

January 12, 2015

Amy Rein Worth, Chair, Dave Cortese, Vice Chair, and Commissioners
Metropolitan Transportation Commission
101 Eighth Street
Oakland, CA 94607

Re: Public Participation Plan for Plan Bay Area 2017

Dear Chair Worth, Vice Chair Cortese, and Commissioners:

The adoption of a Public Participation Plan is the first in a series of important decisions that MTC and ABAG will make in the process leading to the adoption of the next Plan Bay Area in 2017. We are pleased to provide comments on the draft Participation Plan. We believe our recommendations will help the process yield outcomes that are best for the region's disadvantaged communities *and* for the region as a whole.

As strong supporters of regional planning, we find much to praise both in the last regional planning process and in the draft Participation Plan. First, we applaud improvements to the regional planning process by which Plan Bay Area was developed four years ago, among them:

- The adoption of **strong goals and performance measures** early in the process;
- The convening of a Regional Equity Working Group to guide staff in **analyzing equity issues throughout the process**, not just at the very end;
- The analysis in the EIR of the **Equity, Environment and Jobs (EEJ) alternative**; and
- The adoption of **Plan Bay Area (PBA) amendments** reflecting the areas in which that analysis showed the EEJ outperformed the “preferred alternative.”

Since adopting PBA, MTC has also taken a more proactive role in guiding the **county transportation agencies**, or CMAs, whose long-range plans are a significant input into the regional plan. This was demonstrated by MTC's adoption of updated countywide transportation plan (CTP) guidelines, which will help the region achieve and exceed PBA goals and performance measures by moving the needle county by county. As we noted in our comments on the 2010 Public Participation Plan (attached), “MTC remains responsible for ensuring the fairness of the planning process, even – and especially – when it delegates authority to others, or adopts decisions made by them.” We applaud MTC for stepping actively into the role of guiding the CMAs toward achievement of PBA's goals and performance measures.

Finally, we are pleased with a number of improvements in the draft Participation Plan over the last one, especially:

- The draft Participation Plan **specifies each key decision point** in the process. Consistent with the request in our comments in 2010, it describes the nature and importance of the decision to be made, identifies the decision maker, describes the process that will be used in reaching that decision (including the role that various boards, committees and task

forces will play in that process), and states the anticipated timeframe and sequencing of decisions.

- The draft Plan provides a much clearer **process map** (Appendix A, pp. 3, 30), and its opportunities for input include evening workshops to allow public review on the results of the analysis of the scenario alternatives before “any decisions by ABAG and MTC on a preferred scenario” (Appendix A, pp. 11-12).
- The draft Plan anticipates **integrating equity metrics into the process** of defining and evaluating scenarios (Appendix A, p. 11), something that was lacking in the last process.
- The draft Plan includes programs to “[c]ontract with community-based organizations in low-income and minority communities for targeted outreach” (p. 15) and make “[g]rants to community-based organizations to co-host meetings and remove barriers to participation by offering such assistance as child care or translation services” (p. 17).

These improvements are welcome. At the same time, the draft Participation Plan can and should be improved in important ways. We provide the following recommendations and offer our assistance in addressing some critical gaps:

1. **Start with the Needs:** As in 2010, the draft Participation Plan skips this crucial step. MTC should include an early process for assessing the critical transportation and safety needs of the region as a whole, and of low-income communities and communities of color in particular, and should describe how the critical needs identified will guide later analyses and decision making.
2. **Engage Stakeholders in Scenario *Development*, and Include an Equity Scenario from the Start:**
 - a. The draft Participation Plan does not lay out a process for involving the public in the development of scenarios (as opposed to the evaluation of scenarios developed by staff). We have long expressed our desire to be included in that process. In the recent development of the CTP Guidelines, MTC heard and responded to the public’s desire to participate in workshops before the draft was “written in stone.” The same early engagement is even more crucial here.
 - b. A scenario should be developed and analyzed that, like the EEJ, maximizes greenhouse gas reduction by running more frequent local transit service; protecting high-propensity transit riders against displacement; incentivizing increased transit mode share with free passes (especially for youth, persons with disabilities, and seniors); locating more affordable housing near transit, schools and jobs; integrating local transit and safe, active transportation between these essential destinations; investing more in complete streets maintenance and improvement; and ensuring that underserved and disadvantaged communities receive a fair, timely and meaningful share of the benefits of public investment.
3. **Evaluate and Integrate Goals and Performance Measures:** Plan Bay Area’s goals and performance measures are strong, and should be strengthened. Since they are the yardstick against which progress will be measured, they should not live in a vacuum during this process:
 - a. The goals and performance measures should guide the entire process. For

instance, rather than waiting until the EIR to see how well each scenario meets the performance measures, that analysis should be conducted during the process of scenario development and selection.

- b. MTC should report annually on the extent to which progress has been made against PBA’s performance measures at both the project and overall plan levels, and the public should be involved in this evaluation process. The “Vital Signs” initiative is a welcome step in that direction, but it must encompass all of PBA’s performance measures and equity metrics.
4. **Evaluate Near-Term Equity Impacts:** Instead of analyzing equity impacts using a “colorblind” methodology that speculates about impacts at the distant horizon of the planning process, MTC should build on the approach suggested by HUD for our Regional Prosperity Plan’s “Fair Housing and Equity Assessment” by (a) identifying the determinants of current segregation and exclusion by race and income (including gentrification and displacement); (b) adopting action programs to address and eliminate them in the short term (four years); and (c) assessing progress annually.
5. **Add a New Focus on Quality Jobs:** With hundreds of billions of dollars being spent, our new regional plan has the power to help reduce extreme income inequality. It should include a focus on how that public funding can be used in a way that creates, and gives low-income residents access to, good jobs, and should incorporate key findings and strategies identified in the Economic Prosperity Strategy and other outcomes of the HUD-funded Sustainable Communities Regional Planning Grant.
6. **Be Proactive about Access:**
 - a. Public meetings should be held at times and places that are convenient and accessible to the public, including low-income residents. Evening and weekend meetings should be scheduled at locations that are well served by public transit that runs at night and on weekends.
 - b. Assure meaningful opportunities to participate by Limited English Proficient residents based upon language needs of local communities and not merely a request for translation. Identify the language needs of “communities of concern,” especially in Priority Development Areas where planning and investment decisions may have the greatest impacts. Provide additional assistance reflecting the language needs of the locality in which meetings, hearings, and outreach occur.
7. **Do Not Disband the Equity Working Group:** Last round, the Regional Equity Working Group (REWG) was an effective forum for bringing together the best thinking on equity issues through an ongoing dialogue of equity experts, yet the draft Plan makes no mention of reconvening the REWG. At the same time, MTC should ensure that the recommendations of equity stakeholders do not live in a silo, but are brought to the Commission and to key advisory groups, such as the Regional Advisory Working Group, throughout the Plan Bay Area process.
8. **Establish a Housing Advisory Committee and Track RHNA Performance:** There is no plan to convene a housing-focused advisory group (pp. 21-22). Although this cycle of Plan Bay Area will not include an update of the Regional Housing Need Allocation

(RHNA), housing 100 percent of the region’s projected population growth at all income levels remains one of SB 375’s two mandatory targets. A formal housing advisory group comprised of a diverse set of local and regional stakeholders will help ensure that this target is met. The process should also include an assessment of whether the region is on track to meet the 2013 RHNA, and whether policy changes are needed to encourage and accommodate the necessary housing production.

9. **Demonstrate Explicit Consideration of Input:** Describe how public input from each of the varied forums described in the draft Participation Plan will be used in the development, evaluation and selection among alternatives at each key decision point. Provide specific opportunities for residents of low-income communities of color to meet with decision makers in their communities.
10. **Highlight Local Outcomes:** Residents connect to planning most effectively when they understand how it affects them at the local level – in their communities and neighborhoods. Describing throughout the Plan Bay Area process how decisions, scenarios, and plans affect transit riders, residents, commuters, and workers where they live and work will help ensure robust public participation.

We would welcome a meeting with you and MTC staff to discuss our vision for a robust and transparent process that will enable everyone in our region to reap a fair share of the benefits of the update of Plan Bay Area.

Sincerely,

ACCE Riders for Transit Justice

Miya Yoshitani, Associate Director
Asian Pacific Environmental Network

Carl Anthony and Paloma Pavel, Co-Founders
Breakthrough Communities

Sarah de Guia, Executive Director
California Pan-Ethnic Health Network

Wendy Alfsen, Executive Director
California Walks

Dawn Phillips, Co-Director of Program
Causa Justa :: Just Cause

Tim Frank, Director
Center for Sustainable Neighborhoods

Bill Magavern, Policy Director
Coalition for Clean Air

Frank Gallo, Steering Committee Member
Ditching Dirty Diesel Collaborative

Kate O'Hara, Executive Director
East Bay Alliance for a Sustainable Economy

Gloria Bruce, Interim Executive Director
East Bay Housing Organizations

John Claassen, Chair, Genesis Leadership Council
Mary Lim-Lampe, Genesis Lead Organizer
Genesis

Jeremy Madsen, Executive Director
Greenbelt Alliance

Vien Truong, Director, Environmental Quality
Greenlining Institute

Gladwyn d'Souza, Principal
Green Youth Alliance

Joshua S. Hugg, Program Manager
Housing Leadership Council of San Mateo County

John Young, Executive Director
Marin Grassroots

Gerry LaLonde-Berg, Chair
NBOP Transit Riders United

Jill Ratner, Program Director
New Voices Are Rising Project

Pilar Lorenzana-Campo, Deputy Policy Director
Non-Profit Housing Association of Northern California

Leticia Romero, President
Janis Watkins, Chair, Transit Equity/Neighborhood Development Task Force
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Joel Ervice, Associate Director
Regional Asthma Management & Prevention
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Tim Little, Executive Director
Rose Foundation for Communities & the Environment

Marty Martinez, Northern California Regional Policy Manager
Safe Routes to School National Partnership

Jennifer Martinez, Executive Director
San Francisco Organizing Project/Peninsula Interfaith Action

Shelley Kessler, Executive Secretary-Treasurer
San Mateo County Central Labor Council

Rev. Kirsten Snow Spalding, Executive Director
San Mateo County Union Community Alliance

Bob Planthold, Chair
SF Bay Walks

Peter Cohen and Fernando Marti, Co-Directors
SF Council of Community Housing Organizations

Rev. Earl W. Koteen, Member, Coordinating Committee
Sunflower Alliance

Clarrissa Cabansagan, Community Planner
TransForm

Ellen Wu, Executive Director
Urban Habitat

Derecka Mehrens, Executive Director
Working Partnerships USA

Cc: info@mtc.ca.gov; Steve Heminger; Alix Bockelman; Ken Kirkey
Enclosure: 2010 Comments on Draft Public Participation Plan

August 23, 2010, with updated list of signatories as of September 14, 2010

BY ELECTRONIC MAIL

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

Re: Public Participation Plan for the RTP and SCS

Dear Chair Haggerty and Commissioner Rubin:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusion

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

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

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

Sincerely,

Reverend Daniel Buford, Prophetic Justice Ministry
ALLEN TEMPLE BAPTIST CHURCH

Claire Haas, Organizer
**ALLIANCE OF CALIFORNIANS FOR COMMUNITY EMPOWERMENT
(ACCE)**

Claudia Hudson, President
AMALGAMATED TRANSIT UNION, LOCAL 192

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BAY AREA REGIONAL HEALTH INEQUITIES INITIATIVE

Aaron Lehmer, Network Development Director
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EAST BAY ALLIANCE FOR A SUSTAINABLE ECONOMY (EBASE)

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ELLA BAKER CENTER FOR HUMAN RIGHTS

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EQUAL JUSTICE SOCIETY

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GENESIS

Stephanie Reyes, Policy Director
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James Zahradka, Supervising Attorney
LAW FOUNDATION OF SILICON VALLEY

Carmen Rojas, Director of Strategic Grantmaking
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CALIFORNIA AFFORDABLE HOUSING LAW PROJECT**

Anne Kelsey Lamb, Director
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M. Williams
REGIONAL ALLIANCE FOR TRANSIT (RAFT)

David Grant, Executive Director
SF WALKS & ROLLS

John Holtzclaw
SIERRA CLUB

Dave Room
TAKE BACK THE MIC BAY AREA

David Schonbrunn, President
**TRANSPORTATION SOLUTIONS DEFENSE AND EDUCATION FUND
(TRANSDEF)**

Jeff Hobson, Deputy Director
TRANSFORM

Juliet Ellis, Executive Director
URBAN HABITAT

Nancy Holland, Coordinator
WALK & ROLL BERKELEY

Brian Beveridge, Co-Director
WEST OAKLAND ENVIRONMENTAL INDICATORS PROJECT

Cindy Chavez, Executive Director
WORKING PARTNERSHIPS USA

Tuere Anderson, LCSW, Director of Health Services, Youth Radio

Jonathan Bair, Chair of Oakland's Bicycle and Pedestrian Advisory Committee

Summer Brenner; Will Dominie; Gaby Miller; Sarah Peters; Roberta Spieckerman

Enclosure: Attachment: Detailed Comments and Recommendations

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

Attachment:
Detailed Comments and Recommendations

SUMMARY OF RECOMMENDATIONS

Comment 1: Start with the Needs.

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

Comment 2: Get Specific About Key Decision Points.

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

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

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

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

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

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

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

Comment 5: Evaluate the Equity Impacts of Each Alternative.

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

Comment 6: Demonstrate Explicit Consideration of Input.

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

Comment 7: Get Specific about Outreach.

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

Comment 8: Get Specific About Linguistic Access.

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

Comment 9: Learn from Past Mistakes.

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

BACKGROUND

A. The Regional Legacy of Structural Inequality

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

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

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

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

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

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

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

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

B. Requirements Governing Public Participation

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

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

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

(i) Providing adequate **public notice of public participation activities and time for public review and comment at key decision points**, including but not limited to a reasonable opportunity to comment on the proposed metropolitan transportation plan and the TIP;

(ii) Providing timely notice **and reasonable access to information about transportation issues and processes;**

(iii) Employing visualization techniques to describe metropolitan transportation plans and TIPs;

(iv) Making public information (technical information and meeting notices) available in electronically accessible formats and means, such as the World Wide Web;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DETAILED COMMENTS AND RECOMMENDATIONS

Comment 1: Start with the Needs.

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

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

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

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

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

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

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

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

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

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

. . .

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

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

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

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

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

MTC went on to note that:

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

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

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

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

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

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

Comment 2: Get Specific About Key Decision Points.

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

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

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

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

- Vision and Goals
- Alternative operating and capital investment strategies

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

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

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

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

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

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

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

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

Recommendation 2:

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

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

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

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

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

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

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

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

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

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

Recommendation 3:

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

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

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

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

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

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

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

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

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

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

Comment 5: Evaluate the Equity Impacts of Each Alternative.

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

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

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

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

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

Comment 6: Demonstrate Explicit Consideration of Input.

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

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

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

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

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

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

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

Comment 7: Get Specific about Outreach.

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

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

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

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

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

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

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

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

Comment 8: Get Specific About Linguistic Access.

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

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

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

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

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

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

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

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

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

Comment 9: Learn from Past Mistakes.

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

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

NOTES

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

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

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

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

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

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

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

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

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

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

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

⁹ Draft Plan, p. 22.

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

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

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

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

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

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

¹⁶ 23 C.F.R. § 450.316 (a).

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

¹⁸ 23 C.F.R. § 450.334 (a) (3).

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

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

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

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

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

²⁴ 23 C.F.R. § 450.316 (a) (1) (vii).

²⁵ 23 CFR § 450.316 (a) (1) (vii).

²⁶ Draft Plan, p. 22.

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

²⁸ Draft Plan, App. A, pp. 53, 55.

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

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

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

³² Lifeline Report, pp. 6, 26.

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

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

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

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

³⁶ Draft Plan, App. A, p. 44.

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

³⁸ “Transportation planning includes a number of steps:

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

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

³⁹ Draft, App. A, p. 45.

⁴⁰ Government Code § 14522.2 (a).

⁴¹ 23 C.F.R. § 450.316 (a) (1) (iii).

⁴² See 23 C.F.R. § 450.334 (a) (3).

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

⁴⁴ Draft Plan, p. 23.

⁴⁵ 23 C.F.R. § 450.334 (a) (3).

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

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

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

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

⁵⁰ Draft Plan, App. A, p. 50.

⁵¹ Draft Plan, App. A, p. 47.

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