is approximately \$20,000 less than the statewide median income, and that Merced accommodates excess housing demand from the Bay Area and Sacramento, where median incomes are higher than the state median. (p.4.) The rapid growth in population in Merced will require jurisdictions to develop and implement robust plans to preserve and create affordable housing for lower-income households to prevent displacement and the exacerbation of unsustainable housing-cost burdens impacting Merced households.

Various performance measures were identified to determine whether EJ communities in Merced County have an equitable share of housing in the 2018 RTP. Among these measures, MCAG analyzed disparities in countywide housing-type stock and availability and variety of housing. Based on the analysis provided for Countywide housing type, MCAG concluded that in comparison to scenario one, scenario two would have half as many large lots and single-family homes which will *likely* generate more housing choices for EJ communities and affordable housing types. (RTP p. 49.)

The draft needs to be revised to include clear policy commitments and programs that guarantee affordable housing in low-income communities rather than discuss the likelihood of diverse housing choices. It also must include an analysis of the availability of very low, low and moderate income units necessary to meet Merced County's regional housing needs allocation. As the draft presently stands, MCAG has not complied with the requirement to identify areas within the region "sufficient to house all populations...including all economic segments of the population..." (Gov. Code Section 65080(b)(2)(B).)

Additionally, the comparison of households in low-income EJ areas within walking distance (0.5 miles) of a park between Scenario 1 (5.9%) and Scenario 2 (10.4%) fails to demonstrate a commitment to investing in EJ and low-income communities.

## **VII. Reinstatement of the 2014 RTP Vision Theme Policy Goals and Sustainable Community Goals in the 2018 RTP.**

In collaboration with the advisory committee, MCAG developed and identified various policies and objectives for the 2014 RTP policy element and SCS. Several of these “Vision Themes” were included in the 2018 RTP draft, however many of the policy actions identified for each theme were omitted. Some of these policies are still relevant and reflect input provided by stakeholders, including comments from disadvantaged communities, during the public engagement process for the 2018 RTP. We recommend that the following goals from the 2014 RTP be reinstated in the 2018 draft along with additional edits to make the identified goals action oriented policies that highlight the importance of smart and equitable investment in existing communities.

- Maintaining the existing road system, prioritizing unincorporated communities and cities with poor and at-risk Pavement Condition Indices.
- Encourage land use and growth patterns that enhance the livability of our communities and maximizes the productivity of transportation investments by prioritizing funding for projects that include or directly support affordable infill development in existing communities, including rural communities.
- Favor transportation investments that protect the environment including improving air quality, promoting energy efficiency and improving the quality of life. These investments should include the prioritization of electric vanpool programs in rural unincorporated areas with limited transit services.

Additionally, MCAG should include a Sustainable Communities section that provides for strategies to reach the goal of reducing per capita greenhouse gas emissions through compact growth and alternative transportation strategies. State law requires that the RTP be “action-oriented and pragmatic, considering both the short-term and long-term future” and that is “present clear, concise policy guidance to local and state officials.”

As currently written, many of the policies do not include an action plan and simply state the overall objective but do not identify an action to ensure that an integrated, multimodal transportation system is developed. (pp. 2-3). We recommend that the following goals and policies be added to the Sustainable Communities Strategies policy element.

**Goal:** Reduce per capita greenhouse gas emissions through compact growth and alternative transportation strategies.

**1. Objective:**

- Emphasize infill development, transportation investments and job development in or around town centers in existing incorporated and unincorporated communities.

**Policies:**

- Direct growth through infill strategies that promote increased investment in existing communities-prioritize disadvantaged communities and neighborhoods that provide a range of housing choices (affordable, small, large lot single-family and multifamily housing) for existing and new residents).
- Direct employment growth to existing cities and unincorporated communities rather than directing growth to new town developments.
- Link investments to housing, jobs, and transportation in or around town centers.

**2. Objective:** Prioritize transportation investments on diverse and flexible modes of public transit and alternative modes to maximize public health, environmental and economic benefits

**Policies:**

- Front load public transit and active transportation investment to reduce GHG.
- Develop feasibility studies, complete streets studies, and community and neighborhood plan to evaluate for transit readiness, walkability, and bike-ability as funds are available.
- Improve access to public transit in rural and urban areas, prioritizing disadvantaged communities and neighborhoods, and identify new funding sources for service and infrastructure improvements ( shelters, bus stop signs, etc.) to service in rural communities.
- Prioritize existing road and bridge maintenance over the development of new roadways and roadway expansion
- Increase investment and prioritize alternative transit options such as zero-emission carpool/vanpool projects in rural disadvantaged communities to bridge the transit gap that currently exists.

**3. Reduce GHG and associated criteria and toxin air pollutants**

- Identify and apply for state and federal grant opportunities for EJ communities that help reduce GHG emissions
- Plan for and implement coordination of land use and alternative modes of transportation that would reduce miles traveled by providing rural and urban residents transportation options multiple modes.

### **VIII. The RTP Must Include Planning and Analysis to Proactively Address the Impacts of Climate Change.**

The RTP Guidelines, to which RTPs adopted by all MPOs in California must conform, state that RTPs should begin to address climate change adaptation in collaboration with State agencies. (Guidelines, pp. 4, 160.) The Guidelines note that, “transportation infrastructure projects that do not consider the impacts of climate may not be eligible to receive state funds.” (p. 160.) Relatedly, recent changes to federal law now require that RTPs provide for consideration of projects and strategies that will improve the resiliency of the transportation system and reduce or mitigate stormwater impacts of surface transportation. (23 U.S.C. § 134(h)(i).)

However, the draft fails to include proactive planning and strategies to address climate change and mitigation of stormwater impacts. For example, stormwater flooding significantly impacts residents from rural unincorporated areas throughout Merced County, and these impacts will only worsen with climate change. Although the Draft incorporates regulatory setting and planning requirements that include mitigation for stormwater impacts of surface transportation (pg. 18), the environmental impact report fails to identify action oriented policies to ensure proper mitigation for these impacts. The RTP must include policies to ensure that communities are protected from flood and stormwater risks that are exacerbated from any transportation projects planned for by the RTP.

### **IX. MCAG Must Revise The RTP To Ensure That Funding Investments Address And Prioritize The Needs of Environmental Justice Communities.**

#### **A. Revise Project Selection Methodology**

Appendix K describes the methodology used to create the prioritized project list for the 2018 RTP. Four criteria were created to help guide the project selection process, two of the four were heavily focused on goods movement. While addressing goods movement is an important component of the transportation system, other aspects of transportation such as adequate infrastructure to support walking, biking, and public transit accessibility; public health; and reducing reliance on vehicle usage must also be highlighted and addressed as potential mitigation measures.

Additionally, the project selection methodology criteria calls for “clearly identifiable information” to ensure that the selection process and objectives recognize the different benefits of each project. Rural communities throughout Merced face multiple challenges in addressing fundamental transportation deficiencies due to a lack of available data, lack of proactive efforts by agency staff to obtain such data, and a lack of prioritization of rural transportation needs as compared to urban and commercial transportation needs. The lack of basic infrastructure to support walking, biking, public transportation accessibility, and even personal vehicle use in

many rural communities undermines mobility for rural residents and creates safety hazards which are exacerbated by poor land use planning which places truck and car-intensive land uses next to communities.

For example, residents have advocated for a safety pedestrian project on the intersection of Plainsburg and highway 140 in Planada, but due to a lack of available data and funding opportunities, highway widening projects have been prioritized and selected for construction. Throughout the RTP process, multiple projects were identified by community as priority. Some of these projects include: (1) Protected bike lane at the intersections of Shanks and Schendel in Delhi; (2) repavement and restructuring of El Capitan Way in Delhi; (3) pedestrian safety improvements on the intersection of Plainsburg/HWY 140; (4) pedestrian safety improvements on Sandy Mush Road and Highway 59. By allowing jurisdictions to eliminate projects proposed by residents during the public participation process with no analysis, MCAG effectively ignores that input. MCAG's methodology therefore conflicts with the federal requirement that require "explicit consideration" of input provided by the public and the criteria identified by the Department of Transportation to assess COGs' Title VI compliance. (23 CFR § 450.316(a)(1)(vi); DOT, FHA, Title VI Requirements in Metropolitan and Statewide Planning (providing that DOT will consider the mechanisms in place to ensure that issues and concerns raised by low-income and minority populations are appropriately considered).)

To comply with MCAG's obligations under state and federal civil rights laws and to foster and consider public input, MCAG must select an alternative methodology which does not result in the exclusion of projects designed to benefit communities of color and immigrant communities without appropriately performing a feasibility analysis. We recommend that additional criteria be added to the methodology section to analyze the historical disinvestments areas with absent and deteriorating infrastructure and strong community support. Funding should be prioritized to communities with historical transportation disinvestment and greatest need for road infrastructure and safety conditions. We recommend that the methodology that it uses to determine the project list be revised to include an independent analysis of each project proposed during the public participation process. This analysis should also include a set aside requirement of a minimum of 50% to ensure that project in low-income disadvantaged communities are funded. MCAG should also add a policy to the Policy Element stating that no public dollars can be used to subsidize new growth at the expense of disadvantaged communities.

**B. Include a Program Action to Conduct a Disadvantaged Communities Needs Assessment to Ensure an Equitable Selection Process**

We recommend that MCAG conduct a Disadvantaged Communities Needs Assessment in the next two years and adding an action item with funding to the Action Element. The assessment process would include targeted workshops within disadvantaged communities and regional workshops to identify the transportation projects needed to connect them to critical resources and services, such as health centers, grocery stores, educational centers. Many disadvantaged communities in Merced have never had the benefit of such an assessment, which makes it impossible for MCAG and local governments to systematically address the transportation-related needs of these communities and respond to historic and ongoing disinvestment. The results from

the needs assessment would form the basis of the needs assessment for future RTP rounds, which would in turn serve as the basis for the Project Evaluation Criteria and the Environmental Justice analysis for the 2022 RTP. The project list should be expanded with existing and future funding sources to fund projects identified by the Disadvantaged Communities Needs Assessment. The completion and implementation of the Disadvantaged Communities Needs Assessment would play a critical role in supporting compliance by MCAG with its duty to invest equitably in low-income communities and communities of color and rectify past discriminatory practices. (See, e.g., 49 C.F.R. § 21.5(b)(7).)

### **C. Revise Project Timeline to Eliminate Delay**

The Federal Transportation Administration Circular 4703.1 established three guiding environmental justice principles to serve as guidance to all federal transit recipients developing transportation plans and other transportation developments. The third guiding principle requires transportation agencies to “prevent the *denial of, reduction in, or significant delay the receipt of benefits by minority and low-income populations.*”<sup>5</sup>

In conflict with this requirement, the few projects that are included in the RTP and located in disadvantaged and environmental justice communities have elongated timelines for completion. For example, the community-identified safety pedestrian project in Planada on the intersection of Plainsburg Rd/Hwy 140, a highly utilized road for vehicles and pedestrians with high velocity traffic and lacking infrastructure is scheduled for construction until 2025. Meanwhile, other new and more affluent areas such as Campus Parkway are scheduled to be completed by 2023.

MCAG must revise the timeline to accelerate completion of projects identified by community during the public participation period to ensure that MCAG is meeting the needs of the most vulnerable population throughout Merced.

### **X. The Draft Program Environmental Impact Report**

The California Supreme Court has held that “[t]he foremost principle under CEQA is that the Legislature intended the act ‘to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.’” (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 390 (hereinafter “*Laurel Heights*”) quoting *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259 disapproved on other grounds by *Kowis v. Howard* (1992) 3 Cal.4th 888; *Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 112.)

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<sup>5</sup> U.S Department of Transportation (2012), “*Environmental Justice Policy Guide for Federal Transit Administration Recipients*”  
Envi[https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/FTA\\_EJ\\_Circular\\_7.14-12\\_FINAL.pdf](https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/FTA_EJ_Circular_7.14-12_FINAL.pdf)

The purpose of an environmental impact report (“EIR”) is to “provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.” (*Laurel Heights*, 47 Cal.3d at 390 citing Pub. Resources Code § 21061; CEQA Guidelines, § 15003, subds. (b)-(e).) The phrase “significant effect on the environment” means “a substantial, or potentially substantial, adverse change in the environment.” (Pub. Resources Code § 21068; *Laurel Heights*, 47 Cal.3d at 390.)

“The EIR is the heart of CEQA, and the mitigation and alternatives discussion forms the core of the EIR.” (*In re Bay-Delta etc.* (2008) 43 Cal.4th 1143, 1162; *see also Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.)

#### **A. The Alternatives Analysis Is Insufficient**

CEQA requires that an EIR, in addition to analyzing the environmental effects of a proposed project, also consider and analyze project alternatives that would reduce adverse environmental impacts. (*In re Bay-Delta etc.*, 43 Cal.4th at 1163.) “The CEQA Guidelines state that an EIR must ‘describe a range of reasonable alternatives to the project ... which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project ... .’” (*Id.* quoting Cal. Code Regs., tit. 14, § 15126.6, subd. (a).)

There is no “no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason,” which “requires the EIR to set forth only those alternatives necessary to permit a reasoned choice” and to “examine in detail only the ones that the lead agency determines could feasibly attain most of the basic objectives of the project.” (*Id.*)

Here, the project objectives are set forth in the DEIR in the form of eighteen (18) RTP/SCS Goals:

1. Provide a safe and efficient regional road system that accommodates the demand for movement of people and goods.
2. Provide an efficient, effective, coordinated regional transit system that increases mobility for urban and rural populations, including transportation for disadvantaged persons.
3. Provide a rail system that provides safe and reliable service for passengers.

4. Improve the national freight network, strengthen the ability of rural communities to access national and international trade markets, and support regional economic development.
5. Provide a fully functional and integrated air service and airport system complementary to the countywide transportation system.
6. Regional transportation system for bicyclists and pedestrians. Create a safe, connected, and integrated regional transportation system for bicycle system for bicyclists and pedestrians.
7. Reduce usage of nonrenewable energy resources for transportation purposes.
8. Achieve air quality standards set by the Environmental Protection Agency (EPA), and the State Air Resources Board.
9. Provide economical, long-term solutions to transportation problems by encouraging community designs which encourage walking, transit, and bicycling.
10. Develop and support financing strategies that provide for a continuous implementation of the Regional Transportation Plan projects and strategies.
11. Provide a forum for participation and cooperation in transportation planning and facilitate relationships for transportation issues that transcend jurisdictional boundaries.
12. Reduce per capita greenhouse gas emissions through compact growth and alternative transportation strategies. Protect and enhance the natural environment. Support vehicle electrification and the provision of electrification infrastructure in public and private parking facilities and structures.
13. Coordinate, monitor, and integrate planning and programming for intelligent transportation system (ITS), smart infrastructure, demand-responsive transportation, and automated vehicles.
14. Achieve a significant reduction in congestion on the National Highway System. Improve the efficiency of the surface transportation system.
15. Achieve a significant reduction in traffic fatalities and serious injuries on all public roads.
16. Maintain transportation system in a state of good repair.
17. Promote and provide equitable transportation and housing options for all populations and ensure that all populations share in the benefits of transportation improvements.

18. Promote and provide equitable transportation and housing options for all populations and ensure that all populations share in the benefits of transportation improvements.<sup>6</sup>

(DEIR 2-8 - 2-9.)

The DEIR then considers four (4) project alternatives, along with a “No-Project” alternative:

1. Alternative Scenario 1 - Compact Development
2. Alternative Scenario 2 - Infill Emphasis
3. Alternative Scenario 3 - Jobs-Housing Balance
4. Alternative Scenario 4 - Transit Priority Corridors

(DEIR 2-15.) The MCAG Board selected Alternative Scenario 2 as the preliminary preferred alternative, a selection that is consistent with the Advisory Committee’s recommendation.<sup>7</sup>

These four alternatives do not constitute a reasonable range of alternatives as required by CEQA. The *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 17 Cal.App.5th 413 (hereinafter “*Cleveland*”) case is on point. In *Cleveland*, San Diego Association of Governments (SANDAG) certified an EIR for its “2050 Regional Transportation Plan and Sustainable Communities Strategy.” The EIR analyzed seven project alternatives.<sup>8</sup> (*Id.* at 436) However, the *Cleveland* court held that “the EIR’s discussion of project alternatives is deficient because it does not discuss an alternative which could significantly reduce total vehicle miles traveled.” (*Id.*) The court noted that “[a]lthough Alternatives 3a and 3b are labeled ‘transit emphasis’ alternatives, the labeling is a misnomer...these alternatives do not provide any new transit projects or significant service increases.” (*Id.*) Instead of considering an alternative or alternatives that would reduce VMTs, SANDAG considered alternatives that appeared “focused

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<sup>6</sup> Goal 18 appears to be identical to goal 17 in the DEIR.

<sup>7</sup> As noted above, Leadership Counsel abstained from the Advisory Committee vote recommending the preliminary preferred scenario, both because it lacked information regarding GHG reductions for each scenario and because none of the four scenarios sufficiently advance the goal of providing equitable transportation and housing options.

<sup>8</sup> Alternatives analysed in *Cleveland* were as follows: (a) a no-project alternative; (b) two “modified funding strategy” alternatives that deleted or delayed highway improvements and added some transit projects along coupled with two land use patterns; (c) “A transit emphasis alternative, which advanced the development of some transit projects, but did not add any new transit projects (Alternative 3a)”; (d) “The same transit emphasis alternative, but assuming the modified smart growth land use pattern (Alternative 3b)”; (e) “An alternative implementing the transportation plan’s transportation network, but assuming the modified smart growth land use pattern (Alternative 4)”; and (f) “A slow growth alternative, which assumed the application of regulations and/or economic disincentives to slow population and employment and delayed the complete implementation of the transportation plan by five years (Alternative 5)”

primarily on congestion relief.” (*Id.* at 437.) The court went on to cite SANDAG’s own conclusion that while congestion relief may provide short-term reductions in greenhouse gas emissions due to more efficient travel, “congestion relief is not necessarily an effective long-term strategy.” (*Id.*)

The DEIR here is similar to the one rejected by the court in *Cleveland* as containing an inadequate alternatives analysis. While the DEIR analyzes four (4) alternatives, none of the alternatives will reduce VMT, and in fact all four scenarios will increase VMT.

Moreover, none of the four alternatives will meet goal number 17, which states that the RTP/SCS should “[p]romote and provide equitable transportation and housing options for all populations and ensure that all populations share in the benefits of transportation improvements.” This fact is demonstrated by the environmental justice metrics included in the RTP and DEIR, none of which show significant improvement in terms of transportation options, housing or employment within disadvantaged communities. (*See* DEIR 4-4.)

Along the same lines, one alternative that should have been included and analyzed is the “Hybrid” scenario developed by community residents and several members of the Advisory Committee. (*See* Appendix 1.) Unfortunately, despite the fact that the Hybrid Scenario was proposed to MCAG on January 4, 2018, more than four (4) months prior to the release of the DEIR, MCAG declined to analyze the proposed Hybrid. Leadership Counsel believes that the Hybrid is feasible, that it has a strong potential to reduce VMT by increasing transit investments, and that it better accomplished the goals of the Draft RTP. Without analyzing the Hybrid Scenario or another alternative that meaningfully increases transit and alternate modes investments, the DEIR is inadequate as an informational document.

#### **B. The Mitigation Measures In The DEIR Are Insufficient.**

MCAG must identify “feasible mitigation measures.” (*Laurel Heights*, 47 Cal.3d at 402.) “Mitigation” may include “(a) Avoiding the impact altogether by not taking a certain action or parts of an action; (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation; (c) Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment; (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; [and] (e) Compensating for the impact by replacing or providing substitute resources or environments.” (Cal. Code Regs., tit. 14, § 15370.) In this context, the term “feasible” means “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.” (Cal. Code Regs., tit. 14, § 15364.)

Additionally, “[f]ormulation of mitigation measures should not be deferred until some future time.” (*Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 92 quoting CEQA Guidelines, § 15126.4(a)(1)(B).) An EIR is inadequate if “[t]he success or failure of mitigation efforts may largely depend upon management plans that have not yet been formulated, and have not been subject to analysis and review within the EIR.” (*Communities for a Better Environment*, 184 Cal.App.4th at 92)

Here, MCAG acknowledges significant and purportedly unavoidable impacts to many environmental issue areas, including: air quality, climate change and greenhouse gas emissions, energy consumption, water quality, depletion of groundwater supply, division of existing communities, noise, displacement, water and wastewater treatment impacts, storm water, transportation and traffic. (DEIR 1-14 - 1-67.)

Despite acknowledging these significant impacts of the preliminary preferred project, the DEIR restates nearly identical “Significance after Mitigation” statements for each potential impact:

The responsibility to approve land use development consistent with the general plans and the SCS rests with the local jurisdictions and the responsibility to design and construct transportation improvements rests with Caltrans, the local jurisdictions, and other responsible agencies with jurisdiction over a project area. While implementation and monitoring of the above mitigation measures will provide the framework and direction to avoid or reduce the significant aesthetic impacts identified, it is probable that such impacts could remain significant and unavoidable. As a program-level document, evaluation of all project-specific circumstances is not plausible. Individual projects will require a project-level analysis to determine appropriate mitigation strategies. As appropriate, MCAG will encourage the implementation of the above-notated mitigation strategies intended to avoid or reduce the significant impacts identified.

This position is impermissible under the authority cited above. Specifically, the DEIR is inadequate because the formulation of mitigation measures has been deferred until some future time, and the success and failure of mitigation depends largely upon management plans that have not yet been formulated, and which have not been subject to analysis and review within the EIR. (*Communities for a Better Environment*, 184 Cal.App.4th at 92) While MCAG is correct that it does not have authority to “approve land use development,” it incorrectly implies that it does not have the power to shape land use decisions. As recognized by SB 375, MPOs such as MCAG have the power and duty to: (a) propose an RTP and SCS that shapes land use decisions made by local jurisdictions; and (b) exercise its authority over transportation expenditures to ensure that

the RTP and SCS is implemented along with feasible mitigation measures that are necessary to address significant impacts.

CEQA does not permit MCAG merely to shift the burden of implementing mitigation onto other jurisdictions and/or agencies without also adopting monitoring, reporting or other requirements to ensure that the local jurisdictions implement the identified mitigation measures. (Pub. Resources Code, § 21081.6; *California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, 195.)

#### **XI. The Draft RTP And SCS Will Have Disparate Negative Impacts On Protected Classes.**

State law provides that no person shall, on the basis of race, national origin, ethnic group identification, and other protected classes, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state. (Gov. Code § 11135.)

In addition, California's Fair Employment and Housing Act, California Government Code 12900, et seq. guarantees all Californians the right to hold and enjoy housing without discrimination based on race, color or national origin. (*See also* Gov. Code § 65008 [Any discriminatory action taken “pursuant to this title by any city, county, city and county, or other local governmental agency in this state is null and void if it denies to any individual or group of individuals the enjoyment of residence, land ownership, tenancy, or any other land use in this state...”]; Government Code §§ 12955, subd. (l) [unlawful to discriminate through public or private land use practices, decisions or authorizations].)

Similarly, Title VI prohibits recipients of federal funds (like MCAG) from taking actions that have the effect of discriminating on the basis of race. (*See* 42 U.S.C. § 2000d.)

Discrimination under these authorities may be shown by a “disparate impact,” meaning that an act which is not expressly discriminatory may still be unlawful if it harms a protected class more than other classes of people. A prima facie case of disparate impact under Section 11135 and Title VI is established by showing: (1) the occurrence of certain outwardly neutral practices; and (2) a significantly adverse or disproportionate impact on minorities produced by the defendant's facially neutral acts or practices.” (*Darensburg v. Metro. Transp. Comm'n* (N.D.Cal. 2009) 611 F.Supp.2d 994, 1042.) A showing of “discriminatory intent” is not required. (*Id.*)

The draft RTP and SCS provides for an inequitable distribution of transportation, employment and housing investments within Merced County, which will result in lack of access to opportunity for residents of disadvantaged communities, many of which are majority

Mr. Fell  
July 17, 2018

communities of color. Moreover, disadvantaged communities of color will likely experience significantly adverse and disproportionate impacts from the RTP/SCS.

An example of disparate impact lies with the roadway widening projects contained in the draft RTP/SCS. As noted in the draft RTP and DEIR, the Tier 1 roadway capacity increasing projects impact environmental justice communities at a higher rate than other communities:

Overall, over 78 percent of project benefits serve EJ areas. Of these project benefits, 33 percent go to lower income areas, while 72 percent are in Hispanic or non-White population centers. The RTP projects provide benefit to EJ areas by 14.6 percent more than would be needed to provide equal benefit to the county residents living in EJ areas. One project is located in EJ areas, while the remaining seven traverse both EJ and non-EJ areas.

(RTP p. 50; *see also* DEIR p. 3-456.)

While MCAG discusses roadway expansion as a benefit to disadvantaged communities, EJ communities and communities of color, in fact these projects subject EJ communities to disparate construction impacts as well as decreased air quality stemming from road expansion. Studies have shown that roadway expansion have had the effect of increasing air quality impacts, despite any associated improvement in traffic flow. (*See* Section IV, *supra*.)

As a result, MCAG's own analysis shows that the draft RTP will subject protected classes to disparate impacts associated with roadway expansion.

\* \* \* \* \*

We look forward to discussing these issues with the MCAG Governing Board and staff, and hope to reach a mutually agreeable resolution that protects the interests of residents of disadvantaged communities within Merced County.

Sincerely,

Abigail Ramirez, Policy Advocate  
Leadership Counsel for Justice and Accountability

Suguet Lopez, Executive Director  
Lideres Campesinas

# **APPENDIX 1**

## **Proposed Scenario 5 - Hybrid Transit Priority Scenario**

**The Hybrid scenario should be modeled according to proposed GHG targets \*Incorporates GHG reduction targets.**

### **Overarching Principles**

- 1. Emphasize infill development, transportation investments and job development in or around town centers in existing incorporated and unincorporated communities.**
- 2. Prioritize transportation investments on transit and alternative modes.**
- 3. Link investments in housing, jobs and transportation in or around town centers.**
- 4. Maximize public health, environmental and economic benefits by funding diverse and flexible modes of public transit**
- 5. Lead with equity by directing targeted investments in existing disadvantaged communities first, including investments to facilitate housing, transit, and active transportation, increased jobs, and services (medical, childcare, groceries).**
- 6. Front load public transit and active transportation investments to reduce GHG.**
- 7. Promote and ensure fair housing opportunities**
- 8. Protect and preserve open space and farmland**
- 9. Protect against displacement**
- 10. Protect water resources**
- 11. Reduce GHG and associated criteria and toxin air pollutants**

### **Development Patterns**

Infill with an emphasis in environmental justice communities who have a housing shortage.

**High/Need areas can be defined as the following:**

-EJ Communities - 80% of MHI

-Transportation disadvantaged communities, historically neglected

- Projected growth and transportation investments in existing communities, both unincorporated and incorporated (modify Scenario 4 to reflect appropriate growth in existing communities).
- No new unincorporated communities
- Limits new growth in incorporated areas (focus on infill)
- Prioritize all investment in existing communities
- Conserve agricultural and natural lands
- Promote Job housing balance
- Include water assessment analysis in growth scenarios and investment decisions to ensure sustainability of existing communities.

### **Development Density**

- Improves job/housing balance in cities and unincorporated communities
- Mix use and mixed income housing and compact neighborhoods
- Services, employment, and affordable housing in close proximity

### **Complementary Uses**

- Average housing density: 10.9 units per acre (Using the same number from scenario 4)
- Mix of new housing types: 47% multifamily, 29% small-lot single family, 24% conventional/large-lot single-family (mirrored after the existing recommendations in scenario 4)

### **Transportation Investments:**

- Increase Transit and Bike/ped investment
- In Kern County, we are proposing creation of transit ready areas which are areas that may already be served by some or no form of transit but is prime for targeted outreach to ID potential solutions - rideshare, more frequent bus service, first mile last mile etc
- Invest in repair/rehabilitation of existing streets and roads in existing communities
- Minimize road expansion /maximize expenditure on alternative modes including transit and active transportation. Frontload transportation expenditures that maximize transit and alternative modes projects.

### Asks

Model 5th scenario with these principles in mind

Model different transportation expenditure plans for each scenario to better understand impact of land use and transportation changes