

September 7, 2010

TO: Members of the MAG Regional Council Executive Committee

FROM: Mayor Thomas Schoaf, City of Litchfield Park, Chair

SUBJECT: MEETING NOTIFICATION AND TRANSMITTAL OF TENTATIVE AGENDA FOR THE MAG REGIONAL COUNCIL EXECUTIVE COMMITTEE AND A POSSIBLE EXECUTIVE SESSION

Monday, September 13, 2010 - 12:00 Noon  
MAG Office, Suite 200 - Cholla Room  
302 North 1<sup>st</sup> Avenue, Phoenix

A meeting of the MAG Regional Council Executive Committee has been scheduled for the time and place noted above. Members of the Committee may attend the meeting either in person, by telephone conference, or by videoconference.

Please park in the garage under the building. Bring your ticket to the meeting, parking will be validated. For those using transit, the Regional Public Transportation Authority will provide transit tickets for your trip. For those using bicycles, please lock your bicycle in the bike rack in the garage.

Pursuant to Title II of the Americans with Disabilities Act (ADA), MAG does not discriminate on the basis of disability in admissions to or participation in its public meetings. Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting Denise McClafferty at the MAG office. Requests should be made as early as possible to allow time to arrange the accommodation.

If you have any questions regarding the Executive Committee agenda items, please contact me at (623) 935-5033. For MAG staff, please contact Dennis Smith, MAG Executive Director, at (602) 254-6300.

MAG EXECUTIVE COMMITTEE  
TENTATIVE AGENDA  
SEPTEMBER 13, 2010

COMMITTEE ACTION REQUESTED

1. Call to Order

The meeting of the Executive Committee will be called to order.

2. Call to the Audience

An opportunity will be provided to members of the public to address the Executive Committee on items not scheduled on the agenda that fall under the jurisdiction of MAG, or on items on the agenda for discussion but not for action. Members of the public will be requested not to exceed a three-minute time period for their comments. A total of 15 minutes will be provided for the Call to the Audience agenda item, unless the Executive Committee requests an exception to this limit. Please note that those wishing to comment on action agenda items will be given an opportunity at the time the item is heard.

3. Approval of Executive Committee Consent Agenda

Prior to action on the consent agenda, members of the audience will be provided an opportunity to comment on consent items that are being presented for action. Following the comment period, Committee members may request that an item be removed from the consent agenda. Consent items are marked with an asterisk (\*).

2. Information and discussion.

3. Approval of Executive Committee Consent Agenda.

ITEMS PROPOSED FOR CONSENT  
BY THE EXECUTIVE COMMITTEE

\*3A. Approval of the August 16, 2010 Executive Committee Meeting Minutes

\*3B. Consultant Selection for the Sustainable Transportation and Land Use Integration Study

On May 26, 2010, the MAG Regional Council approved the Fiscal Year (FY) 2011 MAG Unified

3A. Review and approval of the August 16, 2010 Executive Committee meeting minutes.

3B. Approval of the selection of Arup North American, Ltd. as the consultant to develop the Sustainable Transportation and Land Use Integration Study for an amount not to exceed \$750,000.

Planning Work Program and Annual Budget, which provides \$750,000 to conduct a Sustainable Transportation and Land Use Integration Study. A Request for Proposals was advertised on June 29, 2010, and nine proposals were received. On August 26, 2010, a multi-agency review team evaluated the proposals, conducted consultant interviews, and recommended to MAG that Arup North American, Ltd. be hired to develop the study at a cost not to exceed \$750,000. This item is on the September 8, 2010 MAG Management Committee agenda for recommendation to approve. Please refer to the enclosed material.

\*3C. Consultant Selection for the On-Call Transportation Planning Consultant Services Program

The Fiscal Year (FY) 2010 MAG Unified Planning Work Program and Annual Budget, approved by the MAG Regional Council in May 2009, was amended in February 2010 to include \$150,000 to conduct the On-Call Transportation Planning Consultant Services Program. The FY 2011 Unified Planning Work Program and Annual Budget, approved by the MAG Regional Council in May 2010, provides an additional \$100,000 for this On-Call Program. The purpose of the program is for expediting the delivery of consultant services at MAG. For the purposes of this On-Call Transportation Planning Consultant Services program, qualified consultants were sought to assist staff in the following five services areas: (1) Civil Engineering, (2) Transportation Planning, (3) Transportation Operations, (4) Policy and Finance, and (5) Public Involvement. A Request for Statements of Qualifications was issued on April 15, 2010 and a total of 37 Statements of Qualifications were received by the due date of May 27, 2010. An internal team of MAG staff reviewed the Statements of Qualifications and on July 22, 2010, recommended to MAG selecting six consultants for participation in the On-Call Transportation Planning Consultant Services program. This item is on the September 8, 2010 MAG Management

3C. Approval of the selection of Cambridge Systematics, Inc., AECOM Technical Services, Inc., PB Americas, Inc., HDR Engineering, Inc., Kimley-Horn and Associates, Inc., and Burgess & Niple, Inc. as the consultants to participate in the On-Call Transportation Planning Consultant Services Program for a two-year period, as provided for in the FY 2010 and FY 2011 Unified Planning Work Programs and Annual Budgets.

Committee agenda for recommendation to approve. Please refer to the enclosed material.

\*3D. Conformity Consultation

The Maricopa Association of Governments is conducting consultation on a conformity assessment for an amendment and administrative modification to the FY 2011-2015 MAG Transportation Improvement Program (TIP). The proposed amendment and administrative modification involve several American Recovery and Reinvestment Act (ARRA) funded projects, including a City of Phoenix pavement preservation project and a Scottsdale park-and-ride project. In addition, the City of Mesa has proposed an amendment involving transit projects. The amendment includes projects that may be categorized as exempt from conformity determinations. The administrative modification includes minor project revisions that do not require a conformity determination. This item is on the September 8, 2010 Management Committee agenda for consultation. Please refer to the enclosed material.

\*3E. Project Changes - Amendment to the FY 2011-2015 MAG Transportation Improvement Program

The fiscal year (FY) 2011-2015 MAG Transportation Improvement Program (TIP) and Regional Transportation Plan 2010 Update were approved by the MAG Regional Council on July 28, 2010. Since that time, there has been a request from ADOT to add a new project to replace an analog radio system throughout the region. This project is requesting to use \$2.9 million of federal Highway Safety funds in federal fiscal year (FFY) 2010; ADOT manages the federal Highway Safety fund program. This request is time sensitive as the Federal Highway Administration stops accepting obligation requests for FFY 2010 on September 16, 2010. This item is on the September 8, 2010 Management Committee agenda for information, discussion and

3D. Consultation.

3E. Information, discussion and approval to amend the FY 2011-2015 MAG Transportation Improvement Program, and as appropriate, the Regional Transportation Plan 2010 Update to add a new highway safety project.

recommendation to approve. Please refer to the enclosed material.

ITEMS PROPOSED TO BE HEARD  
BY THE EXECUTIVE COMMITTEE

4. ARRA Local Highway Funds: Project Changes - Amendment to the FY 2011-2015 MAG Transportation Improvement Program

The Fiscal Year (FY) 2011-2015 MAG Transportation Improvement Program (TIP) and Regional Transportation Plan 2010 Update were approved by the MAG Regional Council on July 28, 2010. Since that time, there has been a request from the City of Phoenix to move ARRA funds from the PHX09-804 project, which will now be funded with local funds to the PHX09-801 project to increase the project budget and the number of miles of roadway to be repaved. This request is time sensitive as the Federal Highway Administration stops accepting obligation requests on September 16, 2010. This item is on the September 8, 2010 Management Committee agenda for possible recommendation to approve. Please refer to the enclosed material.

5. ARRA Transit Funds: Project Changes - Amendment to the FY 2011-2015 MAG Transportation Improvement Program

The Fiscal Year (FY) 2011-2015 MAG Transportation Improvement Program (TIP) and Regional Transportation Plan 2010 Update were approved by the MAG Regional Council on July 28, 2010. Since that time, there has been a request from the City of Scottsdale to move ARRA funds from a construction project to a design project. Additionally, the Federal Transit Administration has deemed three design projects led by the City of Mesa ineligible for federal funding including ARRA funds. The three projects are MES10-801T, MES10-803T, and MES10-804T with a total of \$1,897,500 in ARRA funds. On December 9, 2009, the MAG Regional Council approved a set of Prioritization Guidelines for Unspent or Redistributed ARRA Funds.

4. Possible approval to amend the FY 2011-2015 MAG Transportation Improvement Program, and as appropriate, the Regional Transportation Plan 2010 Update to move \$1,281,693 of ARRA funds to PHX09-801 and increase the project budget accordingly.

5. Possible approval to amend the FY 2011-2015 MAG Transportation Improvement Program, and as appropriate, the Regional Transportation Plan 2010 Update for the Scottsdale request to move \$183,498 in ARRA funds from a construction project to a design project and approval of the city of Mesa request to program \$1,771,250 of ARRA transit funds for the construction of the Gilbert/L202 park-and-ride project, MES10-805T, and \$126,250 of ARRA transit funds for the construction of L202/Power park-and-ride, MES08-801T.

Following the approved Prioritization Guidelines coupled with the project status, the unspent \$1,897,500 of ARRA funds would be allocated to the 2.1 priority to increase operating assistance for bus and rail. There is currently \$1,750,000 of ARRA Transit funds programmed for bus and rail operating assistance, which is below the ceiling of ten percent of ARRA Transit funds, up to \$6,442,122, that can be used for bus and rail operating assistance. The City of Mesa is requesting that \$1,771,250 of ARRA transit funds be programmed for the construction of the Gilbert/L202 park-and-ride, MES10-805T and \$126,250 is programmed for the construction of L202/Power park-and-ride, MES08-801T. The MES10-805T project is currently programmed with \$517,750 of ARRA Transit, \$1,417,000 of federal 5309-rail and fixed guideway modernization (FGM), \$218,471 of regional funds, and \$135,780 of local funds. The funding changes for MES08-801T would decrease the 5309-FGM by \$101,000 from \$1,025,800 to \$924,800 and decrease local funds by \$25,250 from \$256,450 to \$231,200. This request is explained in the attached table. This request also affects the programming for FY 2009 federal transit 5309-FGM funds. MAG would have to reprogram \$1,517,999 of 5309-FGM in the next committee cycle. 5309-FGM funds have limited eligibility requirements and uses in comparison to ARRA 5307 transit funds. This item is on the September 8, 2010 Management Committee agenda for possible recommendation to approve. Please refer to the enclosed material.

6. MAG Air Quality Technical Advisory Committee Vice Chair Appointment

On July 22, 2009, the MAG Regional Council approved the MAG Committee Operating Policies and Procedures. Officer appointments for technical and other policy committees, with exception of the MAG Regional Council, Transportation Policy Committee, and Management Committee, will be made by the MAG Executive Committee and are eligible for one-year terms, with possible reappointment to

6. Approval of the Air Quality Technical Advisory Committee appointment of vice chair ending June 2011.

serve up to one additional term by consent of the respective committee.

As of August 16, 2010, the position of vice chair of the Air Quality Technical Advisory Committee will be vacant. Gaye Knight from the City of Phoenix, and vice chair of the Air Quality Technical Advisory Committee, retired after many years of public service. On August 17, 2010, MAG staff sent a notice to the Management Committee, the Air Quality Technical Advisory Committee, and the Intergovernmental Representatives to solicit letters of interest for the Air Quality Technical Advisory Committee vice chair position. Copies of the letters and a table identifying individuals requesting consideration for the position has been included. Please refer to the enclosed material.

7. Update on the Transportation Planning Certification Review of the Metropolitan Transportation Planning Process for Phoenix Transportation Management Area (TMA)

In November 2009, the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) performed a Certification Review Process on the MAG Transportation Planning Process. The FHWA and the FTA determined that the transportation planning process conducted by MAG meets the requirements of the Metropolitan Planning Rule and was jointly certified. Recommendations and commendations were provided by FHWA and FTA to improve the planning process. No corrective actions were provided. Staff will provide an overview of the recommendations and commendations provided in the certification. Please refer to the enclosed material.

8. Formation of a MAG Joint Planning Advisory Council Working Group

On July 19, 2010, the MAG Executive Committee approved forming a subcommittee to discuss the formation of a MAG JPAC Working Group and to return to the Executive Committee with a recommendation for the composition of this

7. Information and discussion.

8. Information, discussion and possible action regarding the composition of the MAG JPAC Working Group.

working group. On August 16, 2010, the Executive Committee Subcommittee for the Formation of a JPAC Working Group met to discuss the composition of the working group. A report was given to the Executive Committee at the August 16, 2010 meeting. The Executive Committee requested that the subcommittee further define the process and determine the appropriate individuals to be considered by the Regional Council for appointment to the working group. It was also suggested that letters of interest be solicited from MAG member agency elected officials for the representation of the Five Cities/Towns. A subcommittee meeting will be held on September 13, 2010 to further define the process and discuss the composition of the working group. A report will be provided to the Executive Committee.

9. Sustainable Communities Regional Planning Grant Program

In August 2010, MAG submitted an application for the Sustainable Communities Regional Planning Grant Program on behalf of the Sun Corridor Consortium. The grant requests nearly \$5 million to support the creation of a regional plan for sustainable development. The purpose of the plan is to integrate housing, economic development, and transportation planning in order to enhance the economy, the environment, and social equity. In total, 120 partners formally supported the grant application by leveraging nearly \$21 million. The Sustainable Communities Planning Grant Program is offered through the U.S. Department of Housing and Urban Development (HUD) in partnership with the U.S. Department of Transportation and the Environmental Protection Agency. The application process is expected to be very competitive for the \$98 million available nationally. MAG began convening stakeholders in April 2010 to explore possible opportunities to position the region well. Six initiatives were proposed in the application to inform the process to develop the Sun Corridor Regional Plan for Sustainable Development. These initiatives address issues such as transportation and housing.

9. Information and discussion.

Securing funding now may be advantageous for the region if regional plans for sustainable development become a requirement with the re-authorization of federal transportation funding. An update will be provided on the activities and partners included in the grant application. Please refer to the enclosed material.

10. Update on Exceptional Events and MAG Five Percent Plan for PM-10

On August 16, 2010, the Executive Committee was provided an update on the critical dates regarding the proposed action on the MAG Five Percent Plan for PM-10 and the letters submitted to request delaying this action for at least six months to ensure that a final decision on exceptional events would be made by EPA based upon the best scientific information available. On August 24, 2010, EPA sent a letter to ADEQ indicating that EPA will be proposing action on the Five Percent Plan on September 3, 2010, and that EPA will be addressing the exceptional events in that action. MAG has continued to conduct outreach to the Congressional Delegation as directed by the Regional Council. On August 30, 2010, the Arizona Congressional Delegation sent a letter to EPA expressing serious concern with the recent EPA decision on exceptional events and the MAG Five Percent Plan for PM-10. On August 17, 2010, the Imperial County Air Pollution Control District Board in California approved the pursuit of all appropriate legal remedies to challenge EPA's limited disapproval of their dust control rules tied to the disapproval of the exceptional events. On September 1, 2010, ADEQ and MAG sent a joint letter to EPA to express concern with the process used by EPA to implement the Exceptional Events Rule and to request an extension of at least six months before EPA proposes action on the Five Percent Plan. On September 3, 2010, the EPA Regional Administrator signed a Federal Register notice that proposed partial approval and partial disapproval of the Five Percent Plan for PM-10 for the Maricopa County nonattainment area. The notice

10. Information, discussion and possible action to recess the meeting to conduct an executive session with MAG's attorney for legal advice regarding the EPA nonconcurrence on the four exceptional events at the West 43<sup>rd</sup> Avenue monitor in 2008 and the EPA's intent to disapprove the MAG Five Percent Plan for PM-10 for reducing dust pollution in the Valley. A.R.S. § 38-431.03(A)(3).

is expected to be published within two weeks. Please refer to the enclosed material.

The Executive Committee may vote to recess the meeting and go into executive session with MAG's attorney(s) for legal advice regarding the EPA nonconcurrency on the four exceptional events at the West 43<sup>rd</sup> Avenue monitor in 2008 and the consequences to MAG. The authority for such an executive session is A.R.S. § 38-431.03(A)(3). The Executive Committee will then reconvene regular session.

11. Request for Future Agenda Items

Topics or issues of interest that the Executive Committee would like to have considered for discussion at a future meeting will be requested.

12. Comments from the Committee

An opportunity will be provided for the Executive Committee members to present a brief summary of current events. The Executive Committee is not allowed to propose, discuss, deliberate or take action at the meeting on any matter in the summary, unless the specific matter is properly noticed for legal action.

Adjournment

11. Information and discussion.

12. Information

MINUTES OF THE  
MARICOPA ASSOCIATION OF GOVERNMENTS  
MAG REGIONAL COUNCIL EXECUTIVE COMMITTEE

August 16, 2010  
MAG Offices, Cholla Room  
302 N. 1<sup>st</sup> Avenue, Phoenix, Arizona

MEMBERS ATTENDING

Mayor Thomas L. Schoaf, Litchfield Park,  
Chair  
# Mayor Hugh Hallman, Tempe, Vice Chair  
Mayor Marie Lopez Rogers, Avondale,  
Treasurer

Mayor Jim Lane, Scottsdale  
Mayor Michael LeVault, Youngtown  
Councilwoman Peggy Neely, Phoenix  
Mayor Scott Smith, Mesa

\* Not present

# Participated by video or telephone conference call

1. Call to Order

The Executive Committee meeting was called to order by Chair Schoaf at 12:09 p.m. He noted that the addendum to the agenda and the consultant bios were at each place. Chair Schoaf stated that public comment cards were available for those members of the public who wish to comment. Transit tickets were available from Valley Metro for those using transit to come to the meeting. Parking validation was available from MAG staff for those who parked in the parking garage.

2. Call to the Audience

Chair Schoaf noted that, according to the MAG public comment process, members of the audience who wish to speak are requested to fill out the public comment cards. He stated that there is a three-minute time limit. Public comment is provided at the beginning of the meeting for items that are not on the agenda that are within the jurisdiction of MAG, or non-action agenda items that are on the agenda for discussion or information only. Chair Schoaf noted that no public comment cards had been received.

3. Consent Agenda

Chair Schoaf noted that prior to action on the consent agenda, members of the audience are provided an opportunity to comment on consent items that are being presented for action. Following the comment period, Committee members may request that an item be removed from the consent agenda. Chair Schoaf noted that no public comment cards had been received.

Chair Schoaf requested a motion to approve the consent agenda. Mayor Lane moved to approve items #3A and #3B. Mayor LeVault seconded the motion and the motion carried unanimously.

3A. Approval of the July 19, 2010 Executive Committee Meeting Minutes

The Regional Council Executive Committee, by consent, approved the July 19, 2010, Executive Committee meeting minutes.

3B. Amendment to the FY 2011 MAG Unified Planning Work Program and Annual Budget to Accept Funding from the U.S. Department of Housing and Urban Development (HUD) for Human Services Coordination of a Study on the Impact of Housing and Services for Homeless Families

The Regional Council Executive Committee, by consent, approved the amendment of the FY 2011 MAG Unified Planning Work Program and Annual Budget to accept funding from the Department of Housing and Urban Development (HUD) to conduct a study on the impact of housing and services for homeless families that increases the FY 2011 MAG UPWP by an amount up to \$20,000 and for MAG to enter into a Memorandum of Understanding with Abt Associates, Inc. The FY 2011 MAG Unified Planning Work Program and Annual Budget (UPWP) was approved by the MAG Regional Council on May 26, 2010. Recently, MAG was notified by HUD that they would like for MAG to conduct a study in the MAG region on the impact of housing and services for homeless families working with Abt Associates, Inc. This study will be one year in length, beginning September 1, 2010 and ending August 31, 2011. Total funding awarded will be based on the total number of families enrolled in the study in an amount up to \$20,000. This item is to approve an amendment to the FY 2011 MAG UPWP increasing the budget for the award by an amount up to \$20,000, and for MAG to enter into a Memorandum of Understanding with Abt Associates, Inc.

4. MAG Office Space Update

Dennis Smith stated that MAG and the City of Phoenix have been meeting to discuss the terms of the office space and parking lease. He reported that MAG is ready to proceed with the lease and that the item should be on the Phoenix City Council agenda in September. Mr. Smith stated that MAG would be acquiring the fourth floor for office space and turning the second floor into meeting room space. He noted that the negotiated cost per square foot on the lease is \$18.00, which is a substantial reduction in what they are currently charging MAG. Mr. Smith noted that all parking arrangements have been worked out and this will be a ten year lease with an option to renew after the ten years.

Chair Schoaf thanked Mr. Smith and stated that this item was on the agenda for information only.

5. Formation of a MAG Joint Planning Advisory Council Working Group

Denise McClafferty updated the Executive Committee on the discussions of the Subcommittee for the Formation of a JPAC Working Group. She noted that at the July 19, 2010 Executive Committee meeting, the motion was to approve forming a subcommittee of the Executive Committee to discuss the formation of a MAG JPAC Working Group and to return to the Executive Committee with a recommendation for the composition of the working group. Ms. McClafferty stated that the subcommittee met prior to this meeting and the highlights of the discussion included a more focused effort of the MAG JPAC working group; to foster discussions with all players, including the private sector, economic development organizations and rail; and to bring parties together and educate each other. She stated that the subcommittee created a list of potential members to be contacted to determine their interest in serving on the MAG JPAC Working Group. This list included:

- 1) Councilwoman Peggy Neely, Phoenix, Chair
- 2) Mayor Marie Lopez Rogers, Avondale
- 3) Mayor Scott Smith, Mesa
- 4) Mayor Jim Lane, Scottsdale
- 5) (west valley member agency)
- 6) Jim Rounds, Elliott Pollack & Company, VP & Senior Economist
- 7) Jeffrey Simmons, Ryley Carlock, Transportation Attorney
- 8) Mary Peters, HDR, ADOT Consultant
- 9) Representative from Thunderbird
- 10) WESTMARC
- 11) East Valley Partnership
- 12) Steve Betts, ULI. GPEC Board member
- 13) Greater Phoenix Leadership (GPL)
- 14) Joseph Stewart, Chairman, JP Morgan Chase Bank

Chair Schoaf thanked Ms. McClafferty for the report and the subcommittee for their work. He asked if the Subcommittee looked at defining the individuals on this group by position or process. Councilwoman Neely stated that the subcommittee did not. She noted that the thought process began with a representative from the Central City, East Valley and West Valley. She stated that we will need to make that two representatives for the East Valley and West Valley. Councilwoman Neely stated that it is important to get the resources that are valuable to this committee. She noted that a starting point is to first talk to the recommended members to see if there is interest. The subcommittee agreed on a group of 10 to 12 members is a good size. Councilwoman Neely stated what was defined is the five elected officials for the MAG member agencies and the importance of working with the business community. She noted that we would like to create a working group that has special knowledge and resource, as well as a special interest. Councilwoman Neely noted that this is a passionate issue for her and asked that the Executive Committee consider allowing her to chair the working group. Chair Schoaf stated that he would support Councilwoman Neely chairing the working group. He also noted the importance of a process in forming the committee, as well as the importance of having discussions with potential members to be sure they are interested.

Mayor Hallman agreed that developing a process in forming the committee is important. He also agreed on the importance of having people that have a passion for the subject and that if we have members that lack that passion, things may not get done. Mayor Lopez Rogers suggested that Chair Schoaf sit on this working group as the seconded west valley elected official. Chair Schoaf requested that the subcommittee go back and look at the process and determine the appropriate individuals to sit on this working group. He noted that we also want to look at the long-term and how this group will function as we move forward.

#### 6. Consultant for Air Quality Communications and Intergovernmental Assistance

Dennis Smith reported that there are some important air quality deadlines ahead beginning with September 3, 2010, which is when the Environmental Protection Agency (EPA) would propose action on the consent decree for the MAG Five Percent Plan for PM-10, with a schedule of finalizing the action by January 28, 2011. He noted that at the July 2010 Regional Council meeting, the FY 2011 MAG Unified Planning Work Program and Annual Budget (UPWP) was amended to provide up to \$500,000 of funding for legal advice and experts. Mr. Smith stated that MAG issued a Request For Qualifications (RFQ) and received eight proposals. He noted that there was a proposal

review group of six members, three from the MAG staff and one each from the cities of Glendale, Mesa and Phoenix. Mr. Smith noted that two firms were interviewed, Crowell Moring and Patton Boggs. He noted that it was a very hard decision to choose between the two firms because each has specific areas of expertise. Mr. Smith stated the review team is recommending Crowell Moring, but would like the option to use Patton Boggs in the future. He explained that Crowell Moring has significant connections with and knowledge of the EPA, and Patton Boggs has contacts with California and experience working on Capitol Hill.

Mayor Smith asked the nature of the debate. He noted that they are very different firms. Mayor Smith noted his concern of taking an overly technical approach to this problem, which is a political issue. He noted that he believes the EPA is using a technical process to advance a political agenda. Mayor Smith stated that he supports the review team's decision, but hopes that as we move forward, emphasis is put on both the technical and political sides. Mr. Smith stated it is very common for firms like this to work together. Councilwoman Neely stated that everything is political. She agreed that we should engage both firms. Mayor Smith stated he agrees and wants to make sure that this is a balanced approach. Chair Schoaf noted his concern regarding engaging Patton Boggs at the proper time. Mr. Smith suggested modifying the action to retain Patton Boggs as needed for additional assistance.

Mayor Hallman moved to approve the selection of Crowell Moring to serve as a consultant for Air Quality Communications and Intergovernmental Assistance in an amount to be negotiated, and to also retain Patton Boggs as needed for additional assistance. Mayor Smith seconded the motion and the motion carried unanimously.

10. Discussion of the TIGER II Grant Applications and a Request From the City of Surprise for a Partnership Agreement for the Grand Avenue Corridor TIGER II Planning Grant Program

Dennis Smith stated that requests for support of TIGER II applications are beginning to arrive at MAG. He noted that we do not have a formal process for this. Mr. Smith stated the way we currently handle these requests is by looking to see if the requested project is in the TIP or the Plan. He explained that these funds are above and beyond the funds that are coming to the state. Mr. Smith stated MAG received a request to serve as project manager for the City of Surprise and their consortium for the enhanced Alternatives Analysis for the Grand Avenue Corridor project, should the grant be awarded. He explained that if there is a project that is not in the TIP or Plan and an applicant is successful in being awarded TIGER II funds, eventually it would need to be incorporated into the MAG TIP. Mr. Smith also reported on a small inland port project by Wickenburg. He noted that they are working with the Arizona/California Railroad. Mr. Smith noted that this is an opportunity for the committee to see the kinds of projects that are coming through at MAG. Councilwoman Neely stated that she supports this effort. She requested that the City of Phoenix be removed from the Grand Avenue Corridor TIGER II grant application until they have time to review and take a position. Mayor Lopez Rogers asked because there are multiple applications, will the applications be diminished because they are competing for the same funds. Mr. Smith stated that they are competing for the same money and the projects are not prioritized like they are in other regions. Mr. Smith noted that a letter from MAG is supporting the members efforts. Mayor Smith asked if there might be a situation where one of these TIGER II projects might have an inadvertent negative impact on some other program MAG is doing. Mr. Smith reported that there may be a situation where a TIGER II project is put before MAG's prioritized projects. Chair Schoaf asked if there were any other comments. There were none.

Councilwoman Neely moved to approve recommending that MAG participate in the TIGER II grant application for the enhanced Alternatives Analysis for the Grand Avenue corridor and serve as Project Manager if the grant is awarded. Mayor Hallman seconded the motion and the motion carried unanimously.

7. Update on Exceptional Events and MAG Five Percent Plan for PM-10

Mayor Hallman requested that the Executive Committee begin with executive session. Chair Schoaf asked if there was a motion to go into executive session. Scott Holcomb, MAG General Counsel, stated that the agenda reflects that the committee may go into executive session to receive legal advise and discuss legal strategy.

Mayor Hallman moved that the Executive Committee go into executive session to receive legal advice. Mayor LeVault seconded the motion and the motion carried unanimously. The Executive Committee went into executive session at 12:41 p.m. The Executive Committee reconvened regular session at 1:18 p.m.

8. Request for Future Agenda Items

Chair Schoaf asked if there were any requests for future agenda items. There were none.

9. Comments from the Committee

Chair Schoaf asked if there were any comments for the committee members. There were no comments.

Adjournment

Mayor Lane moved to adjourn the Executive Committee meeting. Mayor LeVault seconded the motion and it carried unanimously. There being no further business, the Executive Committee adjourned at 1:19 p.m.

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Chair

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Secretary

## **MARICOPA ASSOCIATION OF GOVERNMENTS INFORMATION SUMMARY... *for your review***

**DATE:**

September 7, 2010

**SUBJECT:**

Consultant Selection for the Sustainable Transportation and Land Use Integration Study

**SUMMARY:**

On May 26, 2010, the MAG Regional Council approved the Fiscal Year 2011 MAG Unified Planning Work Program and Annual Budget, which provides \$750,000 to conduct a Sustainable Transportation and Land Use Integration Study. MAG issued a Request for Proposals on June 29, 2010 and received proposals from Arup North America, Ltd.; Design, Community & Environment; Fregonese Associates; HDR Engineering, Inc.; IBI Group; Nelson/Nygaard Consulting Associates; Otak, Inc.; PB Americas, Inc.; and Steer Davies Gleave. A multi-agency review team reviewed the proposals and conducted interviews with the top four ranked firms on August 26, 2010. The Evaluation Team recommended to MAG that Arup North America, Ltd. be selected to develop the Sustainable Transportation and Land Use Integration Study for an amount not to exceed \$750,000.

The study will build upon the Regional Transit Framework Study and the Commuter Rail System Study by identifying appropriate transportation and land use strategies to increase the effectiveness of future high capacity transit corridors. The study will provide "best practice" recommendations in the following areas: (1) overall strategies necessary to promote sustainable transportation and to enhance the land use/transportation connection; (2) development patterns and densities necessary to support high capacity transit service options; and (3) economic viability of implementing alternative land use scenarios along the targeted transit corridors. Study recommendations will identify strategies to improve transportation mobility through increased transit ridership, and to enhance economic opportunities through public and private investments around transit station areas.

**PUBLIC INPUT:**

None.

**PROS & CONS:**

PROS: This study will provide a coordinated, comprehensive approach for promoting sustainable transportation and transit supportive land use patterns.

CONS: None.

**TECHNICAL & POLICY IMPLICATIONS:**

TECHNICAL: The study will provide planning tools to assist local jurisdictions in preparing for future high capacity transit services.

POLICY: The study will define how transit can help support the development of a sustainable transportation system in the MAG region. The study will also recommend development patterns and densities necessary to support various types of high capacity transit service (e.g., bus rapid transit and commuter rail).

**ACTION NEEDED:**

Approve the selection of Arup North America, Ltd. as the consultant to develop the Sustainable Transportation and Land Use Integration Study for an amount not to exceed \$750,000.

**PRIOR COMMITTEE ACTIONS:**

This item will be on the September 8, 2010 Management Committee agenda to recommend approval of the selection of Arup North America, Ltd. as the consultant to develop the Sustainable Transportation and Land Use Integration Study for an amount not to exceed \$750,000

A multi-agency review team reviewed the proposals and conducted interviews with the top four ranked firms on August 26, 2010. The Evaluation Team recommended to MAG that Arup North America, Ltd. be selected to develop the Sustainable Transportation and Land Use Integration Study for an amount not to exceed \$750,000.

Proposal Evaluation Team

City of Avondale: Ken Galica  
El Mirage: Pat Dennis  
Mesa: Mike James  
City of Phoenix: Jorie Bresnahan and Carol Johnson

City of Tempe: Robert Yabes  
METRO: Jim Mathien  
RPTA: Stuart Boggs  
MAG: Anubhav Bagley and Kevin Wallace

**CONTACT PERSON:**

Kevin Wallace, MAG, (602) 254-6300.

# **MARICOPA ASSOCIATION OF GOVERNMENTS**

## **INFORMATION SUMMARY... for your review**

**DATE:**

September 7, 2010

**SUBJECT:**

Consultant Selection for the On-Call Transportation Planning Consultant Services Program

**SUMMARY:**

The Fiscal Year (FY) 2010 MAG Unified Planning Work Program and Annual Budget, approved by the MAG Regional Council in May 2009, was amended in February 2010 to include \$150,000 to conduct the On-Call Transportation Planning Consultant Services Program. The FY 2011 Unified Planning Work Program and Annual Budget, approved by the MAG Regional Council in May 2010, provides an additional \$100,000 for this On-Call Program.

The purpose of an On-Call Consultant Services list is for expediting the delivery of consultant services at MAG. The intent of this program is to enable MAG staff to augment existing resources by forming a pool of qualified consultants to provide specialized services that are required for executing tasks and projects in identified areas. It is anticipated that the selected consultants will use state-of-the-art engineering and planning tools to execute task orders. For this proposed On-Call Transportation Planning Consultant Services program, qualified consultants are sought to assist staff in the following five service areas:

1. Civil Engineering - To assist and facilitate MAG staff review and comment of Regional Transportation Plan generated projects in the areas of roadway design, transit facility design, and environmental design. No design services for construction will be sought as part of this On-Call consultant services program.
2. Transportation Planning - For assistance and preparation of transportation planning projects by MAG staff. Potential tasks may include, but not be limited to, multimodal and mode-specific corridor studies, sub-area and community plans, and focused studies that may be incorporated into future updates of the Regional Transportation Plan.
3. Transportation Operations - Supplement MAG staff capabilities in monitoring Valley multimodal transportation operations. Efforts may include capacity analyses, travel time and delay studies, and assistance in providing review and comment of the impact land use proposals may have on the regional transportation network.
4. Policy and Finance - For assistance in preparing data and conducting research into transportation planning issues for projects and efforts that are underway by MAG staff. Example tasks a consultant may be asked to complete could include research on present High Occupancy Vehicle (HOV) policies and practices throughout the country and their potential application in the Valley, a review of the current Public Private Partnership (PPP) and its implication on MAG and the Regional Transportation Plan, and data development - financial and engineering - in future balancing efforts for the Regional Freeway and Highway Program.
5. Public Involvement - Supplement MAG transportation division staff capabilities in coordinating with stakeholders affected by the Regional Transportation Plan and its programs. Efforts may include an analysis of public comments on potential actions, development of strategies to improve coordination, and

in conjunction with MAG Communications staff the preparation of materials related to Regional Transportation Plan and projects by the Transportation Division.

MAG issued a Request for Statements of Qualifications for interested consultants to submit on April 15, 2010, with a due date of May 27, 2010, for their response. A total of 37 Statements of Qualification were received from the following consultants:

|  |   |
|--|---|
| AECOM Technical Services, Inc., Phoenix, AZ              | Michael Baker Jr., Inc., Phoenix, AZ                          |
| ARUP North America Ltd., San Francisco, CA               | Morrison Maierle, Inc., Tucson, AZ                            |
| Ayres Associates, Inc., Tempe, AZ                        | Nelson Nygaard Consulting Associates, Inc., San Francisco, CA |
| Aztec Engineering Arizona, LLC, Phoenix, AZ              | Parsons Corporation, Phoenix, AZ                              |
| Bernardin Lochmueller & Associates, Inc., Evansville, IN | PB Americas, Inc. (dba Parsons Brinckerhoff), Tempe, AZ       |
| Burgess & Niple, Inc., Tempe, AZ                         | PBS&J, Phoenix, AZ  |
| Cambridge Systematics, Inc., Oakland, CA                 | Shea, Carr & Jewell, Olympia, WA                              |
| CivTech, Inc., Scottsdale, AZ                            | Southwest Traffic Engineering, LLC, Phoenix, AZ               |
| Community Design + Architecture, Inc., Oakland, CA       | Stantec Consulting Services, Inc., Phoenix, AZ                |
| David Evans and Associates, Inc., Denver, CO             | Strand Associates, Inc., Phoenix, AZ                          |
| Fehr & Peers Transportation Consultants, San Diego, CA   | the CK Group, Inc., Phoenix, AZ                               |
| Gunn Communications, Inc., Peoria, AZ                    | Traffic Research & Analysis, Inc., Phoenix, AZ                |
| HDR Engineering, Inc., Phoenix, AZ                       | United Civil Group Corporation, Phoenix, AZ                   |
| IBI Group, San Diego, CA                                 | URS Corporation, Phoenix, AZ                                  |
| InfraConsult, LLC, Scottsdale, AZ                        | W.C. Scoutten, Inc., Goodyear, AZ                             |
| Jacobs Engineering Group, Inc., Phoenix, AZ              | Wilbur Smith Associates, Scottsdale, AZ                       |
| Kimley-Horn and Associates, Inc., Phoenix, AZ            | Wilson & Company, Inc., Engineers & Architects, Phoenix, AZ   |
| Lee Engineering, LLC, Phoenix, AZ                        | Y.S. Mantri & Associates, LLC, Chandler, AZ                   |
| Lockwood, Andrews & Newman, Inc., Phoenix, AZ            |   |

An internal team of MAG staff reviewed the Statements of Qualifications and recommended to MAG selecting the following six consultants to participate in the On-Call Transportation Planning Consultant Services Program, for a two-year period, in their accompanying service areas:

1. Cambridge Systematics, Inc. - Policy and Finance, Transportation Planning, Public Involvement
2. AECOM Technical Services, Inc. - Transportation Planning, Civil Engineering, Transportation Operations, Public Involvement
3. PB Americas, Inc. - Civil Engineering, Transportation Planning, Transportation Operations, Policy and Finance, Public Involvement
4. HDR Engineering, Inc. - Public Involvement, Civil Engineering, Transportation Planning, Transportation Operations, Policy and Finance
5. Kimley-Horn and Associates, Inc. - Transportation Operations, Civil Engineering, Transportation Planning, Policy and Finance, Public Involvement
6. Burgess & Niple, Inc. - Civil Engineering, Transportation Planning, Transportation Operations, Policy and Finance, Public Involvement

**PUBLIC INPUT:**

No public input has been received.

**PROS & CONS:**

PROS: On-Call Consultant Services programs will enable MAG to deliver information, data, and projects within a relatively short timeframe. The On-Call nature of the program affords the opportunity to engage a qualified consultant in a matter of weeks with a task order versus a considerably longer conventional

procurement process that is followed for much larger project engagements. This program also increases the Transportation Division capabilities to provide rapid and strategic responses to critical issues that periodically face MAG.

CONS: None.

**TECHNICAL & POLICY IMPLICATIONS:**

TECHNICAL: The added capabilities of this On-Call Transportation Planning Consultant Services program will ensure that MAG receives information to move forward the initiatives of the overall transportation planning program. Data received from the task orders will be used in current and future projects. This program will be implemented in a manner that is consistent with the other current On-Call Consultant Services programs that are presently being administered at MAG.

POLICY: Timely regional transportation planning and analyses will provide policy makers with accurate information upon which to make decisions.

**ACTION NEEDED:**

Approve that Cambridge Systematics, Inc., AECOM Technical Services, Inc., PB Americas, Inc., HDR Engineering, Inc., Kimley-Horn and Associates, Inc., and Burgess & Niple, Inc. be selected as the consultants to participate in the On-Call Transportation Planning Consultant Services Program for a two-year period, as provided for in the FY 2010 and FY 2011 Unified Planning Work Programs and Annual Budgets.

**PRIOR COMMITTEE ACTIONS:**

This item is on the September 8, 2010 Management Committee agenda to Recommend that Cambridge Systematics, Inc., AECOM Technical Services, Inc., PB Americas, Inc., HDR Engineering, Inc., Kimley-Horn and Associates, Inc., and Burgess & Niple, Inc. be selected as the consultants to participate in the On-Call Transportation Planning Consultant Services Program for a two-year period, as provided for in the FY 2010 and FY 2011 Unified Planning Work Programs and Annual Budgets.

On July 22, 2010, the proposal evaluation team recommended selecting Cambridge Systematics, Inc., AECOM Technical Services, Inc., PB Americas, Inc., HDR Engineering, Inc., Kimley-Horn and Associates, Inc., and Burgess & Niple, Inc. for participation in the On-Call Transportation Planning Consultant Services Program for a two-year period, and for an amount not to exceed \$250,000 as provided for in the FY 2010 and FY 2011 Unified Planning Work Programs and Annual Budgets. Members of the team included:

- Eric Anderson, Maricopa Association of Governments
- Bob Hazlett, Maricopa Association of Governments
- Roger Herzog, Maricopa Association of Governments
- Monique de Los Rios-Urban, Maricopa Association of Governments
- Vladimir Livshits, Maricopa Association of Governments
- Sarath Joshua, Maricopa Association of Governments
- Jason Stephens, Maricopa Association of Governments
- Tim Strow, Maricopa Association of Governments
- Marc Pearsall, Maricopa Association of Governments
- Micah Henry, Maricopa Association of Governments

**CONTACT PERSON:**

Bob Hazlett, MAG Senior Engineer, 602 254-6300.

## ***MARICOPA ASSOCIATION OF GOVERNMENTS INFORMATION SUMMARY... for your review***

**DATE:**

September 7, 2010

**SUBJECT:**

Conformity Consultation

**SUMMARY:**

The Maricopa Association of Governments is conducting consultation on a conformity assessment for an amendment and administrative modification to the FY 2011-2015 MAG Transportation Improvement Program (TIP). The proposed amendment and administrative modification involve several American Recovery and Reinvestment Act (ARRA) funded projects, including a City of Phoenix pavement preservation project and a Scottsdale park-and-ride project. In addition, the City of Mesa has proposed an amendment involving transit projects. The amendment includes projects that may be categorized as exempt from conformity determinations. The administrative modification includes minor project revisions that do not require a conformity determination. A description of the projects is provided in the attached interagency consultation memorandum. Comments on the conformity assessment are requested by September 10, 2010.

**PUBLIC INPUT:**

Copies of the conformity assessment have been distributed for consultation to the Federal Transit Administration, Federal Highway Administration, Arizona Department of Transportation, Arizona Department of Environmental Quality, Regional Public Transportation Authority, City of Phoenix Public Transit Department, Valley Metro Rail, Maricopa County Air Quality Department, Central Arizona Association of Governments, Pinal County Air Quality Control District, U.S. Environmental Protection Agency and other interested parties including members of the public.

**PROS & CONS:**

**PROS:** Interagency consultation for the amendment and administrative modification notifies the planning agencies of project modifications to the TIP.

**CONS:** The review of the conformity assessment requires additional time in the project approval process.

**TECHNICAL & POLICY IMPLICATIONS:**

**TECHNICAL:** The amendment and administrative modification may not be considered until the consultation process for the conformity assessment is completed.

**POLICY:** Federal transportation conformity regulations require interagency consultation on development of the transportation plan, TIP, and associated conformity determinations to include a process involving the Metropolitan Planning Organization, State and local air quality planning agencies, State and local transportation agencies, Environmental Protection Agency, Federal

Highway Administration, and the Federal Transit Administration. Consultation on the conformity assessment has been conducted in accordance with federal regulations, MAG Conformity Consultation Processes adopted by the Regional Council in February 1996 and MAG Transportation Conformity Guidance and Procedures adopted by the Regional Council in March 1996. In addition, federal guidance is followed in response to court rulings regarding transportation conformity.

**ACTION NEEDED:**

Consultation.

**PRIOR COMMITTEE ACTIONS:**

This item is on the September 8, 2010 Management Committee agenda for consultation.

**CONTACT PERSON:**

Dean Giles, Air Quality Planning Program Specialist III, (602) 254-6300.



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Email: mag@mag.maricopa.gov ▲ Website: www.mag.maricopa.gov

August 31, 2010

TO: Leslie Rogers, Federal Transit Administration  
Robert Hollis, Federal Highway Administration  
John Halikowski, Arizona Department of Transportation  
Benjamin Grumbles, Arizona Department of Environmental Quality  
David Boggs, Regional Public Transportation Authority  
Debbie Cotton, City of Phoenix Public Transit Department  
Stephen Banta, Valley Metro Rail  
William Wiley, Maricopa County Air Quality Department  
Maxine Brown, Central Arizona Association of Governments  
Donald Gabrielson, Pinal County Air Quality Control District  
Gregory Nudd, U.S. Environmental Protection Agency, Region IX  
Other Interested Parties

FROM: Dean Giles, Air Quality Planning Program Specialist

SUBJECT: CONSULTATION ON A CONFORMITY ASSESSMENT FOR A PROPOSED AMENDMENT AND ADMINISTRATIVE MODIFICATION TO THE FY 2011-2015 MAG TRANSPORTATION IMPROVEMENT PROGRAM

The Maricopa Association of Governments is conducting consultation on a conformity assessment for an amendment and administrative modification to the FY 2011-2015 MAG Transportation Improvement Program (TIP). The proposed amendment and administrative modification involve several American Recovery and Reinvestment Act (ARRA) funded projects, including a City of Phoenix pavement preservation project and a Scottsdale park-and-ride project. In addition, the City of Mesa has proposed an amendment involving transit projects. A description of the projects is provided in the attached interagency consultation memorandum. Comments on the conformity assessment are requested by September 10, 2010.

MAG has reviewed the projects for compliance with the federal conformity rule and has found that consultation is required on the conformity assessment. The amendment includes projects that may be categorized as exempt from conformity determinations. The administrative modification includes minor project revisions that do not require a conformity determination. The conformity finding of the TIP and the associated Regional Transportation Plan 2010 Update that was made by the Federal Highway Administration and Federal Transit Administration on August 25, 2010 remains unchanged by this action. The conformity assessment is being transmitted for consultation to the agencies listed above and other interested parties. If you have any questions or comments, please contact me at (602) 254-6300.

Attachment

cc: Eric Massey, Arizona Department of Environmental Quality  
Jennifer Toth, Arizona Department of Transportation  
Mark Hodges, Arizona Department of Transportation

## ATTACHMENT

### CONFORMITY ASSESSMENT FOR A PROPOSED AMENDMENT AND ADMINISTRATIVE MODIFICATION TO THE FY 2011-2015 MAG TRANSPORTATION IMPROVEMENT PROGRAM

The federal transportation conformity rule (40 CFR 93.105) requires interagency consultation when making changes to a Transportation Improvement Program (TIP) and Transportation Plan. The consultation processes are also provided in the Arizona Conformity Rule (R18-2-1405). This information is provided for consultation as outlined in the MAG Conformity Consultation Processes document adopted by the MAG Regional Council on February 28, 1996. In addition, federal guidance is followed in response to court rulings regarding transportation conformity.

The amendment includes projects that may be categorized as exempt from conformity determinations. Types of projects considered exempt are defined in the federal transportation conformity rule at 40 CFR 93.126. The administrative modification includes minor project revisions that do not require a conformity determination. Examples of minor project revisions include design, right-of-way, and utility projects. The proposed amendment and administrative modification to the FY 2011-2015 MAG Transportation Improvement Program includes the projects on the attached table. The project number, agency, and description is provided, followed by the conformity assessment.

MAG has reviewed the projects for compliance with the federal conformity rule and consultation is required on the conformity assessment. The projects are not expected to create adverse emission impacts or interfere with Transportation Control Measure implementation. The conformity finding of the TIP and the associated Regional Transportation Plan that was made by the Federal Highway Administration and Federal Transit Administration on August 25, 2010 remains unchanged by this action.



Amendment and Administrative Modification to the FY 2011-2015 MAG Transportation Improvement Program

| TIP #     | Agency  | Project Location  | Project Description  | Fiscal Year | Length | Fund Type | Local Cost   | ARRA Cost     | Federal Cost | Regional Cost | Total Cost    | Requested Change  | Conformity Assessment   |
|-----------|---------|---|--|-------------|--------|-----------|--------------|---------------|--------------|---------------|---------------|---|---|
| PHX09-801 | Phoenix | Various Locations (North Area Phase 1/Citywide Phase 2)-Functionally Classified | Design & Construction of Pavement Preservation   | 2011        | 30.19  | ARRA      | \$ -         | \$ 13,481,483 |              |               | \$ 13,481,483 | Amend: Increase project location by 2.19 miles and increase ARRA funding by \$1,281,693 from PHX09-804. | The project is considered exempt under the category "Pavement resurfacing and/or rehabilitation." The conformity status of the TIP and Regional Transportation Plan 2010 Update would remain unchanged. |
| PHX09-804 | Phoenix | Various Locations - (North Area)  | Design & Construction of Removal/ Replacement of Existing ADA Ramps or Construction of New ADA Ramps | 2011        | n/a    | Local     | \$ 1,281,693 |               |              |               | \$1,281,693   | Admin Mod: Change funding source from 100% ARRA to 100% Local   | A minor project revision is needed to change funding source. The conformity status of the TIP and Regional Transportation Plan 2010 Update would remain unchanged.                                      |

| TIPIDN     | Agency     | Location                 | Work Type   | FY   | A.L.U    | Fund Type | ARRA         | Federal    | Regional  | Local      | Total Cost   | Comments   | Conformity Assessment  |
|------------|------------|--------------------------|---|------|----------|-----------|--------------|------------|-----------|------------|--------------|--|--|
| SCT09-801T | Scottsdale | Loop 101/ Scottsdale Rd. | Pre-design/design for regional park-and-ride (Scottsdale/101). 5309-FGM funds are from 2008 and ARRA funds are from 2009. | 2011 | 11.31.04 | 5309/ARRA | \$ 183,498   | \$ 293,202 | \$ 73,300 | \$ -       | \$ 550,000   | Admin. Modify: Increase project costs by \$183,498 with ARRA funds from SCT09-803T   | A minor project revision is needed to increase funding amount. The conformity status of the TIP and Regional Transportation Plan 2010 Update would remain unchanged. |
| SCT09-803T | Scottsdale | Loop 101/ Scottsdale Rd  | Construct regional park-and-ride (Loop 101/Scottsdale)  | 2011 | 11.33.04 | ARRA      | \$ 4,816,502 | \$ -       | \$ -      | \$ -       | \$ 4,816,502 | Admin. Modify: Decrease project costs by \$183,498.  | A minor project revision is needed to decrease funding amount. The conformity status of the TIP and Regional Transportation Plan 2010 Update would remain unchanged. |
| MES10-801T | Mesa       | US60/Country Club        | Park-and-Ride design  | 2010 | 11.31.04 | Local     |              |            |           | \$ 367,500 | \$ 367,500   | Admin Mod: Change project costs from ARRA to Local. Design ineligible for ARRA funds, unspent ARRA to be programmed: \$367,000 | A minor project revision is needed to change funding source. The conformity status of the TIP and Regional Transportation Plan 2010 Update would remain unchanged.   |
| MES10-803T | Mesa       | Loop 202/Power           | Design regional park-and-ride (Loop 202/Power)  | 2010 | 11.31.04 | Local     |              |            |           | \$ 765,000 | \$ 765,000   | Admin Mod: Change project costs from ARRA to Local. Design ineligible for ARRA funds, unspent ARRA to be programmed: \$765,000 | A minor project revision is needed to change funding source. The conformity status of the TIP and Regional Transportation Plan 2010 Update would remain unchanged.   |

Amendment and Administrative Modification to the FY 2011-2015 MAG Transportation Improvement Program

| TIPIDN     | Agency | Location         | Work_Type                     | FY   | A.L.I    | Fund Type | ARRA | Federal | Regional | Local      | Total Cost | Comments   | Conformity Assessment  |
|------------|--------|------------------|-------------------------------|------|----------|-----------|------|---------|----------|------------|------------|--|--|
| MES10-804T | Mesa   | Gilbert/McDowell | Design regional park-and-ride | 2010 | 11.31.04 | Local     |      |         |          | \$ 765,000 | \$ 765,000 | Admin Mod: Change project costs from ARRA to Local. Design ineligible for ARRA funds, unspent ARRA to be programmed: \$765,000 | A minor project revision is needed to change funding source. The conformity status of the TIP and Regional Transportation Plan 2010 Update would remain unchanged. |

| TIPIDN     | Agency | Location         | Work_Type   | FY   | A.L.I    | Fund Type             | ARRA         | Federal    | Regional | Local      | Total Cost   | Comments  | Conformity Assessment   |
|------------|--------|------------------|---|------|----------|-----------------------|--------------|------------|----------|------------|--------------|---|---|
| MES08-801T | Mesa   | Loop 202/Power   | Construct regional park-and-ride (Loop 202/Power) (ARRA FY2010 Funds) | 2011 | 11.33.04 | ARRA-Transit/5309-FGM | \$ 644,000   | \$ 924,800 | \$ -     | \$ 231,200 | \$ 1,800,000 | Admin Mod: Increase ARRA funds by \$126,250 from \$517,750 to \$644,000 from MES10-801T, MES10-803T, MES10-804T. Decrease the 5309-FGM by \$101,000 from \$1,025,800 to \$924,800 and decrease local funds by \$25,250 from \$256,450 to \$231,200. | A minor project revision is needed to modify funding source(s) and amounts. The conformity status of the TIP and Regional Transportation Plan 2010 Update would remain unchanged. |
| MES10-80ST | Mesa   | Gilbert/McDowell | Construct regional park-and-ride (ARRA FY2010 Funds)                  | 2011 | 11.33.04 | ARRA                  | \$ 2,289,000 |            |          |            | \$ 2,289,000 | Admin Mod: Modify funding type to ARRA; project is 100% funded with ARRA - \$1,771,250 from MES10-801T, MES10-803T, MES10-804T. \$1,416,999 of 5309-FGM funds, \$218,471 of PTF, and \$135,780 of local is freed up.                                | A minor project revision is needed to modify funding source(s) and amounts. The conformity status of the TIP and Regional Transportation Plan 2010 Update would remain unchanged. |



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September 7, 2010

TO: Leslie Rogers, Federal Transit Administration  
Robert Hollis, Federal Highway Administration  
John Halikowski, Arizona Department of Transportation  
Benjamin Grumbles, Arizona Department of Environmental Quality  
David Boggs, Regional Public Transportation Authority  
Debbie Cotton, City of Phoenix Public Transit Department  
Stephen Banta, Valley Metro Rail  
William Wiley, Maricopa County Air Quality Department  
Maxine Brown, Central Arizona Association of Governments  
Donald Gabrielson, Pinal County Air Quality Control District  
Gregory Nudd, U.S. Environmental Protection Agency, Region IX  
Other Interested Parties

FROM: Dean Giles, Air Quality Planning Program Specialist

SUBJECT: CONSULTATION ON A CONFORMITY ASSESSMENT FOR A PROPOSED AMENDMENT  
AND ADMINISTRATIVE MODIFICATION TO THE FY 2011-2015 MAG TRANSPORTATION  
IMPROVEMENT PROGRAM

We are providing notification that MAG has received a request to add a new safety project from the Arizona Department of Transportation since mailing the August 31, 2010 memorandum for consultation on a conformity assessment for an amendment and administrative modification to the FY 2011-2015 MAG Transportation Improvement Program (TIP). A complete table with the new project, DOT11-103, is attached. The conformity status of the TIP and Regional Transportation Plan 2010 Update would remain unchanged.

If you have any questions or comments, please contact me at (602) 254-6300.

Attachment

cc: Eric Massey, Arizona Department of Environmental Quality  
Jennifer Toth, Arizona Department of Transportation  
Mark Hodges, Arizona Department of Transportation

Amendment and Administrative Modification to the FY 2011-2015 MAG Transportation Improvement Program

| TIP #     | Agency  | Project Location  | Project Description  | Fiscal Year | Length | Fund Type                          | Local Cost   | ARRA Cost     | Federal Cost | Regional Cost | Total Cost    | Requested Change  | Conformity Assessment  |
|-----------|---------|---|--|-------------|--------|------------------------------------|--------------|---------------|--------------|---------------|---------------|---|--|
| PHX09-801 | Phoenix | Various Locations (North Area Phase 1/Citywide Phase 2)-Functionally Classified | Design & Construction of Pavement Preservation   | 2011        | 30.19  | ARRA                               | \$ -         | \$ 13,481,483 |              |               | \$ 13,481,483 | Amend: Increase project location by 2.19 miles and increase ARRA funding by \$1,281,693 from PHX09-804. | The project is considered exempt under the category "Pavement resurfacing and/or rehabilitation." The conformity status of the TIP and Regional Transportation Plan 2010 Update would remain unchanged.        |
| PHX09-804 | Phoenix | Various Locations - (North Area)  | Design & Construction of Removal/ Replacement of Existing ADA Ramps or Construction of New ADA Ramps | 2011        | n/a    | Local                              | \$ 1,281,693 |               |              |               | \$ 1,281,693  | Admin Mod: Change funding source from 100% ARRA to 100% Local   | A minor project revision is needed to change funding source. The conformity status of the TIP and Regional Transportation Plan 2010 Update would remain unchanged.   |
| DOT11-103 | ADOT    | Regionwide  | Replace analog radio system (Using HSIP federal fiscal year 2010 funds)                              | 2011        | n/a    | Highway Safety Improvement Program | \$ 176,700   |               | \$ 2,923,300 | \$ -          | \$ 3,100,000  | Amend: New project  | The project is considered exempt under the category "Highway Safety Improvement Program implementation." The conformity status of the TIP and Regional Transportation Plan 2010 Update would remain unchanged. |

| TIP/IDN    | Agency     | Location                 | Work Type   | FY   | A.L.I.   | Fund Type  | ARRA         | Federal    | Regional  | Local | Total Cost   | Comments   | Conformity Assessment  |
|------------|------------|--------------------------|---|------|----------|------------|--------------|------------|-----------|-------|--------------|--|--|
| SCT09-801T | Scottsdale | Loop 101/ Scottsdale Rd. | Pre-design/design for regional park-and-ride (Scottsdale/101). 5309-FGM funds are from 2008 and ARRA funds are from 2009. | 2011 | 11.31.04 | 5309/ ARRA | \$ 183,498   | \$ 293,202 | \$ 73,300 | \$ -  | \$ 550,000   | Admin. Modify: Increase project costs by \$183,498 with ARRA funds from SCT09-803T | A minor project revision is needed to increase funding amount. The conformity status of the TIP and Regional Transportation Plan 2010 Update would remain unchanged. |
| SCT09-803T | Scottsdale | Loop 101/ Scottsdale Rd  | Construct regional park-and-ride (Loop 101/Scottsdale)  | 2011 | 11.33.04 | ARRA       | \$ 4,816,502 | \$ -       | \$ -      | \$ -  | \$ 4,816,502 | Admin. Modify: Decrease project costs by \$183,498.                                | A minor project revision is needed to decrease funding amount. The conformity status of the TIP and Regional Transportation Plan 2010 Update would remain unchanged. |

Amendment and Administrative Modification to the FY 2011-2015 MAG Transportation Improvement Program

| TIPIDN     | Agency | Location          | Work Type                                      | FY   | A.L.I.   | Fund Type | ARRA | Federal | Regional | Local      | Total Cost | Comments   | Conformity Assessment  |
|------------|--------|-------------------|--|------|----------|-----------|------|---------|----------|------------|------------|--|--|
| MES10-801T | Mesa   | US60/Country Club | Park-and-Ride design                           | 2010 | 11.31.04 | Local     |      |         |          | \$ 367,500 | \$ 367,500 | Admin Mod: Change project costs from ARRA to Local. Design ineligible for ARRA funds, unspent ARRA to be programmed: \$367,000 | A minor project revision is needed to change funding source. The conformity status of the TIP and Regional Transportation Plan 2010 Update would remain unchanged. |
| MES10-803T | Mesa   | Loop 202/Power    | Design regional park-and-ride (Loop 202/Power) | 2010 | 11.31.04 | Local     |      |         |          | \$ 765,000 | \$ 765,000 | Admin Mod: Change project costs from ARRA to Local. Design ineligible for ARRA funds, unspent ARRA to be programmed: \$765,000 | A minor project revision is needed to change funding source. The conformity status of the TIP and Regional Transportation Plan 2010 Update would remain unchanged. |
| MES10-804T | Mesa   | Gilbert/McDowell  | Design regional park-and-ride                  | 2010 | 11.31.04 | Local     |      |         |          | \$ 765,000 | \$ 765,000 | Admin Mod: Change project costs from ARRA to Local. Design ineligible for ARRA funds, unspent ARRA to be programmed: \$765,000 | A minor project revision is needed to change funding source. The conformity status of the TIP and Regional Transportation Plan 2010 Update would remain unchanged. |

| TIPIDN     | Agency | Location         | Work Type   | FY   | A.L.I.   | Fund Type             | ARRA         | Federal    | Regional | Local      | Total Cost   | Comments  | Conformity Assessment   |
|------------|--------|------------------|---|------|----------|-----------------------|--------------|------------|----------|------------|--------------|---|---|
| MES08-801T | Mesa   | Loop 202/Power   | Construct regional park-and-ride (Loop 202/Power) (ARRA FY2010 Funds) | 2011 | 11.33.04 | ARRA-Transit/5309-FGM | \$ 644,000   | \$ 924,800 | \$ -     | \$ 231,200 | \$ 1,800,000 | Admin Mod: Increase ARRA funds by \$126,250 from \$517,750 to \$644,000 from MES10-801T, MES10-803T, MES10-804T. Decrease the 5309-FGM by \$101,000 from \$1,025,800 to \$924,800 and decrease local funds by \$25,250 from \$256,450 to \$231,200. | A minor project revision is needed to modify funding source(s) and amounts. The conformity status of the TIP and Regional Transportation Plan 2010 Update would remain unchanged. |
| MES10-805T | Mesa   | Gilbert/McDowell | Construct regional park-and-ride (ARRA FY2010 Funds)                  | 2011 | 11.33.04 | ARRA                  | \$ 2,289,000 |            |          |            | \$ 2,289,000 | Admin Mod: Modify funding type to ARRA; project is 100% funded with ARRA - \$1,771,250 from MES10-801T, MES10-803T, MES10-804T. \$1,416,999 of 5309-FGM funds, \$218,471 of PTF, and \$135,780 of local is freed up.                                | A minor project revision is needed to modify funding source(s) and amounts. The conformity status of the TIP and Regional Transportation Plan 2010 Update would remain unchanged. |

# **MARICOPA ASSOCIATION OF GOVERNMENTS**

## **INFORMATION SUMMARY... for your review**

**DATE:**

September 7, 2010

**SUBJECT:**

Project Changes – Amendment to the FY 2011-2015 MAG Transportation Improvement Program

**SUMMARY:**

The fiscal year (FY) 2011-2015 MAG Transportation Improvement Program (TIP) and Regional Transportation Plan 2010 Update were approved by the MAG Regional Council on July 28, 2010. Since that time, there has been a request from ADOT to add a new project to replace an analog radio system throughout the region. This project is requesting to use \$2.9 million of federal Highway Safety funds in federal fiscal year (FFY) 2010; ADOT manages the federal Highway Safety fund program. This request is time sensitive as the Federal Highway Administration stops accepting obligation requests for FFY 2010 on September 16, 2010. Please refer to the enclosed material.

**PUBLIC INPUT:**

None.

**PROS & CONS:**

PROS: Approval of this TIP amendment and administrative modification will allow the projects to proceed in a timely manner.

CONS: None.

**TECHNICAL & POLICY IMPLICATIONS:**

TECHNICAL: Projects that wish to utilize transportation federal funds need to be shown in the TIP in the year that they expect to commence and may need to undergo an air quality conformity analysis or consultation.

POLICY: This amendment and administrative modification request is in accord with MAG guidelines. ADOT is the agency responsible for the Highway Safety program; programming and policy direction for programming federal Highway Safety funds lie with ADOT.

**ACTION NEEDED:**

Information, discussion and possible approval to amend the FY 2011-2015 MAG Transportation Improvement Program, and as appropriate, the Regional Transportation Plan 2010 Update to add a new highway safety project.

**PRIOR COMMITTEE ACTIONS:**

This item is on the September 8, 2010 Management Committee agenda for Information, discussion and possible recommendation to approve.

**CONTACT PERSON:**

Eileen Yazzie, Transportation Programming Manager

**Request for Project Change - 2011-2015 MAG Transportation Improvement Program**

**HIGHWAY**

| TIP #     | Agency | Project Location | Project Description   | Fiscal Year | Length | Fund Type | Local Cost | ARRA Cost | Federal Cost | Regional Cost | Total Cost   | Requested Change   |
|-----------|--------|------------------|---|-------------|--------|-----------|------------|-----------|--------------|---------------|--------------|--------------------|
| DOT11-103 | ADOT   | Regionwide       | Replace analog radio system (Using HSIP federal fiscal year 2010 funds) | 2011        | n/a    | HSIP      | \$ 176,700 |           | \$ 2,923,300 | \$ -          | \$ 3,100,000 | Amend: New project |

# **MARICOPA ASSOCIATION OF GOVERNMENTS**

## **INFORMATION SUMMARY... for your review**

**DATE:**

September 7, 2010

**SUBJECT:**

ARRA Local Highway Funds: Project Changes - Amendment to the FY 2011-2015 MAG Transportation Improvement Program

**SUMMARY:**

The Fiscal Year (FY) 2011-2015 MAG Transportation Improvement Program (TIP) and Regional Transportation Plan 2010 Update were approved by the MAG Regional Council on July 28, 2010. Since that time, there has been a request from the City of Phoenix to move ARRA funds from the PHX09-804 project, which will now be funded with local funds to the PHX09-801 project to increase the project budget and the number of miles of roadway to be repaved. This request is time sensitive as the Federal Highway Administration stops accepting obligation requests on September 16, 2010. This item will be heard for the first time at the Management Committee on September 8, 2010.

**PUBLIC INPUT:**

None.

**PROS & CONS:**

PROS: Approval of this TIP amendment and administrative modification will allow the projects to proceed in a timely manner.

CONS: None.

**TECHNICAL & POLICY IMPLICATIONS:**

TECHNICAL: Projects that wish to utilize transportation federal funds need to be shown in the TIP in the year that they expect to commence and may need to undergo an air quality conformity analysis or consultation.

POLICY: This amendment and administrative modification request is in accord with MAG guidelines for ARRA Local funds.

**ACTION NEEDED:**

Possible approval to amend the FY 2011-2015 MAG Transportation Improvement Program, and as appropriate, the Regional Transportation Plan 2010 Update to move \$1,281,693 of ARRA funds to PHX09-801 and increase the project budget accordingly.

**PRIOR COMMITTEE ACTIONS:**

Management Committee: This item is on the September 8, 2010 Management Committee agenda for possible recommendation to approve.

**CONTACT PERSON:**

Eileen Yazzie, Transportation Programming Manager

**Request for Project Change - 2011-2015 MAG Transportation Improvement Program**

**HIGHWAY**

| TIP #     | Agency  | Project Location  | Project Description   | Fiscal Year | Length | Fund Type | Local Cost   | ARRA Cost     | Federal Cost | Regional Cost | Total Cost    | Requested Change  |
|-----------|---------|---|---|-------------|--------|-----------|--------------|---------------|--------------|---------------|---------------|---|
| PHX09-801 | Phoenix | Various Locations (North Area Phase 1/Citywide Phase 2)-Functionally Classified | Design & Construction of Pavment Preservation   | 2010        | 30.19  | ARRA      | \$ -         | \$ 13,481,483 |              |               | \$ 13,481,483 | Amend: Increase project location by 2.19 miles and increase ARRA funding by \$1,281,693 from PHX09-804. |
| PHX09-804 | Phoenix | Various Locations - (North Area)  | Design & Construction of Removal/Replacement of Existing ADA Ramps or Construction of New ADA Ramps | 2010        | n/a    | Local     | \$ 1,281,693 |               |              |               | \$1,281,693   | Admin Mod: Change funding source from 100% ARRA to 100% Local   |

# **MARICOPA ASSOCIATION OF GOVERNMENTS**

## **INFORMATION SUMMARY... for your review**

**DATE:**

September 7, 2010

**SUBJECT:**

ARRA Transit Funds: Project Changes - Amendment to the FY 2011-2015 MAG Transportation Improvement Program

**SUMMARY:**

The Fiscal Year (FY) 2011-2015 MAG Transportation Improvement Program (TIP) and Regional Transportation Plan 2010 Update were approved by the MAG Regional Council on July 28, 2010.

Since that time, there has been a request from the City of Scottsdale to move American Recovery and Reinvestment Act (ARRA) funds from a construction project to a design project. On Tuesday, August 31, 2010, the Federal Transit Administration deemed three design projects led by the City of Mesa ineligible for federal funding including ARRA funds. The three projects, MES10-801T, MES10-803T, and MES10-804T are programmed with a total of \$1,897,500 in ARRA funds. These are outlined in the attached table.

On December 9, 2009, the MAG Regional Council approved a set of Prioritization Guidelines for Unspent or Redistributed ARRA Funds. Please see the attached Prioritization Guidelines. Following the approved Prioritization Guidelines coupled with the project status, the unspent \$1,897,500 of ARRA transit funds would be allocated to the 2.1 priority to increase operating assistance for bus and rail. There is currently \$1,750,000 of ARRA Transit funds programmed for bus and rail operating assistance, which is below the ceiling of ten percent of ARRA Transit funds, up to \$6,442,122, that can be used for bus and rail operating assistance.

The City of Mesa is requesting that \$1,771,250 of ARRA transit funds be programmed for the construction of the Gilbert/L202 park-and-ride, MES10-805T and \$126,250 is programmed for the construction of L202/Power park-and-ride, MES08-801T. The MES10-805T project is currently programmed with \$517,750 of ARRA Transit, \$1,417,000 of federal 5309-rail and fixed guideway modernization (FGM), \$218,471 of regional funds, and \$135,780 of local funds. The funding changes for MES08-801T would decrease the 5309-FGM by \$101,000 from \$1,025,800 to \$924,800 and decrease local funds by \$25,250 from \$256,450 to \$231,200. This request is explained in the attached table. This request also affects the programming for FY 2009 federal transit 5309-FGM funds. MAG would have to reprogram \$1,517,999 of 5309-FGM in the next committee cycle. 5309-FGM funds have limited eligibility requirements and uses in comparison to ARRA 5307 transit funds.

This will be heard for the first time at Management Committee on September 8, 2010.

**PUBLIC INPUT:**

None.

**PROS & CONS:**

PROS: Approval of this TIP amendment and administrative modification will allow the projects to proceed in a timely manner.

CONS: None.

**TECHNICAL & POLICY IMPLICATIONS:**

TECHNICAL: Projects that wish to utilize transportation federal funds need to be shown in the TIP in the year that they expect to commence and may need to undergo an air quality conformity analysis or consultation. If the Mesa request is approved, MAG will need to reprogram \$1.5 million of 5309-FGM. This would affect the FY2009 and FY2010 Transit Program of Projects, and the programming of the FY2011-2015 MAG TIP.

POLICY: In December 2009, MAG Regional Council approved prioritization guidelines on how to program Unspent and Redistributed ARRA Transit funds.

**ACTION NEEDED:**

Possible approval to amend the FY 2011-2015 MAG Transportation Improvement Program, and as appropriate, to the Regional Transportation Plan 2010 Update for the Scottsdale request to move \$183,498 in ARRA funds from a construction project to a design project and approval of the city of Mesa request to program \$1,771,250 of ARRA transit funds for the construction of the Gilbert/L202 park-and-ride project, MES10-805T and \$126,250 of ARRA transit funds for the construction of L202/Power park-and-ride, MES08-801T.

**PRIOR COMMITTEE ACTIONS:**

Management Committee: This item is on the September 8, 2010 Management Committee agenda for possible recommendation to approve.

**CONTACT PERSON:**

Eileen O. Yazzie, Transportation Programming Manager, (602) 254-6300.

**Request for Project Change - 2011-2015 MAG Transportation Improvement Program**

**TRANSIT**

| TIPIDN     | Agency     | Location                | Work Type  | FY   | A.L.I    | Fund Type             | ARRA         | Federal    | Regional  | Local      | Total Cost   | Comments  |
|------------|------------|-------------------------|--|------|----------|-----------------------|--------------|------------|-----------|------------|--------------|---|
| SCT09-801T | Scottsdale | Loop 101/Scottsdale Rd. | Pre-design/design for regional park-and-ride (Scottsdale/101). (2008 5309-FGM and ARRA FY2010 funds) | 2011 | 11.31.04 | 5309/ARRA             | \$ 183,498   | \$ 293,202 | \$ 73,300 | \$ -       | \$ 550,000   | Admin. Modify: Increase project costs by \$183,498 with ARRA funds from SCT09-803T  |
| SCT09-803T | Scottsdale | Loop 101/Scottsdale Rd  | Construct regional park-and-ride (Loop 101/Scottsdale) - (ARRA FY2010 Funds)                         | 2011 | 11.33.04 | ARRA                  | \$ 4,816,502 | \$ -       | \$ -      | \$ -       | \$ 4,816,502 | Admin. Modify: Decrease project costs by \$183,498.   |
| MES10-801T | Mesa       | US60/Country Club       | Park-and-Ride design   | 2010 | 11.31.04 | Local                 |              |            |           | \$ 367,500 | \$ 367,500   | Admin Mod: Change project costs from ARRA to Local. Design ineligible for ARRA funds, unspent ARRA to be programmed: \$367,000  |
| MES10-803T | Mesa       | Loop 202/Power          | Design regional park-and-ride (Loop 202/Power)   | 2010 | 11.31.04 | Local                 |              |            |           | \$ 765,000 | \$ 765,000   | Admin Mod: Change project costs from ARRA to Local. Design ineligible for ARRA funds, unspent ARRA to be programmed: \$765,000  |
| MES10-804T | Mesa       | Gilbert/McDowell        | Design regional park-and-ride  | 2010 | 11.31.04 | Local                 |              |            |           | \$ 765,000 | \$ 765,000   | Admin Mod: Change project costs from ARRA to Local. Design ineligible for ARRA funds, unspent ARRA to be programmed: \$765,000  |
| MES08-801T | Mesa       | Loop 202/Power          | Construct regional park-and-ride (Loop 202/Power) (ARRA FY2010 Funds)                                | 2011 | 11.33.04 | ARRA-Transit/5309-FGM | \$ 644,000   | \$ 924,800 | \$ -      | \$ 231,200 | \$ 1,800,000 | Admin Mod: Increase ARRA funds by \$126,250 from \$517,750 to \$644,000 from MES10-801T, MES10-803T, MES10-804T. Decrease the 5309-FGM by \$101,000 from \$1,025,800 to \$924,800 and decrease local funds by \$25,250 from \$256,450 to \$231,200. |
| MES10-805T | Mesa       | Gilbert/McDowell        | Construct regional park-and-ride (ARRA FY2010 Funds)   | 2011 | 11.33.04 | ARRA                  | \$ 2,289,000 |            |           |            | \$ 2,289,000 | Admin Mod: Modify funding type to ARRA; project is 100% funded with ARRA - \$1,771,250 from MES10-801T, MES10-803T, MES10-804T. \$1,416,999 of 5309-FGM funds, \$218,471 of PTF, and \$135,780 of local is freed up.                                |

**Transit Capital Project**  
**Prioritization Guidelines**  
**Unspent or Redistributed ARRA Funds**  
**Approved by MAG Regional Council on December 9, 2009**

**1. Provide Services and Improvements Required by Law**

1.1. Upgrade facilities and fleet to comply with applicable laws

**2. Provide Equipment and Facilities for Existing Service**

2.0 Current ARRA projects that require additional funds without changes to scope

2.1. Operating assistance – bus and rail operations

2.2. ADA operating assistance

2.3. Preventive maintenance costs

2.4. Maintain existing operating facilities

2.5. Maintain existing passenger facilities

2.6. Construct regional park and rides to support existing services

2.7. Construct transit centers to support existing services

**3. Passenger Enhancements**

3.1. Provide bus stop improvements for existing bus stops (no NEPA issues)

3.2. Provide enhancements to existing passenger facilities

**4. Provide Equipment and Facilities for Expansion of Service**

4.1. Expand existing operating facilities

4.2. Construct new operating facilities

4.3. Construct regional park and rides for service expansion

4.4. Construct BRT capital improvements

4.5. Construct transit centers for service expansion

**5. Other Desired Support Services**

5.1. Purchase replacement fleet

5.2. Purchase fleet for service expansion

5.3. Other support costs and enhancements

**Air Quality Technical Advisory Committee Vice Chair Appointment**

| <u>Vice Chair</u>                              | <u>Agency</u>      |
|--|--------------------|
| Larry Person, Senior Environmental Coordinator | City of Scottsdale |
| Kurt Sharp, Management Assistant               | Town of Gilbert    |
|  |                    |
|  |                    |



August 30, 2010

Maricopa Association of Governments  
Attn: Mayor Thomas Schoaf, MAG Chair  
302 N. 1<sup>st</sup> Avenue, Suite 300  
Phoenix, AZ 85003

Re: Air Quality Technical Advisory Committee – Vice Chair Vacancy

Dear Mayor Schoaf:

I would like to express my interest in being vice-chair of the MAG Air Quality Technical Advisory Committee. For the past year and a half I served on the committee learning the key issues for the Town of Gilbert, the importance and impact the committee has on other communities, and have built relationships with other committee members in order to foster communication.

As vice-chair, I would like to continue to engage committee members and encourage participation in order to best represent air quality issues facing the Maricopa County region. I look forward to bringing my enthusiasm and integrity generated through my fifteen years of service with the Town of Gilbert to the regional level as vice-chair. It is my intent to help support the initiatives of the chair and fill in wherever necessary.

Thank you in advance for your consideration.

Best Wishes,

A handwritten signature in black ink that reads "K+B. Sharp". The signature is written in a cursive, slightly slanted style.

Kurt B. Sharp  
Town of Gilbert  
Management Assistant



City Manager

3939 North Drinkwater Boulevard  
Scottsdale, AZ 85251

PHONE 480-312-2800  
FAX 480-312-2738  
WEB [www.ScottsdaleAZ.gov](http://www.ScottsdaleAZ.gov)

August 30, 2010

The Honorable Thomas Schoaf, Chair  
Maricopa Association of Governments  
302 N. 1<sup>st</sup> Avenue, Suite 300  
Phoenix, AZ 85003

**RE: Nomination for MAG Executive Committee**

Dear Mayor Schoaf:

I am pleased to write to you today to recommend Larry Person to be appointed to Vice-Chair of the Air Quality Technical Advisory Council (AQTAC).

Mr. Person has been a valued member of the AQTAC for over fourteen years and possesses an in-depth knowledge of these important issues and a strong desire to work to resolve problems in regard to the region's air quality.

I would much appreciate consideration on Mr. Person's behalf for this important position and to serving the region in this regard. Please contact me if you have any questions or require additional information.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Richert", is written over a faint, larger signature.

David Richert  
City Manager

cc: Dennis Smith, MAG Executive Director  
Lindy Bauer, Environment Director

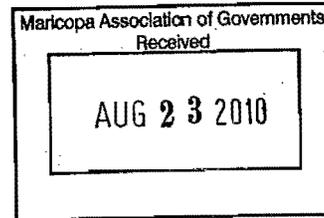


U. S. Department  
of Transportation

Agenda Item #7

Federal Highway  
Administration

Federal Transit  
Administration



Transportation Planning Certification Review of the  
Metropolitan Transportation Planning Process For  
Phoenix Transportation Management Area

**Maricopa Association of Governments (MAG)**

**Final Report**

Revised: March 30, 2010 / July 26, 2010

*Prepared with assistance from the U.S. Department of Transportation/Volpe  
National Transportation Systems Center*

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## Preface

The Safe, Accountable, Flexible, Efficient Transportation Equity Act (SAFETEA-LU) of 2005 set forth requirements for Statewide and metropolitan transportation planning processes, following upon predecessor legislation, the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21). The United States Department of Transportation (U.S. DOT) issued planning regulations on November 14, 2007 implementing SAFETEA-LU requirements governing the transportation planning process. These requirements are presented in 23 CFR Part 450 and 49 CFR Part 613, Statewide and Metropolitan Planning Final Rule. The Metropolitan Planning Regulations are closely linked to related requirements of the Clean Air Act Amendments of 1990 (CAAA), as amended, for air quality conformity. SAFETEA-LU essentially continues the major programs and basic philosophies of ISTEA and TEA-21.

The Metropolitan Planning Regulations require that the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) jointly review and evaluate the transportation planning process conducted in each urbanized area or Transportation Management Area (TMA) with a population over 200,000 no less than once every four years. This review meets the requirements of the Metropolitan Planning Regulations and, in air quality nonattainment or maintenance areas, evaluates area-wide transportation planning to ensure conformity of plans and programs to the EPA Air Quality Conformity regulations. Upon completion of planning reviews, FHWA and FTA can jointly Certify, Certify with Corrective Action, or Decertify the metropolitan planning process in the TMA.

This Certification review of the Metropolitan Transportation Planning Process for the Phoenix Transportation Management Area was conducted on November 3-5, 2009, for the Maricopa Association of Governments (MAG), which serves as the TMA's Metropolitan Planning Organization (MPO). The review was led by FHWA-Arizona Division and FTA Region IX staff, with assistance from the U.S. DOT's Volpe National Transportation Systems Center, and involved discussions with the MPO staff, as well as staff from their partner planning agencies – the Arizona Department of Transportation (ADOT); Valley Metro/Regional Public Transportation Authority (Valley Metro/RPTA); Valley Metro Rail; Phoenix Transit; and the Arizona Department of Environmental Quality (ADEQ).

The purpose of the on-site review meeting was to assess the technical capability of the MPO staff in meeting the requirements set forth in 23 CFR Part 450 and 49 CFR Part 613, and the ability of the MPO to involve the public who may be affected by transportation investments in the transportation decisionmaking process. In addition, the review team used these sessions to help assess the multi-modal nature of the MPO planning activities as well as its ability to respond to various DOT initiatives. The Federal review team conducted a desk review of the major components of the transportation planning process, and explored selected components of the

planning process and major DOT initiatives in depth during the on-site review. The FHWA-Arizona Division and FTA Region IX also provide regular oversight of metropolitan area transportation planning activities and review key planning documents. Based on desk review, site visit, review of area-wide planning documents, and on-going oversight, this report identifies recommendations for consideration by the MPO for improvement and also highlights some of the positive practices of the MPO that can serve as examples to other States and planning organizations.

## **Certification Action**

The FTA and the FHWA have determined that the transportation planning process conducted by the Maricopa Association of Governments (MAG), representing the Phoenix Transportation Management Area, meets the requirements of the Metropolitan Planning Rule, 23 CFR Part 450 Subpart C and 49 CFR Part 613. The FHWA and the FTA are therefore jointly certifying the transportation planning process.

## **Summary of Federal Actions**

### **1. Corrective Actions**

a. None

### **2. Recommendations**

- a. **Clarifying Roles and Responsibilities of Participating Organizations:** The Federal team observed the complex structure of the technical committees of the MPO and recommends that the MPO and its partner agencies consider undertaking a study of the efficiency of this structure. The team also observed that the public appears uncertain about the exact responsibilities of regional transit agencies and providers, and also encourages consideration of a study of the efficiency of these organizations.
- b. **Memorandums of Understanding (MOU):** MAG should work cooperatively with ADOT to develop a new agreement that formalizes mutual roles and responsibilities. This will improve accountability and transparency of the planning process. FHWA and FTA will actively participate in this action. MAG should also work cooperatively on a second MOU with ADEQ, ADOT, and Maricopa County that updates mutual roles and responsibilities pertaining to air quality.
- c. **Broader Regional Planning (Megaregions):** In recognition of MAG's ongoing work with the Central Arizona Association of Governments (CAAG) and the Pima Association of Governments (PAG) to explore broader transportation issues

beyond the MPO's planning jurisdiction, the Federal team recommends that MAG expand this effort to other agencies such as ADOT and ADEQ. This involves a proactive approach that recognizes the importance of multistate corridors for goods movement and passenger travel, and the challenges of planning and investing to meet these emerging needs.

- d. **Electronic S/TIP:** MAG should work with ADOT to continue initial progress on development of the electronic State Transportation Improvement Program (S/TIP) and advance towards the next phase of the geographic information systems component (GIS-T). These products are potentially very useful to manage business processes and promote transparency and public participation.
- e. **Annual Project Listing:** Since the TIP has not been published annually, as scheduled, MAG has not met their requirement of annually listing projects. As MAG moves towards publishing the TIP every two years instead of annually, it should plan to publish this annual listing in another form in the years where they do not publish a TIP.
- f. **Financial Planning:** MAG should show greater transparency in documenting the financial planning process in a single accessible reference source. Such documentation should include the assumptions across all modes, jurisdictions, and funding categories, and a discussion of the risks involved in revenue and expenditure estimates (i.e., capital, operations, and maintenance), and program implications. The Federal team will provide examples of best practices for planning.
- g. **Systematic Approach to Investment Scenarios:** The Federal team recognizes the merits of MAG's systematic approach to reduce the funding level for approved programs, particularly the use of funding scenarios to describe critical choices. This rigorous and transparent approach to a key aspect of programming should be expanded to include the transit component of the program as well.
- h. **Congestion Management Process (CMP):** MAG should move ahead rapidly to complete phase three of the CMP, including mainstreaming key aspects into the broader planning process.
- i. **Public Participation:** MAG should reevaluate its strategy for public participation and consider ways to make public participation more effective. Potential means to increase effectiveness of public participation to consider include establishing a Citizens Advisory Committee, convening regular focus groups, or holding more informal citizen group meetings.
- j. **Public Transit:** To continue the positive momentum in planning for public transit, MAG and its partners should complete a public transit framework and move further toward a multi-modal transportation system framework that will

ease the ability to make trade-offs between highway, transit, and other alternatives. MAG uses frameworks as a long-range planning tool to assess the transportation needs of multi-county areas with significant input from regional stakeholders.

### 3. Commendations

- a. **Business Representatives:** The Federal team commends MAG for including business representatives on the Transportation Planning Committee (TPC). These representatives have proved to be effective participants in the transportation planning process, particularly in freight planning and advising on development of the RTP.
- b. **Framework Studies:** The Federal team commends MAG for its use of the framework studies, which expand long-range thinking for major sub-regions, enlist partners through consultation, and identify land use implications of transportation decisions.
- c. **Performance Measures:** The Federal team commends efforts to include performance measures in the Unified Planning Work Program (UPWP), the annual program of planning tasks funded through the MPO, and recognizes the potential value of this to reflect priorities in the RTP.
- d. **Integration of Human Services Programs in Transportation Planning:** The Federal team recognizes the proactive approach to integrate human service programs in transportation planning as part of the Title VI and public outreach process. The approach encompasses innovative application of livability concepts by focusing on meeting the transportation needs of underserved communities, and bringing these initiatives into the overall transportation planning process. This is an excellent example of a proactive approach, adapting the MPO planning process to help meet associated transportation needs.
- e. **Public Transit:** The Federal team commends MAG and its partners for their efforts to bring public transit into the regional multi-modal planning process, including MAG's efforts in establishing the Transit Committee.
- f. **Safety:** The Federal team recognizes MAG's efforts in safety planning, including related progress to establish the standing Transportation Safety Committee, to complete safety audits, and to measure mid-block crashes. The team also recognizes the potential for MAG to expand these activities to take a leadership role in safety planning.
- g. **Modeling:** The Federal team commends MAG's strong initial efforts in combining visualization with model outputs.

- h. **Environmental Mitigation and Consultation:** The Federal team notes MAG's thorough approach in meeting SAFETEA-LU requirements for environmental mitigation consultation, including working with Tribes and resource agencies. MAG is showcased in a new FHWA best practices report on this topic, Environmental Mitigation in Transportation Planning, Case Studies in Meeting SAFETEA-LU Section 6001 Requirements.
- i. **Tribal Relationships:** The Federal team commends MAG and its Tribal partners for their successful current consultation procedures, and encourages MAG to extend the collaboration to bring Tribal partners and their plans more fully into the regional transportation planning process.

## **Review of Findings and Recommendations from 2004 Federal TMA Certification Review**

At the site visit, MAG staff outlined their response and action to the 2004 Certification recommendations and required actions. The Federal team reviewed the status of all Federal findings and Federal actions from the 2004 review and concluded that MAG had made satisfactory progress on all items. In many cases, MAG is currently engaged in initiatives and actions related to recommendations from the 2004 review. The Federal team encourages continued progress in these areas, which include:

- The Joint Planning Advisory Council, in recognition of new growth outside the boundaries of Maricopa County;
- Safety planning, related to reducing highway-related fatalities;
- Measuring the effectiveness of public outreach and Title VI efforts, which has been an outstanding issue at MAG for the past 10 years;
- Documentation of transit project selection in the Transportation Improvement Program (TIP), including ranking of transit projects and making this information available to the public.

Considerations related to these and other recommendations from the 2004 review are incorporated into the sections below.

## **Planning Requirements Covered by this Review**

The Metropolitan Planning Regulations set forth in 23 CFR Part 450 and 49 CFR Part 613, Statewide and Metropolitan Planning Final Rule contain specific requirements for recipients of federal funds that conduct Statewide or Metropolitan Planning. This section of the report

addresses each of these requirements as they apply to the transportation planning activities of MAG in the Phoenix TMA. The assessment examines how successfully the MPO and the other planning agencies meet the planning requirements through the desk review and the on-site visit, as well as continuing oversight by the FHWA-Arizona Division and FTA Region IX offices.

## **Organization**

### Regulatory Basis

Federal legislation (23 USC 134(b); 49 USC 5303) requires the designation of a MPO for each urbanized area with a population of more than 50,000 population. The policy board of the MPO shall consist of (a) local elected officials, (b) officials of local agencies that administer or operate major modes of transportation within the area, and (c) appropriate State officials.

This designation remains in effect until the MPO is re-designated. The addition of jurisdictional or political bodies into the MPO or members to the policy board generally does not constitute a re-designation of the MPO.

The organizational requirements for MPOs are spelled out in Federal Regulation CFR 23 Section 450.310. To the extent possible there will be one MPO for each urbanized area in the State, designated by the Governor through enabling State legislation. The MPO should have a defined organizational structure.

### Observations:

MAG's Regional Council is responsible for governance and policy-making for the organization. The Council consists of local elected officials appointed by each of its member agencies. Member agencies include the 25 incorporated cities and towns within Maricopa County and the contiguous urbanized area, Maricopa County, three Indian Communities, ADOT, and the Citizens Transportation Oversight Committee (CTOC). ADOT and CTOC serve as ex-officio members to the Council for issues related to transportation. MAG also has an Executive Committee, which consists of three or more Regional Council members and attends to business between meetings of the Regional Council. The Transportation Policy Committee (TPC) includes both elected officials and private sector representatives; this committee makes regional transportation policy recommendations for consideration by the larger Regional Council.

Finally, MAG has eighteen technical advisory committees (TACs) that make earlier and more detailed recommendations about transportation projects and decisions before review by the TPC. The newest of these technical committees is the Transit Committee, which includes representation from Valley Metro/RPTA, Valley Metro Rail, Phoenix Transit, and other local transit operators.

MAG has a full-time staff of 79 employees to support MAG's committees and programs. MAG's employees work in nine divisions, including Administration, Communications, Environmental

Programs, Fiscal Services, Human Services, Information Services, Information Technology, Office Services, and Transportation. The MAG Executive Director reports directly to the Regional Council.

MAG meets the requirements for organization and designation of 23 CFR 450.310. The organizational structure further enables the MPO to consider planning opportunities outside the traditional transportation realm.

Recommendation:

The Federal team observed the complex structure of the technical committees of the MPO and recommends that the MPO and its partner agencies consider undertaking a study of the efficiency of this structure. The team also observed that the public appears uncertain about the exact responsibilities of regional transit agencies and providers, and also encourages consideration of a study of the efficiency of these organizations.

Commendation:

The Federal team commends MAG for including business representatives on the TPC. These representatives have proved to be effective participants in the transportation planning process, particularly in freight planning and advising on development of the RTP.

**Boundaries**

Regulatory Basis:

Federal legislation (23 USC 134(c); 49 USC 53039(d)) requires boundaries of a metropolitan planning area to be determined by agreement between the MPO and the Governor.

Each metropolitan planning area shall encompass at least the existing urbanized area and the contiguous area expected to become urbanized within a 20-year forecast period and may encompass the entire metropolitan statistical area or consolidated metropolitan statistical area, as defined by the Bureau of the Census. CFR 23 Section 450.312 defines the boundary requirements for Metropolitan Planning Organizations.

Observations:

The Phoenix-Mesa-Scottsdale Metropolitan Statistical Area (MSA), as identified by the 2000 Census, includes all of Maricopa and Pinal Counties. The MPO boundaries are based on the urbanized area within those counties as of the 2000 Census. MAG's boundaries include all of Maricopa County and the City of Apache Junction and the Town of Queen Creek, both of which lie at least partially in Pinal County. MAG is currently working on changing its bylaws to allow MAG to expand its boundaries further into Pinal County. The Urbanized Area Boundary and the Metropolitan Planning Area have not changed since the previous Certification review, but MAG plans to make adjustments according to the results of the 2010 Census.

MAG covers a contiguous geographic area with a finite boundary. It incorporates the existing urban area, areas expected to become urbanized, and all nonattainment and maintenance areas in the Phoenix-Mesa-Scottsdale MSA.

## **Agreements/Contracts**

### Regulatory Basis:

Federal legislation (23 USC 13) requires the MPO to work in cooperation with the State and public transportation agencies in carrying out a continuing, cooperative, and comprehensive metropolitan planning process. These agencies determine their respective and mutual roles and responsibilities and procedures governing their cooperative efforts. Federal regulation requires that these relationships be specified in agreements between the MPO and the State and between the MPO and the public transit operators:

“The MPO, the State(s), and the public transportation operator(s) shall cooperatively determine their mutual responsibilities in carrying out the metropolitan transportation planning process. These responsibilities shall be clearly identified in written agreements among the MPO, the State(s), and the public transportation operator(s) serving the MPA.” *23 CFR 450.314(a)*

If more than one MPO has been designated to serve an urbanized area, there shall be a written agreement among the MPOs, the State(s), and the public transportation operator(s) describing how the metropolitan transportation planning processes will be coordinated to assure the development of consistent metropolitan transportation plans and TIPs across the MPA boundaries...” *23 CFR 450.314(d)*

The regulations also require an agreement between the MPO and any other agency responsible for air quality planning under the Clean Air Act. A single agreement should be executed among the MPO, State, transit operators, and designated air quality regulations “to the extent possible.” *23 CFR 450.314 (c)*.

### Observations:

MAG has several Memorandums of Understanding, which help guide the transportation planning process.

1. MAG has an interagency contract with ADOT that outlines the MPO’s role in performing work activities specified in the UPWP. The agreement also includes specifications for reporting, Federal funding allocations, and invoices between the two agencies. The agreement is updated every five years. The latest agreement, effective as of July 1, 2005, includes allocation of Proposition 400 funds, which is a County funding source based on sales tax revenue.

2. MAG has three interagency agreements with RPTA for the following programs and services:
  - a. Transit Planning Support Services (effective October 27, 2008)
  - b. Bike and Regional Bike Safety Education Campaign (effective February 19, 2009)
  - c. Regional Rideshare Program Services (effective October 8, 2004)

The agreements are updated annually, and there have been no substantive changes in these agreements since the last Federal Certification review.

3. MAG has an interagency agreement with Valley Metro Rail for Light Rail Transit Planning Services. The agreement is updated annually and has been described in the UPWP since it was first executed in 2005. The latest agreement is effective as of October 28, 2009.
4. A Transit Planning Agreement, executed on March 31, 2010, is an agreement between MAG, Valley Metro Rail, RPTA, the City of Phoenix, and other local transit operators with representation on the Regional Council, that defines the basic structure for cooperative planning and decision making for transit planning and programming between the signatory agencies. The Agreement establishes representation on the MAG Transit Committee, assigns MAG coordinating responsibility for the RTP and the TIP, and sets additional roles and responsibilities related to the provision of coordinated, region-wide transit service.
5. A Memorandum of Agreement between ADEQ, ADOT, and MAG provides a framework and guidelines to promote coordinated decisionmaking in planning, development, implementation, and enforcement of the National Ambient Air Quality Standards in Maricopa County. The signatory agencies must coordinate with each other to prepare the MAG regional air quality plans, with MAG maintaining the Regional Air Quality Planning Process. All agencies commit to implement the measures identified for the County. The latest agreement, which took effect on November 9, 1992, shall remain in effect until it is terminated by a signatory agency or superseded by a subsequent agreement.

MAG has adopted the necessary agreements to promote a cooperative planning process among ADOT, RPTA, transit operators, and other relevant agencies.

Recommendation:

MAG should work cooperatively with ADOT to develop a new agreement that formalizes mutual roles and responsibilities. This will improve accountability and transparency of the planning process. FHWA and FTA will actively participate in this action. MAG should also work cooperatively on a second MOU with ADEQ, ADOT, and Maricopa County that updates mutual roles and responsibilities pertaining to air quality.

## **Transportation Planning Process**

### Regulatory Basis:

The overall Transportation Planning Process, relative to planning factors and other elements of the planning process, is described in the 23 CFR Part 450 and 49 CFR Part 613, Statewide and Metropolitan Planning Final Rule § 450.306.

The eight planning factors are:

1. Support the economic vitality of the metropolitan area, especially by enabling global competitiveness, productivity, and efficiency;
2. Increase the safety of the transportation system for motorized and non-motorized users;
3. Increase the security of the transportation system for motorized and non-motorized users;
4. Increase accessibility and mobility of people and freight;
5. Protect and enhance the environment, promote energy conservation, improve the quality of life, and promote consistency between transportation improvements and State and local planned growth and economic development patterns;
6. Enhance the integration and connectivity of the transportation system, across and between modes, for people and freight;
7. Promote efficient system management and operation; and
8. Emphasize the preservation of the existing transportation system.

SAFETEA-LU also requires a public participation process and plan as a component of the planning process as defined in section § 450.316 (a). This regulation requires that the MPO consult all interested parties including citizens, public agencies, freight shippers, representatives of transportation use groups and other stakeholders. The MPO must create a public participation plan in consultation with all interested parties. The plan should include adequate public notice for all participation activities; visualization techniques to describe the transportation plan and TIP activities; provisions for holding public meetings in convenient, accessible locations; and provide ample opportunity for public comment.

### Observations:

MAG works closely with ADOT, transit agencies and operators, State agencies, local governments, and the public to carry out all parts of the transportation planning process, including the RTP, the TIP, the UPWP, and the Congestion Management Process. Also, as part

of MAG's ongoing evolution of its public involvement process, it adopted a Public Participation Plan in 2006, which meets all Federal regulations for public involvement in the transportation planning and programming process. The Public Participation Plan and other elements of MAG's public outreach are described in further detail later in this report.

The MAG RTP includes a section describing how its objectives address each of the eight SAFETEA-LU planning factors. The RTP further notes how selected planning activities and projects meet the stated objectives and address each planning factor. MAG also includes in its TIP a detailed explanation of how each planning factor is considered in the planning process. In this section of the TIP, MAG lists specific programs, processes, studies, and plans that address each factor.

A key component of the MAG planning process is its approach to "framework studies," which allow the agency to make a longer-range assessment of transportation needs for the region, and potentially identify new RTP elements for consideration. Framework studies often cover multi-county areas and include significant participation by other COGs and regional agencies, as well as State and Federal agencies. Two recently-completed framework studies are:

- *I-10 Hassayampa Valley Framework Study*: Hassayampa Valley has 160 entitled communities with a projected population of 2.8 million people, presenting transportation planners with problems of interstate exchanges. An entitled community has been authorized by the appropriate local jurisdiction to be developed at a density consistent with water supply and zoning regulations. After consulting hundreds of stakeholders, MAG produced a study and an environmental scan to lay out future transportation corridors and avoid problem areas. The resulting series of maps (environmentally sensitive areas, high capacity corridors, transit framework, freight networks) can be used in future stages of development. The MAG Regional Council accepted the study in February 2008 for inclusion in the RTP as an illustrative element.
- *Hidden Valley Framework Study (I-8 and I-10)*: Jointly funded with Pinal County, a key goal of the study is to address concerns for numerous interchange requests along I-8 and I-10. The framework addresses new, improved connections between the study area and metropolitan Phoenix. The framework also involved an extensive environmental scan and a series of recommendations for parkways, freeways, rail connections, and other transit. The study was accepted by the MAG Regional Council in September 2009 for inclusion in the RTP as an illustrative element; CAAG also accepted the study's recommendations. One proposal from the study is the creation of the Interstate 11 corridor, which would connect Las Vegas to Phoenix, providing an example of effective inter-regional planning by MAG.

Framework studies cost between \$500,000 and \$750,000 to complete, and the cost is split between many agencies, including the local agencies that would be responsible for implementing the outcomes of the studies. Future framework studies will include the Central Phoenix

Framework Study for the areas largely within Loop 101 and 202 and a freight study. MAG-initiated framework studies will feed into the 2050 Recommended Statewide Framework Scenario, a project for Building a Quality Arizona. The I-11 proposal currently under consideration came out of both the Hassayampa and Hidden Framework Studies.

MAG is appropriately considering the SAFETEA-LU planning factor requirements in their planning process. The MAG transportation planning process demonstrates close coordination with transportation agencies, State and local governments, and the public. MAG also is using innovation in considering the long-term needs of the region.

Commendation:

The Federal team commends MAG for its use of the framework studies, which expand long-range thinking for major sub-regions, enlist partners through consultation, and identify land use implications of transportation decisions.

**Regional Transportation Plan Development**

Regulatory Basis:

The requirements for development of a Regional Transportation Plan are spelled out in § 450.322 of 23 CFR Part 450 and 49 CFR Part 613, Statewide and Metropolitan Planning Final Rule.

“The metropolitan transportation planning process shall include the development of a transportation plan addressing no less than a twenty-year planning horizon as of the effective date. The plan shall include both long-range and short-range strategies/actions that lead to the development of an integrated intermodal transportation system that facilitates the efficient movement of people and goods.” 23 CFR 450.322 The regional transportation plan is to be updated every four years in nonattainment and maintenance areas to ensure its consistency with changes in land use, demographic, and transportation characteristics.

The regulation also identifies a number of required elements that must be addressed in the RTP, including:

- Demand analysis [23 CFR 450.322 (f) (1)];
- Congestion management strategies [23 CFR 450.322 (f)(4)];
- Pedestrian walkway and bicycle facilities [23 CFR 450.322 (f) (2)];
- System preservation [23 CFR 450.322 (f) (5)];
- Design concept and scope descriptions of all existing and proposed transportation facilities, in sufficient detail to permit conformity determinations in nonattainment and maintenance areas [23 CFR 450.322 (f) (6)];
- A multimodal evaluation of the transportation, socioeconomic, environmental, and financial impact of the overall plan [23 CFR 450.322 (f) (7)];

- Transportation enhancements [23 CFR 450.322 (f) (9)];
- “A financial plan that demonstrates how the adopted transportation plan can be implemented” [23 CFR 450.322 (f) (10)];
- Public official and citizen involvement (in accordance with the requirements of 23 CFR 450.316), including participation during the early stages of plan development, availability of the document for public review, and at least one formal public meeting in nonattainment TMAs [23 CFR 450.322 (j)];
- Conformity determination in nonattainment and maintenance areas 23 CFR 450.322(l)].

Observations:

MAG most recently conducted a major update of its RTP in 2003, following a three-year planning effort. The 2003 RTP, which was adopted prior to the previous Certification review, features the use of performance measures in evaluating transportation alternatives. MAG generally updates the RTP annually, with the most recent update adopted in 2007. The 2007 update is compliant with SAFETEA-LU as well as relevant State regulations. The RTP incorporates projects and priorities from the modal Life Cycle programs, which are described in greater detail in the next section. While MAG generally intends to update the RTP on an annual basis, they have not adopted an update in the past two years. MAG staff notes that they are considering adopting a biennial schedule to update the RTP, but no formal decision has been made at the time of this publication.

The RTP is multi-modal and results from diligent collaboration with local, State, and regional stakeholders to incorporate the most comprehensive project and program assessment. Several key characteristics of the plan are:

- Responds to the eight SAFETEA-LU planning factors from the SAFETEA-LU regulations;
- Provides strategic direction for the TIP;
- Includes analyses of environmental resources, environmental justice benefits and burdens, and air quality conformity (jointly administered with the FY 2009-2012 TIP);
- Incorporates 2004 Freight Needs Assessment (described in greater detail later in this report);
- Uses the latest available projections for demographics, land use, congestion, and economic activity;
- Discusses all modes of transportation, including transit, vehicular, rail, ferry, air, freight, pedestrian and bicycle; and
- Integrates the congestion management process (CMP) (described in greater detail later in this report).

MAG's 2007 RTP Update includes an Extended Regional Transportation Planning Outlook, documenting MAG's efforts in inter-regional coordination and modal and area transportation studies. MAG recognizes that the growth patterns in the region compel the MPO to actively pursue connectivity and coordination with other regions, and MAG is making progress in these linkages through the establishment of study partnerships with CAAG, PAG, and their member agencies; these partnerships address transportation needs across counties. Furthermore, the RTP recognizes the need for an integrated planning program with Pinal County.

The MAG RTP meets the requirements of *23 CFR, Section 450.322* and is the result of extensive interagency involvement and a robust planning process. MAG has successfully and comprehensively addressed SAFETEA-LU planning factors, modal programs, and targeted regional goals into the RTP. MAG has employed innovative strategies to plan for the region's transportation needs beyond the scope of the current RTP.

Recommendation:

In recognition of MAG's ongoing work with CAAG and PAG to explore broader transportation issues beyond the MPO's planning jurisdiction, the Federal team recommends that MAG expand this effort to other agencies such as ADOT and ADEQ. This involves a proactive approach that recognizes the importance of multistate corridors for goods movement and passenger travel, and the challenges of planning and investing to meet these emerging needs.

**TIP Development and Project Selection**

Regulatory Basis:

The MPO is required, under *23CFR 450.324*, to develop a Transportation Improvement Program (TIP) in cooperation with the State DOT and public transit operators. Specific requirements and conditions, as specified in the regulations, include:

"The MPO, in cooperation with the State(s) and any affected public transportation operator(s), shall develop a TIP for the metropolitan planning area. The TIP shall cover a period of no less than four years, be updated at least every four years, and be approved by the MPO and the Governor... The TIP must be compatible with the STIP development and approval process."

*[23CFR 450.324(a)]*

- Conformity determination by FHWA and FTA in nonattainment and maintenance areas. *[23CFR 450.324(a)]*
- Reasonable opportunity for public comment in accordance with *23CFR 450.316(a)* and, in nonattainment TMAs, an opportunity for at least one formal public meeting during the TIP development process. *[23CFR 450.324(b)]*
- The TIP shall include a financial plan identifying projects that can be implemented using public or private sources. The State and the transit operator must provide MPOs with

estimates of Federal and State funds available for the transportation system serving the metropolitan area. *[23CFR 450.324 (h)]*

- The TIP shall include: all transportation projects, including bicycle and pedestrian facilities, proposed for funding under title 23, U.S.C., including Federal Lands Highway projects, but excluding safety projects funded under *23 U.S.C 402*, emergency relief projects, and planning and research activities not funded with National Highway System, Surface Transportation Program or Minimum Allocation funds; all regionally significant transportation projects for which FHWA or FTA approval is required and, for informational purposes, all regionally significant projects to be funded from non-Federal sources; only projects that are consistent with the Transportation Plan. *[23CFR 450.324(c)]*
- Information shall be provided as follows for each project included in the TIP: sufficient descriptive material to identify the project or phase; estimated total cost; the amount of Federal funds proposed to be obligated during each program year; proposed source of Federal and non-Federal funds; identification of funding recipient/project sponsor; in nonattainment and maintenance areas, identification of TCMs and sufficiently detailed description to permit conformity determination. *[23CFR 450.324(e)]*
- Projects that the State and MPO do not consider to be of appropriate scale for individual identification in a given program year may be grouped by function, geographical area, and work type. *[23CFR 450.324(f)]*. In nonattainment and maintenance areas, classifications must be consistent with the exempt project classifications contained in the U.S. EPA conformity requirements. *[40 CFR part 51]*
- As a management tool for monitoring progress in implementing the Transportation Plan, the TIP shall identify the criteria and process for prioritizing the implementation of Transportation Plan elements through the TIP; list major projects implemented from the previous TIP and identify significant delays in implementation. *[23CFR 450.324(l)(1) and (2)]*
- In nonattainment and maintenance areas, the TIP shall describe progress in implementing required TCMs *[23CFR 450.324(l)(3)]*;

Several other regulations govern different aspects of TIP development and implementation:

- *23CFR 450.326* addresses modification of the TIP, stating that the TIP can be modified at any time, subject to the following conditions:
  - In nonattainment or maintenance areas, adding or deleting projects that affect emission levels requires a new conformity determination.
  - Public involvement opportunities are provided consistent with requirements for complete information, timely notice, full public access to key decisions, and other relevant provisions.

*23CFR 450.326* also governs the relationship between TIP and STIP:

- A Governor- and MPO- approved TIP shall be included without modification in the STIP.

- In nonattainment and maintenance areas, a conformity finding by FHWA and FTA must be made before incorporation in the STIP.
- In TMAs, all Title 23 and Federal Transit Act funded projects not included in the first year of the TIP as an “agreed to” list of projects (except projects on the NHS and projects funded under the bridge, interstate maintenance, and Federal Lands Highways programs) shall be selected from the approved metropolitan TIP by the MPO, in consultation with the State and Transit operator. *[23CFR 450.330 (a)]*
- If the State or transit operator(s) wish to proceed with a project in the second or third year of the TIP, MPO project selection procedures must be followed unless expedited project selection procedures formally exist. *[23CFR 450.330(a)]*
- In nonattainment and maintenance areas, priority will be given to the timely implementation of TCMs included in the applicable SIP. *[23CFR 450.330 (e)] TEA-21 [23USC134(h)(7)(B)]* requires the publication of an annual listing of projects for which Federal funds have been obligated in the preceding year. This list shall be consistent with the categories identified in the TIP.

CFR 23 Section 450, Subpart C – Metropolitan Transportation Planning and Program spells out a comprehensive planning process for MPOs to follow. Generally, the development and selection of projects for funding shall be completed through a comprehensive planning process with local input. Projects should be identified in the RTP and listed in the TIP, and be developed through various planning methods.

Observations:

The current TIP, which covers FY 2008 – FY 2012, represents close coordination with MAG member agencies, regional agencies, and ADOT. The TIP covers a five-year period and includes a complete listing of projects that are programmed for funding during that period. The TIP is generally updated annually, though MAG is experiencing delays due to extensive policy discussions resulting from the economic recession and declining sales tax revenues. MAG anticipates that its next TIP will cover FY 2011-2015 and will be adopted in July 2010.

MAG has established a systematic process to develop and update the TIP. First, MAG member agencies submit projects to be considered for inclusion in the TIP through the online TIP Data Entry System, which takes the form of an Access database. MAG is working to synchronize the electronic TIP entry system with GIS-T, which will allow improved integration of program information into modeling and allow users to see draft projects and plans geographically. TIP projects require a local funding match; the related process to coordinate with local agencies starts in mid-November. MAG anticipates that its upcoming TIP will have many deferred or delayed projects due to a lack of local funding.

The TIP is largely developed through the MAG committee process, with significant review and discussion at the technical advisory committee level. Six technical advisory committees review

TIP projects: Safety Committee, Streets Committee, Bicycle and Pedestrian Committee, Intelligent Transportation Systems Committee, Transit Committee (in development), and the Transportation Review Committee (TRC). The role of the technical committees is to complete a technical evaluation, a project criteria analysis, and a qualitative assessment guided by the RTP goals for each project. The TRC reviews the evaluation and analysis from the technical committees and makes recommendations on projects to be selected and programmed with Federal funds. The MAG Regional Council then makes final decisions on project selections, based on the TRC's recommendations.

MAG collaborates with its partner agencies to implement its project selection procedures. MAG provided the Federal team with the MAG Federal Fund Programming Principles, which dictates the competitive selection and programming process for projects that use CMAQ Federal funds. Other projects and programs that use Federal funds are evaluated through the freeway, arterial, and transit life cycle programs (LCP), which each have specific program management processes. The LCPs also program the regional half-cent tax for transportation.

The LCPs cover a 20-year planning horizon and include all projects planned within the program for that time period; LCPs are scheduled to be updated annually. The TIP includes projects that have been published in the LCPs as related to the TIP years. Each LCP has its own documented policies and procedures for prioritizing, selecting, and advancing projects. The Freeway Life Cycle Program (FLCP) was the first to be established in 1992 as part of Proposition 300. (Proposition 300 was a half-cent sales tax approved by Maricopa County voters in 1985 to construct controlled-access highways). ADOT develops and maintains the FLCP and relies on the MAG Highway Acceleration Policy for project selection and prioritization. The Arterial Life Cycle Program (ALCP) and the Transit Life Cycle Program (TLCP) were first produced in 2005-2006, following the enactment of Proposition 400 in November 2004. MAG maintains the ALCP, and wrote its policies and procedures, which were most recently updated in 2009. The policies and procedures for programming guidance for the TLCP allow cities to establish their own transit priorities and explain the allocation of funds in the TLCP. Valley Metro/RPTA maintains the TLCP, with assistance from Valley Metro Rail, and MAG is responsible for review and concurrence.

The adoption of the TIP involves two public hearings per fiscal year to solicit public comments. The first hearing is held in March with representatives from the State Transportation Board, CTOC, Valley Metro/RPTA, Valley Metro Rail, the City of Phoenix Public Transit Department, and MAG representatives, which may or may not include Regional Council members. This hearing is the first opportunity for members of the public to see a list of selected projects for the TIP, although the public is encouraged to participate in the technical advisory committee review prior to this hearing where their input is most valuable.

The second public hearing occurs in June or July, presenting a final opportunity for the public to comment on the prioritized list of TIP projects. The hearing is primarily made up of

representative staff from MAG, ADOT, Valley Metro, and City of Phoenix Transit. Both hearings have a court reporter, which records all public comments verbatim and passes these comments with written staff responses along to the MAG Management Committee, Transportation Policy Committee, and Regional Council for consideration prior to final approval of the TIP. MAG notes that the TIP does include amendments and new programs based on citizen input. Further detail on the public involvement process is included in later sections.

MAG acknowledges the serious concern with TIP project deferrals, especially for projects with air quality implications. MAG's "Federal Aid Working Group" has met twice since its formation in the fall of 2009 to address these project deferrals and to look into what other regional agencies are doing. MAG has been trying to use a "carrot" approach to help member agencies restart stagnant projects, but the efforts have not been successful due to local budget shortfalls. In some cases, the Federal process is too expensive for air quality projects, such as small-scale paving of dirt roads.

FHWA, FTA, and MAG have determined that the FY 2008 – FY 2012 TIP is in conformity with applicable Federal air quality regulations. The TIP is developed through a comprehensive and cooperative process and meets the requirements of relevant metropolitan transportation planning regulations.

#### Recommendation:

MAG should work with ADOT to continue initial progress on development of the electronic S/TIP and advance towards the next phase of GIS-T. These products are potentially very useful to manage business processes and promote transparency and public participation.

Since the TIP has not been published annually, as scheduled, MAG has not met their requirement of annually listing projects. As MAG moves towards publishing the TIP every two years instead of annually, it should plan to publish this annual listing in another form in the years where they do not publish a TIP.

#### **UPWP Development**

##### Regulatory Basis:

*23 CFR 450.308* identifies the requirements for UPWPs to be prepared in TMAs. *CFR 420.109* governs how FHWA planning funds are distributed to the MPOs. *49 USC 5303 (h)* allocates FTA assistance to metropolitan planning organizations. MPOs are required to develop the UPWP in cooperation with the State and public transit agencies [*450.308 (c)*].

Elements to be included in the UPWP are:

- Discussion of the planning priorities facing the metropolitan planning area

- Description of all metropolitan transportation planning and transportation-related air quality planning activities anticipated within the next 1- or 2-year period, regardless of funding source or agencies conducting activities, indicating:
  - Who will perform the work;
  - Schedule for completion of the work; and
  - Intended products.
- Include all activities funded under title 23 and the Federal Transit Act [450.308(b)]

Observations:

MAG publishes the UPWP annually, with the FY 2010 UPWP published in May 2009. The first part of the UPWP consists planning, projects, and resources for included activities; the second part is an annual financial plan with two years of projected budget and one year of actual expenses. While MAG leads the preparation of the UPWP, they receive contributions from partner transportation agencies, including ADOT, Valley Metro/RPTA, Valley Metro Rail, and the City of Phoenix.

The UPWP preparation process begins in November or December with a request for projects for the annual budget. MAG staff presented formal documents to all committees for review beginning in January and presented draft changes each month through adoption in May; the public can provide input at the technical advisory committee level at this time. MAG distributes a draft budget to Federal and State agencies in March and holds an Intermodal Planning Group meeting in April. The budget is then adopted in May and distributed in June.

The UPWP contains elements on Environmental Programs, Public Works Support, Human Services, Regional Community Partners, Program Implementation, Transportation Programs, MAG Information Center, Information Services, and Administration of Programs. Each of the elements in the UPWP includes a program description, mission statements, performance measures (including the prior year's performance measures), and accomplishments. Performance measures are outcome-based and are intended to be as objective as possible. MAG has been recognized by the Government Finance Officers' Association for Distinguished Budget Presentation Award for the last 10 years, with outcome measures being a strong component of MAG's success.

MAG uses a series of priority principles to select projects for funding through the UPWP. These principles are as follows:

1. Fulfill requirements under metropolitan transportation regulations (23 CFR 450.300).
2. Enable MAG and its partner agencies to support the metropolitan transportation planning process or fulfill other regulations applicable to this process
3. Support planning efforts for projects identified in the MAG RTP

4. Support planning efforts consistent with the direction set forth in the RTP or other State or regional planning documents
5. Support, develop and implement planning efforts that enable the region to meet other needs that support MAG's integrated, multimodal transportation system.

MAG's RTP identifies four major goal areas: system preservation and safety, access and mobility, sustaining the environment, and accountability and planning. MAG provided the Federal team with a list of each program included in the UPWP along with the associated RTP goal area for each program.

MAG develops a comprehensive UPWP, meeting the requirements of 23 CFR 450.308, in cooperation with ADOT, Valley Metro/RPTA, Valley Metro Rail, and the City of Phoenix. The Federal team encourages MAG to continue incorporating innovative programs and performance measures into their UPWP.

Commendation:

The Federal team commends efforts to include performance measures in the UPWP, and recognizes the potential value of this to reflect priorities in the RTP.

**Financial Planning**

Regulatory Basis:

There are two sections of CFR 23 that define financial requirements of MPOs: Section 450.322(e)(10) and Section 450.324(h).

The provisions related to the RTP include the following requirements:

- Contain system level estimates of costs and revenue sources that will be expected to operate Federal-aid highways and public transportation
- The MPO and the State should cooperatively estimate funding sources required to support regional transportation plan implementation
- Include recommendations on other financing strategies
- For nonattainment and maintenance areas, the financial plan shall address the specific financial strategies required to ensure implementation of TCMs in the applicable SIP.

The provisions related to the TIP include the following requirements:

- Includes a financial plan demonstrating which projects can be implemented with current revenue sources and which projects require proposed revenue sources
- Takes into account the costs of adequately maintaining and operating the existing transportation system
- Developed by the MPO in cooperation with the State and transit operator

- Developed with estimates of available federal and state funds provided by the state and transit operator
- Includes only projects for which construction and operating funds can reasonably be expected to be available
- Includes strategies for ensuring the availability of new funding sources
- For the financial analysis, considers all projects funded with Federal, state, local private resources
- In nonattainment/maintenance areas, only includes projects for which funds are available and committed in the first two years.

Observations:

MAG has ensured that the FY 2008-2012 TIP is fiscally constrained, and includes only projects for which funds are reasonably available. The Life Cycle programs, municipalities, and Tribal communities provide MAG with financial information on projects selected for inclusion in the TIP. MAG coordinates with all appropriate agencies to ensure matching local funding, and staff produces interim regional budget updates to help MAG work with local agencies and budget accordingly. In the electronic data entry system for TIP projects, agencies must identify the source of local funds, which streamlines the data collection process.

Transportation in the MAG region is funded by a mix of ADOT funds, Federal funds, and Proposition 400, a half-cent sales tax approved by Maricopa County voters in 2004. Local funding is dependent on revenue from Proposition 400, which will provide funding through 2025 to implement programs and projects identified in the RTP. Proposition 400 requires that 56.2 percent of tax revenues be distributed to the freeways and highways, 10.5 percent to arterial street improvements, and 33.3 percent to transit. Proposition 400 also requires MAG to lay-out all of its funding on a 20-year time frame, which differs from the traditional five-year financial planning time frame for the TIP.

The financial planning process for State funds starts with the Arizona Resource Allocation Advisory Committee (RAAC). In 1999, the RAAC set up a process to decide how State highway funds would be distributed and allocated 37 percent to MAG, which is considered "locked-in" funding. ADOT then calculates degrees of risk and ranges of outcomes. The State-level analysis and allocation is passed to MAG, which works closely with ADOT to create appropriate regional projections and project allocations.

MAG makes conservative estimates of expected future Federal funding. MAG has also developed a model to predict future ADOT funding, revising forecasts of the Arizona Highway User Revenue Fund (HURF) due to reduced forecasts for this revenue source. MAG uses its regimented modeling system to ensure transparency so that all funding recipients can predict the funding they will receive.

The models MAG uses to predict revenue were created based on several decades of data, but the recession of 2008-2009 exceeded even the greatest data extremities and ranges within the model. Identifying a \$6.6 billion deficit in their freeway program alone, MAG staff has come up with a series of actions to address the deficit but still accomplish the objectives of the RTP. These include: management strategies, value engineering, and project deferrals. MAG will defer the projects proposed for the 2021-2025 range, with priority placed on completing a few “legacy corridors” that have broad public support. MAG’s use of Life Cycle programs for modal planning ensures that projects are reviewed on a life cycle basis, which gives a more accurate estimate of total project costs and is particularly helpful during times of economic uncertainty.

Using a series of internal documents, MAG records its funding sources and the assumptions and risks it considers in the financial planning process. However, MAG does not include information on assumptions and risks in a public report format; MAG relies upon the Financial Plan section of the RTP to make transit financial planning information accessible to the public.

Recognizing the major budget shortfalls at the local and State levels, MAG is working to coordinate its own budget forecasts with those of ADOT, transit agencies, and municipalities. The budget shortfalls and resulting financial planning to address deficits is causing some delays in project implementation, including conformity projects that may not be implemented on schedule. A Federal Aid Working Group, described in a previous section, is working to address these issues.

MAG’s partner agencies have their own complementary financial planning processes. ADOT completes a risk assessment plan for highway projects that includes construction and right-of-way cost and a probability matrix with confidence intervals for future costs. Valley Metro works closely with MAG to plan for forecasts in transit ridership, mode split, and assumptions for the RTP. However, efficient and accurate transit financial planning is complicated by the fact that private providers operate all transit under contract to the public agencies.

MAG demonstrates financial constraint in both the RTP and the TIP. The Transportation Policy Committee has recognized MAG staff for creating a systematic, technical rationale for project deferrals and spending cuts. MAG staff also demonstrated to the Federal team that its staff undertakes a thorough financial analysis, including conservative funding predictions and consideration of risks, but this analysis is not well documented to the general public.

Recommendation:

MAG should show greater transparency in documenting the financial planning process in a single accessible reference source. Such documentation should include the assumptions across all modes, jurisdictions, and funding categories, and a discussion of the risks involved in revenue and expenditure estimates (i.e., capital, operations, and maintenance), and program implications. The Federal team will provide examples of best practices for planning.

The Federal team recognizes the merits of MAG's systematic approach to reduce the funding level for approved programs, particularly the use of funding scenarios to describe critical choices. This rigorous and transparent approach to a key aspect of programming should be expanded to include the transit component of the program as well.

## **Air Quality and Conformity**

### Regulatory Basis:

Section 176 (c)(1) of the 1990 Clean Air Act Amendments (CAAA) states:

"No metropolitan planning organization designated under *Section 134 of title 23, United States Code*, shall give its approval to any project, program, or plan which does not conform to an implementation plan approved or promulgated under section 110." The Intermodal Surface Transportation Efficiency Act of 1991 subsequently included provisions responsive to the mandates of the CAAA. Implementing regulations have maintained this strong connection. Provisions governing air quality-related transportation planning are incorporated in a number of Metropolitan Planning Regulations, rather than being the primary focus of one or several regulations. For MPOs that are declared to be air quality nonattainment or maintenance areas, there are many special requirements in addition to the basic requirements for a metropolitan planning process. These include formal agreements to address air quality planning requirements, requirements for setting metropolitan planning area boundaries, interagency coordination, Transportation Plan content and updates, requirements for a Congestion Management Process (CMP), public meeting requirements, and conformity findings on Transportation Plans and TIPs. Sections of the Metropolitan Planning Regulations governing air quality are summarized below:

- In a metropolitan area that does not include the entire nonattainment or maintenance area, an agreement is required among the State DOT, State air-quality agency, affected local agencies, and the MPO providing for cooperative planning in the area outside the metropolitan planning area but within the nonattainment or maintenance area. [23 CFR 450.314(b)] In metropolitan areas with more than one MPO, an agreement is required among the State and the MPO describing how they will coordinate to develop *an overall MTP for the metropolitan area*; in nonattainment and maintenance areas, the agreement is required to include State and local air-quality agencies. [23 CFR 450.314(d)] The MPO is required to coordinate development of the Transportation Plan with the SIP development process, including the development of transportation control measures (see *Regional Transportation Plan* topic area). [23 CFR 450.322 (d)] The MPO shall not approve any Transportation Plan or program that does not conform with the SIP.
- In TMAs designated as nonattainment areas, Federal funds may not be programmed for any project that will result in a significant increase in carrying capacity for single

occupant vehicles, unless the project results from a CMP meeting the requirements of 23 CFR 450.320 (d).

- The Transportation Plan shall identify single-occupancy vehicle projects that result from a CMS meeting Federal requirements. [23 CFR 450.322 (f) (4)] and include design concept and scope descriptions of all existing and proposed transportation facilities to permit conformity determinations [23 CFR 450.322 (f)(6)]. The FHWA, FTA, and MPO must make a conformity determination on any new or revised Transportation Plan in nonattainment and maintenance areas (see *Metropolitan Transportation Plan* topic area). [23 CFR 450.322(l)]
- In nonattainment and maintenance areas, the FHWA, FTA and MPO must make a conformity determination on any new or amended TIPs [23 CFR 450.324 (a)]
- In nonattainment TMAs, there must be an opportunity for at least one formal public meeting during the TIP development process [23 CFR 450.324 (b)]
- In nonattainment and maintenance areas, the TIP shall give priority to eligible TCMs identified in the approved SIP and shall provide for their timely implementation. [23 CFR 450.324(i) and 450.330 (e)]
- In nonattainment and maintenance areas, the TIP shall include all regionally significant transportation projects proposed to be funded with Federal and non-Federal funds [23 CFR 450.324 (d)] and identify projects identified as TCMs in the SIP [23 CFR 450.324 (e)(5)]. Projects shall be specified in sufficient detail to permit air quality analysis in accordance with U.S. EPA conformity requirements. [23 CFR 450.324 (e)(6)]
- For the purpose of including Federal Transit Act section 5309 funded projects in a TIP [49 U.S.C. 5309], in nonattainment and maintenance areas, the TIP shall describe the progress in implementing required TCMs. [23 CFR 450.324 (l) (3)]
- In nonattainment or maintenance areas, if a TIP is amended by adding or deleting projects that affect transportation-related pollutants, the MPO and the FHWA and the FTA must make a new conformity determination [23 CFR 450.326 (a)].

In TMAs that are nonattainment or maintenance areas, the FHWA and FTA will review and evaluate the transportation planning process to assure that the process meets the requirements of applicable provisions of Federal law and this subpart, including 40 CFR Part 93 [23 CFR 450.334 (b)]. Air Quality requirements are spelled out in 23 CFR Section 450.322(l) and Section 450.324(a). "In nonattainment and maintenance areas subject to transportation conformity requirements, the FHWA and the FTA, as well as the MPO, must make a conformity determination on any updated or amended TIP, in accordance with the CAA and the EPA conformity regulations."

#### Observations:

MAG is one of the few MPOs that serve as the designated regional air quality planning agency. In this capacity, MAG prepares regional air quality plans and provides modeling assistance for

the ADEQ. An air quality MOU, in place since 1992, provides the framework for coordinated planning and implementation among ADEQ, ADOT, Maricopa County and MAG. The Air Quality Technical Advisory Committee, a technical committee within MAG, serves an advisory function to the Management Committee and the Regional Council and makes recommendations on air quality projects. The Air Quality Committee consists of 38 members, with representatives from all sectors that emit pollutants. Representation of stakeholders responsible for air emissions problems on the Technical Committee is helpful for cases that go before the legislature.

During the last two years, MAG staff has prepared an Eight-Hour Ozone Plan (2007), an Eight-Hour Ozone Redesignation Request and Maintenance Plan (2009), and a Five Percent Plan for PM-10 (2007). Maricopa County is a maintenance area for carbon monoxide and one-hour ozone, and there have been no violations since 1996. The County is a nonattainment area for PM-10 and for eight-hour ozone, and there have been no violations for the eight-hour ozone standard of .08 parts per million since 2004, the year the boundary was expanded. MAG models used to perform the conformity analyses for the TIP and the RTP showed travel patterns, capacity, and population projections consistent with Federal conformity requirements.

Particulate Matter (PM-10) is the most challenging pollutant for MAG to address due to the dryness of soil in the region. The Region currently faces potential exceedances of the PM-10 standard for 2008, which hinges on the establishment of ADEQ's definition of exceptional events (most of the exceedances on record were during exceptional events). EPA is still reviewing the ADEQ exceptional events documentation for PM-10, and if EPA disagrees with the ADEQ documentation, MAG will face having to add new measures to the plan and the triggering of sanctions, including the potential loss of Federal highway funds and the possibility of litigation.

ADEQ has responsibility for the vehicle emissions testing programs, issuance of permits on portable sources, State Air Quality monitoring, and special studies. ADOT has responsibility for conducting major studies and rubberized asphalt. Maricopa County Air Quality Department is responsible for the Maricopa County air quality monitoring network, provides permits for stationary sources, and completes a large emissions inventory.

MAG recognizes the linkages between air quality and transportation to meet conformity regulations. MAG air quality staff conducts regional emissions tests on the TIP and the RTP to meet Federal conformity requirements. The Transportation Control Measures (TCM) included in the TIP and RTP include ridesharing, road paving, and street sweepers. For the past several years, TCMs have been implemented on schedule and at levels that exceed commitments in air quality plans. MAG recognizes its limited control over greenhouse gas pollutants, which can be most effectively limited through Federal initiatives to reduce greenhouse gas emission from vehicle tailpipes.

The Air Quality Technical Advisory Committee also forwards CMAQ evaluations on the estimated air quality benefits, that have been provided by MAG staff, to other MAG committees for use in prioritizing projects. These evaluations assist technical and modal committees, as well as the Transportation Review Committee, in project selection. The Transportation Review Committee makes a recommendation on the projects to receive CMAQ funds.

## **Congestion Management Process**

### Regulatory Basis

Under SAFTEA-LU regulations *23 CFR 450.320*, a metropolitan-wide congestion management process (CMP) is required for new and existing multimodal transportation facilities in the TMA to ensure safe and efficient use of the system. Performance measures and strategies for congestion management should be reflected in the TIP and metropolitan transportation plan. The congestion management process should include *23 CFR 450.320 (c)*:

- Methods to monitor and evaluate the performance of the multimodal transportation system, and identify the causes of recurring and non-recurring congestion.
- Performance measures that are tailored to the locality
- Data collection system coordinated with other data collection efforts
- Identification of an implementation strategy and funding sources
- Congestion management strategies could include:
  - Demand management measures
  - Traffic operational improvements
  - ITS technologies
  - Additional system capacities

### Observations:

MAG has been using its Congestion Management Systems (CMS) model to guide its congestion management activities, including the recent development of the 2008-2012 TIP. The CMS includes strategies to address congestion and the implementation of a CMS Rating System. For Federally-funded CMAQ projects, MAG has established a project application, programming schedule, project evaluation process, and project selection process. The processes, which occur at the technical advisory committee level, include an evaluation of expected emissions reductions and cost effectiveness.

MAG is also engaged in an ongoing Performance Measurement and Congestion Management Update Study. The third phase of the study, in compliance with the SAFETEA-LU requirement, is the creation of a new Congestion Management Process that will incorporate performance measurement to establish a consistent methodology to prioritize and select programs. CMP strategies will be based upon goals and objectives in the 2003 RTP and use RTP congestion mitigation criteria for evaluation of projects. MAG's new CMP will include innovative

approaches to enhanced data collection, modeling, graphic depiction, and data simulation. The CMP in development will also emphasize management and operational solutions as well as travel demand reduction solutions for proposed capacity increases. MAG established a CMP Technical Advisory Group (CMP TAG) with representatives from MAG member agencies and modal committees to provide input to the CMP development from a jurisdictional perspective. The CMP TAG will continue to have an advisory role in the CMP update.

The performance measures in the CMP will be based both on multiple modes (limited access highways, HOV lanes, arterials, transit, freight, and non-motorized) and on RTP goal areas. For example, the RTP goal of Safety and Security is associated with the performance measures for Intersection Crash Ranking (for Arterials) and Transit Crime Rate (for Transit), among others. The performance measures for the Transit mode are based on RPTA's standards for system efficiency and effectiveness. Currently, performance measures and the modeling program are based on observed data sources, whereas in the future MAG hopes to be able to more accurately predict congestion and related elements. MAG plans to incorporate a simulation program that evaluates effects of congestion on performance measures. Included in these enhancements, MAG has developed a new measure for lost productivity, defined as how much capacity is lost on a given facility due to slower speeds.

As part of its performance measurement efforts, MAG has begun to publish rankings for congestion and accident data on arterials and intersections. The rankings come in response to the need of the Transportation Safety Committee to identify high crash locations and institute safety enhancements accordingly. MAG recognizes that the rankings may imply that some jurisdictions are safer or less congested than others; the Federal team encourages MAG to continue to use transparency in portraying the objectives of collecting and disseminating the ranking information.

As MAG completes the CMP development process, staff will focus on finalizing performance measures, processes for project evaluation and selection, and safety and congestion rankings. The CMP will also include a strong component of early and ongoing public interaction and understanding, including an interactive websites and visualization tools. Finally, MAG will create an implementation plan including methodologies for evaluating effectiveness.

The development of the CMP will provide a structured and comprehensive means of evaluating causes of congestion and planning for access management. The MAG region demonstrates the use of innovative mechanisms to predict and plan for congestion as part of its new CMP, which should be incorporated into the overall transportation planning process.

Recommendation:

MAG should move ahead rapidly to complete phase three of the CMP, including mainstreaming key aspects into the broader planning process.

## Outreach/Public Participation

### Regulatory Basis:

The requirements for public involvement are set forth primarily in *23 CFR 450.316*, which addresses elements of the public involvement requirements. Public involvement also is addressed specifically in connection with the Transportation Plan in *450.322 (i)* and the TIP in *450.324(b)*.

Requirements related to the planning process generally are summarized in *450.316*, as follows:

- A proactive process
- Complete information
- Development of a participation plan in coordination with all interested parties
- Timely public notice of public involvement activities and information about transportation issues and processes
- Full public access to key decisions and time for public review and comment
- Early and continuing public involvement in developing the TIP
- A minimum public comment period of 45 days before adoption or revision of the public involvement process
- Minimum 30-day review period for Transportation Plan, TIP and major amendments in nonattainment areas classified as serious and above
- Explicit consideration and response to public input
- Consideration of the needs of people traditionally underserved by transportation systems, including low-income and minority households; consistency with Title VI of the Civil Rights Act of 1964, including actions necessary to comply with the Americans with Disabilities Act of 1990
- Periodic review of public involvement effectiveness
- Coordination of metropolitan and statewide public involvement processes
- MPO should consult with other agencies and officials responsible for planning activities such as federal agencies, Tribal governments, transit operators, etc.

The requirements pertaining to the Transportation Plan (*450.322(i)*) are further elaborated as follows:

- Opportunity for public official and citizen involvement in the development of the Transportation Plan, in accordance with *450.316(a)*.

TIP related requirements [*450.324 (b)*] include:

- MPOs must provide reasonable opportunity for public comment in accordance with the requirements of *450.316(a)* and, in nonattainment TMAs, an opportunity for at least one formal public meeting during the TIP development process and provision for public review and comment. The passage of ISTEA in 1991 marked the beginning

of an increased emphasis on the role of the public in making transportation decisions that affect their locality.

Public involvement in the transportation planning process is a major feature of SAFETEA-LU. The Metropolitan Planning Regulations state that, "The metropolitan transportation planning process shall include a proactive public involvement process that provides complete information, timely public notice, full public access to key decisions, and supports early and continuing involvement of the public in developing plans and TIPs." To this end, MPOs must develop and adopt a formal public involvement process for planning and program development.

Observations:

MAG formally established its four-phase public involvement process in 1994. MAG staff have continually refined and formalized the process, and in December 2006, MAG adopted its Public Participation Plan, which documents the MPO's policies and procedures for public involvement. The four phases of the process align with the TIP and RTP update publication schedule, although public input also is solicited for the UPWP and other key publications. Additionally, MAG engaged in an extensive public input process prior to the 2003 adoption of the RTP.

The four phases are as follows:

1. Early phase: occurs prior to the draft listing of TIP projects and includes meetings between MAG staff, MAG committee members, and stakeholders. MAG encourages stakeholders to get involved at this stage, where they can have the most influence. The findings from early phase participation are published in an Opportunity Report that is distributed to technical and policy committees.
2. Mid phase: occurs concurrently with draft releases of the TIP and RTP update. Stakeholders submit comments on the drafts, and MAG staff formally responds to each comment. The findings from mid phase participation are published in an Opportunity Report and also in transcripts of the public meetings. The report is distributed to the MAG policy committees prior to action.
3. Final phase: includes the final public hearing for adoption of the TIP or RTP update, and stakeholders can submit comments on the final plans. Staff also must formally respond to each comment, and results are published in an Opportunity Report that is distributed to policy committees prior to final adoption of plans and programs.
4. Continuous involvement: represents the bulk of public participation; continuous involvement involves outreach at community events and multimedia outreach. Comments from staff and members of the public suggest that this stage is considered the most effective form of participation.

MAG has demonstrated significant efforts to solicit public participation and involvement in non-traditional manners. MAG staffs information booths at community events, often targeted at Title VI communities, and speaks at community organizations and meetings. One of MAG's most effective outreach areas has been individualized presentations for blind and disabled communities, which are described in greater detail in later sections of this report.

MAG utilizes innovative visualization techniques to aid in public understanding of transportation plans and programs. Visual tools include maps, graphs, digital and aerial photography, GIS displays, photo simulations, technical drawings, and visual depictions of alternative scenarios. Many of these visualization tools are presented at community forums and small group meetings. Additionally, MAG has a Video Outreach Program as a means of disseminating information about MAG plans and programs, and recently completed a 30 minute documentary on the transportation improvements resulting from Proposition 400 revenues.

MAG has also made strides in multimedia outreach, including the provision of electronic and web-based resources to make its publications and activities more accessible to the public. MAG produces and distributes electronic versions of MAG documents and maintains a Spanish-language web page. In October 2008, MAG started a subscription-based email notification system to allow members of the public to track committee events, receive new documents, and monitor Web page changes. Also, MAG has been targeting young adults in the region through web-based games and other interactive programming for an anti-litter campaign.

The MAG policy for public notice prior to public hearings is to display an advertisement in major papers, including papers circulated in minority communities, at least 30 days prior to the final decision (with the goal of printing the notice 30 days prior to the actual hearing). Public hearings are handicapped- and transit-accessible and usually held after working hours. MAG also invites representatives from ADOT, RPTA, and the City of Phoenix to attend public hearings.

In an effort to evaluate the effectiveness of their public involvement process as recommended in the 2004 Certification review, MAG conducted telephone polls and a public awareness survey, which was distributed at community events. MAG recognizes the difficulty in measuring public involvement effectiveness, but the surveys quantitatively show increases in: awareness, positive perception of MAG, and people who have participated in the public input process. The survey also collects zip codes to track responses from minority and low-income areas. MAG also completed an extensive review of its public involvement process associated with the publication of its Public Participation Plan in 2006. The Plan was reviewed by all MAG policy committee members, partner agencies, and parties on the MAG public involvement mailing list.

During the public hearing associated with the MAG Federal Certification review, the Federal team heard comments related to speakers' perception that their efforts have limited effectiveness in making changes to transportation plans and projects. Several commenters felt their expressed concerns are not considered or do not impact the outcome of transportation decisions. MAG

notes that all transportation funding for the next 20 years is dedicated to projects included in the 2003 RTP, the development of which included an extensive public involvement process. MAG cannot remove or add projects that have not already been approved as part of the RTP, which was approved by the MAG Regional Council and partner agencies. However, members of the public can influence alignments, transit service changes, and components of major road projects, such as the addition of a bike path. The Federal team encourages MAG to clarify the ways in which the public can influence transportation projects, describe how concerns are reflected in the process, and resolve the confusion and frustration that exists among some stakeholders.

One related forum for public involvement is the Citizen's Transportation Oversight Committee (CTOC), which is run through ADOT. CTOC was established to provide citizen-led oversight of the regional freeway system. ADOT and MAG staff admits that the CTOC is not well-attended and does not necessarily function effectively. However, members of the public who provided comments to the Federal team expressed a strong desire for a formalized means for citizens to express ideas and concerns, which they feel the CTOC has not fulfilled. Furthermore, the CTOC does not appear to provide a means of oversight or feedback for MAG plans and projects outside of the regional freeway system. A new Citizens Advisory Committee, housed within MAG, could give the public an established venue to address MAG plans and programs. The Advisory Committee could report directly to MAG committees.

MAG has shown strong efforts in diversified public participation and outreach activities to notify the public of transportation planning activities and to provide opportunities for the public to comment on transportation policies, priorities, and projects. MAG's public participation program meets the requirements of pertinent Federal transportation planning regulations, but the Federal team encourages MAG to provide greater clarification about the impact of public comments and identify opportunities to make improvements.

Recommendation:

MAG should reevaluate its strategy for public participation and consider ways to make public participation more effective. Potential means to increase effectiveness of public participation to consider include establishing a Citizens Advisory Committee, convene regular focus groups, or hold more informal citizen group meetings.

**Title VI and Environmental Justice**

Regulatory Basis:

It has been the U.S. DOT's longstanding policy to actively ensure non-discrimination under Title VI of the Civil Rights Act of 1964. Title VI states the "no person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or subjected to discrimination under a program or activity receiving Federal financial assistance." Title VI bars intentional discrimination as well as disparate impact discrimination

(e.g., a neutral policy or practice that has the effect of a disparate impact on protected groups). 23 CFR 450.334(a)(3) requires the FHWA and FTA to certify that the “planning process . . . is being conducted in accordance with all applicable requirements of . . . Title VI of the Civil Rights Act of 1964 and the Title VI assurance executed by each State under 23 U.S.C 324 and 29 U.S.C. 794.”

*Executive Order 12898*, issued in 1994, further amplifies Title VI by providing that “each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing as appropriate, disproportionately high and adverse human health and environmental effects of its programs, policies, and activities on minority populations and low-income populations.” In compliance with *Executive Order 12898*, the U.S. DOT Order on Environmental Justice was issued in 1997.

#### Observations:

While MAG does not have a specific publication devoted to Title VI, it conducts extensive outreach to Title VI communities. The Public Participation Plan includes Title VI components, such as strategies for seeking out and considering the needs of traditional underserved communities, including low-income and minority populations.

MAG staff prepared an environmental justice analysis for freeways and arterials during the RTP development (MAG’s partner transit agencies prepared a similar analysis for transit). The analyses determined the percentage of underserved communities that will be served by roads, road improvements, or transit improvements included in the RTP. MAG examined minority, low-income, elderly, mobility-disabled, and female head of household population segments. The analysis compared rates of service in these communities with the rates of service for non-minority census tracts. MAG found that Title VI communities and non-Title VI communities had equal access to freeway and highway network improvements. Rates of service were slightly higher for transit improvements in the Title VI communities than the non-Title VI communities. For arterial projects, several of the Title VI population segments examined had less service than non-minority communities.

MAG’s Title VI Community Outreach Program was established in 2001 to provide information and receive input from minority and low-income communities. The Program includes a full-time Community Outreach Specialist on MAG staff, who coordinates and engages with minority communities. The Community Outreach Specialist is the continuation of three Community Outreach Associates contracted in 2001 to work with the Hispanic, African-American, and Native American communities for the 2003 RTP. The Associates obtained mailing lists, participated in special events, and formed relationships with each community, and the current Community Outreach Specialist has worked to maintain these connections.

MAG engages its Community Outreach Specialist to translate major documents, press releases, and other outreach materials into Spanish to distribute and to post on the MAG website. MAG

publishes its MAGazine newsletter in English and Spanish, and they distribute transportation planning and programming information through Spanish-language media outlets. MAG will also translate materials into Braille, large-print, or audio formats upon request. Public hearing notices advertise the availability of special assistance to accommodate language barriers. While MAG has not specifically created documents with simplified language to accommodate Low English Proficiency (LEP) populations, they have made efforts to target programs to children and young adults appropriately. LEP populations are those with English reading abilities at or below the fourth-grade level, including both native and non-native English speakers. There may be the potential to expand these efforts into a more robust LEP program.

MAG has a close relationship between its Transportation division and its Human Services division, which allows MAG to conduct transportation planning activities especially catered to the needs of targeted populations. Several MAG technical committees specifically address the needs of aging populations, homeless populations, victims of domestic violence, and persons with disabilities. The Disability Outreach Associate works closely with transit-dependent populations and educates community members on how to use the transit system, purchase ADA eligibility cards, and use the online trip planner. This staff member also refers feedback from community members back to MAG, strengthening how related news is considered at appropriate places in the on-going planning process. Disabled persons can also arrange to ride the rail with a Valley Metro representative.

MAG staff created the first Human Services Coordination Transportation Plan in 2007, and the plans have been updated every year. The document has the goal of coordinating transportation services between many transportation-disadvantaged communities. By having a MAG staff member with a background in human services, MAG is better able to combine transportation needs with other key needs, such as housing or health.

Within the Human Services division, the Transportation Ambassador Program has allowed MAG to provide better access to information about transit and transportation. The program targets Ambassadors from elderly, disabled, or low-income communities, but others are also welcome to participate. Ambassadors participate in quarterly meetings, held according to geographic location within the region, and one full regional meeting in which all participants interact with each other. Ambassadors learn about regional transportation plans and projects at the quarterly meetings, and they disseminate this information through their formal and informal networks, thus soliciting questions and comments about the projects. Over 200 people have participated in the program, including Tribal, agency, governmental, and business representatives; and MAG estimates that many more individuals access information through the extensive informal networks of participants.

MAG undertakes conscientious efforts to adhere to environmental justice principles, ensuring that the benefits and burdens of transportation programs and projects are fairly distributed among communities in the region. Their strategic linkages between the Transportation and Human

Services divisions allow MAG to more seamlessly meet the transportation needs of Title VI communities and other underserved population segments while improving their quality of life.

Commendation:

The Federal team recognizes the proactive approach to integrate human service programs in transportation planning as part of the Title VI and public outreach process. The approach encompasses innovative application of livability concepts by focusing on meeting the transportation needs of underserved communities, and bringing these initiatives into the overall transportation planning process. This is an excellent example of a proactive approach, adapting the MPO planning process to help meet associated transportation needs.

**Self-Certification**

According to *23 CFR 450.334* Certification review by FTA and FHWA is required in TMAs, concurrent with the TIP submission, the State and MPO shall certify at least every four years that the metropolitan transportation planning process is being carried out in accordance with the following requirements:

- Section 134 of title 23, U.S.C.,
- the Metropolitan Planning Regulations,
- Sections 174 and 174 (c) and (d) of the Clean Air Act,
- Title VI of the Civil Rights Act,
- Section 1101 (b) of ISTEA (as incorporated in TEA-21) *49CFR part 26* regarding the involvement of DBE in FHWA & FTA funded planning projects, and
- The provisions of the Americans with Disabilities Act of 1990 (ADA).

Observations:

The MAG combines self-certification with the development and adoption of the TIP. As part of preparation of the TIP, MAG and ADOT evaluate all major issues in the metropolitan planning area and certify that the planning process addresses these issues, in accordance with Federal regulations. The TIP contains a certification page signed by the Executive Director of MAG and the Director of Multimodal Planning Division at ADOT and the document is made available to the public.

The FY 2008-2012 TIP, approved July 25, 2007, includes a self-certification by the MPO. MAG meets the self-certification requirements of *23 CFR 450.334*.

## **Additional Priority Topics from Site Visit**

In meeting the requirements of the Metropolitan Planning Regulations set forth in 23 CFR Part 450 and 49 CFR Part 613, Statewide and Metropolitan Planning Final Rule, MPOs have the flexibility to focus their particular planning expertise on the needs that they define for their planning region through their planning process. The priority topics highlighted at the on-site review and described in this section represent innovative programs and challenges that uniquely impact MAG.

### **Transit Planning**

#### Observations:

Several agencies share responsibility for planning and managing transit in the MAG region. Currently, MAG's official role is to review transit programs for concurrency and incorporate transit projects into the TIP and the UPWP. MAG also has a few transit planning support functions related to regional GIS, air quality monitoring, transit system performance monitoring, and travel forecasting. RPTA/Valley Metro is responsible for management of the transit elements of the Transit Life Cycle program (LCP), the TIP, and the RTP, as well as the grant process for transit projects. Valley Metro Rail manages the high-capacity transit elements (for light rail transit) for the LCP, the TIP, and the RTP. Both RPTA and Valley Metro Rail receive some funding from MAG to support transit planning. Finally, the Phoenix Transit Department manages the grant process for bus and high capacity formula funded projects, with a supporting role in developing the TIP transit element.

Recognizing the complex allocation of transit-related responsibilities, MAG and its partner agencies have been actively working to coordinate transit planning. In September 2009, the Regional Council approved a new transit planning structure which would consolidate programming at MAG. Most significantly, under this new structure MAG will develop the transit element of the TIP. MAG will also be responsible for review and consolidation of the annual discretionary grant process. On March 31, 2010, the Regional Council adopted a Transit Planning Agreement with RPTA, Valley Metro Rail, the City of Phoenix, and other transit operators that are represented on the MAG Regional Council. The Agreement sets forth the basic structure for cooperative planning and decisionmaking regarding transit planning and programming between signatory agencies and other local government agencies. The Agreement is anticipated to be adopted as part of the UPWP in May 2010. One intended outcome of the coordination is to align the goals of all agencies, both with each other and with the goals in the RTP. Another goal is to ensure that all MAG member agencies have input into transit decisions.

In order to develop the transit element for the TIP, MAG recently instituted a transit technical advisory committee (Transit Committee), with representation from the partner transit agencies and transit operators in the region, to review transit projects and make recommendations to the TRC and the Regional Council. The Transit Committee, which began regular meetings in

December 2009, is structured based on best practices from peer regions. The Transit Committee will primarily focus on project selection for the TIP with the goal of expanding responsibilities over time. Secondary responsibilities of the committee will include annual discretionary grant requests, procedures documents for transit programming, and recommendations on transit studies.

MAG is also engaged in long-term transit planning through its Regional Transit Framework Study, which considers regional transit needs beyond the funding timeline of Proposition 400. On March 29, 2010, the MAG Regional Council accepted the findings of the Regional Transit Framework as the public transportation framework for the MAG region; accepted the Illustrative Transit Corridors map in the study for inclusion as unfunded illustrative corridors in the RTP; and determined to consider the future planning actions identified in the study through the UPWP process. Over the long term, MAG anticipates a transition from extensive transit, covering a large part of the region, to intensive transit concentrated on selected corridors based on market demand.

Recommendation:

To continue the positive momentum in planning for public transit, MAG and its partners should complete a public transit framework and move further toward a multi-modal transportation system framework that will ease the ability to make trade-offs between highway, transit, and other alternatives. MAG uses frameworks as a long-range planning tool to assess the transportation needs of multi-county areas with significant input from regional stakeholders.

Commendation:

The Federal team commends MAG and its partners for their efforts to bring public transit into the regional multi-modal planning process, including through the establishment of the Transit Committee.

## **Transportation Safety**

Observations:

MAG has made significant strides to address transportation safety planning since 2001, when the MAG Safety Stakeholders Group was established. The Safety Stakeholders Group held annual Regional Transportation Safety Forums between 2001 and 2004, which featured training on Road Safety Assessments and Road Safety Analysis Tools. In 2004, MAG established a Transportation Safety Committee (TSC), composed of 24 members including representatives from transit and local government agencies.

The TSC transformed a Draft Safety Action Plan into the region's first Strategic Transportation Safety Plan (STSP), which MAG adopted in 2005. The STSP contains goals for roadways,

enforcement, education, EMS, nonmotorized modes, and transit users. For each of these goal areas, the STSP includes general strategies, potential actions, and lead agencies.

A major project of the TSC is the Regional Transportation Safety Information Management System (RTSIMS), which is a tool that will provide MAG with a better understanding of road safety in the region by enabling them to run studies on traffic data. MAG has collected all crash data between 1998 and 2007, and staff will link this data with other traffic data and incorporate with spatial data to enable GIS analysis of crash data. The TSC is also investigating mid-block crashes to identify hazardous locations in the region, as described in the Congestion Management Process section previously in this document. Development of the software to perform crash data analysis is expected to be complete in early 2010. MAG plans to share the tool with member agencies to enhance their capacity for safety planning.

In addition to development of the RTSIMS, the TSC monitors performance measures related to safety, including: freeway system crash rates, injury rates and fatality rates for passenger vehicles and large trucks. The TSC also holds regional safety workshops and completes safety audits in conjunction with ADOT.

Members of the public can offer comments about MAG's safety programs through public meetings held in conjunction with the RTP, the TIP, or the UPWP. The Transportation Safety Committee also solicits and reviews public comments at their meetings.

#### Commendation:

The Federal team recognizes MAG's efforts in safety planning, including related progress to establish the standing Transportation Safety Committee, to complete safety audits, and to measure mid-block crashes. The team also recognizes the potential for MAG to expand these activities to take a leadership role in safety planning.

### **Freight and Goods Movement**

#### Observations:

MAG completed a *Regional Freight Assessment* in April 2004 to inventory key facilities and corridors used in the movement of freight. Major highway freight corridors include I-10, I-8, I-17, US-93, and US-60. While 86 percent of the region's freight goes by truck, the MAG region also relies on two rail lines and the Phoenix Sky Harbor Airport and the Phoenix Mesa Gateway Airport for freight service. While Arizona and the MAG region have both export and import products, Arizona is primarily a throughput state with many products from Mexico or California traveling through Arizona en route to their final destinations.

The RTP has been updated to explicitly include an objective about freight mobility and access between intercity freight corridors and terminals. The RTP includes a chapter on goods movement, which assesses the multiple modes of freight serving the region and considers

potential of future regional freight planning efforts. The RTP also enhances freight mobility and accessibility through significant investments in freeways, highways, and streets as well as the use of Intelligent Transportation Systems (ITS) to relieve freight-related congestion.

Since MAG identified truck transportation as the primary freight mode for the region, MAG plans to use major freeway improvements identified in the RTP as a means to improve freight mobility. MAG should continue to monitor how future freight needs will affect mobility on key highway corridors, and they should also consider the use of ITS and non-truck freight modes to reduce the need for additional highway capacity.

MAG includes private sector freight representatives on the Transportation Policy Committee, as required by Arizona statute, and as a means to ensure that goods movement is considered as part of the regional transportation planning process. While MAG maintains an extensive mailing list of interested citizens, agencies, businesses, and organizations, the agency does not maintain a separate list dedicated to freight interests. Additionally, MAG continues to work with railroad partners, including Burlington Northern Santa Fe and Union Pacific railroads, to consider rail freight and intermodal connections.

As part of its long-term freight planning, MAG will look for opportunities outside of Arizona, including freight connections to Mexico, Nevada, and Utah. A proposed study to identify a location for a multi-modal transportation complex fits well within MAG's pursuit of megaregional planning, outside the Maricopa County borders, as it affirms how transportation and economic competitiveness require input from beyond multiple regions, States, and even nations. MAG also plans to study freight as part of its commuter rail corridor studies; MAG is encouraged to include infrastructure improvements for freight along with passenger rail improvements, as planned. MAG is also a participant in several regional and national freight planning efforts, including the I-10 Corridor Study, the River Trade Coalition (out of Texas), the Western High Speed Rail Alliance, and the Intermountain MPO alliance.

## **Travel Demand Modeling**

### Observations:

MAG employs a four-step travel model that covers Maricopa County (including all municipal planning areas) and part of Pinal County. The model forecasts travel demand for seven trip purposes and incorporates detailed mode choice capabilities that have been updated with a recently completed on-board survey. MAG's forecasting capabilities have benefitted from improvements that have substantially reduced model run-times, and the agency's technical methods have been continuously reviewed by peer and Federal agencies.

MAG provided the Federal team with a detailed description of their model's network coding conventions for highway and transit, and the team noted several areas of good modeling practice. First, MAG's model inputs rely on strong data sources, including on-board survey data for mode

choice, Regional Household Travel Survey, and the National Household Travel Survey (NHTS). Second, the model structure incorporates transportation and land-use interactions; joint distribution of household size and auto ownership; multiple vehicle weight classes for truck stratification; and spreading capabilities “within” time periods for the peak hour model. MAG also provides detailed documentation and tabular summaries for each model component, including spatial patterns documented through embedded GIS plots. The model explicitly includes important trip purposes as sub-models, such as Arizona State University and Phoenix Sky-Harbor Airport. Finally, MAG staff is working to develop and implement an activity-based model, which will provide greater accuracy for future planning needs.

A few areas of the modeling program showed potential for further work. First, tabular reports of estimated and observed vehicle miles traveled (VMT) by time-period, facility class, and time period indicated some modest variation from observed values (>20% for some bins). The variance appeared most evident for the suburban area types. The Federal team encourages MAG technical staff to further explore the source for differences between estimated and observed comparisons – particularly for those area, time, and facility type classifications that differ by 20 percent or more. Aggregate assignment results and RMSE do appear reasonable. The documentation references speed studies conducted in 2002 and 2003, noting that this information was used to “validate the vehicle hours of travel, speeds, and other performance measures output by the latest transportation models.” Tabulations of estimate and observed estimates of VMT (by area-type and facility class) reveal reasonably aggregate results, although the documentation notes greater validation challenges for non-freeway facility classes. Validation strategies that examine point-to-point travel times for important zone interchanges may further reveal sources for differences between estimate and observed travel times.

Second, model documentation describes the use of year 2000 Census data for calibrating the HBW trip distribution models, and the documentation further notes that this data is not sufficient to address the lower Auto Ownership groups. The recently completed NHTS ‘add-on’ survey processing is currently underway, and will likely serve as a key data input to model validation efforts; this survey will be even more important as the availability of small-area flow data from the American Community Survey remains in question. The Federal team encourages MAG technical staff to continue data dissemination and processing steps that will provide useful information for model validation activities.

Finally, a number of MPOs that have taken the step towards activity models have established expert panels to review and comment on technical work plans and to provide technical input to the model development process. This level of input can be helpful for addressing potential problems “mid-stream” that may arise during the model development process. MAG may want to consider a similar peer review process.

After the site visit, MAG staff provided the following additional information:

MAG has completed a number of model updates and improvements, including recalibration and update of the volume delay functions, recalibration to the 2007 On-Board Transit Survey, updates to ASU and Sky-Harbor Airport sub-models. The updated model was validated with 2007 and 2008 traffic counts and 2007 Travel Time and Speed Study data. The results were presented at the planning certification review. The model documentation is being updated to include the latest validation results and documentation related to the latest model improvements.

Commendations:

The Federal team commends MAG's strong efforts in combining visualization with model outputs.

**Tribal and Resource Agency Consultation and Coordination**

Observations:

MAG has a three-step approach for consultation with agencies, including Federal, State, wildlife, land use, natural resource, conservation, environmental protection, historic preservation, and other regulatory agencies. First, MAG holds a joint consultation workshop annually to discuss transportation topics with general applicability. For example, the 2010 workshop will focus on framework studies and the implications of new Federal legislation. Second, MAG holds individual meetings with each agency to develop specific approaches to include in the planning process. These meetings help ensure that agencies are informed of MAG's public involvement process. Finally, MAG encourages agencies and their representatives to participate in MAG's general public involvement process. Any agency feedback received during early, mid, or final phases is included in the Opportunity Reports that are distributed to technical and policy committees.

MAG hopes that their multi-faceted approach will strengthen their relationship with resource agencies, which will aid MAG in long-range planning. MAG already enjoys some of the highest participation rates in Arizona from resource and regulatory agencies, since both MAG and the resource agencies have offices in Phoenix. The FHWA recently recognized MAG for their work in environmental mitigation in a FHWA research report.

In addition to their relationships with resource and regulatory agencies, MAG also coordinates closely with the three Native American communities within the region. Each of the three Tribal communities (Gila River Indian Community, Salt River Pima-Maricopa Indian Community, and Fort McDowell Yavapai Nation) has a representative on the MAG Regional Council with full voting rights. A fourth Native American community (the Tohono O'odham) has a small piece of land within the MAG region and has discussed becoming a MAG member.

Tribal representatives have coordinated and participated in transportation studies, such as the Salt River Pima Long Range Transportation Plan and the Hidden Valley Transportation Study. MAG has also dedicated staff resources to transportation planning efforts within Native

American communities, and they are working with the Tribes on access issues for two casinos. In addition to project-specific work, MAG has worked with the Intertribal Council of Arizona to discuss framework studies and consider long-range planning needs. MAG also led a successful road and streets panel at a recent Tribal conference.

Commendations:

The Federal team notes MAG's thorough approach in meeting SAFETEA-LU requirements for environmental mitigation consultation, including working with Tribes and resource agencies. MAG is showcased in a new FHWA best practices report on this topic, Environmental Mitigation in Transportation Planning, Case Studies in Meeting SAFETEA-LU Section 6001 Requirements.

The Federal team commends MAG and its Tribal partners for their successful current consultation procedures, and encourages MAG to extend the collaboration to bring Tribal partners and their plans more fully into the regional transportation planning process.

**Additional Information**

After the site visit, MAG staff provided the following additional information:

Arizona's Socioeconomic Modeling, Analysis and Reporting Toolbox (AZ-SMART) will update and refine the MAG socioeconomic models, creating a suite of tools that can be used for socioeconomic modeling and assessment of policy scenarios over a wider geography and by other stakeholders in the State of Arizona. To identify the needs of the model, MAG collaborated with a number of entities, including the six Arizona Council of Governments (COGs), three Metropolitan Planning Organizations (MPOs), the Arizona Department of Transportation, the Arizona State Land Department and the Arizona Department of Commerce.

The consultant component of Phase I of AZ-SMART is now complete, building upon a national socioeconomic model, UrbanSim/OPUS. Phase I included the data design, model development and graphical user interface. MAG staff is now collecting and verifying data to fully test the model under various scenarios. Nationally, MAG staff co-sponsored a multi-day UrbanSim/OPUS Users Group conference at the Puget Sound Regional Council in order to get more COGs and MPOs actively involved in the process. UrbanSim/OPUS is rapidly becoming the national socioeconomic model of choice for many COGs and MPOs and, since AZ-SMART was built on the UrbanSim/OPUS framework, the work done on AZ-SMART was of primary interest to the group.

The Central Arizona Association of Governments contracted with MAG to assist the agency in developing a socioeconomic process and has asked MAG to provide socioeconomic modeling services for them. In addition, the Pima Association of Governments is actively discussing implementation of AZ-SMART with MAG and other COGs and MPOs throughout the state are

July 26, 2010

also considering its use. Adoption of AZSMART will enable all COGs and MPOs to collect data on a common platform that will enhance everyone's ability to model regional and statewide transportation and other infrastructure impacts.

## Appendix A

### *Composition of Federal Team*

The individuals listed below were responsible for reviewing all pre-meeting materials, conducting the on-site review, and writing the draft and final Certification report.

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## **Appendix B**

### *List of Participants*

The following individuals attended the on-site review held on November 3-5, 2009 at the Maricopa Association of Governments offices, in Phoenix, Arizona.

#### *Federal Representatives*

Lorrie Lau, Transportation Planner, FHWA  
Nathan Banks, Senior Engineer / Program Manager, FHWA-AZ  
Ed Stillings, Engineering Development Coordinator, FHWA-AZ  
Jerome G. Wiggins, Transportation Program Representative, FTA-Region IX  
Eric Pihl, Modeling Technical Specialist, FHWA Resource Center  
William Lyons, Transportation Planner, U.S. DOT/Volpe Center  
Haley Peckett, Transportation Planner, U.S. DOT/Volpe Center

#### *Maricopa Association of Governments*

Dennis Smith, Executive Director  
Eric Anderson, Transportation Director  
Roger Herzog, Senior Project Manager  
Bob Hazlett, Senior Engineer  
Kevin Wallace, Transit Planning Project Manager  
Eileen Yazzie, Transportation Program Manager  
Lindy Bauer, Environmental Director  
Becky Kimbrough, Fiscal Services Manager  
Monique de los Rios-Urban, Performance Program Manager  
Sarath Joshua, ITS and Safety Program Manager  
Vladimir Livshits, System Analyst and Program Manager  
Kelly Taft, Communications Manager  
Rita Walton, Information Services Manager  
Jason Stephens, Public Involvement Planner II  
Amy St. Peter, Human Services Manager  
Audrey Skidmore, Information Technology Manager  
Nathan Pryor, Senior Policy Planner  
Alana Chavez, Management Analyst III

#### *Valley Metro/RPTA*

Dave Boggs, Executive Director  
Bryan Jungwirth, Deputy Executive Director / Chief of Staff  
Carol Ketcherside, Deputy Executive Director of Planning  
Paul Hodgins, Capital Programs Manager  
Bob Antila, Capital Planner

***Valley Metro Rail***

Wulf Grote, Director of Project Development  
Jim Mathien, Planning Project Manager

***Phoenix Transit***

Debbie Cotton, Director  
Jorie Bresnahan, Planner  
Joe Bowar, Environmental Programs Coordinator  
Mark Melnychenko, Principal Planner

***Arizona Department of Transportation***

John McGee, Executive Director of Planning  
Jennifer Toth, Director of Multimodal Planning  
Mike Normand, Director of Community and Grant Services  
Mark Hodges, Director of Data Management and Analysis

***Arizona Department of Environmental Quality***

Diane Arnst, Air Quality Planning Section

***Central Arizona Association of Governments***

Maxine L. Brown, Executive Director

## Appendix C

### *Agenda for the Certification Review of the Maricopa Association of Governments*

Date: November 3 – 5, 2009  
Place: Saguaro Room  
Maricopa Association of Governments  
302 North 1<sup>st</sup> Avenue  
Phoenix, Arizona 85003

#### **11/3/2009**

9:30 Introduction  
9:45 Findings from Previous Certification Review  
10:00 Planning Agreements/ Organizational Structure  
10:30 Break  
10:45 SAFETEA-LU Planning Factors  
11:15 Congestion Management Process  
11:45 Lunch  
1:00 Local Transit Discussion  
2:30 Break  
2:45 RTP, TIP and Fiscal Constraint  
3:45 Travel Demand Modeling  
5:00 Public Meeting  
7:30 Adjourn

#### **11/4/2009**

9:00 Overall Work Program  
10:00 Air Quality Conformity  
10:30 Break  
10:45 Public Involvement Process (Participation Plan/Visualization)  
11:45 Lunch  
1:00 Title VI and Environmental Justice  
1:45 Tribal and Resource Agency Consultation and Coordination Issues  
2:15 Freight and Goods Movement  
2:45 Federal Review Team Preparations of Preliminary Findings

#### **11/5/2009**

8:00 Federal Review Team continues to meet if necessary  
9:00 Review Closeout

## Appendix D

### Public Input Summary

This section summarizes the comments of attendees at the Maricopa Association of Governments (MAG) public meeting for the Federal Certification review held November 3, 2009. Out of 22 attendees at the Public Input Meeting, 12 made oral comments. This appendix also summarizes the 12 written comments received by the Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) during the meeting and over the comment period following the meeting. Some individuals provided both written and oral comments. Oral or written comments, or both, were received from 18 different individuals, as indicated in the Public Input Matrix below.

Comments about public involvement in the transportation planning process were far ranging, from complementary to critical, and referred to the activities of MAG as well as its partner agencies. Although most comments dealt with the planning process itself, several comments were directed toward specific projects.

The comments are classified in the following thirteen categories (see Public Input Matrix) and summarized below:

- MAG considers public input well
- MAG has improved outreach in recent years
- Strong outreach to disability community
- Public input is inadequately considered
- MAG makes regional decisions without adequate input
- MAG process lacks transparency
- Communication of data is inadequate
- Time limit for comments is inadequate
- Outreach focused on communities or events is more effective
- Support for public transit
- MAG should facilitate discussions about Congestion Mitigation and Air Quality (CMAQ) funding
- Comments about planning procedures at partner agencies
- Examples of projects for which comments were not addressed
- Other comments

#### MAG considers public input well

Several commenters complimented MAG for a good job of considering public comments, either specific to projects or in general. One commenter expressed that the managers who oversee open space, bike and pedestrian projects, and rail are “wonderful” and listen to citizen input without “preconceived ideas or an agenda.” Another commenter expressed appreciation for how MAG

keeps lines of communication open with constituents throughout the planning process. One commenter praised MAG for “an excellent job” of keeping the public involved and informed.

Several commenters cited examples in which citizen input was considered. One commenter noted that the plan to use the County sales tax was gradually changed to include public transit based on public feedback. Another noted that light rail station platforms were changed to better accommodate wheelchairs and bicycles.

#### MAG has improved outreach in recent years

A commonly-expressed sentiment was that MAG has made dedicated efforts to improve its public input process in recent years. One commenter noted MAG has improved its public participation process by responding to comments, albeit slowly. Another commenter noted that MAG previously had problems considering comments, but this commenter noticed advancement in recent years. A few commenters noted that MAG’s improvement in public outreach was relative to other transit agencies and committees, which have not shown improvement.

Another commenter expressed that MAG has worked very hard over the past 10 years to show improvement; in particular the agency’s efforts have resulted in the notable Travel Ambassador’s forum. One commenter observed that MAG outreach, over time, has helped member municipalities “think as a community” as opposed to solely thinking of their individual interests.

#### Strong outreach to disability community

Representatives from the disability community had a strong presence at the public hearing and expressed unanimous appreciation for MAG’s dedicated outreach to the disability community. One commenter noted that her program benefited from the MAG liaison to the disability community, who updates her students periodically and listens to their input for transportation planning. Others observed that MAG provides critical opportunities for their communities to provide input to transportation planning. Another commenter noted that MAG has come to his organization’s facility, addressed the organization’s needs, listened to its concerns, and made his job easier by supporting public transit. One commenter noted that Valley Metro, after hearing input from the disability community, kept the Dial-a-Ride service despite budget cuts.

#### Public input is inadequately considered

Some commenters expressed the opinion that MAG does not adequately consider public input, and noted that they cannot recall instances when plans were adjusted based on public input. Others acknowledged MAG’s improvements in soliciting citizen comments. One commenter observed that MAG directors place insufficient value on citizen input, and this fosters disengagement among citizens.

Additionally, commenters cited examples of their comments or those of others that were not considered by MAG. For example, one commenter noted that the only time he has observed

MAG change a transportation decision based on public input was after strong concerns from the disability community, not from citizen comment at a public meeting. Additional project-specific comments are in a later section of the Public Input Summary.

#### MAG makes regional decisions without adequate input

Several commenters noted that MAG does not adequately consult with stakeholders or follow a clear process in making key planning decisions. One commenter provided the example of MAG's plans to extend its boundaries, although this decision should be made by State leaders and other stakeholders, according to the commenter. Another commenter believed that the MAG highway decisions were made without adequate consideration of regional interests.

Other comments were more process-oriented. One commenter cited examples of public meetings in which the public was not permitted to ask questions of technical experts. Another commenter expressed dissatisfaction with elements of regional decisionmaking, including the selection of consultants and accommodation of budgetary limitations.

#### MAG lacks transparency

A few comments were directed at how MAG solicits and considers public input, and the need for MAG to more clearly describe how it considers input. One commenter noted a need for greater transparency about how transportation planning works. Another commenter gave an example of her participation on a committee dealing with a new road alignment and observed that citizen members did not feel their input was considered. A commenter suggested that MAG and the Arizona Department of Transportation (ADOT) provide more accurate communication about how input will be considered.

#### Communication of data is inadequate

Several commenters criticized the adequacy of the data MAG transmits to agencies and the public. One commenter noted that MAG provided inadequate data related to air quality, and needed to improve data transmittal to meet requirements and terms of interagency agreements. Commenters described situations where MAG did not provide a citizen committee with requested technical information and used outdated data to run a model, despite citizens' requests that updated data be used.

One commenter believed that MAG used incomplete data to justify a selected road alignment and another described the use of erroneous data in the technical review of a light rail project.

#### Time limit for comments is inadequate

Several commenters expressed concern about time limitations on public comments at MAG hearings, specifically that three minutes is inadequate and may not meet public participation requirements. Another suggested that the council or committee holding the hearing should divide

the time available among comments. Inadequate time has discouraged some citizens from participating.

#### Outreach focused on communities or events is more effective

A few commenters observed that other types of outreach are more effective than input at public meetings. One commenter noted that because each city has jurisdictional and taxation powers, the most effective feedback is to mayors or through participation in community events. While some commenters expressed dissatisfaction with public input procedures at hearings, they noted the value of MAG's presence at community events. One commenter noted that because many hearings are during the day, staff from advocacy organizations have a hard time participating.

#### Support for public transit

Many commenters voiced their support for public transit. In several cases, commenters noted that they traveled mostly or exclusively by transit and expressed gratitude at MAG's role in supporting transit that enhances their mobility. At least one commenter noted that transit was a key need for disabled populations, and that MAG supports this important social service. Another commenter expressed excitement at the completion of the light rail, while others called for expansion to more areas.

Other commenters supported the concept of transit but voiced preferences for other technologies, including monorails, elevated rail, or changes to the bus and light rail system. A commenter believed that public-private partnerships are the best way to finance future transit service.

#### MAG should facilitate discussions about CMAQ funding

Two commenters expressed concerns about the current process for distributing CMAQ funds. Currently all CMAQ allocations go to the MAG region, although Pinal County will soon be designated as a nonattainment area and would like to use CMAQ funds to pave some dirt roads. The commenters noted that the current MAG planning process does not allow opportunities to discuss CMAQ allotments, and suggested that MAG and Statewide planning processes provide these opportunities.

#### Comments about planning procedures at partner agencies

Many citizens directed their comments towards public input procedures at MAG's partner agencies, including ADOT, Valley Metro/Regional Public Transportation Authority (Valley Metro/RPTA), Valley Metro Rail, and the City of Phoenix Transit. One commenter said that the Citizens Transportation Oversight Committee (CTOC), which is under ADOT, does not properly advertise public meetings. Another commenter expressed the opinion that CTOC serves political interests, rather than providing oversight. One commenter noted that, unlike MAG, other agencies do not provide the opportunity for input prior to public meetings. This commenter cited examples of the Regional Paratransit Board, the City of Phoenix Transit, and the Phoenix City

Council where no prior input is permitted. Other comments about inadequate public input procedures were directed to RPTA and CTOC.

Several commenters seemed unclear about the responsibilities of and coordination between the planning agencies related to public participation. One commenter expressed concern that her comments to MAG were not provided to ADOT or CTOC.

Finally, one commenter observed that Federal staff was not providing adequate oversight of public input procedures.

#### Examples of projects for which comments were not addressed

Commenters provided several examples of specific projects where comments in prior public hearings were inadequately addressed, including:

- Concern about safety for persons in wheelchairs on light rail
- Concern about unsafe interchange design
- Concern about inadequate highway ramps
- Signalization for light rail and highway ramps that interrupts car traffic flow
- Central location of the Phoenix Municipal Court that causes traffic
- Location of the new hockey stadium outside of the city
- Regionalization of Dial-a-Ride
- Development of plans to reduce daily vehicle miles traveled

#### Other comments

Several comments could not be classified under the other categories:

- A 1992 Memorandum of Agreement between the Arizona Department of Environmental Quality and MAG needs to be updated to reflect restructuring.
- MAG has done good outreach with businesses adjacent to the light rail corridor.
- Phoenix's transportation is fragmented and 20 years behind other cities.
- MAG should have a process to address delays in advancing projects in the TIP, allowing funds to be released to other projects. MAG needs a mechanism to deal with projects that do not meet milestones or lack consensus.
- Use of security guards at MAG and RPTA meetings creates a negative environment for the public.
- Planning should give greater consideration to project implementation.
- Acknowledging regional economic problems and budget cuts, commenters expressed hope for a new funding source to revive transit and paratransit service.
- The current financial crisis offers MAG a "great opportunity" to listen to the public and enhance future transportation planning.
- Transportation agencies and infrastructure have an important role in urban and suburban development and urban renewal.





September 7, 2010

TO: Members of the MAG Regional Council Executive Committee

FROM: Amy St. Peter, Human Services Manager

SUBJECT: SUSTAINABLE COMMUNITIES REGIONAL PLANNING GRANT PROGRAM

In July 2010, the MAG Regional Council approved the recommendation of the MAG Regional Council Executive Committee to have MAG apply as the lead applicant on behalf of the Sun Corridor Consortium for the Sustainable Communities Regional Planning Grant Program. The purpose of the program is to integrate housing, economic development, and transportation planning through the creation of regional plans for sustainable development. In August 2010, with the assistance of 120 partners and nearly \$21 million in leverage, MAG submitted an application for nearly \$5 million representing six initiatives to inform the development of a regional sustainability plan. The purpose of this memorandum is to provide an update on the partnerships established and the activities proposed in the Sun Corridor Consortium's application.

The Sun Corridor Consortium comprises the Maricopa Association of Governments, the Pima Association of Governments (PAG), the Central Arizona Association of Governments (CAAG), and 117 additional partners representing the public and private sectors, as well as nonprofit agencies. All have signed partner agreements indicating support for activities throughout the three-year period of the grant. This is the first time in the history of the Sun Corridor that such a diverse and extensive consortium has been established to mobilize on issues related to sustainability. Activity at the Sun Corridor level will be coordinated through the Joint Planning Advisory Council (JPAC). The JPAC was established by a signed resolution in December 2009 by MAG, PAG, CAAG to address issues that impact all three regions. Local issues will be addressed by member agencies and community partners in work groups through MAG, PAG, and CAAG.

One of the key strengths of the project is the diverse consortium assembled to implement the proposed grant activities. Primary partners include the Arizona Department of Transportation, the Arizona Department of Housing, the Urban Land Institute, the Sonoran Institute, the Morrison Institute for Public Policy at Arizona State University (ASU), the Stardust Center for Affordable Homes and the Family at ASU, and the Drachman Institute at University of Arizona. Each partner contributes significant expertise and resources. For example, the Central Arizona Project has contributed the strategic right-of-way valued at \$14 million for the trail system along the canals that run through Maricopa, Pima, and Pinal counties. This resource will be leveraged to implement one of the initiatives proposed in the grant, the Canal Path Integration Study.

In total, six initiatives have been proposed to build a foundation for the regional plan for sustainable development. These include the following:

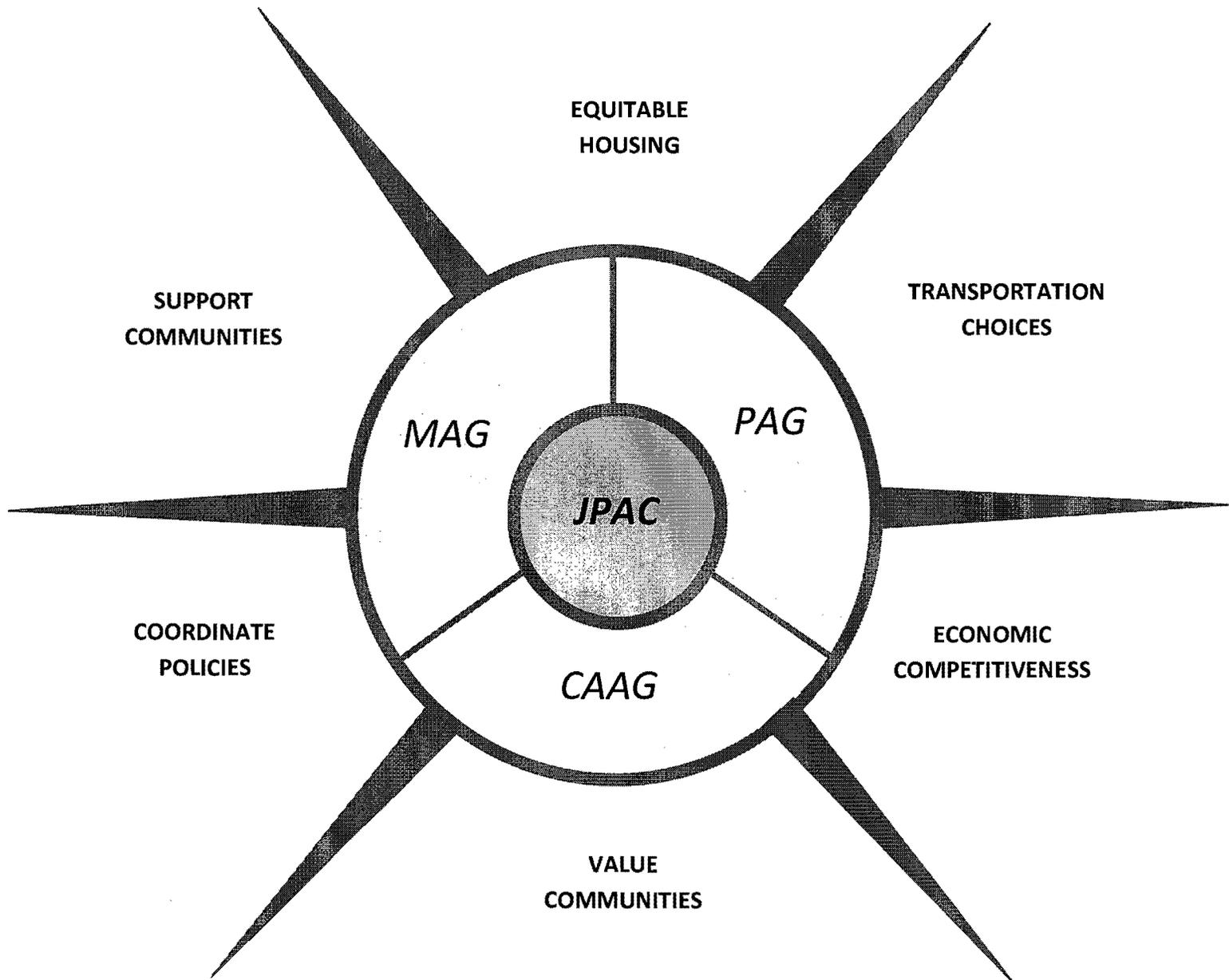
1. *Cluster Economic Development Study* to determine the industries, support, and strategies needed to promote economic development.
2. *Connected Centers Framework Study* to identify the factors needed to support existing and emerging activity centers.
3. *Native American Communities Transit Study* to better connect with employment and educational opportunities.
4. *Regional Housing Plan* to identify the range of housing needed, including affordable housing and fair housing.
5. *Arizona Health Survey* to track a robust data set of indicators relevant to health, quality of life, and social equity.
6. *Canal Path Integration Study* to identify missing segments and develop strategies to complete the trail system along the canals.

Feedback from member agencies and community partners defined these six initiatives as holding the most potential to have a positive impact on the region and to make the grant application as competitive as possible. The application process is expected to be very competitive. In total, up to \$98 million is available nationally. HUD has set aside 25 percent of the awards for small metropolitan or rural areas. Applications meeting threshold requirements but not receiving an award may be granted preferred sustainability status. Applicants with this status may apply for an additional \$2 million that will be available nationally in fall 2010 for technical assistance. HUD has indicated this status may also provide a benefit when applying for other federal funding sources. Applying for this funding source now may position MAG well in the future if such plans become a requirement with the reauthorization of federal transportation funding.

Staff will continue to track federal activity regarding the Sustainable Communities Regional Planning Grant Program and related programs. Originally, HUD indicated awards would be announced in October. In recent communications, HUD has withdrawn this deadline and has not published a new date for the awards announcement. Once the awards have been announced, MAG will convene the partners to determine next steps.

If you have any questions regarding this item, please contact me at the MAG office at (602) 254-6300.

# SUN CORRIDOR CONSORTIUM ORGANIZATIONAL CHART



**JPAC** - Joint Planning Advisory Council

**CAAG** - Central Arizona Association of Governments

**PAG** - Pima Association of Governments

**MAG** - Maricopa Association of Governments

## Roles

**Joint Planning Advisory Council:** Develop Sun Corridor strategies and sustainability plan.

**CAAG, MAG, and PAG:** Organize work groups, approve menu of strategies, and develop regional approach.

**Livability principles:** Housing, transportation, and economic competitiveness will be addressed by their respective work groups. Policy coordination will be addressed by the Sun Corridor Steering Committee composed of designated representatives from MAG, PAG, and CAAG. The supporting existing communities principle will be addressed by the Housing Plan and Centers Study. The valuing communities and neighborhoods principle will be addressed by scenario planning, the Canal Path Study, and the AZ Health Survey. Please refer to the Partner Role Matrix for details on specific agency commitments.



## *News*

### *From Imperial County*

*Ralph Cordova, Jr.*

**COUNTY EXECUTIVE OFFICER**

**940 W. Main Street, Suite 208**

**El Centro, CA 92243**

**760.482.4290**

#### **FOR IMMEDIATE RELEASE:**

#### **AIR DISTRICT BOARD APPROVES PURSUIT OF CHALLENGE TO EPA DISAPPROVAL OF DUST RULES**

After meeting in closed session, the Imperial County Board of Supervisors, sitting in their capacity as the Imperial County Air Pollution Control District (ICAPCD) Board, today reported that it has formally approved action to pursue all appropriate legal remedies, including litigation if necessary, to challenge the Environmental Protection Agency's July 8, 2010 limited disapproval of the ICAPCD's Regulation VIII fugitive dust rules.

"The Regulation VIII rules are a critical part of the ICAPCD's strategy to implement best available control measures for dust and other particulate matter in the County," explained Brad Poiriez, Air Pollution Control Officer. "We feel EPA's decision not to approve the rules was unjustified, and it is vitally important for the County to challenge the disapproval and ultimately achieve the ability to move forward with these rules under an approved SIP."

The Board proactively adopted the Regulation VIII rules (District Rules 800-806) on November 8, 2005, over 3½ years before there was a specific legal requirement to do so. The Regulation VIII rules were adopted after nearly a year of active participation and workshops involving members of this community, EPA, the California Air Resources Board (ARB), representatives of the agricultural community, representatives of environmental groups, and other local organizations. On June 16, 2006, the California Air Resources Board (ARB) submitted the approved rules to EPA for formal approval as revisions to the California State Implementation Plan (SIP) for the ICAPCD. The rules mirror stringent dust requirements used in other "serious" PM10 nonattainment areas such as the San Joaquin Valley, the South Coast Air Basin and Maricopa County, Arizona, yet EPA disapproved the rules when submitted on behalf of Imperial County.

If any member of the public has any questions regarding the Board's action, please call County Counsel Mike Rood at 760.482.4400.



March 3, 2010

Jared Blumenfeld  
Regional Administrator  
U.S. Environmental Protection Agency (EPA), Region IX  
75 Hawthorne Street  
San Francisco, CA 94105-39001

SUBJECT: Response to the December 22, 2009 letter from the U.S. Environmental Protection Agency regarding the California Air Resources Board's Imperial County's Exceptional Events Request

Dear Mr. Blumenfeld:

The California Air Resources Board (ARB) submitted documentation of three exceptional events (September 2, 2006, April 12, 2007 and June 5, 2007) in May 2009 to the U.S. Environmental Protection Agency (EPA). In a December 22, 2009 letter (EPA Events Letter) from Laura Yoshii, Acting Regional Director of EPA Region IX to James Goldstene, ARB Executive Officer, EPA refused to concur with ARB's request to flag these exceedences as exceptional events. We have reviewed the EPA Events Letter and are greatly troubled by EPA's interpretation of the Exceptional Event Rule (EER) and the technical information available for these days, both of which we believe are plainly inconsistent with existing regulations and guidance on exceptional event determinations. The implications of EPA's refusal to flag these data, if it is allowed to stand, are far-reaching and could adversely impact air quality planning and policy in Imperial County and throughout the southwestern United States. Our concerns and objections are presented in more detail in Attachment A. The key issues are summarized briefly below:

- We do not agree with EPA's interpretation of the Exceptional Event Rule (EER) or the conclusion that the flagged natural events somehow do not merit EPA's concurrence because of its desire to see certain control measures on anthropogenic sources improved. As discussed herein, EPA's objections that dust controls were insufficient or inadequate on the event days is tantamount to a conclusion that the events were reasonably controllable or preventable. That conclusion is completely unsupported by the available evidence. EPA has provided no evidence to refute the critical conclusion legally required under the EER - that the exceptional **events** (i.e., the combination of the high winds, the unusual levels of dust entrainment from nonanthropogenic and anthropogenic sources, and the resulting exceedences at the Imperial County monitors) were not reasonably controllable or preventable.
- In the EPA Events Letter, EPA takes the position that the requirement for an exceptional event to be "not reasonably controllable or preventable" inherently implies "a requirement that the state demonstrate that anthropogenic sources contributing to the exceedance caused by the event were reasonably controlled." This interpretation of the EER appears to be inconsistent with the language of 40 CFR §50.1(j), which defines an "exceptional event" as one caused by a natural event or non-recurring human activity and which is itself "not reasonably controllable or preventable." Under the legal

definition, it is *irrelevant* what controls are in place on the day of an otherwise qualifying event if it can be shown that such controls would not have reduced emissions enough to prevent an exceedance *anyway*.

- We also disagree with EPA's position that the EER justifies the use of Best Available Control Measures (BACM) as the "appropriate... level of control in evaluating whether reasonable controls are in place" in determining whether an event may qualify as exceptional under the EER. This interpretation is unsupported by the language of the EER and inconsistent with the intent of the EER. The purpose of the EER is to protect states from suffering the consequences of reclassification to a more serious designation as a result of "exceptional" events for which the normal planning and regulatory process established by the CAA is not appropriate. EPA's analysis of exceptional events should not depend on elements of the normal planning process, including the area's particular attainment status. In other words, the standards for determining an exceptional event in a serious nonattainment area should be no different than determining one in a moderate area or in an attainment area.
- We also object to EPA's incomplete and misleading characterization of fugitive dust controls in Imperial County. In the EPA Events letter, EPA implies that dust controls are not adequate because of concerns about fallowed lands and OHV-related contributions. On the contrary:
  - Farm lands produce significantly less emissions, taken as a whole or on a per-acre basis, compared to remote desert lands in the County due in part to ICAPCD's adoption of Rule 806, which requires a host of conservation management practices to prevent, reduce and mitigate PM emissions from agricultural sources.<sup>1</sup> Rule 806 was adopted in November 2005, years before the 2009 PM<sub>10</sub> SIP<sup>2</sup> was developed and adopted. That rule was modeled on the San Joaquin Valley Air Pollution Control District's Rule 4550, which was approved by EPA on May 26, 2004.<sup>3</sup> EPA makes no mention of Rule 806 when discussing the County's agricultural controls.
  - Imperial County has been paving unpaved roads at great expense and despite hard economic times and record unemployment in the County; it began meeting its rule commitment starting in 2006.
  - Despite the fact that EPA has worked with ARB and ICAPCD for over a decade, including on the development of rules and BACM Technical Analysis beginning in 2004 and analysis of the exceptional events beginning in 2008, EPA never raised concerns about OHV-related contributions until *after* the Exceptional Events documents were submitted by ARB in May 2009 and after the draft PM<sub>10</sub> SIP was released in July 2009.<sup>4</sup> The draft PM<sub>10</sub> SIP was revised to address those concerns. In any event, there is no basis for EPA's conclusion that OHV controls

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<sup>1</sup> See Table 3.1 and Figure III.B.4 of the 2009 Imperial County PM<sub>10</sub> SIP.

<sup>2</sup> Imperial County 2009 PM<sub>10</sub> SIP, Final Draft, August 2009

<sup>3</sup> 69 FR 30035, May 26, 2004

<sup>4</sup> In addition, EPA did not raise these concerns while working with ARB and ICAPCD for over a year and a half on the Exceptional Events documentation or while working with ARB and ICAPCD for over two years on the development of the PM<sub>10</sub> SIP, or during the 30-day public comment period on the Exceptional Events documents (during which there were NO public comments submitted), or before the draft PM<sub>10</sub> SIP was released.

somehow would have prevented any of the exceedences attributable to the exceptional event days.

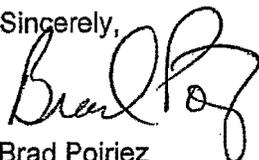
- EPA has misinterpreted technical information submitted by ARB and ICAPCD, which appears to have led to EPA's erroneous conclusions related to causality. ARB and ICAPCD carefully documented PM transport to show how such transport affected the September 2006 Westmorland and Calexico exceedences (see Sections 2.1.1 and 2.1.2 of Attachment A). As discussed further in the attachment, EPA's interpretation of the September 2006 exceedences is incorrect, and was not based on a sound technical understanding of the events associated with those exceedences.
- EPA's decision making regarding the level of evidence/documentation necessary to establish causality is not correct and is not consistent with the EER.
  - First, EPA's letter appears to set an impossible and legally unsupported standard for the evidence required to support the causality requirement of an exceptional event determination (i.e., to show a clear causal relationship between the exceedences and a qualifying event). EPA demands ever more detail about the exact sources of dust and wind transport as part of the exceptional events showing, yet has not clearly specified what level of detail (if any) would be sufficient to convince EPA that the exceptional events beyond the District's reasonable control were responsible for the measured exceedences.
  - Also, rather than considering the cumulative weight of the evidence showing that unpreventable exceptional events caused the exceedences at issue, EPA has chosen to evaluate each piece of supporting data separately and conclude that each separate piece *alone* does not support a causal relationship for the event. EPA has not considered the implications of this novel and troubling position regarding causality on SIP determinations and other regulatory processes.
  - For reasons that are detailed in Attachment A, we believe that the level of data, analyses, and documentation that would be required to meet EPA's apparent proof thresholds (i.e., to satisfy the causality and "but-for" requirements of the EER) here would exceed even the requirements for SIP planning itself. That is clearly inconsistent with the intent of the EER. The EER requires the weight of evidence to be taken as a whole, and rejecting flagged data is tantamount to a determination that "the exceedences were caused by recurring anthropogenic sources" (see 72 FR 13574). EPA cannot reject ARB's documentation of the exceptional events without producing such proof sufficient to overcome the great weight of the evidence to the contrary.

Based on the weight of available evidence and the established EER requirements and guidance, the events described in the ARB submittal clearly were exceptional events that themselves were not reasonably controllable or preventable, and which directly led to the measured exceedences. EPA has not demonstrated (and cannot demonstrate) that these exceedences were caused by anthropogenic sources and thus somehow appropriate for consideration in normal SIP planning.

Thus, we strongly urge EPA to reconsider its decision and concur with ARB's request to flag these exceedences as exceptional events, consistent with the intent and language of the EER. Failure to reverse this decision will not only result in a decision unsupported by the law or the

data, but also would create troubling precedent for both future exceptional event documentations and related SIP planning in the southwestern United States. Both results would be unacceptable, and could subject EPA to a challenge or other action.

Sincerely,



Brad Poiriez  
Air Pollution Control Officer, ICAPCD

cc: ICAPCD Board of Directors  
Gina McCarthy, Assistant Administrator for Air And Radiation, EPA Headquarters  
Deborah Jordan, Air Division Director, EPA Region IX  
James Goldstene, Executive Officer, ARB

**Attachment A: Detailed Initial Analysis of EPA's December 22, 2009 Letter  
Concerning the Imperial County Exceptional Events Requests**

**1. Not Reasonably Controllable or Preventable**

**1.1. General Interpretation of the Requirement for High-Wind Events**

One of the key requirements of the Exceptional Events Rule (EER) that repeatedly surfaces in EPA's December 22, 2009 Review of the Imperial County Exceptional Event Requests is the criterion set forth in 40 CFR § 50.1(j) that an "exceptional event" is an event that "is not reasonably controllable or preventable." In that Response Document, EPA takes the position that this criterion inherently implies "a requirement that the state demonstrate that anthropogenic sources contributing to the exceedance caused by the event were reasonably controlled."

This requirement is simply inconsistent with the language of 40 CFR § 50.1(j). Under the plain regulatory language, it is irrelevant whether "reasonable and appropriate" controls are in place on the day of an otherwise qualifying event when it can be shown that such controls would not reduce emissions and impact at the monitor sufficiently to prevent the exceedance anyway. In such circumstances, an event would clearly not be reasonably controllable or preventable.

It is inconsistent with the intent of the CAA for EPA to refuse to concur in the flagging of an exceedance as caused by an exceptional event solely due to EPA's dissatisfaction with the stringency of certain controls when such controls could not have prevented the exceedance. The consequence of such an action would be to require a state to pursue control measures that are beyond the area's practicable abilities - a result the EER is specifically designed to avoid. Indeed, other specific exemption provisions are in place to prevent such difficulties (see "State Implementation Plans for Serious PM<sub>10</sub> Nonattainment Areas,"<sup>5</sup> Section V: "Waivers for Certain PM<sub>10</sub> Nonattainment Areas). As stated in that document (p. 42008), "if emissions from anthropogenic sources are reduced to the point that it is no longer technologically or economically feasible to reduce those emissions further, and the area still cannot attain the NAAQS, the EPA may consider waiving the serious area attainment date and appropriate serious area requirements."

There are three types of sources identified in the Final Rule promulgating the EER (FR Vol. 72, No 55, March 22, 2007) for the specific case of High Wind Events: non-anthropogenic sources, anthropogenic sources within the state, or anthropogenic sources outside the state. (In Imperial County, anthropogenic sources of significance in High Wind events may include international lands in Mexico.) Importantly, the language of the rule suggests that the requirement that the sources be "reasonably well-controlled" only applies to anthropogenic sources within the state.<sup>6</sup>

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<sup>5</sup> FR, Vol. 59, No. 157, August 16, 1994, p. 41998.

<sup>6</sup> "The EPA's final rule concerning high wind events states that ambient particulate matter concentrations due to dust being raised by unusually high winds will be treated as due to uncontrollable natural events where (1) the dust originated from nonanthropogenic sources, or (2) the dust originated from anthropogenic sources within the State, that are determined to have been reasonably well-controlled at the time that the event occurred, or from anthropogenic sources outside the State."

**Objection:** We fail to see the rationale for EPA's interpretation that the existence of "reasonable and appropriate" controls is a necessary condition to establish that the event *itself* was not reasonably controllable or preventable. The regulatory requirement that "an event was not reasonably controllable or preventable" for an otherwise qualifying event is met unless BOTH (i) reasonable controls for contributing anthropogenic sources within the state were not in place, AND (ii) these controls would have prevented the exceedence, had they been in place.

## 1.2. Meaning of "Reasonable and Appropriate Controls"

In its EPA Events Letter, EPA takes the position that "because implementation of BACM is required in serious PM<sub>10</sub> nonattainment areas such as Imperial County under Section 189(b) of the CAA, it is appropriate to consider that level of control in evaluating whether reasonable controls are in place for purposes of the Exceptional Events Rule". (p. 9)

EPA has provided no justification for this assertion. Not only would this create a new standard for exceptional events showings found nowhere in the language of the EER, it would be fundamentally inconsistent with the intent of the EER, which entails only "reasonable" control of anthropogenic sources and not the "best available" controls. The purpose of the EER is to protect states from suffering the consequences of reclassification to a more serious designation as a result of "exceptional" events not preventable by reasonable control measures and for which the normal CAA planning and regulatory process is not appropriate. By definition, exceptional events fall outside the normal planning process, and their analysis should not depend on elements of the normal planning process, including attainment or non-attainment designation status.

**Objection:** We fail to see the basis of EPA's contention that it is appropriate, in the context of reviewing a State's exceptional events documentation, for EPA to use different standards of judgment for different areas (based for example on attainment designation status) in determining whether an event was reasonably controllable or preventable.

If the same standard of analysis is used for all areas independent of their designation status, as we believe is appropriate, then the language of "reasonable and appropriate controls" suggests that RACM, rather than BACM, would be a more appropriate standard when assessing whether controls on anthropogenic sources are sufficiently reasonable and appropriate to show that the exceptional events was beyond reasonable prevention or control.

## 1.3. Determination of Which Anthropogenic Sources Require "Reasonable and Appropriate Controls"

In the EPA Events Letter (p. 8), EPA states that "ideally, exceptional event requests would identify all non-*de minimis* anthropogenic sources that contributed to an exceedance and would then describe how each is reasonably controlled." EPA then goes on to note that ARB's

documentation for the 2006 Westmorland and for the 2007 events fails to specify which anthropogenic sources need reasonable controls.

Again, EPA's proposed interpretation would stand the EER on its head. Rather than focusing on the ability or inability to reasonably control or prevent the exceptional event *itself*, EPA would ignore the event and instead have the District justify the "reasonableness" of virtually all (i.e., non-*de minimis*) its anthropogenic controls, *whether they would have prevented the exceedance or not*. Even if this was the test, which it is not, EPA has not specified a criterion defining what level(s) make an anthropogenic source *de minimis*, or explained how the EER even justifies the use of such a test. In any event, as noted above, any criterion for evaluating the reasonableness of local control measures should be independent of an area's attainment or non-attainment status and be technically implementable.

**Objection:** In the absence of criteria clearly defining the type of sources to be reasonably controlled during exceptional events, ad hoc decision-making by EPA regarding which sources require "reasonable and appropriate" controls during any given event is arbitrary. EPA has not justified the basis for such criteria, proposed such criteria, or specified what technical analyses will be required for implementing the criteria (including analysis of the feasibility of technically implementing the criteria).

#### 1.3.1. Controls for Open Areas

April 12 and June 5, 2007 Events. For both the 2007 events, for which elevated PM concentrations were associated with high winds coming from the west, the open areas that may have contributed to the exceedances are the Plaster City, Superstition Mountains, Arroyo Salado, and Ocotillo Wells recreational areas, as well as areas around the Salton City. In the EPA Events Letter (p. 8), EPA claims that the ARB documentation (i) did not specifically address these emissions, and (ii) did not "provide any meaningful analysis of BACM or any other level of control for OHVs."

September 2, 2006 Event. Given the direction of surface winds on this day, the only open areas that may have contributed to an exceedance (at the Westmorland station) are the Imperial County Sand Dunes. In the EPA Events Letter, EPA objects that the ARB documentation did not specifically address the contribution of these emissions (p. 8).

Open areas where natural soil is disturbed by anthropogenic OHV activity were analyzed in Appendix III of the 2009 PM<sub>10</sub> SIP.<sup>7</sup> Figure III.B.6 shows the location of OHV areas on a map of windblown PM<sub>10</sub> emissions calculated using the windblown dust model developed by ENVIRON and ERG. For open areas that may have contributed to windblown dust on the high-wind days considered here, it is not clear whether OHV sources should be considered *de minimis* sources (and therefore whether they are even subject to the requirement of reasonable controls), what level of control EPA expects for illegal OHV usage (if the District is even in a position to control such use), and why current California and Imperial County regulations do not constitute reasonable controls in the face of otherwise unavoidable exceptional events.

<sup>7</sup> Imperial County 2009 PM<sub>10</sub> SIP, Final Draft, August 2009.

Moreover, as discussed in Appendix III of the SIP document, anthropogenic disturbance of the sand dunes does not actually increase the emissivity of these soils in wind events, since they are fully disturbed in the natural state. As quantified in Appendix III of the 2009 PM<sub>10</sub> SIP (see Tables III.B.2 and III.B.3), the incremental wind-blown emissions within the Sand Dunes Open Area that could possibly be due to anthropogenic disturbance is only a very small fraction (0.9 tpd, approximately 10%) of the total windblown emissions from the Imperial County sand dunes area. Note that this information was included at EPA's request after the District had worked with EPA staff for over a year before the event documentation was finalized, and after the public comment period for the exceptional events documents was over.

**Objection:** The substance and timing of EPA's stated concerns over open areas and OHV influence suggest that EPA has arbitrarily ignored data already developed for EPA, at EPA's request, through District staff's diligent work with CARB and EPA staff on these exceptional events and on the SIP Imperial County PM<sub>10</sub> inventory since August 2008. Furthermore, EPA is not justified in misusing EE documentations as a way to require arbitrary and increasingly expanding levels of analysis of source impacts and controls when the data already establishes that the exceptional events and exceedances still would have occurred even if controls were improved.

Direct Entrainment of Dust in Open Areas. In the EPA Events Letter, EPA cites direct entrainment of dust in open areas (p. 7, 8). Given the high winds of April 12 and June 5, 2007, and the thunderstorm activity of September 2, 2006, OHV activity on these days is expected to have been negligible, and so direct entrainment of dust from OHV activity on these days is also expected to have been negligible.

### 1.3.2. Controls for Agricultural Lands

Despite statements to the contrary in EPA's Events Letter, ICAPCD has adopted and enforces stringent controls on agricultural sources well beyond the reasonableness level required in the EER. ICAPCD and ARB have discussed controls on agricultural lands with EPA for many years. ICAPCD and ARB worked with EPA during the development of the 2005 Regulation VIII BACM Analysis,<sup>8</sup> which was adopted by the ICAPCD in November 2005. Rule 806 was closely modeled on the San Joaquin Valley Air Pollution Control District's Rule 4550 that EPA had approved in May 2004 (69 FR 30035). At the adoption hearing, EPA testified that all of the Regulation VIII rules, including Rule 806, Conservation Management Practices, were BACM. Moreover, review of the emission inventory (2009 PM<sub>10</sub> SIP Appendix III) shows that agricultural lands are significantly less emissive than most of the non-populated areas in Imperial County that are not essentially bare rock (c.f., Figure III.B.6 of the 2009 PM<sub>10</sub> SIP).

In the EPA Events Letter discussion of controls for agricultural lands, EPA only mentions the following program, not Regulation VIII (including Rule 806) requirements that were in force on the event days. Fallowed land issues were included in the 2005 Regulation VIII BACM Analysis. It is not clear why EPA does not discuss Rule 806 at all. In any event, the failure to address Rule 806 alone makes EPA's conclusions regarding agricultural areas suspect.

<sup>8</sup> Technical Memorandum: Regulation VIII BACM Analysis. October 2005. Prepared for ICAPCD by ENVIRON.

## 2. Clear Causal Relationship

### 2.1. Technical Objections

#### 2.1.1. September 2, 2006 Calexico Exceedences

**Comparison to Days with Similar Meteorological Conditions.** The ARB documentation includes an analysis of historical data for days that have meteorological conditions in Calexico/Mexicali similar to those observed on September 2, 2006. This analysis (see discussion of Table 5 in the ARB document) reveals that:

- i. The impacts of local pollution emissions on such days are lower than average due to enhanced dispersion;
- ii. The impacts of Mexicali emissions at Calexico stations on such days are significant; but that
- iii. About half of the measured PM concentrations at Calexico stations on September 2, 2006 cannot be attributed to the expected impact of the local EI (including Calico and Mexicali) given the local meteorology for that day.

ARB argues that these results support the explanation that the Calexico exceedences were due to long-range transport of dust generated by high winds S, SE, or SSE of Mexicali, as opposed to unusual level of local emissions in Calexico and Mexicali (see Appendix A1).

In the EPA Events Letter, EPA concedes that September 2, 2006 was in some way atypical, but claims that the analysis "does not provide direct support for the required causal relationship. Indeed, if the conditions on September 2, 2006 were sufficient to cause an exceptional event as ARB claims, it is unclear why exceedences were not also recorded on the days with similar wind conditions." (p. 14).

The historical days used in this analysis (Table 5 of the September 2, 2006 documentation) are those that have similar wind conditions in Calexico. The selection for inclusion in the analysis does not consider other factors, including other meteorological factors which may be the cause for the differences in PM<sub>10</sub> concentrations recorded on September 2, 2006, August 19, 2003, August 18, 2002, and PM<sub>10</sub> concentrations recorded on the remainder of the days in Table 5. Our conclusion is that exceedences were not recorded on the other days in Table 5 **precisely because** September 2, 2006, August 19, 2003, and August 18, 2002 had very dissimilar wind conditions (away from Calexico), strongly indicating that high levels of dust leading to the exceedences must have come from remote sources in non-populated, non-monitored areas (most likely desert areas to the east along the Mexican border).

**Consideration of Other Causes.** On p. 14 of the EPA Events Letter, EPA expresses concern about emissions from OHV or fallow agricultural fields: "In addition, once surface crusts have been disturbed, emissions can result from OHVs or fallow agricultural fields without there being direct anthropogenic activities. As noted in Section 4.2.2, OHV activity indirectly increases PM10 emissions by disturbing vegetation on surface crusts, leaving the surface less stable and more vulnerable to emissions during subsequent winds. Similarly, a fallow agricultural field can also be left in a condition that is vulnerable to wind erosion. Noting the absence of increased anthropogenic activity on the day of the exceedance does not address previous anthropogenic activities that could have left surfaces more vulnerable to emissions during subsequent winds."

This argument would appear to be irrelevant in the analysis of the September 2, 2006 Calexico exceedences, given that there are no OHV lands or domestic agricultural lands S, SE, or SSE of the Calexico monitors that could have contributed to the measured impact at these monitors on that day.

**Objection:** Based on the apparent misunderstanding of the comparison with non-exceedence days and the fact that 1) ARB did not make any implications about activity levels on the exceedence day and 2) that other causes raised by EPA did not need to be considered because they are not relevant to the exceedences in Calexico during this event, EPA's decision-making concerning the September 2, 2006 Calexico exceedences does not appear to be based on sound technical understanding of the events associated with these exceedences.

### 2.1.2. September 2, 2006 Westmorland Exceedence

**Transport.** High winds were observed NE and NW of Westmorland in the late afternoon, including a 27 mph hourly measurement at 5 pm at the Palo Verde station (~ 57 miles ENE of Westmorland), and a 23 mph hourly measurement at 6 pm at the Oasis station (~ 45 miles NW of Westmorland).

EPA concedes (EPA Events Letter, p. 16) that these winds "may be consistent with short-lived high wind with a direction different from the underlying flow, such as might be caused by thunderstorm outflow [and that] the directions can be interpreted as consistent with the theory that dust was transported to Westmorland." EPA then offers three objections as "conflicting evidence on the transport of emissions from north of the County to the Westmorland monitor, which undermines the case for a clear causal relationship" (p. 18):

- i. *"The increased wind at Oasis toward Westmorland is simultaneous with the Westmorland concentration spike, rather than an hour or two before as one would expect based on the distance between the two locations. Further, in order for dust generated at Oasis to reach Westmorland one must assume the wind followed a straight line path over the 50 mile distance for two hours, despite the observed variability in speed and direction."* (EPA Events Letter, p.16, see also first bullet of p. 18)

First, EPA's premise is incorrect; the increased wind at Oasis occurred at 6 pm, one hour ahead, rather than at the same time as the 7 pm PM<sub>10</sub> peak at Westmorland. Second, the wind speed measurement of 23 mph corresponds to an hourly average. Wind gusts (such as those generated by a thunderstorm cell collapse) responsible for this high hourly average would have been of much higher speed, consistent with ~45 miles travel over the space of one hour, as suggested in the ARB documentation.

- ii. *"Palo Verde experienced increased wind speed before Oasis, which is inconsistent with the path of the storm from west to east."* (EPA Events Letter, p.16-17)

First, the increased wind at Palo Verde actually occurred two hours ahead of the 7 pm PM<sub>10</sub> peak at Westmorland, and its direction (WNNW) and speed (27 mph hourly average, with expected wind gusts of much higher speeds) are both consistent with transport toward Westmorland in the two-hour recorded time difference.

Second, this interpretation of recorded data is in no way weakened by incomplete certainty about the location of thunderstorm cells during the late afternoon. Recorded wind speeds are due to thunderstorm outburst, and the use of those recorded speeds helps to establish a cause-and-effect relationship between the *measured* wind speeds and direction, and the *measured* PM<sub>10</sub> concentrations at Westmorland. It does not appear that EPA is disputing that the recorded wind speeds are consistent with thunderstorm outbursts, nor does EPA appear to argue that the wind speed or direction are somehow inconsistent with transport of dust from Palo Verde to Westmorland. We fail to see how the lack of understanding about the precise location of the storm in time (a very difficult, if not impossible fact to ascertain, particularly in remote, non-populated/monitored areas) is relevant to a cause-and-effect analysis based on undisputed evidence of measured wind speeds, wind directions, PM concentration values and satellite evidence of thunderstorm activity suggesting that the high winds were caused by thunderstorms.

- iii. *"There is additional evidence which contradicts ARB's claim that dust was transported to Westmorland from the northeast or northwest. First, the wind direction at Westmorland itself was consistently from the southeast or east-southeast. HYSPLIT back-trajectories ending at Westmorland near the 7 pm high concentration hour are also inconsistent with transport from northern stations during the two hours in which high speed winds occurred."*

Short-lived high winds may have a direction different from the underlying flow. Thus, transport of dust by high winds from Oasis or Palo Verde to impact Westmorland at 7 pm is not inconsistent with a 7 pm hourly-average wind direction at Westmorland from the SE. Along the same lines, HYSPLIT back-trajectories are expected to capture the underlying flow pattern, not short-lived variations in flow superimposed on the underlying flow pattern. Thus, this evidence does not contradict ARB's claim.

**Objection:** Based on EPA's apparent misunderstandings regarding PM transport affecting the September 2006 Westmorland exceedence, we object that EPA's decision-making concerning the September 2, 2006 Westmorland apparently is not based on sound technical understanding of the events associated with that exceedence.

## 2.2. Discussion of Data availability and Feasibility of Technical Analysis

The EPA Events Letter expresses doubt about the extent of investigations of other possible sources of PM emissions, and cites insufficient source apportionment and satellite imagery as primary reasons in EPA's position that clear, causal relationships were not established in the 2006 and 2007 documentations (Table 1).

**Table 1. Key issues in EPA's analysis of causality**

| <b>Subject</b>                | <b>Comment and Reference (2009 EPA Events Letter)</b>   | <b>Event</b>   |
|-------------------------------|---|--|
| Source apportionment          | <p>"The submittal contains little assessment of the relative contributions of anthropogenic and non-anthropogenic emissions in the potential source areas, which could provide evidence of a causal relationship" p. 16</p> <p>"The relative contributions of possible source areas in the northwest, northeast, east, and southeast are little examined. The weight of evidence does not demonstrate a clear causal relationship as required by the EER" p. 18</p> <p>Referring to the various sources that may have contributed to the 2007 exceedences, EPA states that <u>"there should be fuller source attribution, both for deciding which sources need reasonable measures..., and also for establishing the required clear causal relationship."</u> (p. 20; this same concept is restated in Section 5.3.6 on p. 25, and in Section 9.3 on p. 29-30).</p> | <p>2006 Westmorland</p> <p>2006 Westmorland</p> <p>2007 events</p> |
| Satellite imagery             | <p>"ARB presents satellite imagery to show that the times of elevated PM10 concentration at Indio/Palm Springs and Yuma correspond to the passage of the thunderstorm activity in each area... The 5 pm satellite image does provide evidence of thunderstorm activity north of Imperial County. However, it does not provide clear evidence of a causal relationship because the images are not taken frequently enough to compare them with the timing of the concentration spike." p. 17-18</p>  | <p>2006 Westmorland</p>  |
| Consideration of other causes | <p>"ARB notes an absence of unusual activity that would lead to increased anthropogenic emissions on this day. This is supported by ICAPCD's investigation of the period, and the lack of unusual entries in source inspection logs. This evidence is consistent with ARB's conclusion that the cause of the exceedance was not local; however, the extent of ICAPCD's investigation is unclear and this evidence does not directly support the causal relationship." p. 18</p> <p>Comments to the same effects are made on p. 24 and 25</p>  | <p>2006 Westmorland</p> <p>2007 events</p>                         |

To conduct the "fuller" source attribution reported in Table 1, EPA suggests (see last paragraph of p. 20, and first paragraph of p. 21) the need for a day-specific inventory and a method to account for the effect of distance from source to monitor on impact. Even if these steps were theoretically feasible, EPA fails to provide specific guidance describing the kind of technical methods that they would endorse for such an analysis. For example, although EPA proposes that a re-run of the existing ENVIRON/ERG Windblown Dust Model with episode-specific winds would improve the analysis, EPA is also quick to identify several deficiencies in this model (which is so far the best available). This leads us to the following objection.

**Objection:** Although EPA suggests that higher levels of documentation for source attribution, thunderstorm activity, or investigation of other potential causes would be preferred, EPA does not suggest reasonable, technically implementable analyses to achieve these higher levels of documentation. We would question what technical analyses EPA suggests should be conducted. We would also question whether these analyses and the required level of data are achievable or realistic now or in the future for similar events in Imperial County and in other areas (particularly those surrounded by remote, non-populated, non-monitored source areas), and whether these analyses exceed the requirements for SIP planning itself. EPA has not (and, we believe, cannot) propose reasonable, technically achievable investigations and analyses superior to those produced by the District and ARB that would address EPA's stated concerns. Thus, we find that both EPA's conclusions on causality and EPA's position on the level of analysis required to demonstrate causality are incorrect and inconsistent with the purpose of the EER.

### 2.3. Discussion of Implications of EPA's Position About Causality Requirements

EPA takes the position that there are not sufficient data to show a clear causal relationship between the exceedences and a qualifying exceptional event. EPA argues that the exact sources of the dust impacting the stations, that the high winds leading to entrainment from the sources, and that the transport of the dust from these sources to the impacted monitors have not been clearly elucidated.

#### 2.3.1. Special Case of Class III Exceptional Events

The undeniable weight of the evidence establishes that the PM concentrations recorded on September 2, 2006 are not the result of PM emissions from recurring anthropogenic sources within the Imperial Valley:

- A statistical analysis shows that the exceedences in Imperial County cannot be attributed to unusual local impact from non-windblown dust sources, since high values were measured at every Imperial County station<sup>9</sup>
- In addition, the exceedences cannot be attributed to high windblown dust emissions from unpaved roads, agricultural lands, and other anthropogenic sources within the entire ICAPCD planning area (see also our discussion of OHV land emissions in Section 1.3.1), since there were no high winds over the entire Imperial Valley
- Comparison of PM data for September 2, 2006 and for days with similar wind speeds and wind direction within Imperial County shows that September 2, 2006 is similar to other days for which PM<sub>10</sub> concentrations in the valley were dominated by impacts due to long-range transport of dust (from outside the populated parts of the Imperial Valley)
- Indeed, there was thunderstorm activity in the region, and surrounding areas experiences exceedences consistent with Type III exceptional events (thunderstorm events)

<sup>9</sup> PM concentrations on September 2, 2006 at the Niland, Westmorland, Brawley, El Centro, Calexico Ethel, and Calexico Grant stations are in the 97<sup>th</sup>, 98<sup>th</sup>, 97<sup>th</sup>, 99<sup>th</sup>, 98<sup>th</sup>, and 99<sup>th</sup> percentiles, respectively, of all 2001-2007 measurements at their respective stations. The chances of observing such same-day concentrations if they are caused by a set of independent factors is less than 1 in 10<sup>10</sup>. Unusual local impacts from unusual local events would be such a set of independent factors.

Therefore, consideration of these exceptional event air quality monitoring data in the normal planning and regulatory processes is absolutely inappropriate. As stated in the Introduction of EPA's response document, the proper review and handling of such PM data is the very purpose of the EER.

It would be a matter of great concern for both ICAPCD and ARB if, for events associated with thunderstorm activity in the southwestern United States and Northwestern Mexico, satisfying EPA's demands to establish "clear-causal relationship" and "no exceedence but-for" (including source apportionment and transport) required a level of information (including satellite data and wind data in all desert areas that are possible source contributors) that is unattainable for many areas and technical analyses that may not be feasible. Such a narrow application of the EER will preclude states from excluding from regulatory consideration exceptional PM data that are completely inappropriate for inclusion in the normal planning process.

**Appendix A1:  
Possible Explanations for September 2, 2006 Calexico Exceedences**

There are only three possible explanations for the Calexico exceedences recorded on September 2, 2006:

- i. The exceedences were due to highly unusual, non-windblown local PM emitted south of the monitoring stations but north of the border. Given the very narrow (one mile) strip of land between the stations and the border, such unusual emissions (e.g. highly unusual disturbance of soil at the Calexico airport, or at the border) would have had to have been extraordinarily large to account for the exceptionally high measurements. *We note that no such activity was reported; and that such local emissions would furthermore not explain the regionally high PM concentrations observed on September 2, 2006.*
- ii. The exceedences were due to highly unusual, non-windblown PM emitted south of the border in Mexicali. *We note that no unusual activities were recorded, that such local emissions would not explain the low PM concentrations in Mexicali, and would not explain the regionally high PM concentrations observed on September 2, 2006.*
- iii. The exceedences were due to long-range transport of dust generated by high winds S, SE, or SSE of Mexicali. *This is the only explanation for the regionally high PM concentrations observed on September 2, 2006, and is consistent with historical patterns (i.e., the only other 2 days in Table 5 of the ARB documentation that also have high PM concentrations at Calexico were such days).*

Although EPA points out that explanation (iii) above does not account very well for the difference between the PM<sub>10</sub> concentrations measured at Calexico and at Mexicali stations (p. 12 of the 2009 EPA Events Letter), we maintain that it is by far the most plausible of all possible explanations, and that it is therefore an appropriate conclusion for a weight-of-evidence analysis.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105-3901

AUG 24 2010

OFFICE OF THE  
REGIONAL ADMINISTRATOR

Benjamin Grumbles, Director  
Arizona Department of Environmental Quality  
1110 W. Washington Street  
Phoenix, AZ 85007

Dear Mr. Grumbles:

Thank you for your most recent communications regarding exceptional events dated June 30<sup>th</sup>, July 2<sup>nd</sup>, and August 2<sup>nd</sup>, and your August 2<sup>nd</sup> comments on the schedule in the proposed consent decree in Bahr v. Jackson, No. CV 09-2511-PHX-MHM (D. Ariz.). Regarding the consent decree, EPA and the Department of Justice will review all comments and make a decision based on what is in the public's best interest.

Based upon the proposed consent decree schedule, we will be proposing action on the Phoenix 5% PM-10 Plan on September 3<sup>rd</sup>. As you know, the Plan relies on the exclusion of exceedances that we have determined do not meet the requirements of our Exceptional Events Rule to support the attainment demonstration. Therefore, we will be addressing the exclusion of these exceedances again in that action. We will respond to any comments we receive during the public comment period on this aspect of our proposed action on the 5% Plan when we take final action.

We appreciate all the hard work that your staff has been devoting to these issues.

Sincerely,

A handwritten signature in black ink, appearing to read "Jared Blumenfeld".

Jared Blumenfeld  
Regional Administrator

cc: Dennis Smith, MAG  
Joy Rich, Maricopa County



Janice K. Brewer  
Governor

# ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

1110 West Washington Street • Phoenix, Arizona 85007  
(602) 771-2300 • [www.azdeq.gov](http://www.azdeq.gov)



Benjamin H. Grumbles  
Director

August 27, 2010

Mr. Jared Blumenfeld  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

Re: Supplemental Information Regarding 2008 Exceptional Events

Dear Regional Administrator Blumenfeld:

This letter continues my correspondence of August 2, 2010, which transmitted a revised draft report addressing issues EPA had identified in the Arizona Department of Environmental Quality's (ADEQ's) documentation of PM<sub>10</sub> exceedances that occurred on June 4, 2008. Enclosed are revised draft reports for the exceedances that were measured on March 14, 2008, April 30, 2008, and May 21, 2008. Although ADEQ maintains that the November 17, 2009 reports for all four of these 2008 events were complete at the time that they were submitted, EPA's May 21, 2010, letter indicates the need for additional consultation about the four dates in question.

In addition to these three revised draft reports, I am attaching a newly-updated, revised draft June 4, 2008 report that has been modified to reflect improvements and corrections that were identified in the course of preparing the reports for the other three dates. A summary of the differences between the two revised draft versions of the June 4, 2008, report is attached (see Attachment 1).

Finally, I am transmitting a document regarding the contribution of anthropogenic activities to monitored violations of the PM<sub>10</sub> air quality standard and a detailed breakdown of inspections that occurred on and around the four exceptional event dates in question. This information supplements the information in my June 30, 2010 letter.

Starting on August 30, 2010, and as required by 40 CFR § 50.14(c)(3)(i), ADEQ will be providing notice of the opportunity for public comment and review of all four revised draft reports. These documents will be available for download from the ADEQ website at: <http://www.azdeq.gov/environ/air/plan/index.html>. Upon completion of the public process, it is ADEQ's intent to formally submit these demonstrations, and any public comments received, to EPA Region 9.

Northern Regional Office  
1801 W. Route 66 • Suite 117 • Flagstaff, AZ 86001  
(928) 779-0313

Southern Regional Office  
400 West Congress Street • Suite 433 • Tucson, AZ 85701  
(520) 628-6733

Regional Administrator Blumenfeld  
August 27, 2010  
Page 2 of 2

Through the submission of these revised draft reports, I once again request that EPA Region 9 revisit its May 21, 2010 decision not to concur with ADEQ's exceptional event documentation. Based upon the information in these documents, there is ample evidence to support the continuation of the consultation process envisioned at the time of the drafting of EPA's Exceptional Events Rule.

I remain hopeful that ADEQ's efforts to rekindle the consultation process will result in a thorough review of the materials and further discussion with ADEQ. If your staff has questions or would like to discuss this further, please have them contact Eric Massey, Air Quality Division Director, who can be reached at (602) 771-2308.

Sincerely,



Benjamin H Grumbles  
Director

Enclosures (5)

1. Summary of Changes Made
2. Contribution of Anthropogenic Activities Paper and Detailed Exceptional Event Inspection Information
3. August 16, 2010 Assessment of Qualification for Treatment Under the Federal Exceptional Events Rule: High Particulate (PM10) Concentration Event in the Phoenix Area on March 14, 2008
4. August 16, 2010 Assessment of Qualification for Treatment Under the Federal Exceptional Events Rule: High Particulate (PM10) Concentration Event in the Phoenix Area on April 30, 2008
5. August 16, 2010 Assessment of Qualification for Treatment Under the Federal Exceptional Events Rule: High Particulate (PM10) Concentration Event in the Phoenix Area on May 21, 2008
6. August 16, 2010 Assessment of Qualification for Treatment Under the Federal Exceptional Events Rule: High Particulate (PM10) Concentration Event in the Phoenix Area on June 4, 2008

cc: Deborah Jordan (w/o enclosures)  
Colleen McKaughan (w/o enclosures)  
Dennis Smith, MAG (w/o enclosures)  
Bill Wiley, MCAQD (w/o enclosures)

# Congress of the United States

Washington, DC 20515

August 30, 2010

The Honorable Lisa Jackson  
Administrator  
U. S. Environmental Protection Agency  
Mailcode: 1101A  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

RE: PM-10 Nonattainment Area Plan for Maricopa County, Arizona

Dear Administrator Jackson:

We are writing to express our serious concerns with two recent decisions concerning Maricopa County's air quality plans that have been taken by the Environmental Protection Agency's (EPA's) Region IX Office.

Although Arizona state and local officials have attempted to work with EPA for many years on efforts to attain National Ambient Air Quality Standards (NAAQS) for coarse particulate matter (PM-10), we are concerned that EPA is presently pursuing a course of action that could result in a disruptive effect on Arizona's economy without ensuring a meaningful improvement in air quality. Instead of pursuing the present course of action, we ask that you review each matter and ensure that your agency employs a fair, collaborative and constructive process in resolving any outstanding issues. We believe this is the best course to help our state achieve the requirements of the Clean Air Act (CAA) while not imposing punitive and counterproductive measures.

First, we are concerned with EPA's pending actions concerning a proposed consent decree with respect to the Maricopa Association of Governments (MAG) Five Percent Plan for PM-10. This plan has been a success. It contains 53 new control measures for PM-10 emissions that are the best available control measures and as stringent as any in the country. Most importantly, except for certain natural conditions and events that temporarily caused elevated levels of PM-10, the PM-10 NAAQS has been met in the Maricopa County area. Clean data and compliant air quality has been achieved throughout 2010.

In a July 2, 2010 Federal Register Notice, EPA gave interested parties only 30 days to comment on whether the Agency should propose action on the MAG 2007 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area by September 3. Local and state agencies have, of course, weighed in on this matter, but EPA's overall timeframe in addressing this litigation is unacceptably short given the exceedingly technical nature of the information that is involved and the very large local and state interests that are at stake. After revealing this plan of action only this past July, EPA indicates in the Federal Register notice that it intends to propose action on the Five Percent Plan by September 3, 2010, and take final action by January 28, 2011.

Based on our understanding of EPA's intent in this matter, it appears that the agency will propose disapproval of the Five Percent Plan. According to MAG, this disapproval could initially result in a "conformity freeze" under which new transportation projects would be halted in the Phoenix area, and it could ultimately result in the imposition of CAA sanctions, including additional offset requirements for new construction and withholding of federal highway funds, putting literally billions of dollars in infrastructure investment at risk. Even prior to the imposition of any sanctions, we would be concerned that these actions could serve to chill private sector investment in the Phoenix area at a time when our country is attempting to emerge from a recession. Even the lowest level loss of transportation funding that has been threatened could cost at least 60,000 jobs, according to MAG estimates.

Second, we are concerned with regard to EPA Region IX's abrupt decision on May 21, 2010, to deny the State of Arizona's request regarding certain PM-10 "exceptional events" demonstrations. As you know, the CAA allows certain air quality data to be excluded from the consideration of an area's attainment status if the data was influenced by natural or certain human-caused events that are effectively out of an area's ability to control. Despite a lengthy albeit incomplete process in which Arizona and MAG submitted a considerable amount of technical data and analysis to EPA, the state's request to exclude four days worth of data at a single monitor was rejected by Region IX. At a meeting to discuss this disapproval, Region IX Administrator Jared Blumenfeld called the regulations under which he made his decision "flawed."

In this regard, we would note that the exceptional events rule has been consistently criticized by a wide range of interests since its adoption, including criticism by the state air quality managers in 15 western states most immediately affected by the rule. These states, through the Western States Air Resources Council, have requested action by the EPA Office of Air and Radiation since September 2009 to streamline implementation of the exceptional events rule and to make other changes in administration of the rule. To date, however, we are not aware of any action by EPA to effectively respond to this request or to work with states and localities that are most affected by conditions such as windblown dust and other particulate matter subject to transport.

We therefore request that EPA respond to concerns of states and localities, within existing rules, regulations and ethical guidelines, in an effort to seek a reasonable solution to these issues. In order to allow this process to occur, we respectfully request that:

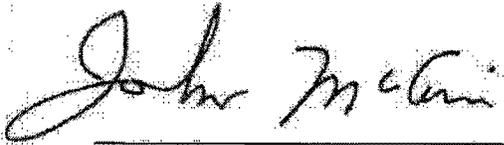
(1) EPA provide adequate time for an additional review of exceptional events requests by the State of Arizona. EPA should review and consider new data and information on these events and move to reconsider its May 21, 2010 determination with regard to the Maricopa County Nonattainment Area.

(2) EPA defer action with regard to its proposed consent decree so that there is adequate time for public comment and consideration. Under the accelerated timeframe that EPA revealed in its July 2, 2010 notice, EPA would propose and take final action on the consent decree in less than five months, allowing only 30 days for public comment. We seriously question whether such a truncated time period will allow sufficient opportunity for states, local areas, business and

private individuals who are not parties or intervenors to the litigation, but who may have a substantial stake in the outcome, to respond and assemble the necessary comments and information for EPA to review.

Thank you for your kind consideration and prompt attention to our concerns. Given the immediacy of this matter, we would ask that you respond in writing to this letter prior to the September 3, 2010 date of proposed action.

Sincerely,



Senator John McCain



Senator Jon Kyl



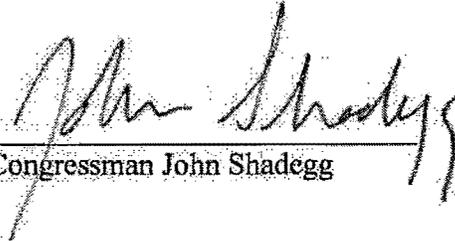
Congressman Harry Mitchell



Congressman Jeff Flake



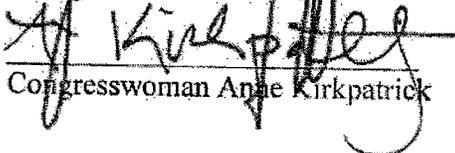
Congressman Ed Pastor



Congressman John Shadegg



Congresswoman Gabrielle Giffords



Congresswoman Anne Kirkpatrick



Congressman Trent Franks



September 1, 2010

The Honorable Lisa Jackson  
Administrator  
U.S. Environmental Protection Agency  
Mailcode: 1101A  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

RE: EPA Policy Regarding Implementation of the Exceptional Events Rule

Dear Administrator Jackson:

As the 40<sup>th</sup> Anniversary of the Clean Air Act ("CAA") approaches, we ask for the Environmental Protection Agency's ("EPA's") prompt attention to a matter that lies at the heart of the collaborative process envisioned for implementation of the CAA's many programs to improve local and regional air quality. In specific, we are writing to express our concern with the process that has been employed by EPA to implement the Exceptional Events Rule ("EER") in Arizona and to request the amendment of a draft consent decree that, if finalized, would require a proposed decision whether to approve the Maricopa Association of Governments ("MAG") Five Percent Plan for PM<sub>10</sub> on September 3, 2010. This proposed deadline does not afford sufficient time to review the additional information that the Arizona Department of Environmental Quality ("ADEQ") and MAG recently submitted in response to EPA's comments or for meaningful consultation with the State before a preliminary determination is rendered. Given the breadth of relevant information and the importance of the issue, ADEQ and MAG request an extension of at least six months before the agency makes a preliminary decision.

As detailed below, ADEQ and MAG are seeking additional consultation with EPA Region IX with regard to requests for the exclusion of certain PM<sub>10</sub> air quality data. The course that EPA has charted in implementing the EER appears to be at odds with CAA policies that have been implemented over the past four decades. Instead of the partnership envisioned in the CAA, it is our experience that implementation of the EER has been inconsistent, fragmented, and, at times, one-sided. We respectfully ask that the partnership between EPA, state, local and tribal authorities that Congress envisioned for the CAA be restored.

## I. The Clean Air Act State/Federal Partnership

The CAA has long been recognized as a partnership between EPA and state, local, and tribal governments. This has been established both in law and in numerous policy statements.<sup>1</sup> Through the years and successive EPA administrations, state and local governments have worked hand-in-hand with EPA to implement the CAA's many provisions and achieved steady progress in reducing ambient concentrations of criteria pollutants. EPA's most recent air trends report is a testament to this progress. This report indicates that emissions of criteria pollutants have declined by 41 percent since 1990, despite significant increases in economic growth (64 percent), population, vehicle miles traveled, and electricity consumption during this same period.<sup>2</sup>

The CAA assigns states the primary responsibility of developing State Implementation Plans ("SIPs") to provide for the attainment and maintenance of National Ambient Air Quality Standards ("NAAQS"). Efforts to implement NAAQS through SIPs submitted to EPA for approval date back to the "modern" CAA, approved by Congress and signed into law in 1970.<sup>3</sup> Throughout the ensuing years, while there have been numerous challenges in achieving clean air for all Americans, EPA has consistently defined its role as assisting states in implementing NAAQS and in working cooperatively to resolve implementation issues.

This policy has carried over with regard to the treatment of air quality data influenced by exceptional events.<sup>4</sup> In the final EER, EPA indicated that states should initially "flag" data reflective of exceptional events and that "States should work with their local agencies for the identification and review of exceptional events and consider requests to flag data from those agencies."<sup>5</sup> The EER describes a process for "case-by-case evaluation, without prescribed threshold criteria, to demonstrate that

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<sup>1</sup> See e.g., 42 U.S.C. 7401(b)(3). The Administration's Fiscal Year 2011 budget for EPA notes that "[t]he Clean Air program is founded on several principles: using health and environmental risks to set priorities, streamlining programs through regulatory reforms, *continuing to partner with state, local and tribal governments* as well as industry and non-governmental organizations, promoting energy efficiency and clean energy supply and encouraging market-based approaches." FY2011 EPA Budget-In-Brief, February 2010, EPA-205-5-S-10-001, at 17. (Emphasis added).

<sup>2</sup> "Our Nation's Air Status and Trends Through 2008," Office of Air Quality Planning and Standards, EPA-454/R-09-002, February 2010 at 7.

<sup>3</sup> Pub. L. 91-604.

<sup>4</sup> 72 Fed. Reg. 13,560 (March 22, 2007).

<sup>5</sup> Id. at 13,568.

an event affected air quality.”<sup>6</sup> This evaluation is to be based on a “weight of evidence” approach and “does not require a precise estimate of the estimated air quality impact from the event.”<sup>7</sup>

EPA specifically noted in the EER that “[b]ecause of the variability in the nature of exceptional events and the resulting demonstration requirements, States should consult with the appropriate EPA Regional Office early in the process of preparing their demonstrations.”<sup>8</sup> EPA further indicated that “[a]cceptable documentation will be determined *through consultation with the EPA regional offices.*”<sup>9</sup> (Emphasis added). Moreover, in response to a comment that EPA must provide a reasonable explanation in denying any exceptional event request, EPA stated “[t]he EPA regional offices will work with the States, Tribes and local agencies to ensure that proper documentation is submitted to justify data exclusion.”<sup>10</sup> Finally, when a commenter asked EPA to “establish a technically-based appellate process for States to follow when Regional offices do not concur with a data flag,” EPA responded that an appellate process was unnecessary, “because we anticipate that the States and Regional Offices will be working closely through the data and documentation submission process.”<sup>11</sup>

This regulatory scheme recognizes the position of states, local, and tribal governments as both partners and “co-regulators” under the CAA. Since the enactment of the 1970 Clean Air Act, Congress has always considered state, local, and tribal governments to be in the best position to evaluate local air quality conditions and to design and implement SIPs necessary for the attainment of NAAQS. Determining what air quality data should – and should not – be utilized in assessing whether an area is in compliance with a NAAQS is a fundamental part of the intergovernmental relationship established by the CAA. It is the *shared* responsibility of EPA, states, local, and tribal governments to ensure that the NAAQS are met.

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<sup>6</sup> Id. at 13,569.

<sup>7</sup> Id. at 13,570.

<sup>8</sup> Id. at 13,573.

<sup>9</sup> Id.

<sup>10</sup> Id. at 13,574.

<sup>11</sup> Id.

## **II. Arizona's Exceptional Events Request Regarding Certain 2008 Air Quality Data**

MAG and ADEQ have attempted to work with Region IX on the matter of achieving compliance with the PM<sub>10</sub> NAAQS. Beginning in 2007, many separate efforts were made to assess non-compliant PM<sub>10</sub> air quality data in the MAG region, as well as other areas in Arizona, and the reasons why exceedances of the applicable NAAQS occurred. With regard to monitoring data for 2008 that ADEQ submitted to Region IX for exceptional events treatment:

- (1) ADEQ made an initial submission on June 30, 2009 regarding all of the previously "flagged" twenty-seven 2008 exceptional events.
- (2) On November 17, 2009, ADEQ transmitted to EPA Region IX documentation for the 12 Maricopa County 2008 exceptional events. The documentation included "Unusual Winds White Paper" and "Control Measures White Paper."
- (3) ADEQ provided EPA Region IX with a supplemental response to the June 4, 2008 PM<sub>10</sub> exceedance on March 17, 2010. The response addressed issues raised by EPA in earlier communications.
- (4) On May 21, 2010, EPA Region IX indicated that it would not concur with ADEQ submittals for demonstration of exceptional events for four of the days in 2008 during which there had been PM<sub>10</sub> exceedances.
- (5) On June 30, 2010, ADEQ submitted a "section-by-section" response to the May 21, 2010 EPA Region IX exceptional events non-concurrence.
- (6) On July 2, 2010, ADEQ submitted separate MAG comments to EPA Region IX concerning the exceptional events non-concurrence.
- (7) On August 2, 2010, ADEQ submitted additional documentation to EPA Region IX concerning the June 4, 2008, PM<sub>10</sub> exceedance.
- (8) On August 27, 2010, ADEQ submitted additional documentation to EPA Region IX concerning the March 14, April 30, and May 21, 2008 PM<sub>10</sub> exceedances, as well as supplemental information pertaining to the June 4, 2008, exceedance.

These written submissions for exceptional events in 2008, as well as other information shared with EPA Region IX both before and after the agency's May 21,

2010 decision, do not appear to have been thoroughly considered.<sup>12</sup> Thus, it would be premature for EPA to make an initial determination on MAG's Five Percent Plan for PM<sub>10</sub> by September 3<sup>rd</sup> as currently proposed by EPA. It would seem more prudent for EPA to hold off making a preliminary decision until it has thoroughly evaluated this pertinent information and the agency and ADEQ have had an opportunity to continue the meaningful consultation on the data that was cut short on May 21, 2010.

In addition, there is a list of items and issues involving the exceptional wind events for 2008 which require additional consideration or a response, including:

- (1) An interpretation of "unusual winds."<sup>13</sup>
- (2) The reliance on EPA-created data that have not been vetted through the public review and comment process established in 40 CFR 50.14(c)(3)(i).
- (3) Recently submitted information regarding the regional high wind frontal system passage on June 4, 2008, which contributed to a total of 10 exceedances.<sup>14</sup>
- (4) All controllable sources of PM<sub>10</sub> in the Phoenix area are subject to an EPA-approved Serious Area SIP ("MAG, 2000"), including numerous Maricopa County rules and as other local dust control measures that the agency has found to be both Best Available Control Measures ("BACM") and meeting the Most Stringent Measures requirements of CAA Section 188(e).<sup>15</sup>

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<sup>12</sup> In addition, EPA has not yet officially responded to previous submissions. ADEQ submitted 2007 EER Demonstrations to Region IX on September 16, 2008. ADEQ received an unofficial, unsigned response from EPA in May 2009 with regard to the information it submitted on these 2007 events. There was no resolution, clarification or finalization regarding the content of information submitted or what additional information was needed by EPA.

<sup>13</sup> "Unusual Winds White Paper," ADEQ submission to Region IX, November 2009.

<sup>14</sup> "Section-By-Section Response to Review of Exceptional Events Request", ADEQ, Air Quality Division, Air Assessment Section, June 30, 2010 at 7.

<sup>15</sup> 67 Fed. Reg. 48,718 (July 25, 2002).

- (5) An explanation of the importance of “seasonal” data, how the data from the relevant time period (March through June) does not constitute a “season,” and how this requirement has been applied in other determinations.
- (6) The use of vector average wind speed data in EPA’s analyses understated the energy of winds cited in ADEQ’s exceptional events requests and mischaracterized wind direction.
- (7) EPA’s conclusion that the concentrations at the West 43<sup>rd</sup> Avenue monitor “may have been caused by local upwind sources and were not regional in nature” has not been revisited in light of recently submitted information.
- (8) Neither the EER nor Section 319 of the CAA requires a direct correlation between conditions at that monitor and those at nearby monitors.
- (9) Supplemental information submissions demonstrate that local sources of air pollution were reasonably controlled.
- (10) Conclusions regarding the Maricopa County exceptional events information are not consistent with previous determinations under the EER for other areas of the country.

The above cited instances are not exhaustive but do reflect the breadth and importance of these issues. In addition, and most important for purposes of this letter, these issues are of the type and character that could have been identified and resolved through a more collaborative consultation process.

### **III. Requirement to Act**

To date, EPA Region IX’s May 21, 2010 letter expressing non-concurrence with exceptional event documentation for four dates in 2008 is the only detailed correspondence that MAG or ADEQ has received regarding all of the exceptional event demonstrations that have been submitted. The only other correspondence related to these matters only acknowledged the submission of the supplemental information and the comments that ADEQ had submitted on the proposed Consent Decree in *Bahr v. Jackson*.<sup>16</sup> In this August 24, 2010, letter from Region IX Administrator Jared Blumenfeld to ADEQ Director Benjamin H. Grumbles, it was

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<sup>16</sup> No. CV 09-251-PHX-MHM (D.Ariz).

indicated that ADEQ submissions regarding exceptional events for 2008 will be made in the context of action on the consent decree. The letter cites ADEQ written submissions on exceptional events data (cited above) and then provides:

Regarding the consent decree, EPA and the Department of Justice will review all comments and make a decision based on what is in the public's best interest. . . . As you know, the [Five Percent] Plan relies on the exclusion of exceedances that we have determined do not meet the requirements of our Exceptional Events Rule to support the attainment demonstration. Therefore, we will be addressing the exclusion of these exceedances again in that action. We will respond to any comments we receive during the public comment period on this aspect of our proposed action on the [Five Percent] Plan when we take final action.

We are disappointed that EPA has apparently chosen to press forward with the schedule in the consent decree and eschew the opportunity for additional consultation and collaboration regarding the 2008 exceptional events. In addition, addressing an issue as important as this one in the context of a citizen suit against the agency, instead of through consultation with the State, seem to lie in stark contrast to a process founded on the shared responsibility of EPA, state, local and tribal governments to implement the CAA.

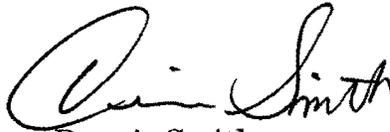
#### IV. Request For Action

Based on the concerns expressed above, we respectfully request that action be taken to restore the opportunity for a federal/state/local dialogue on the implementation of the EER. Specifically, we request that the proposed consent decree referenced above be amended to allow an additional six months of time to review all of the data that is now before the agency before making a proposed decision on the MAG 2007 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area. With this time, EPA, ADEQ and MAG can continue consultation through a collaborative process that has been repeatedly and successfully used in many other areas of CAA implementation.

Sincerely,



Benjamin H. Grumbles  
Director  
Arizona Department of  
Environmental Quality



Dennis Smith  
Executive Director  
Maricopa Association of Governments

The Honorable Lisa Jackson

September 1, 2010

Page 8

cc: Ms. Gina McCarthy  
Assistant Administrator  
Office of Air and Radiation

Mr. Jared Blumenfeld  
Environmental Protection Agency — Region IX



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**REGION IX**  
**75 Hawthorne Street**  
**San Francisco, CA 94105-3901**

September 2, 2010

**OFFICE OF THE  
REGIONAL ADMINISTRATOR**

Benjamin H. Grumbles  
Director  
Arizona Department of Environmental Quality  
1110 W. Washington Street  
Phoenix, AZ 85007

Dennis Smith  
Executive Director  
Maricopa Association of Governments  
302 N. 1<sup>st</sup> Avenue  
Phoenix, AZ 85003

Dear Director Grumbles and Executive Director Smith:

Thank you for your letter of September 1, 2010 to U.S. Environmental Protection Agency (EPA) Administrator Lisa Jackson expressing concerns over EPA's position with respect to the Maricopa County air quality plan and our exceptional events determination of May 21, 2010. Administrator Jackson has requested that I respond on her behalf since the actions we will be taking are the responsibility of my office.

We have reviewed the Maricopa Association of Governments' "MAG 2007 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area." The Plan is intended to meet the coarse particulate matter (PM-10) standards established under the Clean Air Act in Maricopa County as soon as possible. Airborne particulates are linked to significant health problems ranging from aggravated asthma to premature death in people with heart and lung disease. Because air quality in the County does not meet the levels set by law, reducing PM-10 pollution is critical for the protection of public health.

EPA has worked extensively over the past several years with your agencies and the Maricopa County Air Quality Department to develop a successful PM-10 Plan. A number of the current elements in the plan will help reduce air pollution in the County. For example, tomorrow we will be proposing to approve measures in the Maricopa Plan that control emissions from vehicle use, leaf blowers, unpaved areas, burning and other sources of particulate matter.

However, serious flaws in the inventory of PM-10 sources submitted by the State have resulted in a plan that does not satisfy the requirements of the Clean Air Act. EPA will be proposing disapproval of the attainment demonstration and other key elements required by the Clean Air Act. While your letter emphasizes the exceptional events issue, there are other significant problems with the PM-10 Plan that need to be addressed.

As we discussed with you when we met in May, EPA has determined that a legally significant number of exceedances of the PM-10 standard were not caused by "exceptional events." However, we will review the additional documentation submitted by your agencies and respond in our final action.

Consequently, EPA intends to move ahead tomorrow with a proposal to partially disapprove the PM-10 Plan. We believe this decision is legally and scientifically grounded and protective of public health in Maricopa County, where residents have been breathing air that does not meet the PM-10 standard for over two decades. The consent decree we negotiated in litigation brought by the Arizona Center for Law in the Public Interest, in which we agreed to take proposed action no later than September 3, 2010 and final action no later than January 28, 2011, is consistent with our assessment of the PM-10 Plan. Therefore, the Department of Justice has filed a motion in federal district court today requesting entry of the decree. Tomorrow we will issue details of the shortcomings of the PM-10 Plan in a proposed rule to be published in the Federal Register, announcing a 30-day public comment period.

We expect the initial impact from a final disapproval of the PM-10 Plan, if taken, to be minimal. Transportation projects scheduled from 2011-2014 would not be affected, and should be able to continue as planned. Note that final action on the PM-10 Plan is not likely to occur before January 2011. If a final disapproval does occur, the time line for imposition of new facility permitting requirements (18 months later, if the PM-10 Plan's deficiencies are not corrected) and highway funding restrictions (24 months later) should be sufficient to allow the air quality agencies to fix the PM-10 Plan. Even if funding restrictions do occur, no transportation dollars are withheld or lost to the State. Rather, the money must be spent on a more limited set of projects until the issues are resolved.

As in the past, EPA will continue to provide policy guidance and technical expertise to you and your staff so that a new, replacement PM-10 Plan can be submitted as soon as possible. We are confident that working together we can find a way to protect air quality and avoid adverse economic impacts for the citizens of Arizona.

Thank you for the opportunity to respond to your concerns. If I can be of further assistance, please contact me at 415-947-8702, or have your staff contact Deborah Jordan, Air Division Director, at 415-947-8715.

Sincerely,



Jared Blumenfeld

cc: Joy Rich, Maricopa County  
William Wiley, Maricopa County

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2010-0715; FRL-]

Approval and Promulgation of Implementation Plans - Maricopa

County (Phoenix) PM-10 Nonattainment Area;

Serious Area Plan for Attainment of the 24-Hour PM-10 Standard;

Clean Air Act Section 189(d)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

EPA is proposing to approve in part and disapprove in part State implementation plan (SIP) revisions submitted by the State of Arizona to meet the Clean Air Act (CAA) requirements applicable to the serious Maricopa County (Phoenix) nonattainment area (Maricopa area). These requirements apply to the Maricopa area following EPA's June 6, 2007 finding that the area failed to meet its December 31, 2006 serious area deadline to attain the national ambient air quality standards (NAAQS) for particulate matter of ten microns or less (PM-10). Under CAA section 189(d), Arizona was required to submit a plan by December 31, 2007 providing for expeditious attainment of the PM-10 NAAQS and for an annual emission reduction in PM-10 or PM-10 precursors of not less than five percent per year until attainment (189(d) plan).

EPA is proposing to disapprove provisions of the 189(d) plan for the Maricopa area because they do not meet applicable CAA requirements for emissions inventories as well as for attainment, five percent annual emission reductions, reasonable further progress and milestones, and contingency measures. EPA is also proposing to disapprove the 2010 motor vehicle emission budget in the 189(d) plan as not meeting the requirements of CAA section 176(c) and 40 CFR 93.118(e)(4). EPA is also proposing a limited approval and limited disapproval of State regulations for the control of PM-10 from agricultural sources. Finally, EPA is proposing to approve various provisions of State statutes relating to the control of PM-10 emissions in the Maricopa area.

**DATES:** Any comments must arrive by [Insert date 30 days from the date of publication in the Federal Register].

**ADDRESSES:** Submit comments, identified by docket number EPA-R09-OAR-2010-0715, by one of the following methods:

1. Federal eRulemaking Portal: [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions.
2. E-mail: [nudd.gregory@epa.gov](mailto:nudd.gregory@epa.gov).
3. Mail or deliver: Gregory Nudd (Air-2), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

*Instructions:* All comments will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through [www.regulations.gov](http://www.regulations.gov) or e-mail. [www.regulations.gov](http://www.regulations.gov) is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

*Docket:* The index to the docket for this action is available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect

the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Gregory Nudd, U.S. EPA Region 9, 415-947-4107, nudd.gregory@epa.gov or [www.epa.gov/region09/air/actions](http://www.epa.gov/region09/air/actions).

**SUPPLEMENTARY INFORMATION:** Throughout this document, the terms "we," "us," and "our" mean U.S. EPA.

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#### **I. PM-10 Air Quality Planning in the Maricopa Area.**

The NAAQS are standards for certain ambient air pollutants set by EPA to protect public health and welfare. PM-10 is among

the ambient air pollutants for which EPA has established health-based standards. PM-10 causes adverse health effects by penetrating deep in the lungs, aggravating the cardiopulmonary system. Children, the elderly, and people with asthma and heart conditions are the most vulnerable.

On July 1, 1987 EPA revised the health-based national ambient air quality standards (52 FR 24672), replacing the standards for total suspended particulates with new standards applying only to particulate matter up to ten microns in diameter (PM-10). At that time, EPA established two PM-10 standards, annual standards and 24-hour standards. Effective December 18, 2006, EPA revoked the annual PM-10 standards but retained the 24-hour PM-10 standards. 71 FR 61144 (October 17, 2006). The 24-hour PM-10 standards of 150 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ) are attained when the expected number of days per calendar year with a 24-hour average concentration above 150  $\mu\text{g}/\text{m}^3$ , as determined in accordance with appendix K to 40 CFR part 50, is equal to or less than one. 40 CFR 50.6 and 40 CFR part 50, appendix K.

On the date of enactment of the 1990 Clean Air Act Amendments (CAA or the Act), many areas, including the Maricopa area, meeting the qualifications of section 107(d)(4)(B) of the amended Act were designated nonattainment by operation of law. 56 FR 11101 (March 15, 1991). The Maricopa area is located in

the eastern portion of Maricopa County and encompasses the cities of Phoenix, Mesa, Scottsdale, Tempe, Chandler, Glendale, as well as 17 other jurisdictions and unincorporated County lands. The nonattainment area also includes the town of Apache Junction in Pinal County. EPA codified the boundaries of the Maricopa area at 40 CFR 81.303.

Once an area is designated nonattainment for PM-10, section 188 of the CAA outlines the process for classifying the area as moderate or serious and establishes the area's attainment deadline. In accordance with section 188(a), at the time of designation, all PM-10 nonattainment areas, including the Maricopa area, were initially classified as moderate.

A moderate PM-10 nonattainment area must be reclassified to serious PM-10 nonattainment by operation of law if EPA determines after the applicable attainment date that, based on air quality, the area failed to attain by that date. CAA sections 179(c) and 188(b)(2). On May 10, 1996, EPA reclassified the Maricopa area as a serious PM-10 nonattainment area. 61 FR 21372.

As a serious PM-10 nonattainment area, the Maricopa area acquired a new attainment deadline of no later than December 31, 2001. CAA section 188(c)(2). However CAA section 188(e) allows states to apply for up to a 5-year extension of that deadline if

certain conditions are met. In order to obtain the extension, there must be a showing that: (1) attainment by the applicable attainment date would be impracticable; (2) the state complied with all requirements and commitments pertaining to the area in the implementation plan for the area; and (3) the state demonstrates that the plan for the area includes the most stringent measures (MSM) that are included in the implementation plan of any state or are achieved in practice in any state, and can feasibly be implemented in the specific area. Arizona requested an attainment date extension under CAA section 188(e) from December 31, 2001 to December 31, 2006.

On July 25, 2002, EPA approved the serious PM-10 plan for the Maricopa area as meeting the requirements for such areas in CAA sections 189(b) and (c), including the requirements for implementation of best available control measures (BACM) in section 189(b)(1)(B) and MSM in section 188(e). In the same action, EPA granted Arizona's request to extend the attainment date for the area to December 31, 2006. 67 FR 48718. This final action, as well as the two proposals preceding it, provide a more detailed discussion of the history of PM-10 planning in the Maricopa area. See 65 FR 19964 (April 13, 2000) and 66 FR 50252 (October 2, 2001).

On June 6, 2007, EPA found that the Maricopa area failed to attain the 24-hour PM-10 NAAQS by December 31, 2006 (72 FR

31183) and required the submittal of a new plan meeting the requirements of section 189(d) by December 31, 2007.

On December 19, 2007, the Maricopa Association of Governments (MAG) adopted the "MAG 2007 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area." In this proposal, we refer to this plan as the "189(d) plan." On December 21, 2007 the Arizona Department of Environmental Quality (ADEQ) submitted the 189(d) plan and two Pinal County resolutions.<sup>1</sup> MAG adopted and ADEQ submitted this SIP revision in order to address the CAA requirements in section 189(d).

CAA section 110(k)(1) requires EPA to determine whether a SIP submission is complete within 60 days of receipt. This section also provides that any plan that has not been affirmatively determined to be complete or incomplete shall become complete within 6 months by operation of law. EPA's completeness criteria are found in 40 CFR part 51, appendix V. The 189(d) plan submittal became complete by operation of law on June 21, 2008.

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<sup>1</sup> Subsequently, in June 4, 2008 and February 23, 2009 letters from Nancy C. Wrona, ADEQ, to Deborah Jordan, EPA, the State submitted "Supplemental Information to Section 189(d) 5% Reasonable Further Progress PM-10 SIP Revisions for the Maricopa County and Apache Junction (Metropolitan Phoenix) Nonattainment Area."

## II. Overview of Applicable CAA Requirements

As a serious PM-10 nonattainment area that failed to meet its applicable attainment date, December 31, 2006, the Maricopa area is subject to CAA section 189(d) which provides that the state shall "submit within 12 months after the applicable attainment date, plan revisions which provide for attainment of the PM-10 air quality standard and, from the date of such submission until attainment, for an annual reduction of PM-10 or PM-10 precursor emissions within the area of not less than 5 percent of the amount of such emissions as reported in the most recent inventory prepared for the area."

The general planning and control requirements for all nonattainment plans are found in CAA sections 110 and 172. EPA has issued a General Preamble<sup>2</sup> and Addendum to the General Preamble<sup>3</sup> describing our preliminary views on how the Agency intends to review SIPs submitted to meet the CAA's requirements for the PM-10 NAAQS. The General Preamble mainly addresses the

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<sup>2</sup> "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498 (April 16, 1992) (General Preamble) and 57 FR 18070 (April 28, 1992).

<sup>3</sup> "State Implementation Plans for Serious PM-10 Nonattainment Areas, and Attainment Date Waivers for PM-10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 59 FR 41998 (August 16, 1994) (Addendum).

requirements for moderate nonattainment areas and the Addendum, the requirements for serious nonattainment areas. EPA has also issued other guidance documents related to PM-10 plans which are cited as necessary below. In addition, EPA addresses the adequacy of the motor vehicle budget for transportation conformity (CAA section 176(c)) in this proposed plan action. The PM-10 plan requirements addressed by this proposed action are summarized below.

**A. Emissions Inventories**

CAA section 172(c)(3) requires that an attainment plan include a comprehensive, accurate, and current inventory of actual emissions from all sources of the relevant pollutants.

**B. Attainment Demonstration**

The attainment deadline applicable to an area that misses the serious area attainment date is as soon as practicable, but no later than 5 years from the publication date of the nonattainment finding notice. EPA may, however, extend the attainment deadline to the extent it deems appropriate for a period no greater than 10 years from the publication date, "considering the severity of nonattainment and the availability and feasibility of pollution control measures." CAA sections 179(d)(3) and 189(d).

**C. Five Percent (5%) Requirement**

A 189(d) plan must provide for an annual reduction of PM-10 or PM-10 precursor emissions within the area of not less than 5% of the amount of such emissions as reported in the most recent inventory prepared for the area.

**D. Reasonable Further Progress and Quantitative Milestones**

CAA section 172(c)(2) requires that implementation plans demonstrate reasonable further progress (RFP) as defined in section 171(1). Section 171(1) defines RFP as "such annual incremental reductions in emissions of the relevant air pollutant as are required by this part [part D of title I] or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date."

Section 189(c)(1) requires the plan to contain quantitative milestones which will be achieved every 3 years and which will demonstrate that RFP is being met.

**E. Contingency Measures**

CAA section 172(c)(9) requires that implementation plans provide for "the implementation of specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the [NAAQS] by the attainment date applicable under this part [part D of title I]. Such measures are to take effect in any such case without further action by the State or the Administrator."

**F. Transportation Conformity and Motor Vehicle Emissions Budgets**

Transportation conformity is required by CAA section 176(c). Our conformity rule (40 CFR part 93, subpart A) requires that transportation plans, programs, and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do so. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS or any interim milestone. Once a SIP that contains motor vehicle emissions budgets (MVEBs) has been submitted to EPA, and EPA has found it adequate, these budgets are used for determining conformity: emissions from planned transportation activities must be less than or equal to the budgets.

**G. Adequate Legal Authority and Resources**

CAA section 110(a)(2)(E)(i) requires that implementation plans provide necessary assurances that the state (or the general purpose local government) will have adequate personnel, funding and authority under state law. Requirements for legal authority are further defined in 40 CFR part 51, subpart L (51.230-51.232) and for resources in 40 CFR 51.280. States and responsible local agencies must also demonstrate that they have the legal authority to adopt and enforce provisions of the SIP and to obtain information necessary to determine compliance.

SIPs must also describe the resources that are available or will be available to the State and local agencies to carry out the plan, both at the time of submittal and during the 5-year period following submittal of the SIP.

### **III. Evaluation of the 189(d) Plan's Compliance with CAA Requirements**

#### **A. Emissions Inventories**

CAA section 172(c)(3) requires all nonattainment area plans to contain a comprehensive, accurate, and current inventory of emissions from all sources of the relevant pollutants in the geographic area encompassed in the plan. EPA believes that the inventories submitted by Arizona as part of the 189(d) plan for the Maricopa area are comprehensive and current, but are not sufficiently accurate as discussed below.

MAG developed the 189(d) plan using the "2005 Periodic Emissions Inventory for the Maricopa County, Arizona Nonattainment Area," May 2007 (2005 Periodic Inventory). 189(d) plan, appendices, volume one, appendix B, exhibit 1. This inventory was developed by the Maricopa County Air Quality Department (MCAQD) as the baseline inventory for the area. 189(d) plan, p. 3-2.

MAG used economic growth estimates to project 2007, 2008, 2009 and 2010 emissions inventories for the area from the 2005 Periodic Inventory baseline. MAG then used these projected inventories to calculate the 5% reduction target required by section 189(d) and as the baseline for the RFP demonstration required by section 189(c).<sup>4</sup> See 189(d) plan, appendices, volume three, "Technical Document in Support of the MAG 2007 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area," (189(d) plan TSD), chapter II.

The 2005 Periodic Inventory prepared for the Maricopa area describes and quantifies the annual and daily emissions of PM-10 from point, area, nonroad, on-road, and nonanthropogenic sources in the 2,880 square mile nonattainment area.<sup>5</sup> The 2005 Periodic Inventory indicates that the dominant sources of PM-10 emissions

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<sup>4</sup> The 189(d) plan projects that the Maricopa area will attain the PM-10 standard by December 31, 2010. For the 5% demonstration, the plan projects emission reductions in 2008, 2009 and 2010. The RFP demonstration shows annual emission reductions in a downward linear trend from 2007 to 2010. See 189(d) plan, chapters 7 and 8, and discussions of these demonstrations below.

<sup>5</sup> The 2005 Periodic Inventory in the 189(d) plan also includes data on PM-10 precursors. However, a scientific analysis of the particulate matter found on filters on exceedance days indicates that the vast majority of PM-10 on these days is directly emitted PM-10 such as soil dust. See attachment, "On speciated PM in the Salt River industrial area in 2002," dated January 22, 2010, to Email from Peter Hyde, Arizona State University, to Gregory Nudd, EPA, July 30, 2010. Therefore, the 189(d) plan appropriately focuses on directly emitted PM-10.

in the Maricopa area are construction-related fugitive dust, including residential, commercial, road and other land clearing (38 percent); paved road dust, including trackout (16 percent); unpaved roads (10 percent); and windblown dust (9 percent). 2005 Periodic Inventory, table 1.6-11.

EPA has evaluated the base year inventory relied on by MAG in light of the three criteria in section 172(c)(3) and our conclusions follow.

Current: The base year, 2005, is a reasonably current year, considering the length of time needed to develop an inventory and thereafter to develop a plan based on it. The 2005 Periodic Inventory was the most recent inventory available when the 189(d) plan was developed.

Comprehensive: The 189(d) plan's inventories are sufficiently complete. All of the relevant source categories are quantified.

Accurate: The 2005 Periodic Inventory is not sufficiently accurate for the purposes of the 189(d) plan. As discussed below, this inventory and the subsequent year inventories that MAG derived from it overestimate the baseline emissions for construction and other sources. The accuracy of the baseline inventory is particularly important for this plan because it relies heavily on reductions from improving the effectiveness of

existing rules<sup>6</sup> for construction and other sources in order to meet the CAA's 5%, RFP and attainment requirements. See 189(d) plan, chapters 7 and 8.

MCAQD Rule 310 requires control measures for dust generating activities such as excavation, construction, demolition and bulk material handling. According to the 2005 Periodic Inventory, the majority of emissions subject to control under Rule 310 are from residential, commercial and road construction. Measure #8 in the 189(d) plan is a commitment to implement proactive and complaint based inspections during night-time and on weekends and is a telling example of how the 189(d) plan depends primarily on improving Rule 310 effectiveness to demonstrate the required annual 5% reductions and RFP. The plan asserts that Measure #8 will reduce PM-10 emissions by 1,884 tons per year (tpy). 189(d) plan, p. 7-3. Of that, 1,694 tpy are attributed to increases in compliance, and therefore in the effectiveness, of Rule 310. 189(d) plan TSD, p. III-5. This pattern is repeated in Measures #2, #3, #9, #10,

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<sup>6</sup> Rule effectiveness is an estimate of the ability of a regulatory program to achieve all of the emission reductions that could have been achieved by full compliance with the applicable regulations at all sources at all times. EPA requires a state to account for rule effectiveness when estimating emissions from source categories that are subject to regulations that reduce emissions. See "Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations," EPA-454/R-05-001, November 2005 (2005 Emissions Inventory Guidance), p. B-3.

#16, and #44, with a large majority of the 189(d) plan's total emissions reductions derived from increased compliance with Rule 310. This pattern is further detailed in table 2 below.

For the 2005 Periodic Inventory, MCAQD used a set of 63 sample inspections of sources subject to Rule 310 in order to estimate its effectiveness.<sup>7</sup> An analysis of these inspections yielded an estimated rule effectiveness of 51 percent. However, an analysis conducted by MCAQD of the entire database of over 11,000 relevant inspections during the time period of the sample inspections yielded an estimated rule effectiveness of 64.5 percent. In other words, examination of the larger database suggests that a significantly higher percentage of sources were in compliance, and accordingly the aggregate emissions inventory for this source category could be proportionately smaller than that suggested by the smaller set of sample inspections. While MCAQD conducted this analysis in 2010, after the development of the 189(d) plan, the data and the method were available at the time it produced the 2005 Periodic Inventory.<sup>8</sup> Table 1 below shows the impact of these two different rule effectiveness

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<sup>7</sup> 2005 Periodic Inventory, appendix 2.2, "Rule Effectiveness Study for the Maricopa County Rules 310, 310.01, and 316."

<sup>8</sup> The data from the 2010 analysis were from inspections conducted at the time the original rule effectiveness calculation was being developed, so that information should have been in the MCAQD's database. The analytical method was a hybrid of a simple average of the results in the inspection database and the 2005 Emissions Inventory Guidance.

values on the estimate of fugitive dust emissions from construction sources in the Maricopa area. The data in table 1 are from the emission rate back-casting analysis conducted by MCAQD in 2010.<sup>9</sup>

Table 1 - Impact of Rule 310 Effectiveness Methodology on Estimated Emissions from Construction Activity

| <b>Estimation Method</b>  | <b>Rule Effectiveness</b> | <b>Estimated 2005 Emissions for Construction Activity (tons per year)</b> |
|---|---------------------------|---|
| Sample Rule 310 inspections (63 total inspections between July and December 2006) | 51%                       | 32,130  |
| All Rule 310 inspections (over 11,000 between July 2006 and June 2007)            | 64.5%                     | 24,968  |
| Difference in emissions   |                           | 7,162 (-22%)  |

EPA believes that analysis of the full database of 11,000 Rule 310 inspections provides a more accurate measure of rule effectiveness than using a sample of 63 inspections. This is because the 63 inspections may not be representative of the entire population of sources covered by the rule. The larger data set is much more likely to be free of sample biases. Therefore, based on this analysis of the larger data set, EPA has determined that the initial estimate of rule effectiveness for Rule 310 was not accurate.

<sup>9</sup> Email from Matthew Poppen, MCAQD, to Gregory Nudd, EPA, "Back-casting of RE rates," April 19, 2010 (Poppen Email).

There is a similar inaccuracy in the rule effectiveness calculations for MCAQD Rule 310.01<sup>10</sup> for unpaved parking lots, unpaved roads and similar sources of fugitive dust emissions. For the 2005 Periodic Inventory, MCAQD used a set of 124 sample inspections to estimate the effectiveness of Rule 310.01. 2005 Periodic Inventory, appendix 2.2. An analysis of these inspections yielded an estimated rule effectiveness of 68 percent. However, an analysis conducted by MCAQD of the entire database of over 4,500 relevant inspections during the time period of the sample inspections yielded an estimated rule effectiveness of 90 percent. See Poppen Email.

The significance of the inventory inaccuracies discussed above is graphically depicted in table 2:

Table 2<sup>11</sup> - Measures to Improve Compliance with Rules 310 and 310.01 Compared to All Measures Supporting the Attainment, 5% and RFP Demonstrations

|   | 2008  | 2009   | 2010   |
|---|-------|--------|--------|
| Total reductions from attainment, 5% and RFP measures [tpy]           | 6,603 | 15,422 | 19,840 |
| Reductions from measures to improve rule effectiveness of Rule 310    | 4,658 | 11,292 | 15,244 |
| Reductions from measures to improve rule effectiveness of Rule 310.01 | 360   | 1,061  | 1,063  |

<sup>10</sup> EPA is also concerned that the method MCAQD used to estimate rule effectiveness for non-metallic mineral processing and other sources subject to Rule 316 is dependent on qualitative factors rather than compliance data.

<sup>11</sup> This data summary was compiled from the emission reduction calculations found in the 189(d) plan TSD, chapter III.

|                                    |     |     |     |
|------------------------------------|-----|-----|-----|
| % of reductions from such measures | 76% | 80% | 82% |
|------------------------------------|-----|-----|-----|

As shown in table 2, the 189(d) plan is designed to achieve the additional reductions in emissions required for the attainment, 5% and RFP demonstrations primarily through improvements in rule effectiveness for the sources regulated by Rules 310 and 310.01. The inaccuracies in the baseline emissions inventory were carried through into the future year emission inventories and the calculations of emission reductions for those demonstrations.

Moreover, the underestimation of the effectiveness of Rules 310 and 310.01 resulted in a control strategy with a high probability of failure because the over-emphasis on achieving emission reductions from the sources regulated by these rules likely resulted in a corresponding de-emphasis on emission reductions from other sources contributing to the nonattainment problem in the Maricopa area. In table 3 below we compare the projected percentage of 2010 emissions attributable to certain source categories before implementation of the 189(d) plan's controls to the projected percentage of emission reductions attributed to controls for these categories in 2010. The source categories are those contributing more than 5% to the projected 2010 inventory of annual PM-10 emissions. See 189(d) TSD, pp. II-17 and chapter III..

Table 3 - Comparison of the 2010 Emissions Reductions Expected from the Control Measures to the Proportion of 2010 Emissions for Principal Sources of PM-10 in the Nonattainment Area

| <b>Source Category</b>              | <b>Percentage of Pre-Control 2010 Emissions</b> | <b>Percentage of Estimated 2010 Emission Reductions</b> |
|-------------------------------------|---|---|
| Construction                        | 33.1%   | 82.5%   |
| Paved Roads<br>(including trackout) | 19.1%   | 5.1%  |
| Unpaved Roads                       | 17.4%   | 0.0%  |
| Fuel Combustion and<br>Fires        | 5.6%  | 0.2%  |
| Windblown dust from<br>vacant land  | 5.4%  | 7.7%  |
| Other Sources<br>(<5% each)         | 19.4%   | 4.5%  |

As can be seen from this comparison, the plan's emphasis on reducing emissions from the construction industry is out of proportion to that source category's relative contribution to the projected 2010 inventory.

For the reasons discussed above, EPA is proposing to disapprove under CAA section 110(k)(3) the 2005 baseline emissions inventory in the 189(d) plan and all of the projected inventories as not meeting the requirements of section 172(c)(3).

## **B. Measures in the 189(d) Plan**

### 1. Introduction

The 189(d) plan contains 53 measures designed to reduce emissions of PM-10. A detailed description and implementation schedule for each measure is provided in chapter 6 of the plan. Of the 53 measures, 25 measures are intended to support the attainment, RFP and 5% demonstrations provided in the plan, and 9 are contingency measures. These measures incorporate differing strategies to target emissions from a variety of activities within the Maricopa area. The remaining measures are included to represent additional efforts by the State and local jurisdictions to reduce emissions beyond those quantified in the plan. As those measures are implemented, the 189(d) plan provides that a more detailed assessment of the air quality benefits may be developed and reported in the future.

EPA is proposing action on the measures in the 189(d) plan that constitute mandatory directives to the regulated community or to various local jurisdictions to adopt certain legislative requirements. These measures typically involve emissions reductions that can be reasonably quantified, and/or regulatory components that are enforceable. The 189(d) plan does not take specific emission reduction credits for the additional measures

referred to above where the ability to quantify emission reductions was considered to be limited.

In reviewing a statute, regulation, or rule for SIP approval, EPA looks to ensure that the provision is enforceable as required by CAA section 110(a), is consistent with all applicable EPA guidance, and does not relax existing SIP requirements as required by CAA sections 110(l) and 193. Guidance and policy documents that we use to evaluate enforceability and PM-10 rules include the following:

1. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 Federal Register Notice," (Blue Book), notice of availability published in the May 25, 1988 Federal Register.
2. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).
3. "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498 (April 16, 1992) (General Preamble); 57 FR 18070 (April 28, 1992).
4. "State Implementation Plans for Serious PM-10 Nonattainment Areas, and Attainment Date Waivers for PM-10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 59 FR 41998 (August 16, 1994) (Addendum).
5. "PM-10 Guideline Document," EPA 452/R-93-008, April 1993.

## 2. Measures Proposed for Approval

EPA has identified the State statutory provisions submitted with the 189(d) plan that implement the directives in each measure for which we are proposing action. Many of the 189(d)

plan measures refer to Arizona Senate Bill 1552 (SB 1552). In 2007, the Arizona Legislature passed SB 1552, which includes several air quality provisions designed to reduce PM-10. SB 1552 adds new and amends existing provisions of the Arizona Revised Statutes (ARS) and is included in the 189(d) plan submittal. 189(d) plan, chapter 10, "Commitments for Implementation," volume two. We are proposing to approve the sections of the ARS that implement the plan measures identified in table 4 below. For ease of discussion, the statutory provisions that we are proposing to approve are associated with measures that can be generally grouped into seven categories: on-site dust management, certification programs, vehicle use, leaf blowers, unpaved areas, burning and agriculture. A brief discussion of each category is provided after the table.

Table 4 - 189(d) Plan Measure Categories and Associated Statutory Provisions

| <b>Category</b>        | <b>Measure #s<br/>from 189(d)<br/>plan</b> | <b>Associated statutory<br/>provisions</b>                                    |
|------------------------|--|---|
| On-site management     | 2, 3, 16                                   | ARS 49-474.05   |
| Certification programs | 5*, 24*                                    | ARS 9-500.04, ARS 49-457.02<br>ARS 49-474.01                                  |
| Vehicle Use            | 19*, 23, 31,<br>46                         | ARS 9-500.04, ARS 9-500.27,<br>ARS 49-457.03, ARS 49-457.04,<br>ARS 49-474.01 |

|               |                 |  |
|---------------|-----------------|--|
| Leaf blowers  | 18, 21, 22, 45  | ARS 9-500.04, ARS 11-877, ARS 49-457.01  |
| Unpaved areas | 25, 26*, 28, 33 | ARS 9-500.04, ARS 28-6705, ARS 49-474.01 |
| Burning       | 35, 47          | ARS 49-501                               |
| Agriculture   | 50*             | ARS 49-457 <sup>12</sup>                 |

\* The State submitted these measures as contingency measures pursuant to CAA section 172(c)(9). See section III.F below for further discussion.

With the exception of ARS 49-457, discussed in section III.B.3 below, and ARS 49-474.01, the ARS sections listed above are not currently in the Arizona SIP. On August 10, 1988, we approved an earlier version of ARS 49-474.01 that was submitted by the State to EPA on May 22, 1987. 53 FR 30224. In comparison to this previously approved version, the newly submitted version of ARS 49-474.01 contains several additional requirements regarding unstabilized areas and vehicle use that make the statutory provision more stringent. Therefore, we believe the current submitted version of ARS 49-474.01 represents a

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<sup>12</sup> Measure #50 concerns the State statutory and regulatory program for the control of PM-10 from agricultural sources in the Maricopa area. The program is codified in ARS 49-457 and Arizona Administrative Code (AAC) R18-2-610 and R18-2-611. ARS 49-457 established the program and authorized a committee to adopt implementing regulations. While we are proposing to fully approve the amendment to ARS-457 which was submitted with the 189(d) plan, we do not describe it further in this section because we address the agricultural program in detail in section III.B.3 below.

strengthening of the SIP and is consistent with the relevant policy and guidance regarding SIP relaxations.

#### *On-site management*

Many of the 189(d) plan measures are related to the reduction of PM-10 emissions through dust control training and on-site management by trained personnel. Measures #2 and #3 address development of basic and comprehensive training programs for the suppression of emissions. The program requires completion of dust control training for water truck and water pull drivers, and on-site representatives of sites with more than one acre of disturbed surface area subject to a permit requiring control of PM-10 emissions. Any site with five or more acres of disturbed surface area subject to a permit requiring control of PM-10 emissions will be required to have a trained dust control coordinator on site. Measure #16 involves the requirement for subcontractors engaged in dust generating operations to be registered with the control officer. These measures are implemented through ARS 49-474.05. See 189(d) plan, pp. 6-20, 6-24, 6-42, and 6-46.

#### *Certification programs*

Some of the 189(d) plan measures seek to achieve emissions reductions through certification of equipment or personnel. In

certain cases, the certification program is intended to provide an incentive for voluntary emission reductions and good operating practices. In other cases, the certification program seeks to maintain an appropriate level of emissions control from regularly used equipment. Measure #5 directs ADEQ to establish the Dust-Free Developments Program. The purpose of this program is to certify persons and entities that demonstrate exceptional commitment to the reduction of airborne dust. See ARS 49-457.02 and 189(d) plan, p. 6-29. Measure #24 directs cities and towns to require that new or renewed contracts for sweeping of city streets must be conducted with certified street sweepers. Street sweepers must meet the certification specifications contained in South Coast Air Quality Management District (SCAQMD) Rule 1186. See ARS 9-500.04, ARS 49-474.01, and 189(d) plan, p. 6-72.

#### *Vehicle Use*

Because vehicle use often generates PM-10 emissions, the 189(d) plan addresses several different activities related to vehicle use. Measures #19, #23, and #46 restrict off-road vehicle use in certain areas and on high pollution advisory days, and prescribe outreach to off-road vehicle purchasers to inform them of methods for reducing generation of dust. See ARS 9-500.27, ARS 49-457.03, ARS 49-457.04, and 189(d) plan, pp. 6-

53, 6-71 and 6-190. Measure #31 restricts vehicle use and parking on unpaved or unstabilized vacant lots. See ARS 9-500.04, ARS 49-474.01 and 189(d) plan, p. 6-141.

#### *Leaf Blowers*

The 189(d) plan seeks to reduce PM-10 emissions from the operation of leaf blowers. Measures #18 and #45 restrict the use of leaf blowers on high pollution advisory days or on unstabilized surfaces. Measure #21 involves the banning of leaf blowers from blowing landscape debris into public roadways. Measure #22 requires outreach to buyers and sellers of leaf blowing equipment to inform them of safe and efficient use, methods for reducing generation of dust, and dust control ordinances and restrictions. See ARS 9-500.04, ARS 11-877, ARS 49-457.01 and 189(d) plan, pp. 6-50, 6-69, 6-70 and 6-189.

#### *Unpaved areas*

The 189(d) plan contains several measures that seek to reduce PM-10 emissions by reducing the number of unpaved or unstabilized areas. Measures #25, #26, and #28 direct cities and towns to pave or stabilize parking lots, dirt roads, alleys, and shoulders. Measure #33 allows counties the ability to assess fines to recover the cost of stabilizing lots. See ARS

9-500.04, ARS 49-474.01, ARS 28-6705 and 189(d) plan, pp. 6-86, 6-103, 6-124, and 6-169.

### *Burning*

Several measures are designed to regulate burning activities. Measure #35 bans the use of outdoor fireplaces in the hospitality industry on "no burn" days. Measure #47 bans open burning during the ozone season. See ARS 49-501 and 189(d) plan, pp. 6-174 and 6-190.

### 3. Measure Proposed for Limited Approval/Disapproval

Measure #50 is included in the 189(d) plan as a contingency measure and is designed to achieve emission reductions from agricultural sources of PM-10. 189(d) plan, pp. 6-191 and 8-73. Measure #50 is implemented through SB 1552 which amended ARS 49-457 and requires in section 20 that the best management practices (BMP) committee for regulated agricultural activities adopt revised rules. These rules, AAC R18-2-610 and R18-2-611, were revised pursuant to amended ARS 49-457 and submitted with the 189(d) plan. 189(d) plan, chapter 10, "Commitments for Implementation," volume two. See also 189(d) plan, Measure #41, p. 6-185. On May 6, 2010, Arizona again submitted the revised versions of AAC R18-2-610 and R18-2-611 with additional documentation and the "Agricultural Best Management Practices

Guidance Booklet and Pocket Guide" (Handbook). Letter from Benjamin Grumbles, ADEQ, to Jared Blumenfeld, EPA, with enclosures, May 6, 2010. The Handbook provides regulated sources with guidance on how to implement BMPs and provides information to the public and farm organizations about AAC R18-2-610 and R18-2-611 (Handbook, p. 5).

We describe the history of agricultural PM-10 controls in the Maricopa area and we evaluate amended ARS 49-457 and revised AAC R18-2-610 and R18-2-611 below.

a. History

The analysis done for the "Plan for Attainment of the 24-hour PM-10 Standard- Maricopa County PM-10 Nonattainment Area," May 1997 (Microscale Plan) revealed the contribution agricultural sources make to exceedances of the 24-hour PM-10 standard in the Maricopa area. See Microscale plan, pp. 18-19. In order to develop adequate controls for this source category, Arizona passed legislation, the original version of ARS 49-457, in 1997 establishing the agricultural BMP committee and directing the committee to adopt by rule by June 10, 2000, an agricultural general permit specifying best management practices for reducing PM-10 from agricultural activities. The legislation also required that implementation of the agricultural controls

begin by June 10, 2000, with an education program and full compliance with the rule to be achieved by December 31, 2001.

In September 1998, the State submitted ARS 49-457 and on June 29, 1999 we approved the statute as meeting the reasonably available control measure (RACM) requirements of the CAA.<sup>13</sup> 64 FR 34726.

After a series of meetings during 1999 and 2000, the agricultural BMP committee in 2000 adopted the original versions of AAC R18-2-610, "Definitions for R18-2-611," and AAC R18-2-611, "Agricultural PM-10 General Permit; Maricopa PM10 Nonattainment Area" (collectively, general permit rule). 66 FR 34598. The BMPs are defined in AAC R18-2-610. AAC R18-2-611 groups the BMPs into three categories (tilling and harvest, noncropland, and cropland). The original version of AAC R18-2-611 required that commercial farmers select one practice from each of these categories. AAC R18-2-611 also requires that commercial farmers maintain records demonstrating compliance with the general permit rule.

In July 2000, the State submitted the general permit rule. The State also submitted an analysis quantifying the emission

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<sup>13</sup> Prior to its classification as serious, the Maricopa area, as a moderate PM-10 nonattainment area, was required to implement RACM pursuant to CAA section 189(a)(1)(C).

reductions expected from the rule and the demonstration that the rule meets the CAA's RACM, BACM and MSM requirements. We approved the general permit rule as meeting the RACM requirement in CAA section 189(a)(1)(C) on October 11, 2001. 66 FR 51869. We approved the general permit rule as meeting the requirements for BACM and MSM in CAA sections 189(b)(1)(B) and 188(e) on July 25, 2002. 67 FR 48718.

b. Amendments to ARS 49-457 and Revisions to the General Permit Rule

SB 1552 amended ARS 49-457 to increase the number of required BMPs from one to two in the general permit rule by December 31, 2007. SB 1552 also expanded the scope of the applicability of the general permit rule by amending the definition of regulated area to include any portion of Area A<sup>14</sup> that is located in a county with a population of two million or more persons.

The agricultural BMP committee added definitions for the following terms to AAC R18-2-610: "Area A," "cessation of night

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<sup>14</sup> Area A is defined in ARS 49-541. The 189(d) plan does not take any credit for emission reductions from the general permit rule's expansion to Area A because it extends beyond the boundaries of the Maricopa area. 189(d) plan, p. 8-73. ARS 49-451 was not submitted for inclusion into the SIP. While not a basis for our proposed action here, we recommend that ADEQ either insert the definition from ARS 49-451 into the general permit rule or submit ARS 49-451 to EPA.

tilling," "forage crop," "genetically modified," "genetically modified organism," "global position satellite system," "green chop," "high pollution advisory," "integrated pest management," "night tilling," "organic farming practices," "precision farming," and "transgenic crops." The definitions for "commercial farm" and "regulated agricultural activity" were amended to include Area A.

The agricultural BMP committee also amended AAC R18-2-611. Section C of AAC R18-2-611 was amended to require commercial farmers to implement two BMPs each from the categories of tillage and harvest, noncropland, and cropland. The following additional BMPs were added to the tillage and harvest category in Section E of AAC R18-2-611: green chop, integrated pest management, cessation of night tilling, precision farming, and transgenic crops. The cropland category in Section G was augmented with the following additional options: integrated pest management and precision farming.

c. Evaluation of Amendments to ARS 49-457 and Revisions to the General Permit Rule

As stated above, in reviewing a statute, regulation, or rule for SIP approval, EPA looks to ensure that the provision is enforceable as required by CAA section 110(a), is consistent with all applicable EPA guidance, and does not relax existing

SIP requirements as required by CAA sections 110(1) and 193. ARS 49-457 and the general permit rule generally meet the applicable requirements and guidance. We are proposing to approve amended ARS 49-457 because it strengthens the SIP by requiring an increase in the number of required BMPs and expanding the geographical scope of the agricultural BMP program. With regard to the general permit rule, we are proposing a limited approval and limited disapproval and we discuss the bases for that proposal below.

As stated above, we approved the general permit rule as meeting the CAA requirements for BACM in 2002. Since then, several air pollution control agencies in California, including the San Joaquin Valley Unified Air Pollution Control District (SJVAPCD) and the Imperial County Air Pollution Control District (ICAPCD), have adopted analogous rules for controlling PM-10 emissions from agricultural sources. The relevant State and local rules in Arizona, California and Nevada are summarized in our recent action on ICAPCD's Rule 806. 75 FR 39366, 39383 (July 8, 2010).

Since the adoption of controls for agricultural sources in the Maricopa area, other State and local agencies which have adopted such controls, as well as EPA, have acquired additional expertise about how to control emissions from these sources and

implement regulations for them. As a result, we no longer believe that the requirements in the general permit rule that we approved in 2002 for the Maricopa area fully meet CAA requirements.

AAC R18-2-611 Sections E, F and G list BMPs intended to control emissions from tillage and harvest, noncropland and cropland, and the BMPs on these lists are defined in AAC R18-2-610. However, as discussed below, the definitions in AAC R18-2-610 are overly broad. Moreover, there is no mechanism in the rule to provide sufficient specificity to ensure a BACM level of control.<sup>15</sup>

As an example of the breadth of the BMPs, one of the BMPs in AAC R18-2-611 Section E, the tillage and harvest category, is "equipment modification." This term is defined in AAC R18-2-610 Section 18 as "modifying agricultural equipment to prevent or reduce particulate matter generation from cropland." The types

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<sup>15</sup> For example, SJVAPCD's Rule 4550 has an application submittal and approval process. Great Basin Unified Air Pollution Control District's (GBUAPCD) Rule 502 has a similar application submittal and approval process. SJVAPCD's and GBUAPCD's application forms require sources to select conservation management practices (CMPs), the analogue to Arizona's BMPs, and to describe the specifics of the practices chosen. Such an application submittal and approval process provides a mechanism to ensure that controls are implemented at a BACM level.

of equipment modification are not specified in the rule, and according to the Handbook, examples of this practice include using shields to redirect the fan exhaust of the equipment or using spray bars that emit a mist to knock down PM-10. Handbook, p. 10. Because most of the PM-10 generated during active agricultural operations is due to disturbance from parts of agricultural equipment that come into direct contact with the soil, we expect that using appropriately designed spray bars would be far more effective at reducing PM-10 than redirecting a machine's fan exhaust. However, there is no provision in the general permit rule that requires a source or regulatory agency to evaluate whether the more effective version of this BMP is economically and technologically feasible. Moreover, while AAC R18-2-611 Section I requires that a farmer record that he has selected the "equipment modification" BMP, it does not require the farmer to record what type of equipment modification he will be implementing. Hence, neither ADEQ nor the public can verify whether what is being implemented is a best available control measure.

An example from AAC R18-2-611 Section F, the category for noncropland, is the "watering" BMP. AAC R18-2-610 Section 52 defines watering as "applying water to noncropland." The level of control achieved would depend on the amount of water that was

applied, the frequency with which it was applied, as well as the size and conditions of the area to which it was applied.

However, the rule does not specify the frequency or amount of water application or otherwise ensure that watering under this measure is effective. Moreover, the definition for "noncropland" in Section 31 of AAC R18-2-611 states that it "includes a private farm road, ditch, ditch bank, equipment yard, storage yard, or well head." It is not clear which of these areas a farmer would need to control upon selecting the "watering" BMP. As written, the rule allows regulated sources to implement the "watering" BMP in a manner that may not be as effective as best available controls. Furthermore, while AAC R18-2-611 Section I requires that a farmer record that he has selected the "watering" BMP, it does not require the farmer to record how he will be implementing this BMP. Hence, neither ADEQ nor the public can verify whether the BMP that is being implemented is in fact a best available control measure.

An example from AAC R18-2-611 Section G, the category for cropland, is the "artificial wind barrier" BMP. AAC R18-2-610 Section 4 defines "artificial wind barrier" as "a physical barrier to the wind." The control effectiveness of the barrier will depend on what the barrier is constructed of, the size of the barrier, as well as the placement of the barrier. In fact,

the Handbook suggests that certain materials (e.g., board fences, burlap fences, crate walls, and bales of hay) be used, notes that the distance of 10 times the barrier height is considered the protected area downwind of a barrier, and states that the barrier should be aligned across the prevailing wind direction. Handbook, p. 20. However, the general permit rule does not specify any parameters that need to be met for the implementation of the "artificial wind barrier" BMP. Hence a source can construct a barrier that is not a best available control and still be in compliance with the general permit rule.

The absence of sufficiently defined requirements makes it difficult for regulated parties to understand and ensure compliance with the requirements, and makes it difficult for ADEQ or others to verify compliance with the general permit rule. The general permit rule needs to be revised to ensure that the BMPs are enforceable as required by CAA section 110(a) and are implemented at a BACM level as required by section 189(b)(1)(B).

#### 4. Summary of Proposed Action on Measures in 189(d) Plan

EPA believes the statutory provisions associated with the 189(d) plan measures in table 4 in section III.B.2 above are consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. Therefore, we are proposing

to fully approve under CAA section 110(k)(3) the following Arizona statutory provisions, as submitted with the 189(d) plan:

ARS 9-500.04

ARS 9-500.27

ARS 11-877

ARS 28-6705

ARS 49-457

ARS 49-457.01

ARS 49-457.02

ARS 49-457.03

ARS 49-457.04

ARS 49-474.01

ARS 49-474.05

ARS 49-501

EPA is also proposing pursuant to CAA section 110(k)(3) to approve the "Agricultural Best Management Practices Guidance Booklet and Pocket Guide" as submitted on May 6, 2010.

EPA is also proposing pursuant to CAA section 110(k)(3) a limited approval and limited disapproval of AAC R18-2-610 and AAC R18-2-611, as submitted in the 189(d) plan. We are proposing a limited approval because AAC R18-2-610 and AAC R18-2-611 strengthen the SIP. We are proposing a limited disapproval because the general permit rule does not meet the enforceability requirements of CAA section 110(a) and no longer ensures that

controls for agricultural sources in the Maricopa area are implemented at a BACM level as required by section 189(b)(1)(B).

### **C. Attainment Demonstration**

CAA section 189(d) requires the submittal of plan revisions that provide for expeditious attainment of the PM-10 NAAQS. The attainment deadline applicable to an area that misses the serious area attainment date is as soon as practicable, but no later than five years from the publication date of the notice of a nonattainment finding unless extended by EPA as meeting certain specified requirements. CAA section 179(d)(3). Because, as stated previously, EPA published the nonattainment finding for the Maricopa area on June 6, 2007 (72 FR 31183), the attainment deadline for the area is as expeditiously as practicable but no later than June 6, 2012.

The 189(d) plan projects through a modeled attainment demonstration that the Maricopa area will attain the PM-10 standard by December 31, 2010. 189(d) plan, chapter 8. According to the plan, modeling was conducted for the two areas, the Salt River area and the Higley monitor, that have the mix and density of sources that caused the highest 24-hour PM-10 monitor readings in the Maricopa area from 2004 through 2006. The Salt River area includes the three monitors (West 43<sup>rd</sup> Avenue, Durango Complex and Bethune Elementary) that recorded

violations during those years. The Higley monitor did not violate the PM-10 standard for that period but had one exceedance in 2004 and one in 2006 and the surrounding area has a different mix of sources than the Salt River area. The plan also provides a modeled attainment demonstration for the remainder of the nonattainment area. AERMOD was used for the attainment demonstration for the Salt River area. Attainment for the Higley monitor area and the remainder of the nonattainment area was shown using a proportional rollback approach.

AERMOD is an EPA-approved model and was appropriately used in the 189(d) plan. The proportional rollback approach was also appropriate because of the lack of good models for PM-10 on large geographic scales. However, EPA cannot approve an attainment demonstration for PM-10 nonattainment areas based on modeled projections of attainment if actual ambient air quality monitoring data show that the area cannot attain by the projected date. Under 40 CFR 50.6(a), the 24-hour PM-10 standard is attained when the expected number of exceedances per year at each monitoring site is less than or equal to one. The number of expected exceedances at a site is determined by recording the number of exceedances in each calendar year and then averaging them over the past 3 calendar years. 40 CFR part 50, appendix K. Thus, in order for the Maricopa area to attain the standard by

December 31, 2010, there can be no more than one exceedance at any one monitor in the nonattainment area in calendar years 2008, 2009 and 2010.

There were 11 recorded exceedances of the PM-10 standard in 2008 in the Maricopa area. Five of these exceedances were recorded at the West 43<sup>rd</sup> Avenue monitor, two at the Durango Complex monitor, two at the South Phoenix monitor, and two at the Coyote Lakes monitor. In 2009, there were 22 exceedances recorded in the Maricopa Area. Seven of these exceedances were recorded at the West 43<sup>rd</sup> Avenue monitor, three at the Durango Complex monitor, three at the South Phoenix monitor, two at the Higley monitor, two at the West Chandler monitor, one at the West Phoenix monitor, one at the Glendale monitor, one at Greenwood monitor, one at the Dysart monitor, and one at the Bethune Elementary School monitor.<sup>16</sup>

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<sup>16</sup> "USEPA Quick Look Report for Maricopa County (01/01/2008 - 12/31/2010) Air Quality System database, run date: August 26, 2010" (AQS 2008-2010 Quick Look Report). The Air Quality System Identifier numbers for the monitors referenced in this section are as follows: West 43rd Avenue (04-013-4009), Durango Complex (04-013-9812), South Phoenix (04-013-4003), Coyote Lakes (04-013-4014), Higley (04-013-4006), West Chandler (04-013-4004), West Phoenix (04-013-0019), Glendale (04-013-2001), Greenwood (04-013-3010), Dysart (04-013-4010), Bethune Elementary School (04-013-8006).

Of the eleven 2008 exceedances, ten were flagged by the State as due to exceptional events under EPA's Exceptional Events Rule (EER)<sup>17</sup> which allows the Agency to exclude air quality monitoring data from regulatory determinations related to exceedances or violations of the NAAQS if the requirements of the EER are met. All of the 2009 exceedances were flagged as exceptional events under the EER.<sup>18</sup>

Under the EER, EPA may exclude monitored exceedances of the NAAQS from regulatory determinations if a state adequately demonstrates that an exceptional event caused the exceedances. 40 CFR 50.14(a). Before EPA will exclude data from these regulatory determinations, the state must flag the data in EPA's Air Quality System (AQS) database and, after notice and an opportunity for public comment, submit a demonstration to justify the exclusion. After considering the weight of evidence provided in the demonstration, EPA will decide whether or not to concur on each flag.

EPA has evaluated four of the 2008 exceedances recorded at the West 43<sup>rd</sup> Avenue monitor in south-central Phoenix that the

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<sup>17</sup> See "Treatment of Data Influenced by Exceptional Events," 72 FR 13560 (March 22, 2007). The EER is codified at 40 CFR 50.1 and 50.14. For the state flagging requirements, see 40 CFR 50.14(c)(2).

<sup>18</sup> AQS 2008-2010 Quick Look Report.

State claims to be due to exceptional events.<sup>19</sup> The exceedances were recorded on March 14, April 30, May 21, and June 4. On May 21, 2010 EPA determined that the events do not meet the requirements of the EER and therefore do not qualify as exceptional events for regulatory purposes. Letter from Jared Blumenfeld, EPA, to Benjamin H. Grumbles, ADEQ, re: PM<sub>10</sub> National Ambient Air Quality Standard in Phoenix; Request for Concurrence for Treatment as "Exceptional Events," May 21, 2010, with enclosures. As a result, EPA is not excluding the exceedances recorded on these dates from regulatory determinations regarding NAAQS exceedances in the Maricopa area.

Under 40 CFR part 50, appendix K, because there have been four exceedances in 2008 at the West 43<sup>rd</sup> Avenue monitor, the area cannot attain the standard by December 31, 2010 as projected in the 189(d) plan. Therefore, EPA is proposing to disapprove under CAA section 110(k)(3) the attainment demonstration in the plan as not meeting the requirements of sections 189(d) and 179(d)(3).

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<sup>19</sup> EPA has not evaluated the remaining exceptional event claims for 2008 or those for 2009. As discussed below, such an evaluation was not necessary for us to determine that the Maricopa area cannot attain the PM-10 standard by December 31, 2010.

Finally, we note here, as we address in more detail in section III.A above, that most of the emission reductions relied on in the 189(d) plan are projected to be achieved by increased compliance with MCAQD Rules 310, 310.01 and 316. This is the case for the attainment demonstration, as well as for the 5% and RFP demonstrations discussed in sections III.D and III.F below. The 189(d) plan provides little or no support for the emission reductions attributed to these increased compliance measures. See, e.g., Measure #8 (Conduct Nighttime and Weekend Inspections) which, with no explanation, estimates that compliance with MCAQD Rules 310 and 316 will increase by 4 percent in 2008, 6 percent in 2009 and 8 percent in 2010. 189(d) plan TSD, pp. III-4 through III-6. We recognize that calculating accurate emission reduction estimates for increased compliance measures is challenging. It is, however, important for such estimates to have a technical basis, especially when such measures are expected to achieve the majority of the emission reductions in a SIP. One way to begin to address this issue would be to initiate an ongoing process to verify that compliance rates are increasing as expected and that, as a result, the projected emission reductions are actually being realized.

#### **D. 5% Requirement**

The demonstration addressing the 5% requirement of CAA section 189(d) is presented in chapter 7 of the 189(d) plan. Chapter 7 shows the annual 5% emission reductions of PM-10<sup>20</sup> for 2008 through 2010, the projected attainment year. The plan quantifies emission reductions attributable to 25 of the 53 measures in the plan to meet the annual 5% targets. Table 7-2 in the 189(d) plan shows the base case PM-10 emissions from the 2005 Periodic Inventory discussed in section III.A above. Table 7-3 presents the controlled emissions for 2007 through 2010, i.e., the emissions after the emission reductions from the 25 quantified measures have been applied. The plan explains that the annual target is obtained by multiplying the controlled 2007 emissions in table 7-3 by 5% and concludes that the 5% targets are met in 2008, 2009 and 2010 with a surplus margin of benefit in each year. 189(d) plan, table 7-4, p. 7-19.

EPA believes the methodology for determining the 5% targets for the years 2008, 2009 and 2010 is generally appropriate. However, because we have determined that the 2005 Periodic Inventory on which the State based these calculations is inaccurate, the emission reduction targets themselves are also

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<sup>20</sup> While the 5% requirement of section 189(d) can be met by emission reductions of PM-10 or PM-10 precursors, the 189(d) plan relies on PM-10 reductions. This reliance is consistent with the nature of the particulate matter problem in the Maricopa area. See footnote 5.

necessarily inaccurate. Because the 189(d) plan projects emission reductions surplus to the 5% targets in each year, it is theoretically possible that creditable reductions from the 25 quantified measures would still achieve the 5% reductions when recalculated from an accurate base year inventory. However that could only be determined by an EPA review of a revised plan based on adjusted calculations.

Furthermore, the language of section 189(d) compels us to conclude that the 5% demonstration in the 189(d) plan does not meet that section's requirement. CAA section 189(d) requires that the plan provide for annual reductions of PM-10 or PM-10 precursors of not less than 5% each year from the date of submission of the plan *until attainment*. The 189(d) plan submitted by Arizona does not provide for reductions after 2010 because it projects attainment of the PM-10 standard by the end of that year. As discussed in section III.C above, the Maricopa area cannot attain by December 31, 2010.

For the above reasons, EPA is proposing to disapprove under section 110(k)(3) the demonstration of the 5% annual emission reductions in the 189(d) plan as not meeting the 5% requirement in CAA section 189(d).

#### **E. Reasonable Further Progress and Quantitative Milestones**

Under section 189(c)(1), the 189(d) plan must demonstrate RFP. We have explained in guidance that for those areas, such as

the Maricopa area, where "the nonattainment problem is attributed to area type sources (e.g., fugitive dust, residential wood combustion, etc.), RFP should be met by showing annual incremental emission reductions sufficient generally to maintain linear progress towards attainment. Total PM-10 emissions should not remain constant or increase from 1 year to the next in such an area." Further, we stated that "in reviewing the SIP, EPA will determine whether the annual incremental emission reductions to be achieved are reasonable in light of the statutory objective to ensure timely attainment of the PM-10 NAAQS." Addendum at 42015-42016.

PM-10 nonattainment SIPs are required by section 189(c) to contain quantitative milestones to be achieved every three years and which are consistent with RFP for the area. These quantitative milestones should consist of elements which allow progress to be quantified or measured. Specifically, states should identify and submit quantitative milestones providing for the amount of emission reductions adequate to achieve the NAAQS by the applicable attainment date. *Id.* at 42016.

The 189(d) plan provides a graph showing a RFP line representing total emissions in the Maricopa area after emission reduction credit is applied for the 25 measures described in chapter 6 of the plan which are quantified for the purpose of meeting the section 189(c) requirements. 189(d) plan, figure 8-

25; pp. 8-65 through 8-66. The graph shows an annual downward linear trend in emissions from 2007 through 2010, the modeled attainment date in the plan. The plan explains that the appropriate milestone year is 2010. *Id.*

The statutory purpose of RFP is to "ensure attainment" and the quantitative milestones are "to be achieved until the area is redesignated to attainment" under CAA sections 171(1) and 189(c) respectively. As discussed in section III.C above, we are proposing to disapprove the attainment demonstration in the 189(d) plan because, as a result of exceedances of the PM-10 standard recorded at the West 43<sup>rd</sup> Avenue monitor in 2008, the area cannot attain the standard by 2010 as projected in the plan. As a result, the RFP and milestone demonstrations in the plan do not achieve the statutory purposes of sections 171(1) and 189(c). We are therefore proposing to disapprove these demonstrations under CAA section 110(k)(3) as not meeting the requirements of section 189(c).

#### **F. Contingency Measures**

CAA section 172(c)(9) requires that the 189(d) plan provide for the implementation of specific measures to be undertaken if the area fails to make RFP or to attain the PM-10 standard as projected in the plan. That section further requires that such measures are to take effect in any such case without further action by the state or EPA. The CAA does not specify how many

contingency measures are necessary nor does it specify the level of emission reductions they must produce.

In guidance we have explained that the purpose of contingency measures is to ensure that additional emission reductions beyond those relied on in the attainment and RFP demonstrations are available if there is a failure to make RFP or to attain by the applicable statutory date. Addendum at 42014-42015. These additional emission reductions will ensure continued progress towards attainment while the SIP is being revised to fully correct the failure. To that end, we recommend that contingency measures for PM-10 nonattainment areas provide emission reductions equivalent to one year's average increment of RFP. *Id.*

In interpreting the requirement that the contingency measures must "take effect without further action by the State or the Administrator," the General Preamble provides the following general guidance: "[s]tates must show that their contingency measures can be implemented with minimal further action on their part and with no additional rulemaking actions such as public hearings or legislative review." General Preamble at 13512.<sup>21</sup> Further, "[i]n general, EPA will expect all actions

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<sup>21</sup> EPA elaborated on its interpretation of this language in section 172(c)(9) in the General Preamble in the context of the ozone standard: "The EPA recognizes that certain actions, such as notification of sources, modification of permits, etc., would

needed to affect full implementation of the measures to occur within 60 days after EPA notifies the State of its failure." *Id.* The Addendum at 42015 reiterates this interpretation.

We have also interpreted section 172(c)(9) to allow states to implement contingency measures before they are triggered by a failure of RFP or attainment as long as those measures are intended to achieve reductions over and beyond those relied on in the attainment and RFP demonstrations. *Id.*, and see *LEAN v. EPA*, 382 F.3d 575 (5th Cir. 2004).

The 189(d) plan addresses the section 172(c)(9) contingency measure requirement in chapter 8, pp. 8-65 through 8-74. Of the 53 measures in the plan, nine are designated and quantified as contingency measures: Measures #1, #5, #19, #24, #26, #27, #43, #50 and a measure identified as "multiple" which consists of Measures #14, #15 and #17. Chapter 8 of the 189(d) plan includes a discussion of each of these measures along with associated emission reductions for each of the years 2008, 2009 and 2010. Additional information on the emission reductions claimed is in the 189(d) plan TSD, chapter IV. The measures are also individually discussed in chapter 6 of the 189(d) plan.

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probably be needed before a measure could be implemented effectively." General Preamble at 13512.

In calculating the target emission reductions that the contingency measures must meet, the 189(d) plan cites EPA's recommendation that they provide reductions equivalent to one year's average increment of RFP. The plan subtracts the total controlled emissions in 2010 from the total controlled emissions in 2007 and divides this sum by three years to produce an annual average of 4,869 tpy as the target for the contingency measures to meet in each of the years 2008, 2009 and 2010. 189(d) plan, p. 8-67. Table 8-14 in the 189(d) plan lists the projected emission reductions for the nine contingency measures for each of these years and shows emission reductions in excess of the target for each of them. Table 5 below shows the contingency measures in the plan identified by number and reproduces the corresponding projected PM-10 reductions as depicted in table 8-14 in the plan:

Table 5 - Summary of PM-10 Emissions Reductions for Contingency Measures

| Contingency Measures |  | PM-10 Reductions<br>[tons/year] |         |         |
|----------------------|--|---------------------------------|---------|---------|
| #                    | Measure Title  | 2008                            | 2009    | 2010    |
| 1                    | Public education and outreach program                        | 47.6                            | 47.5    | 48.5    |
| 5                    | Certification program for dust free developments             | 28.9                            | 21.5    | 17.6    |
| 19                   | Reduce off-road vehicle use                                  | 140.3                           | 174.6   | 179.1   |
| 24                   | Sweep streets with certified PM-10 certified street sweepers | 1,027.7                         | 1,563.1 | 2,129.2 |
| 26                   | Pave or stabilize existing public dirt roads and alleys      | 1,488.0                         | 2,313.3 | 3,723.6 |

|  |  |                |                |                |
|--|--|----------------|----------------|----------------|
| 27   | Limit speeds to 15 mph on high traffic dirt roads          | 390.4          | 390.2          | 390.2          |
| 43   | Additional \$5M in FY07 MAG TIP for paving roads/shoulders | 205.2          | 820.9          | 820.9          |
| 50   | Agricultural Best Management Practices                     | 637.6          | 608.0          | 579.7          |
| Multiple   | Reduce trackout onto paved roads                           | 1,256.9        | 1,273.4        | 1,270.0        |
| <b>Total for All Quantified Contingency Measures</b> |  | <b>5,222.5</b> | <b>7,212.6</b> | <b>9,158.9</b> |
| <b>Contingency Measure Reduction Target</b>          |  | <b>4,869</b>   | <b>4,869</b>   | <b>4,869</b>   |

As stated above, CAA section 172(c)(9) requires that the plan provide for the implementation of contingency measures to be undertaken if the area fails to attain the PM-10 standard by the applicable attainment date. The Maricopa area cannot attain the PM-10 standard by the projected date in the 189(d) plan because of monitored exceedances of the NAAQS in 2008.<sup>22</sup> As a result, any emission reductions from contingency measures in the 189(d) plan that are intended to take effect upon an EPA finding that the area failed to attain the standard cannot currently be determined to be surplus to the attainment demonstration as required by section 172(c)(9). Therefore we are proposing to disapprove the attainment contingency measures under CAA section 110(k)(3) as not meeting the requirements of section 172(c)(9).

<sup>22</sup> Note that because the modeled attainment demonstration projected attainment by the end of 2010, the 189(d) plan does not address the outside applicable statutory deadline under section 179(d)(3), June 6, 2012. See section III.B above.

As also stated above, contingency measures are required to be implemented upon a failure of the Maricopa area to meet RFP. The 189(d) plan bases the emission reduction target for these measures on reductions between 2007 and 2010 calculated from the 2005 Periodic Inventory that we have determined to be inaccurate. See section III.A above. Thus the emission reduction target for the RFP contingency measures is necessarily also inaccurate.

In addition to the inaccurate emission reduction target for the RFP contingency measures, many of the measures themselves do not meet the requirements of section 172(c)(9). These deficiencies generally fall into three categories: 1) measures in the form of commitments in resolutions adopted by local or State governmental entities to take legislative or other substantial future action; 2) commitments in such resolutions for which implementation is conditioned on good faith efforts and funding availability and are therefore unenforceable; and 3) measures for which no basis is provided for the emission reductions claimed. While we illustrate these individual deficiencies below by reference to one or more of the 189(d) plan's designated contingency measures, it is important to note that many of the measures are deficient for multiple reasons.

1. Some of the commitments by local governments or State agencies to implement measures that are intended to achieve the

required emission reductions in 2008, 2009 and 2010 do not meet the requirement of section 172(c)(9) that such measures are to take effect without further regulatory or legislative action.

For example, Measure #19 is intended to reduce off-road vehicle use in areas with high off-road vehicle activity. For this measure, the 189(d) plan assigns emission reduction credit to the requirement in ARS 9-500.27.A, as submitted in the 189(d) plan, that cities and towns in the Maricopa area adopt, implement and enforce ordinances no later than March 31, 2008 prohibiting the use of such vehicles on unpaved surfaces closed by the landowner. 189(d) plan, p. 8-69; 189(d) plan TSD, p. IV-3. The 189(d) plan includes a number of resolutions adopted by cities and towns committing to adopt such ordinances to address the vehicle use prohibition in the statute. However, because the 189(d) plan was submitted at the end of 2007, the contingency measure, i.e., the vehicle use prohibition, could not be fully implemented throughout the Maricopa area without additional future legislative action on the part of a number of governmental entities.<sup>23</sup>

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<sup>23</sup> In some cases, e.g., the City of Goodyear, ordinances implementing the commitments in resolutions were also submitted with the 189(d) plan. In others, however, e.g., the City of Apache Junction and the Town of Buckeye, the submitted resolutions include a schedule for the future adoption and implementation of ordinances. ADEQ forwarded these ordinances to EPA in 2008 as supplemental information, but not as SIP

Furthermore, not only do some of the contingency measure commitments fail to meet the requirement of section 172(c)(9) that such measures are to be implemented with minimal further action, but because they depend on future actions that may or may not occur, it is also impossible to accurately quantify emission reductions from them at the time of plan development and adoption. Thus it would not be possible to determine at the time of plan development and adoption whether in the aggregate the measures designated as contingency would meet or approximate the target of one year's average increment of RFP. This is the case with Measure #19, mentioned above. For that measure, the 189(d) plan claims emission reduction credit assuming that all jurisdictions subject to the 2008 statutory requirement will comply. 189(d) plan TSD, p. IV-3. However, there is no way to determine at the time of the 189(d) plan adoption which, if any, of the multiple jurisdictions would in fact implement such requirements by the statutory deadline.

Another example of this quantification issue is Measure #26 regarding the paving or stabilization of existing public dirt roads and alleys. 189(d) plan, pp. 6-103 and 8-72; 189(d) plan TSD, p. IV-9. This measure includes commitments in resolutions

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submittals. See footnote 1. This distinction is significant because here the ordinances are the ultimate regulatory vehicle.

adopted by 11 cities and towns to pave roads from 2007 through 2010 and claims emission reduction credit assuming full compliance. See also Measure #5 which quantifies as a contingency measure a requirement in ARS 49-457.02 that ADEQ establish a dust-free development program by September 19, 2007.<sup>24</sup> 189(d) plan TSD, p. 8-69. However, a 2010 report prepared by MAG addressing the 2008 implementation status of the 53 measures in the 189(d) plan states that "[t]his measure was not implemented because ADEQ delayed the certification program indefinitely due to budgetary constraints." Letter from Lindy Bauer, MAG to Jared Blumenfeld, EPA, March 9, 2010, enclosing "2008 Implementation Status of Committed Measures in the MAG 2007 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Areas," February 2010, MAG (2008 Status Report), table 1, p. 4.

See also Measure #24 which includes, among others, a commitment by the Arizona Department of Transportation (ADOT) to require in the contract awarded in January 2008 that contractors use PM-10 certified street sweepers on all State highways in the Maricopa area. 189(d) plan, p. 8-70; 189(d) plan TSD, p. IV-5; ADOT "Resolution to Implement Measures in the MAG 2007 Five

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<sup>24</sup> While the 189(d) plan refers to a deadline in ARS 49-457.02 for the establishment of this program, that statutory provision, as submitted with the 189(d) plan, does not contain a deadline.

Percent Plan for PM-10 for the Maricopa County Nonattainment Area." 189(d) plan, chapter 10, "Commitments for Implementation," volume two. The 2008, 2009 and 2010 emission reductions claimed for Measure #24 assume implementation of the ADOT component of the measure. However, the 2008 Status Report states that "ADOT's current contract...does not require the use of PM-10 certified street sweepers...." 2008 Status Report, p. 15.

2. In addition to the above issue regarding commitments to take future action, a number of the commitments quantified for credit in the 189(d) plan as contingency measures are in the form of city, town and county resolutions that specifically recognize that the funding or schedules for such actions may be modified depending on the availability of funding or other contingencies. These commitments are also qualified by the statement that the agency making the commitment "agrees to proceed with a good faith effort to implement the identified measures."<sup>25</sup> See, e.g., Measure #1 regarding public education and outreach, 189(d) plan, pp. 6-2 through 6-20 and related resolutions in chapter 10, "Commitments for Implementation," volumes one and two. See also *id.*, p. 8-67. See also Measure #26

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<sup>25</sup> While EPA has approved the commitments with this language into the Arizona SIP in past plan actions as strengthening the SIP, we did not approve specific emission reduction credits for them.

regarding the paving or stabilization of existing public dirt roads and alleys, *id.*, pp. 6-103 and 8-72; 189(d) plan TSD, p. IV-7.

The language in the above commitments regarding good faith efforts and funding availability makes the measures that are intended to achieve the required emission reductions virtually impossible to enforce. Section 110(a)(2) of the Act requires that SIPs include "enforceable emission limitations and other control measures" and "a program to provide for the enforcement of the measures" in the plan. As we have explained, "[m]easures are enforceable when they are duly adopted, and specify clear, unambiguous, and measurable requirements. Court decisions made clear that regulations must be enforceable in practice. A regulatory limit is not enforceable if, for example, it is impractical to determine compliance with the published limit." General Preamble at 13568. In the case of most of the contingency measure commitments in the 189(d) plan, the implementation of the underlying measure cannot be ensured because the entity making the commitment can avoid having to implement it by asserting that it made good faith efforts, but failed to do so and/or that implementation did not occur due to insufficient funds.

3. The 189(d) plan provides no methodology or support for the PM-10 emission reductions credited to a number of the contingency measures. For example, the group of Measures #14, #15 and #17 designated in the plan as "multiple" is intended to reduce trackout onto paved roads. 189(d) plan, p. 8-74. The 189(d) plan TSD, p. IV-13, states that "[t]he reduction in trackout emissions in the PM-10 nonattainment area due to the impact of these three committed measures is expected to be at least 15 percent in 2008-2010" and credits these measures with the following emission reductions: 1256.9 tpy in 2008, 1273.4 tpy in 2009 and 1270 tpy in 2010. No information is provided in the 189(d) plan regarding how the 15 percent was determined. Furthermore, the reductions from each measure are not disaggregated so it is impossible to determine the source of the claimed emission reductions or how they were calculated for each measure.

Similarly, for Measure #1, the plan identifies annual emission reductions from seven source categories resulting from public education and outreach in various local jurisdictions but does not explain how these reductions were calculated. 189(d) plan TSD, p. IV-1. See also Measure #5 which provides annual emission reduction credits without any supporting information. The 189(d) plan TSD merely states: "[d]ue to the implementation

of this program [certification program for dust-free developments to serve as an industry standard], the construction emissions are expected to decline by 0.10% in 2008-2010." 189(d) plan TSD, p. IV-2.

For the reasons discussed above we are proposing to disapprove under CAA section 110(k)(3) the contingency measures in the 189(d) plan as not meeting the requirements of section 172(c)(9).

#### G. Transportation Conformity and Motor Vehicle Emissions Budgets

Transportation conformity is required by CAA section 176(c). Our conformity rule (40 CFR part 93, subpart A) requires that transportation plans, programs, and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do so. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS or the timely achievement of interim milestones.

The 189(d) plan specifies the maximum transportation-related PM-10 emissions allowed in the proposed attainment year, 2010, i.e., the MVEB. 189(d) plan, p. 8-75. This budget includes emissions from road construction, vehicle exhaust, tire and brake wear, dust generated from unpaved roads and re-entrained

dust from vehicles traveling on paved roads. This budget is based on the 2010 emissions inventory that was projected from the 2005 Periodic Inventory and reflects emission reductions that the plan expects will result from the control measures. The budget is consistent with the attainment, 5% and RFP demonstrations in the 189(d) plan. However, as explained elsewhere in this proposed rule, the area cannot attain by the end of 2010 as projected in the plan and we are, in addition to the attainment demonstration, proposing to disapprove the plan's emissions inventories, 5% and RFP demonstrations. Therefore we must also propose to disapprove the MVEB.

In order for us to find the emission level or "budget" in the 189(d) plan adequate and subsequently approvable, the plan must meet the conformity adequacy provisions of 40 CFR 93.118(e)(4) and (5). For more information on the transportation conformity requirement and applicable policies on MVEBs, please visit our transportation conformity Web site at:

<http://www.epa.gov/otag/stateresources/transconf/index.htm>. The 189(d) plan includes the PM-10 MVEB shown in table 6 below.

Table 6 - 189(d) Plan, Motor Vehicle Emissions Budget  
(Annual-average emissions in metric tons per day (mtpd))

| Year | MVEB  |
|------|-------|
| 2010 | 103.3 |

On March 13, 2008, we announced receipt of the 189(d) plan on the Internet and requested public comment on the adequacy of the motor vehicle emissions budget by April 14, 2008. We did not receive any comments during the comment period. During that time we reviewed the MVEB and preliminarily determined that it met the adequacy criteria in 40 CFR 93.118(e)(4) and (5). We sent a letter to ADEQ and MAG on May 30, 2008 stating that the 2010 motor vehicle PM-10 emissions budget for the Maricopa area in the submitted 189(d) plan was adequate. Our finding was published in the Federal Register on June 16, 2008 (73 FR 34013), effective on July 1, 2008.

As explained in the June 16, 2008 Federal Register notice, an adequacy review is separate from EPA's completeness and full plan review, and should not be used to prejudge EPA's ultimate approval action for the SIP. Even if we find a budget adequate, the SIP and the associated budget can later be disapproved for reasons beyond those in 40 CFR 93.118(e).

Because we are proposing to disapprove the emission inventories, and the attainment 5% and RFP demonstrations, we are also now proposing to disapprove the 189(d) plan's 2010 PM-10 MVEB. Under 40 CFR 93.118(e)(4)(iv), we review a submitted plan to determine whether the MVEB, when considered together with all other emissions sources, are consistent with applicable requirements for RFP, attainment, or maintenance (whichever is

relevant to a given SIP submission). Because we have now concluded that the area cannot attain by 2010 as projected in the 189(d) plan, the MVEB cannot be consistent with the attainment requirement. In addition, because we are proposing to disapprove the 5% and RFP demonstrations, the MVEB is not consistent with the applicable requirements to show 5% annual reductions and RFP. Given the overemphasis in the plan on reducing emissions from construction activities, it is quite possible that more reductions in onroad emissions will be required to meet the applicable requirements. Consequently, we find that the plan and related budget do not meet the requirements for adequacy and approval.

The consequences of plan disapproval on transportation conformity are explained in 40 CFR 93.120. First, if a plan is disapproved by EPA, a conformity "freeze" takes effect once the action becomes effective (usually 30 days after publication of the final action in the Federal Register). A conformity freeze means that only projects in the first four years of the most recent conforming Regional Transportation Plan (RTP) and Transportation Improvement Program (TIP) can proceed. See 40 CFR 93.120(a). During a freeze, no new RTPs, TIPs or RTP/TIP amendments can be found to conform. The conformity status of these plans would then lapse on the date that highway sanctions

as a result of the disapproval are imposed on the nonattainment area under section 179(b)(1) of the CAA. See 40 CFR 93.120(a)(1). Generally, highway sanctions are triggered 24 months after the effective date of the disapproval of a required SIP revision for a nonattainment area. During a conformity lapse, no new transportation plans, programs, or projects may be found to conform until another SIP revision fulfilling the same CAA requirements is submitted and conformity of this submission is determined.

If EPA were proposing to disapprove the plan for administrative reasons unrelated to the attainment, 5% and RFP demonstrations, EPA could issue the disapproval with a protective finding. See 40 CFR 93.120(a)(3). This would avoid the conformity freeze. Because this is not the case, EPA does not believe that a protective finding should be proposed in connection with our proposed disapproval action on the 189(d) plan. Therefore, a conformity freeze will be in place upon the effective date of any final disapproval of the 189(d) plan.

#### **H. Adequate Legal Authority and Resources**

Section 110(a)(2)(E)(i) of the Clean Air Act requires that implementation plans provide necessary assurances that the state (or the general purpose local government) will have adequate personnel, funding and authority under state law. Requirements for legal authority are further defined in 40 CFR part 51,

subpart L (section 51.230-232) and for resources in 40 CFR 51.280.

States and responsible local agencies must demonstrate that they have the legal authority to adopt and enforce provisions of the SIP and to obtain information necessary to determine compliance. SIPs must also describe the resources that are available or will be available to the state and local agencies to carry out the plan, both at the time of submittal and during the 5-year period following submittal. These requirements are addressed in chapter 10 of the 189(d) plan. We evaluate these requirements for the plan in general and for those measures for which we are proposing approval or limited approval.

MAG derives its authority to develop and adopt the 189(d) plan and other nonattainment area plans from ARS 49-406 and from a February 7, 1978 letter from the Governor of Arizona<sup>26</sup> designating MAG as responsible for those tasks. ADEQ is authorized to adopt and submit the 189(d) plan by ARS 49-404 and ARS 49-406.

We are proposing for full approval statutes that have been adopted by the Arizona legislature, signed by the Governor and

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<sup>26</sup> Letter Wesley Bolin, Governor of Arizona, to Douglas M. Costle, Administrator of EPA, February 7, 1978, found in the 189(d) plan, chapter 10, "Commitments for Implementation," Volume one, "Maricopa Association of Governments."

incorporated into the Arizona Revised Statutes. We are also proposing a limited approval of regulations authorized and mandated by Arizona statute. See section III.B above. Because the requirements in these statutes and regulations are directly imposed by State law, no further demonstration of legal authority to adopt emission standards and limitations is needed under CAA section 110(a)(2)(E)(i) and 40 CFR part 51, subpart L.

Section 51.230 of 40 CFR also requires that the State have the authority to "[e]nforce applicable laws, regulations, and standards, and seek injunctive relief." ARS 49-462, 49-463 and 49-464 provide the general authorities adequate to meet these requirements. We note that EPA, in undertaking enforcement actions under CAA section 113, is not constrained by provisions it approves into SIPs that circumscribe the enforcement authorities available to state and local governments.

Several of the State statutory provisions proposed for full approval and the regulations proposed for limited approval are direct mandates to the regulated community and require ADEQ to implement and enforce programs in whole or in part. See, e.g., ARS 49-457, 49-457.01, 49-457.03 and 49-457.04. There is no description in the 189(d) plan of the resources available to the State to implement and enforce these statutory and regulatory provisions. Thus it is not possible for EPA to ascertain whether

the State has adequate personnel and funding under CAA section 110(a)(2)(E)(i) and EPA's related regulations to carry out these State statutes.

Many of the Arizona statutory provisions proposed for approval are directives to local governmental entities to take action. For example, ARS 49-474.05 requires specified local jurisdictions to develop extensive dust control programs. Developing such programs will require resources and legal authority at the local level. However, we are not proposing approval of such programs at this time. This action is merely proposing approval of the statutory mandate to develop the program. Therefore, for these statutory provisions, a demonstration that adequate authority and resources are available is not required.

Section 110(a)(2)(E)(iii) requires SIPs to include necessary assurances that where a state has relied on a local or regional government, agency or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provision. We have previously found that Arizona law provides such assurances. 60 FR 18010, 18019 (April 10, 1995).

For the reasons discussed above, we propose to find that the requirements of section 110(a)(2)(E) and related regulations

have been met with respect to legal authority. However, we propose to find that the 189(d) plan does not demonstrate that ADEQ has adequate personnel and funding to implement the State statutes and regulations proposed for full or limited approval for which the State has implementation and enforcement responsibility and authority.

#### **IV. Summary of Proposed Actions**

EPA is proposing to approve in part and disapprove in part, the 189(d) plan for the Maricopa County (Phoenix) PM-10 nonattainment area as follows:

A. EPA is proposing to disapprove pursuant to CAA section 110(k)(3) the following elements of the "MAG 2007 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area:"

(1) The 2005 baseline emissions inventory and the projected emission inventories as not meeting the requirements of CAA sections 172(c)(3);

(2) the attainment demonstration as not meeting the requirements of CAA sections 189(d) and 179(d)(3);

(3) the 5% demonstration as not meeting the requirements of CAA sections 189(d);

(4) the reasonable further progress and milestone demonstrations as not meeting the requirements of CAA section 189(c);

(5) the contingency measures as not meeting the requirements of CAA sections 172(c)(9); and

(6) the 2010 MVEB as not meeting the requirements of CAA section 176(c) and 40 CFR 93.118(e)(4).

B. EPA is proposing a limited approval and disapproval of AAC R18-2-610 and AAC R18-2-611 as submitted in the "MAG 2007 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area" pursuant to CAA section 110(k)(3). EPA is proposing a limited approval because these regulations strengthen the SIP and a limited disapproval because they do not fully meet the requirements of CAA sections 110(a) and 189(b)(1)(B) for enforceable BACM for agricultural sources of PM-10 in the Maricopa area.

C. EPA is proposing to approve pursuant to CAA section 110(k)(3) the following sections of the Arizona Revised Statutes as submitted in the "MAG 2007 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area" as strengthening the SIP: ARS 9-500.04, ARS 9-500.27, ARS 11-877, ARS 28-6705, ARS

49-457, ARS 49-457.01, ARS 49-457.02, ARS 49-457.03, ARS 49-457.04, ARS 49-474.01, ARS 49-474.05, and ARS 49-501.

D. EPA is proposing to approve pursuant to CAA section 110(k)(3) the "Agricultural Best Management Practices Guidance Booklet and Pocket Guide" as submitted on May 6, 2010.

E. Effect of Finalizing the Proposed Disapproval Actions

If we finalize disapprovals of the emissions inventories, attainment demonstration, RFP and milestone demonstrations, 5% demonstration and contingency measures, the offset sanction in CAA section 179(b)(2) will be applied in the Maricopa area 18 months after the effective date of any final disapproval. The highway funding sanctions in CAA section 179(b)(1) will apply in the area 6 months after the offset sanction is imposed. Neither sanction will be imposed if Arizona submits and we approve prior to the implementation of the sanctions SIP revisions meeting the relevant requirements of the CAA. See 40 CFR 52.31 which sets forth in detail the sanctions consequences of a final disapproval.

If EPA takes final action on the 189(d) plan as proposed, Arizona will need to develop and submit a revised plan for the Maricopa area that again addresses applicable CAA requirements, including section 189(d). While EPA is proposing to approve

many of the measures relied on in the submitted 189(d) plan, additional emission reductions will be needed. In pursuing such reductions, we expect Arizona to investigate all potential additional controls for source categories in the Maricopa area that contribute to PM-10 exceedances. This investigation should include, but not be limited to, analysis of BACM controls in other geographic areas. We also note that CAA section 179(d)(2) provides EPA the authority to prescribe specific additional controls for areas, such as the Maricopa area, that have failed to attain the NAAQS.

If we finalize a limited disapproval of AAC R18-2-610 and 611, the offset sanction in CAA section 179(b)(2) will be applied in the Maricopa area 18 months after the effective date of the final limited disapproval. The highway funding sanctions in CAA section 179(b)(1) will apply in the area 6 months after the offset sanction is imposed. Neither sanction will be imposed if Arizona submits and we approve prior to the implementation of the sanctions a measure for the control of agricultural sources meeting the requirements of CAA sections 110(a) and 189(b)(1)(B).

In addition to the sanctions, CAA section 110(c)(1) provides that EPA must promulgate a Federal implementation plan addressing any full or limited disapproved elements of the plan, as set forth above, two years after the effective date of a

disapproval should we not be able to approve replacements submitted by the State.

Finally, if we take final action disapproving the 189(d) plan, a conformity freeze takes effect once the action becomes effective (usually 30 days after publication of the final action in the Federal Register). A conformity freeze means that only projects in the first four years of the most recent RTP and TIP can proceed. During a freeze, no new RTPs, TIPs or RTP/TIP amendments can be found to conform.

## **V. Statutory and Executive Order Reviews**

### **A. Executive Order 12866, Regulatory Planning and Review**

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

### **B. Paperwork Reduction Act**

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. Burden is defined at 5 CFR 1320.3(b).

### **C. Regulatory Flexibility Act**

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the

agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals or disapprovals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve or disapprove requirements that the State is already imposing. Therefore, because the proposed Federal SIP partial approval/partial disapproval and limited approval/limited disapproval actions do not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. Union Electric Co., v. U.S. EPA, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

#### D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22,

1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$ 100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the partial approval/partial disapproval and limited approval/limited disapproval actions proposed do not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve and disapprove pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive

Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely proposes to approve or

disapprove a State rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

EPA specifically solicits additional comment on this proposed rule from tribal officials.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April

23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because it approves a state rule implementing a Federal standard.

H. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population

Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies and activities on minority populations and low-income populations in the United States. The Executive Order has informed the development and implementation of EPA's environmental justice program and policies. Consistent with the Executive Order and the associated Presidential Memorandum, the Agency's environmental

justice policies promote environmental protection by focusing attention and Agency efforts on addressing the types of environmental harms and risks that are prevalent among minority, low-income and Tribal populations.

This action will not have disproportionately high and adverse human health or environmental effects on minority, low-income or Tribal populations because the partial approval/partial disapproval and limited approval/limited disapproval actions proposed increase the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population.

I. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new

regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

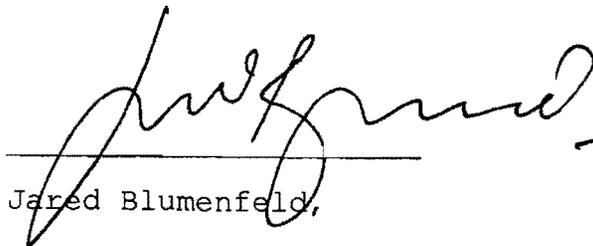
**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401 et seq.

September 3, 2010

Dated:



Jared Blumenfeld,  
Regional Administrator,  
Region IX.