



## Executive Director's Report

At a May 25, 2010, meeting, the Maricopa Association of Governments (MAG) region was stunned by the sudden announcement by the Environmental Protection Agency (EPA) that it had decided to disapprove the MAG Five Percent Plan for PM-10 for reducing dust pollution in the Valley. Our shock was that in December 2009, we pledged to EPA that we would go the extra mile to find out why a monitor at West 43rd Avenue was having high readings during high wind conditions. We had our staff and consultants drill down into the four high wind exceptional events being questioned by EPA. We found compelling information that the conditions in the riverbed and high winds were major contributors to the exceptional events. Additional study efforts have also been initiated. To our amazement, EPA continued along the course it outlined in December and announced the disapproval. We only needed EPA to agree with MAG on one exceptional event. They refused and instead made a decision that can cost this region millions in infrastructure and jobs.

The MAG region has worked diligently to address PM-10 pollution. Our Serious Area Plan for PM-10 contained 77 dust control measures and the Five Percent Plan contains an additional 53 aggressive measures that are currently being implemented. Our tracking report indicated that the cities and towns went over and above their commitments. It is clear that the plan has been working. In the past, PM-10 exceedances at the monitor occurred during stagnant conditions. But since implementation of the plan, no violations of the standard have occurred during stagnant conditions. In fact, there have been no exceedances of the standard to date in 2010, which is likely the result of a wet winter and spring and the implementation of the measures. We told EPA in our December meeting that it was imperative that we find out the unique circumstances surrounding the West 43rd Avenue monitor.

A very troubling part of the plan disapproval is that the EPA Region 9 Administrator acknowledged at the May 25th meeting that the EPA Exceptional Event Rule was flawed. Instead of accepting our technical analysis that the monitor readings were caused by high wind exceptional events, he noted that he had to enforce the flawed rule. It is a disservice to the citizens of this region that federal highway funds are put in jeopardy by EPA enforcing a flawed rule. The decision, if made final, will have significant implications for our region, including a potential freeze on major projects in our \$7 billion Transportation Improvement Program and the loss of federal highway funding.

This region's track record is clear in protecting the health of our residents with strict air quality measures. MAG, the Arizona Department of Environmental Quality

(ADEQ), and the Maricopa County Air Quality Department recognize the serious nature of the dust pollution (PM-10) problem and the health threat it poses to Valley residents. Our issue with EPA's finding is that it ignores scientific data provided by MAG and ADEQ that clearly demonstrate that the four violations in question at the West 43rd Avenue monitor were caused during high wind exceptional events. We live in a desert, the monitor is on a riverbank where the wind blows toward the monitor over a smooth terrain, and the soil is silty. Paving the riverbed is not an option!

At the May 25th meeting, we were prepared to discuss a project involving Phoenix, Maricopa County and the U.S. Army Corps of Engineers to restore the riverbed near the 43rd avenue monitor to its native habitat. We view this as a permanent long-term solution to stabilize the riverbed. We really were not given a chance to discuss this option. EPA had already made up its mind. In fact, we learned it had already come to a preliminary agreement with the Arizona Center for the Law in the Public Interest, which filed a lawsuit against the EPA for its failure to take action on the Plan. It was apparent that EPA had made its decision some time ago and our good faith technical effort only provided false hope to this region. When we returned to our office after the meeting, we learned that a press release had already been sent out by the EPA regarding its decision.

No region should be penalized for exceedances of the standard that are caused by high wind exceptional events. In fact, a Clean Air Act amendment includes provisions to allow for such "exceptional events." *(For additional details regarding the issues that MAG has with the EPA finding, see the story below.)*

MAG and ADEQ staff had been working vigorously to provide information and documentation to the EPA supporting the exceedances as exceptional events. Rather than giving MAG and ADEQ the opportunity to review the EPA's technical analysis of the days in question, the EPA issued its decision with no warning and no opportunity for our experts to review and provide comment on the final technical support document. While we understand that technical experts can disagree, we believe our technical analysis was sufficient for EPA to agree to at least one of the exceptional events.

When the news was presented to the Regional Council at its May 26th meeting, our members were also concerned that EPA would take this disapproval action based on a flawed policy, especially when MAG had been working in good faith with EPA to find the answer to the problem. The Regional Council directed that MAG bring back to the Executive Committee recommendations on obtaining legal advice and that we work with the Governor and the Arizona Congressional delegation to stay the action of EPA until EPA corrects its flawed policy.

**For more information, please contact Dennis Smith, MAG Executive Director, (602) 254-6300.**

## Regional Council Meeting Report for Wednesday, May 26, 2010

### Action Items



#### Regional Council Seeks to Fight Air Quality Decision

The MAG Regional Council received an update regarding the EPA's announcement that it had decided to disapprove the MAG Five Percent Plan for PM-10 (*see Executive Director's report, above*). MAG staff reported MAG has been working with Sierra Research, a leading environmental firm, to support ADEQ's exceptional event documentation. The EPA had questioned the ADEQ documentation for four high wind exceptional events at the West 43rd Avenue monitor. The MAG analysis found that contributing factors to the exceptional event exceedances at the West 43rd Avenue monitor are a combination of high winds, silty soil, and the surface conditions in the vicinity of the monitor, as supported by surface roughness and friction velocity maps.

Staff additionally reported that EPA, by its own admission, notes that the exceptional events policy is flawed. In fact, in September, an association of 15 western state air quality management agencies submitted recommendations to the EPA to improve implementation of the Exceptional Events Rule, including addressing a "lack of clarity surrounding EPA's expectations about what a state should include in its demonstration package." In earlier challenges to the rule, the court upheld the rule, but clarified that the Clean Air Act provides for judicial review of any EPA decision to determine the attainment status of an area, or to designate or redesignate an area, based on EPA's decision to exclude exceptional events data or other information. Staff noted that the EPA's disapproval of the plan will not become final until the EPA publishes the decision in the Federal Register, which could take several months.

Under the Clean Air Act, an air quality violation occurs when a single monitor exceeds the PM-10 standard more than three times over a three-year period. In order to avoid plan disapproval, MAG needed to have three years of "clean" data at the monitor (no violations) in 2008, 2009, and in 2010. If the EPA had ruled that just one of the four high wind days in dispute was an exceptional event, the Valley would have been considered to have had a clean year in 2008.

Staff reported that if the disapproval is finalized in the Federal Register, the region would go into a conformity freeze within 30 to 90 days. A freeze would mean that only projects in the first four years of the Transportation Improvement Program (TIP) and Regional Transportation Plan can proceed. No new TIP, Plan or projects could move forward until a new Five Percent Plan is submitted that fulfills the Clean Air Act requirements and EPA finds the conformity budget adequate. If the problems are not corrected in 18 months, Clean Air Act sanctions would be imposed, usually tighter controls on major industries. If the problem is not corrected in 24 months from the date of the first notice, that would result in the

withholding of federal highway funds—immediately, \$1.7 billion in the draft five year TIP. Imposition of highway sanctions may trigger a conformity lapse, and major projects in the \$7.3 billion draft TIP could not proceed. This would result in the loss of tens of thousands of jobs in our region.

MAG staff stated that the EPA referenced in its press release that the federal government “already provides \$30 million annually to Arizona, through the Congestion Mitigation and Air Quality program. These funds are available to be used to reduce PM-10 emissions.” Staff noted that our region has used these funds to implement aggressive measures to reduce PM-10. From fiscal years 2001 through 2009, MAG has programmed more than \$21.8 million in CMAQ funds for the purchase of 141 PM-10-certified street sweepers. In addition, since FY 2007, MAG has programmed more than \$28.7 million for paving unpaved roads, alleys and shoulders in the Maricopa PM-10 nonattainment area. The City of Phoenix has also spent millions in its own funding to address dust issues in the Salt River area. The purpose of the CMAQ program is to fund transportation projects or programs that will contribute to attainment or maintenance of national ambient air quality standards for ozone, carbon monoxide and particulate matter. Staff added that it will be difficult to develop measures beyond what is already included in the Plan.

Following the report, the MAG Regional Council indicated that it needs to evaluate all of its options to postpone or prevent disapproval of the MAG Five Percent Plan for PM-10 or the triggering of Clean Air Act sanctions. The Regional Council directed MAG to present a detailed listing of available actions, such as seeking the assistance of the Governor and the Arizona Congressional delegation to stop the EPA action until there is an Exceptional Events Rule that is not flawed, and to retain and consult as needed with experts on Clean Air Act issues. The council further instructed MAG to look into appeals or other legal challenges. The Regional Council also asked MAG to look into whether it would be helpful to prepare and submit a revised plan, and directed staff to report to the Executive Committee at its next meeting.

**For more information, please contact Lindy Bauer, MAG Environmental Director, (602) 254-6300.**

### **Regional Council Approves Change for Unobligated ARRA Funds**

In January 2010, the MAG Regional Council approved the guidelines for programming American Recovery and Reinvestment Act (ARRA) local funds from project savings. The guidelines included a provision that a jurisdiction whose ARRA project savings are greater than \$200,000 and have another eligible project that can meet the obligation deadline set by the Arizona Department of Transportation (ADOT) and the Federal Highway Administration (FHWA) can reallocate the project savings to the new project. Since that time, all ARRA projects in the region were obligated prior to the established deadline and currently projects are going out for construction bid. Several smaller member agencies have expressed concern over

the \$200,000 threshold and for returning bid savings lower than that amount rather than using the savings to move other projects forward.

The Regional Council voted to eliminate the \$200,000 threshold, and if a jurisdiction has projects that can meet all of the obligation requirements, that it be allowed to move those projects forward.

**For more information, please contact Eric Anderson, MAG Transportation Director, (602) 254-6300.**

### **Regional Council Accepts Commuter Rail Planning Studies**

The MAG Regional Council voted to accept the findings of the Grand Avenue Commuter Rail Corridor Development plan, Yuma West Commuter Rail Corridor Development plan, and Commuter Rail System Study. Additionally, the Regional Council agreed to allow revisions of the corridor ranking included in the Commuter Rail System Study upon the completion of updated regional socioeconomic forecasts or relevant passenger rail studies.

MAG has been engaged in developing the three commuter rail studies for the past two years. The System Study envisions a system that would radiate from downtown Phoenix and share existing freight track along five corridors. The study examined factors such as existing freight operations and potential opportunities for operating commuter rail in existing rights of way. The study also evaluated ridership potential and capital and operating costs.

The Grand Avenue Rail Corridor Development Plan Study evaluated the potential implementation of commuter rail service within the existing BNSF Railway (formerly Burlington Northern Santa Fe) right-of-way between Wickenburg and downtown Phoenix. The Yuma West Corridor Plan evaluated the potential implementation of commuter rail service within the existing Union Pacific Railroad right-of-way between downtown Phoenix and the community of Arlington in the Southwest Valley.

The study recommends that the Southeast Corridor from Central Phoenix to Queen Creek be implemented as the initial starter segment, followed by the Grand Avenue Corridor from Phoenix northwest to Witmann.

In addition to the Commuter Rail studies, an update was also provided regarding Amtrak intercity rail service in the United States and the possibility of re-establishing passenger rail in the MAG region.

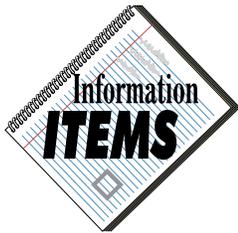
**For more information, please contact Marc Pearsall, MAG Transit Planner, (602) 254-6300.**

### **Regional Council Adopts Work Program and Annual Budget**

The Regional Council approved a resolution adopting the Draft FY 2011 MAG Unified Planning Work Program and Annual Budget and the member dues and

assessments. The Regional Council has received monthly updates on the budget beginning in January 2010. Recommendations for the Work Program include continuing with a reduction to the draft dues and assessments by 50 percent due to the uncertainty of economic conditions. The FY 2011 Work Program includes 21 new projects, including 14 transportation projects, two air quality projects, two information services projects, two communications projects, and one information technology project.

**For more information, please contact Rebecca Kimbrough, MAG Fiscal Services Manager, (602) 254-6300.**



## **Information Items**

### **Sustainable Communities Planning Grant Program**

The MAG Regional Council received an update on the Sustainable Communities Planning Grant Program offered through the U.S. Department of Housing and Urban Development (HUD). Sustainable efforts throughout communities have become a common theme among federal agencies and are expected to be an ongoing priority. Large metropolitan areas are eligible to receive up to \$5 million to develop a regional plan for sustainable development. The Notice of Funding Availability (NOFA) is expected in June 2010. It is anticipated that the grant process will be competitive. The advanced notice published by HUD in March did not define an eligible applicant or region. It is anticipated that the NOFA will clarify who can apply for this funding.

MAG has met with a variety of potential community partners, such as the Urban Land Institute, Arizona State University, Local Initiatives Support Coalition, the Sonoran Institute and others. A focus on transit-oriented development is being considered for the grant. This includes planning for commuter rail, connecting the paths along the canals, working with the tribal communities to connect them with additional transit services, and developing model codes to promote transit-oriented development and fiscal effectiveness. Another strategy being considered is a consolidated application among MAG, the Central Arizona Association of Governments and the Pima Association of Governments that would encompass the Sun Corridor. The Regional Council is confirming the level of support for a consolidated application, while at the same time requesting that MAG be prepared to support individual cities' efforts should they decide to apply for the grant.

**For more information, please contact Amy St. Peter, MAG Human Services Manager, (602) 254-6300.**

### **Next Regional Council Meeting**

The next meeting of the MAG Regional Council is the Annual Meeting and is scheduled for Wednesday, June 30, 2010, at the Sheraton Phoenix Downtown Hotel, 340 North 3rd Street, Phoenix (*please note location change*). Agenda items are expected to include election of MAG officers, appointment of members

to the Transportation Policy Committee, approval of the MAG Regional Plan to End Domestic Violence, conformity consultation, and approval of Electric Vehicle Charging Infrastructure Deployment Guidelines. Additional agenda items are pending. Please note that the Annual Meeting will be immediately followed by the MAG 2010 Desert Peaks Awards recognizing regional excellence.

**For more information, please contact Dennis Smith, MAG Executive Director, (602) 254-6300.**