



*To explore, enjoy and preserve the nation's  
forests, waters, wildlife and wilderness.*

Monday, June 29, 2015

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Via: Email to [matt.fell@mcagov.org](mailto:matt.fell@mcagov.org)

**Re: Proposals 2015 MCAG APS Committee Discussion—Sierra Club**

Dear Mr. Fell,

The following are proposals from the Sierra Club for possible inclusion in the APS Steering Committee (Committee) meeting on July 10 regarding the Merced County Association of Governments' (MCAG) Alternative Planning Strategy (APS). We are also including some items that we hope staff would prepare for the July 10 meeting. Finally, there are items that we would like to draw attention to that do not fall into the strict category of creating a legally sound and Committee-supported APS.

The Sierra Club is the oldest and largest grassroots environmental organization in the United States. The mission of our 1.2 million members and supporters is to explore, enjoy, and protect the wild places of the earth; practice and promote the responsible use of the earth's ecosystems and resources; and educate and enlist humanity to protect and restore the quality of the natural and human environment. Our members who live in Merced County engage in a range of conservation activities including protection of communities from air and water pollution, protection of wildlife species and habitat, preservation of open space and farmland, and partnership with those within our communities historically disadvantaged and frequently bearing the greatest burden of negative health and environmental impacts.

These proposals derive from two sources, as well as our collective experience in dealing with multiple RTPs/SCSs in this first round of SB 375 implementation: 1) past Committee presentations and minutes; 2) our June 4 email to the Committee, redrafted in portions and with additions from colleagues.

Our proposals here assume that the MCAG Board will not only approve a legally valid APS that meets the SB 375 targets, but will also seriously consider amending the approved 2014 RTP—as they are legally allowed to do—incorporating aspects of the APS prior to the 2018 RTP. To avoid the need to prepare an APS for the 2018 RTP, we recommend that the board undertake strong action now that more than meets the SB 375 targets, knowing that the Air Resources Board may well increase targets in following rounds.

## **Background**

There are a combination of forces at work throughout the State that we believe make addressing SB 375 goals aggressively a benefit to local governments and their citizenry. Market forces and demographic changes, in addition to State laws which are only likely to increase in the area of AB 32 implementation make NOW the time to get ahead of these curves. SB 375 specifically realigns RTPs with the State’s “fair share” housing legislation, which has attracted forward-thinking local jurisdictions throughout the State to see advantages more regional, as compared to parochial local, planning (see Bay Area RTP/SCS for the best example of this integration). The RTPs/SCSs in Los Angeles and Sacramento (SACOG) should be seen as models for showing how economic benefits can accrue to a wide variety of community stakeholders through SB 375 implementation. SACOG’s SCS, for example, calls for down-sizing some projects, and associating transit expansion with supportive land use projects to increase transit productivity farebox revenue for local jurisdictions and transportation agencies.

## **The Question of Authority**

There remains a fundamental question of the extent of MCAG powers. It is clear under SB 375 that MCAG and other similar agencies have no **direct** authority over the land use decisions of local jurisdictions, if that authority is defined as the power to enact General Plan updates and amendments, zoning amendments, and land use project approvals. However, we continue to assert that MCAG has adequate authority, through financial and policy decisions, to significantly influence those land use decisions. We hope the MCAG Board ultimately chooses to use this influence at appropriate times, and we continue to assert that compliance with California laws may require MCAG to do so.

We recommend that staff prepare for the July 10 meeting a brief overview of the authority MCAG has to influence local land use decisions. This would include both what is legally allowable and what is likely to be politically acceptable. We understand that to the extent MCAG staff feel such a discussion would intrude upon our pending legal case, MCAG staff would be right in limiting this item or not doing so at all. Nonetheless, the Committee members would greatly benefit, when discussing proposals for the APS, to have a reasonably clear idea of what is legally and politically realistic to include.

As an example, we quote here from our previous submission to the Committee (as revised), emailed on June 4,

“MCAG has the authority to enter contracts, pursue grants, issue bonds, and adopt ordinances and resolutions in furtherance of its duties. As the Transit Joint Powers Authority, it also has authority to issue bonds and other financing to pay for operation and development of transit services and to plan and oversee delivery of transit services.” (Page 1)”

We recommend that the Committee discuss the following for inclusion in the APS and forwarding to the MCAG Board, with staff preparation in advance:

- MCAG issuing a bond to better achieve the targets and further the accompanying goals of the APS;
- MCAG, sitting as the Transit Joint Powers Authority, issuing a bond or enacting another financing mechanism to improve transit in ways that better achieve the targets and further the accompanying goals of the APS;
- MCAG offering financial priority for RTP funding to those land use entities that comply with the land use assumptions of the APS, first and foremost, and to a lesser extent those that comply with the approved RTP.

A concrete example comes from the Bay Area’s “One Bay Area Grant” program, which restricts certain transportation funds to use in locally identified growth zones near transit which must also be in compliance with state “fair share” housing legislation.

MCAG’s website home page perhaps says it best, “The RTP’s scope is Regional: The issues transcend the boundaries of local jurisdictions. “ If the issues transcend those boundaries, then the way we address them—whether transportation, land use, conservation, public health, or equity—should also transcend those boundaries.

## **Proposals Based on Committee Presentations and Minutes to Date**

### **Overcoming Impediments**

In the June 5<sup>th</sup> Committee presentation, under the title “APS Requirements,” reads the following, “Identify the principal impediments to achieving the target in the Sustainable Communities Strategy (SCS).” We recommend that the APS also identify possible mechanisms to overcome those impediments.

## **Survey Methodology Going Forward**

We appreciate MCAG's current public outreach efforts as well as efforts to incorporate Committee members' input into the current public survey. Nevertheless, such surveys have too little accuracy and influence. Thus, we recommend that, upon adoption of the APS, the MCAG Board also direct staff to devise better methodology for gauging public priorities as we head towards the 2018 Regional Transportation Plan (RTP). We further recommend that the Committee discuss ideas towards this goal, whether at their July meeting or a later date.

## **Timeline**

In order to maintain a timeline whereby the MCAG Board approves the APS in September, we recommend that Committee Members be asked whether they are amenable to meeting more often prior to the September deadline.

## **Options**

Again from the June 5 staff presentation, under "Scope and Approach," the "Options" for getting the APS to the targets include "Land Use Assumptions" and "Transportation Investments." We recommend adding "MCAG Policies." MCAG may be able to adopt policies outside of investments that aid in meeting or exceeding the targets (in fact, some are proposed in this letter).

## **Redrafted from Sierra Club June 4 Email to Committee, with Colleague Additions**

### **MCAG's Policies Regarding Selection and Funding of Road Projects— AKA Spend Funds Carefully**

- MCAG staff should, prior to the July 10 meeting, share with the Committee its existing formal or informal policies regarding selection and funding for road projects. For example, it should share the criteria it uses when selecting projects for inclusion in its Regional Transportation Plan ("RTP"). This will allow the Committee members to see what factors MCAG considers (e.g., level of service criteria, vehicle miles traveled, public health, cost, and other factors) when selecting and funding road projects.
- MCAG should modify its transportation project selection criteria to select projects through an inclusive, transparent process that gives significant weight to reducing greenhouse gas emissions and vehicle miles traveled when considering road projects and that will achieve the "co-benefits" discussed by ARB Board members and others when considering the goals of SB 375 (e.g. reduced cost to local governments, public health benefits, land conservation, equity). For example, instead of choosing projects based on

whether they will help maintain a level of service “D,” MCAG should select projects based on broader criteria.<sup>1</sup> For examples, Merced can look to the Bay Area’s “Project Performance Assessment” and the project scoring approach used in Fresno.

- The Committee should use these revised criteria to determine whether to recommend to the MCAG Board removing from the APS (and possible amendments to remove from the approved RTP) certain road expansion projects. To the extent MCAG has existing policy that defines road projects currently in the RTP as “committed” projects that cannot be removed, the agency should modify this policy to redefine what constitutes a “committed” transportation project for purposes of RTPs. Specifically, MCAG should define a “committed” project as one that has completed environmental review under CEQA and a full funding plan and has financing that cannot be legally re-allocated to a different project (or the later without the former).

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- **Increase Funding for Sustainable Communities**

- The MCAG Board should budget adequate funding for and direct staff to prepare a study that identifies new or increased funding sources for transit capital and operations as well as active transportation. This study should evaluate the feasibility of local jurisdictions’ adoption of development impact fees, imposition of parcel or real estate transfer taxes, and development of a ballot measure that calls for either a ½ cent or 1 cent sales tax increase (we understand MCAG is already considering this) or a local vehicle fuels tax increase. At least thirty of the revenue from this ballot measure should be earmarked for transit capital and operations as well as active transportation projects, and no more than one-third should be available for new road capacity. MCAG would work with local bike, transit and environmental justice advocates to solicit ideas for and craft possible tax and other funding measures. The study should identify transportation and/or land use changes required for MCAG or local jurisdictions to qualify for such funds. Disadvantaged communities should receive priority for these funds, with a minimum of 15% going to disadvantaged communities.

- **Take Early Action for Walking & Biking**

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- The Committee should recommend to the MCAG Board an RTP amendment calling for an early action program for active transportation (biking and walking), which should include concrete projects and investment levels for the next 5 years.

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<sup>1</sup> See 2014 RTP at 33 (“A list of projects necessary to preserve the capacity of the regional road system was prepared. It was based on the Policy goal of having no worse than level of service “D” on any significant roadway.”).

### **Ensure All Investments Create Complete Streets**

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- Develop and adopt a “Complete Streets” program that ensures that all road projects also include pedestrian and bike infrastructure where physically possible and useful (e.g. not on a freeway onramp).<sup>2</sup> Such a program would describe: (a) sidewalk and path construction and maintenance; (b) bicycle lane and path construction and maintenance; (c) traffic calming measures; (d) improved pedestrian crossings.
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- **Active Transportation and Transit**
- The MCAG Board should budget adequate funding for and direct staff to prepare a study that identifies new or increased funding sources for transit capital and operations as well as active transportation. This study should evaluate the feasibility of local jurisdictions’ adoption of development impact fees, imposition of parcel or real estate transfer taxes, and development of a ballot measure that calls for either a ½ cent or 1 cent sales tax increase (we understand MCAG is already considering this) or a local vehicle fuels tax increase. Fifty percent of the revenue from this ballot measure should be earmarked for transit capital and operations as well as active transportation projects. MCAG would work with local bike, transit and environmental justice advocates to solicit ideas for and craft possible tax and other funding measures. The study should identify transportation and/or land use changes required for MCAG or local jurisdictions to qualify for such funds.

### **Study the Needs of Disadvantaged Communities**

- MCAG should fund a needs assessment to catalogue County-wide health indicators and transportation infrastructure deficiencies, with an emphasis on the health impacts on and needs of disadvantaged communities. MCAG would use the assessment’s findings to prioritize neighborhoods and communities for funding for transportation, pedestrian safety, transit enhancements, etc. as well as to guide future CEQA documents regarding health impacts from potential transportation projects (e.g. placing large amounts of new traffic, and thus pollutants, within close proximity of vulnerable neighborhoods).

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<sup>2</sup> See “Taking Action on Complete Streets: Implementing Processes for Safe, Multimodal Streets,” Smart Growth America, July 2013, available at: <http://www.smartgrowthamerica.org/documents/cs/impl/taking-action-on-cs.pdf>

## Map and Protect Key Natural Areas

- MCAG should comprehensively map resource areas and farmland in Merced County, including but not limited to 1) all categories of “resource areas” listed in Cal. Gov. Code § 65080.01(a), 2) all groundwater recharge areas mapped in the San Joaquin Valley Greenprint, and 3) all prime farmland, farmland of statewide importance, unique farmland and farmland of local importance in the County according to the most recent data available from the California Department of Conservation’s Farmland Mapping and Monitoring Program. Include maps of all categories of resource areas and farmland in the APS (if time allows; if not, then) and updated versions of these maps in future RTPs/SCSs or APSs.
- MCAG should treat GIS layers reflecting resource areas and farmland as constraints upon development when designing a land use pattern for this APS and any future RTP/SCS, such that the final adopted land use pattern avoids resource areas and farmland to the greatest extent possible. An example of how to implement this approach is provided by the Tulare County RTP/SCS, in which resource maps produced for the “San Joaquin Valley Greenprint “ were compiled as GIS layers that acted as constraints to development of land in the SCS preferred scenario.”<sup>3</sup> Santa Barbara County, where the preferred scenario adopted for the RTP/SCS incorporates a “Regional Greenprint” cataloguing open space, habitat, farmland and other resource areas as constraints to development, offers another example.<sup>4</sup>
- In the event that the resulting land use pattern is irreconcilable with one or more General Plans in Merced County, 1) adopt a land use pattern that conserves all resource areas and farmland not specifically committed to development in a local General Plan, 2) work proactively with all local jurisdictions that revise or update their General Plans during the term of the APS to maximize conservation of resource areas and farmland in the land use patterns reflected in those General Plans (this will require the MCAG Board to revise budgetary resources, to allow for staff/consultants to do this).<sup>5</sup>

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<sup>3</sup> Tulare County Association of Governments. 2014. 2014-2040 Regional Transportation Plan & Sustainable Communities Strategy for Tulare County. Retrieved from <http://www.tularecog.org/Index.aspx?NID=127>.

<sup>4</sup> Santa Barbara County Association of Governments. 2013. 2040 Regional Transportation Plan and Sustainable Communities Strategy. Retrieved from <http://www.sbcag.org/rtp.html>.

<sup>5</sup> Butte County provides an example of how an MPO can help local jurisdictions to incorporate resource areas and farmland into their land use planning. According to the Butte MTP/SCS, the Butte County Association of Governments (BCAG) not only initiated a Regional Conservation Plan covering much of the County, but also “integrated updates of the region’s local general plans both with each other and with the Butte Regional Conservation Plan . . . and Metropolitan Transportation Plan.” For more information, see BCAG. 2012. Butte County Metropolitan Transportation Plan &

- Based on the resource mapping described above, as well as input from conservation and agricultural organizations whose work includes planning for, acquisition of and stewardship of conservation lands, MCAG should develop a regional advance mitigation plan (RAMP) setting priorities for the use of mitigation resources. See <https://rampcalifornia.water.ca.gov/> for explanation and example of RAMP. San Diego’s “Environmental Mitigation Program” should be looked to as a model here, funding multispecies habitat preserves that also serve to channel urban growth to appropriate areas.
- MCAG should develop and adopt enforceable policies requiring adequate CEQA mitigation for MCAG-funded projects that consume or degrade 1) productive farmland, including but not limited to farmland designated as prime, of statewide importance, unique or of local importance (as mapped by California Department of Conservation), 2) habitat, including but not limited to special status species habitat, areas designated in current or future Habitat Conservation Plans, and habitat corridors for the protection of biodiversity, 3) groundwater recharge areas or 4) other important natural resources. Adequate mitigation means at least one-to-one mitigation for farmland, higher ratios as necessary for other natural resources, and adherence to the mitigation hierarchy (avoidance first, minimization second and compensation third) in all cases. It also means that mitigation for each project will address the specific conservation values impacted by that project within the framework of the RAMP described above. For local land use projects, explore MCAG’s ability to use funding to influence local jurisdictions to adopt the above.
- MCAG should develop a policy modeled on SACOG’s “Rural-Urban Connections Strategy,” to improve the viability of the local agricultural economy through improved goods movement and land conservation.

### **Promoting Infill and Compact Development**

- MCAG should develop and adopt a transit-oriented development (TOD) policy or ordinance. The purpose of the TOD policy/ordinance is to provide incentives to local governments to adopt transit-supportive land uses and to promote infill development in areas close to existing or committed transit infrastructure. The TOD policy/ordinance should include measures such as: (a) working with cities to implement flexible zoning that allows for interim uses for existing buildings or public spaces to encourage revitalization in key infill areas; (b) prioritizing for funding transit and other transportation infrastructure in infill areas, as well as upgrading and performing deferred maintenance on public infrastructure that is under the purview of MCAG; (c)



- working with local jurisdictions to pursue air district funding to finance infill projects; (d) developing a model parking management policy that reduces parking requirements for possible adoption by local jurisdictions; (e) working with local jurisdictions to create effective incentives for affordable housing near transit, being mindful that not all affordable housing should be built in existing disadvantaged communities; and (f) Identify “transit-ready” areas, especially those that would help rural communities achieve the ridership needed?
- Establish grants for local governments seeking to develop specific plans for infill development.
  - De-prioritize infrastructure funding from greenfield development at urban edge.

### **Invest in Existing Communities, Particularly the Most Disadvantaged**

- Establish a grant program that funds the needs of disadvantaged communities and supports the planning and infrastructure needed to take advantage of the infill opportunities

### **Identify Infill Opportunities**

- Following the example of San Joaquin COG’s “Smart Growth Incentive Program”, MCAG should work with local jurisdictions to catalogue infill sites, particularly near transit, and estimate their development potential.
- Adopt funding or other incentives for jurisdictions that conform their general plans and development approvals to particular standards, such as LEED for Neighborhood Development<sup>6</sup> or the Valley Blueprint.

### **Facilitate Appropriate CEQA Streamlining**

- Develop criteria and mitigation measures, as well as a worksheet, for developers to qualify for SB 375 exemptions/streamlining. See, for example, the Sacramento Council of Governments’ *SB 375 CEQA Streamlining and Determination of MTP/SCS Consistency Worksheet*.<sup>7</sup> <sup>8</sup> Also develop a map showing all locations within MCAG’s jurisdiction that are within ½ mile of a “major transit stop” or “high quality transit corridor” for purposes of CEQA streamlining. See Pub. Res. Code § 21155.1(b). Provide this and other technical support to enhance local competitiveness for state grant funds.

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<sup>6</sup> See [http://www.nrdc.org/cities/smartgrowth/files/citizens\\_guide\\_LEED-ND.pdf](http://www.nrdc.org/cities/smartgrowth/files/citizens_guide_LEED-ND.pdf)

<sup>7</sup> See SB 375 CEQA Streamlining available at: <http://sacog.org/mtpscs/implementation/>

<sup>8</sup> See Determination of MTP/SCS Consistency Worksheet available at: <http://sacog.org/mtpscs/files/Determination-MTP-SCS-Consistency-Worksheet.pdf>

SACOG's RTP/SCS has a model for this, and they have a project-level worksheet as well.

### Other Items

- MCAG should analyze whether it is feasible to shift significant, already planned, residential growth from unincorporated areas of Merced County that lack transit into existing cities or rural communities that contain more transportation options. MCAG should study the potential use of Transferable Development Rights (TDRs) that would compensate jurisdictions/landowners for transferring jobs/housing from less desirable to more desirable locations, as measured by compliance with the adopted SCS/APS. This should not apply to **existing** rural communities, where additional growth would bring with it better local services that reduce long trips to the cities. It should particularly apply to already planned rural communities such as "New Towns." New Towns and other large developments in unincorporated County jurisdiction not already planned should be strictly discouraged and should not be eligible for TDRs.
- MCAG should study ways in which local jurisdictions could share sales tax revenue. Currently, each jurisdiction has an incentive to compete for sales tax dollars by trying to locate commercial development in its jurisdiction, regardless of whether locating the development there makes sense from a regional perspective. Sharing tax dollars among jurisdictions can incentivize commercial development in core areas that have access to transit.<sup>9</sup>
- MCAG should develop a method for cities and the County to analyze the long-term, full life-cycle costs of development proposals. This analysis would allow local governments to provide more accurate budgets in planning and permitting new projects and could inform mitigation fee structures. It would help ensure that large-lot, sprawl development would pay the full costs of providing public services to the development—costs that are generally higher than for more compact and/or infill development.<sup>10</sup> This, in turn, would incentivize more compact, transit-oriented development. MCAG

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<sup>9</sup> See <http://valleyblueprint.org/files/Shawn-Kantor-The%20Financial%20and%20Institutional%20Challenges%20to%20Smart%20Growth%20Implementation-%20A%20Focus%20on%20California's%20Central%20Valley.pdf>

<sup>10</sup> See <http://static.newclimateeconomy.report/wp-content/uploads/2015/03/public-policies-encourage-sprawl-nce-report.pdf>, p. 27 (describing how "Dispersed development tends to increase the per capita length of roads and utility lines (water, sewage, power, etc.), and the travel distances needed to provide public services (garbage collection, policing, emergency response, etc.) . . . [and how] suburban development tends to attract residents who demand urban quality services in dispersed locations, which increases government cost burdens"). See also Council of Infill Builders "Bringing Downtown Back: boosting infill in SJ Valley," p. 18, at <http://www.councilofinfillbuilders.org/resources/PDFs/Bringing-Downtown-Back.pdf>.

- should adopt a policy requiring jurisdictions to use this analysis for any development proposal where MCAG provides transportation funding.
- MCAG should develop a model ordinance(s) for local jurisdiction adoption addressing project impact fees based on environmental and/or economic impacts, like distance-based fees (such as the City of Lancaster’s Urban Structure Program)<sup>11</sup> or vehicle miles traveled fees. These fees would require outlying projects to pay more for the increase in vehicle miles traveled but would reduce fees on transit-friendly infill projects that benefit the local economy and environment and reduce greenhouse gas emissions. Local officials could consider directing the fee revenue to new infill projects in the geographic areas where the fees were generated in order to help offset the impacts of the outlying projects (thus fulfilling the nexus requirements of the 5th Amendment to the U.S. Constitution). MCAG should adopt a policy/ordinance to utilize funding prioritization to influence local jurisdictions to adopt such ordinances.<sup>12</sup>

### **Improve Performance Evaluation**

- Performance measures should be consistent across all phases of evaluation. Also, individual large local jurisdiction projects should receive individual evaluations for compliance with the approved SCS and APS and then for performance evaluation. The Bay Area has adopted a good model for project-level performance evaluation.
- MCAG should use such performance measures analyze local government and household costs associated with RTP/SCS scenarios. Los Angeles’s RTP/SCS provides a good model for this.

If you or the Committee members have any questions regarding the above, please call me at (530) 488-0661 or via [ckbtravel@earthlink.net](mailto:ckbtravel@earthlink.net).

Sincerely,



Craig K. Breon, Esq.

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<sup>11</sup> This program imposes development impact fees on new development throughout the City of Lancaster. Using a computer model, fees are calculated based on distance from core area of city and costs associated with providing civic services to that area, updated annually.

<sup>12</sup> See Council of Infill Builders “Bringing Downtown Back: boosting infill in SJ Valley.”