MARICOPA ASSOCIATION of GOVERNMENTS

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August 11, 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, August 16, 2010 - 12:00 Noon
MAG Office, Suite 200 - Cholla Room
302 North 1st 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
August 16, 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.	2. Information and discussion.
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 (*).	3. Approval of Executive Committee Consent Agenda.

ITEMS PROPOSED FOR CONSENT
BY THE EXECUTIVE COMMITTEE

*3A. Approval of the July 19, 2010 Executive Committee Meeting Minutes	3A. Review and approval of 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	3B. Approval to amend 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

Impact of Housing and Services for Homeless Families

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. Please refer to the enclosed material.

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.

ITEMS PROPOSED TO BE HEARD BY THE EXECUTIVE COMMITTEE

4. MAG Office Space Update

On May 26, 2010 the Regional Council approved the FY 2011 Unified Planning Work Program and Annual Budget. The budget includes leasing additional office space, renovating portions of the office space currently occupied by MAG staff, and remodeling of the second floor office space to add meeting space. MAG and the City of Phoenix have been meeting to discuss the terms of the office space and parking lease. This item is on the agenda to provide an update on the lease negotiations. Please refer to the enclosed material.

4. Information and discussion.

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

On June 28, 2010, the Joint Planning Advisory Council (JPAC) held a meeting to present the results of the Global Cities Institute Sun Corridor Study by AECOM. Following this meeting, it was

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

suggested that a subcommittee or working group be formed at MAG to provide continuity and guidance on projects related to the JPAC, such as the Freight Transportation Framework Study. 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 working group. The Executive Committee Subcommittee for the Formation of a JPAC Working Group is scheduled to meet on Monday, August 16, 2010 at 11:00 a.m. An update on the discussions at this meeting will be provided.

6. Consultant for Air Quality Communications and Intergovernmental Assistance

On June 21, 2010, the MAG Executive Committee directed staff to retain legal counsel and other consultants to take administrative action needed regarding the Environmental Protection Agency (EPA) nonconcurrence on four exceptional events at the West 43rd 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. On July 19, 2010, the Regional Council Executive Committee recommended approval for amending the FY 2011 MAG Unified Planning Work Program and Annual Budget to provide up to $500,000 of funding for legal advice and experts regarding the EPA nonconcurrence on the four exceptional events at the West 43rd Avenue monitor in 2008, and EPA's intent to disapprove the MAG Five Percent Plan for PM-10 for reducing dust pollution in the Valley.

On July 28, 2010 the MAG Regional Council approved amending the FY 2011 MAG Unified Planning Work Program and Annual Budget to provide up to $500,000 of funding for legal advice and experts. MAG staff issued at Request for Qualifications for Consultants for Air Quality Communications and Intergovernmental Assistance. On August 5, 2010, a review team selected two firms for interviews. On August 10,

6. Approval of 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 retain the option to use Patton Boggs in the future for additional assistance.

2010 the review team interviewed the firms and selected Crowell & Moring for consideration of approval by the MAG Executive Committee. Staff is in the process of negotiating a price for their services and an update on these negotiations will be provided to the Executive Committee. The review team also indicated that Patton Boggs' experience in legislative matters could be helpful and recommends that Patton Boggs be considered in the future for additional assistance as a possible consultant for transportation and air quality issues.

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

On July 2, 2010, the Environmental Protection Agency (EPA) published the proposed consent decree in the Federal Register, which indicated that EPA would propose action on the MAG Five Percent Plan for PM-10 by September 3, 2010, and finalize the action by January 28, 2011. The Arizona Department of Environmental Quality (ADEQ) submitted comments requesting that the schedule in the consent decree be delayed for at least six months to ensure that a final decision on exceptional events will be made by EPA based upon the best scientific information available. The Salt River Pima-Maricopa Indian Community, Maricopa County and MAG submitted comments in support of the ADEQ comments. On August 2, 2010, the ADEQ transmitted supplemental information to EPA regarding the June 4, 2008 exceptional event and again requested that Region IX revisit its May 21, 2010 decision to not concur with the ADEQ exceptional events documentation. MAG has been providing assistance with the supplemental information and more will be forthcoming. MAG has also been conducting outreach to the Congressional Delegation as directed by the Regional Council. In addition, the California Air Resources Board sent a letter to EPA expressing concern with the EPA denial of the Imperial County exceptional events. Please refer to the enclosed material.

The Executive Committee may vote to recess the meeting and go into executive session with MAG's

7. 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 43rd 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).

attorney for legal advice regarding the EPA nonconcurrence on the four exceptional events at the West 43rd 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.

8. 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.

8. Information and discussion.

9. 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.

9. Information

Adjournment

MINUTES OF THE
MARICOPA ASSOCIATION OF GOVERNMENTS
MAG REGIONAL COUNCIL EXECUTIVE COMMITTEE
July 19, 2010
MAG Offices, Cholla Room
302 N. 1st 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 12:00 p.m. He noted that was and updated agenda and additional backup information at the table. 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 through #3D. Mayor Lopez Rogers seconded the motion and the motion carried unanimously.

3A. Approval of the June 21, 2010 Executive Committee Meeting Minutes

The Regional Council Executive Committee, by consent, approved the June 21, 2010, Executive Committee meeting minutes.

3B. Consultant Selection for the MAG Intelligent Transportation Systems and Transportation Safety On-Call Services Request for Qualifications

The Regional Council Executive Committee, by consent, approved the selected list of consultants for the ITS and Transportation Safety on-call services, for the following areas of expertise: (1) Traffic Engineering, (2) ITS Planning, (3) ITS Operations Planning, (4) ITS Training, (5) ITS Evaluation & Feasibility Studies, (6) ITS Modeling and Supporting Services (7) Regional Fiber Network Planning and Management (8) Transportation Safety Planning. The FY 2011 MAG Unified Planning Work Program and Annual Budget, approved by the MAG Regional Council in May 2010, includes a number of projects to be launched in the areas of Intelligent Transportation Systems (ITS) and Transportation Safety. These projects will be executed through on-call consultant contracts with qualified consultants selected in eight areas of technical expertise. A request for qualifications was advertised on April 26, 2010. Two selection panels, each appointed by the ITS Committee and the Transportation Safety Committee, evaluated the statements of qualifications and recommended to MAG the selection of a number of qualified consultant teams, in each of the areas of expertise. On June 22, 2010, the MAG Transportation Safety Committee recommended approval of the list of consultants for Transportation Safety Projects. On July 7, 2010, the ITS Committee recommended approval of the on-call list of consultants for ITS projects. This itemwas on the July 14, 2010 MAG Management Committee agenda to recommend approval.

3C. Consultant Selection for Building and Employment Databases Project

The Regional Council Executive Committee, by consent, approved the selection of Applied Economics to conduct the Building and Employment Database project in an amount not to exceed $100,000. The fiscal year (FY) 2010 MAG Unified Planning Work Program and Annual Budget, approved by the MAG Regional Council in May 2009, includes $100,000 to create a unified Building and Employment Database. This database will allow for better modeling and visualization capabilities for MAG staff and MAG member agencies. Five proposals were received in response to a request for proposals that was advertised on April 7, 2010. On June 15, 2010, a multi-agency evaluation team reviewed the proposals and unanimously recommended to MAG the selection of Applied Economics to conduct this project in an amount not to exceed $100,000. This item was on the July 14, 2010 MAG Management Committee agenda.

3D. Amendment of the FY 2011 MAG Unified Planning Work Program and Annual Budget to Accept FY 2010 Federal Highway Administration Metropolitan Planning Funding

The Regional Council Executive Committee, by consent, approved the amendment to the FY 2011 MAG Unified Planning Work Program and Annual Budget to decrease the FY 2010 Federal Highway Administration Metropolitan Planning funding by $4,479.64. Each year, MAG prepares a Unified Planning Work Program and Annual Budget that lists anticipated revenues for the coming year. Recently, MAG was notified by the Arizona Department of Transportation of the official amount of FY 2010 Federal Highway Administration Metropolitan Planning (PL) funding.

An amendment to the FY 2011 MAG Unified Planning Work Program and Annual Budget is needed to decrease this amount by $4,479.64.

4. Sustainable Communities Program Grant

Amy St. Peter thanked the Chair and Executive Committee. Ms. St. Peter stated that HUD Sustainable Communities Planning Grant Program makes $100 million available nationally to support the creation of regional plans for sustainable development. She noted that of this amount, $5 million is available for large metro areas and $2 million is available for small metro or rural areas. The grant period is three years. Ms. St. Peter explained that applying for this funding now may position the region well if such plans become a requirement with the reauthorization of federal funding. In addition, if the application meets certain threshold requirements, then all partners of the project can receive a "preferred sustainability status" that will make them more competitive when applying for other federal grants. She stated that the Notice of Funding Availability (NOFA) was released on June 24th with a deadline of August 23rd. This provides just 60 days to prepare a competitive application. Ms. St. Peter stated that staff has been working hard to develop a response that puts the region in the most advantageous position and best reflects the priorities of this region. She reported that there appears to be consensus for MAG to apply as the lead applicant on behalf of the Sun Corridor. She noted that it was confirmed with the US Department of Housing and Urban Development (HUD) that the Sun Corridor is eligible as a mega region and will include the entire areas of Maricopa, Pima, and Pinal Counties. To date, there are two other mega regions applying, Utah and Florida. Ms. St. Peter stated that staff has been working closely with the Pima Association of Governments and the Central Arizona Association of Governments to identify unifying elements that retain flexibility and control at the local level.

Ms. St. Peter stated that one area of focus that has been identified in this region is developing additional green housing and jobs along high capacity transit routes. She noted that CAAG and PAG are each taking approaches that respond to their needs. CAAG is very interested in economic development and PAG has been partnering with Imagine Greater Tucson in a visioning process. Ms. St. Peter stated that unifying elements for the entire Sun Corridor include conducting a centers study, supporting the AZ Health Survey by St. Luke's Health Initiative, conducting a tribal transit study, and completing the path along the canal system. She noted that activities will be driven by the councils of governments and their member agencies with support from community partners. The organizational chart provided reflects that the Joint Planning Advisory Council is proposed to coordinate activity at the Sun Corridor level and will not dictate any activity or requirements to the councils of governments. Ms. St. Peter stated that the grant requires applications be submitted by consortiums. She noted that MAG staff has been actively seeking partners to help fulfill this requirement and to assist with the activities proposed in the grant. The Urban Land Institute, Local Initiatives Support Corporation (LISC), Morrison Institute, regional and state transportation agencies, and a number of nonprofit agencies have all expressed interest in partnering on the grant. She noted that PAG and CAAG are in the process of identifying their partners now.

Ms. St. Peter stated that in the interest of making the most of the five weeks remaining before the grant is due, staff is seeking the Committee's direction on the following recommendations: 1) recommend MAG as the lead applicant to work collaboratively with MAG member agencies,

PAG, CAAG, and community partners to submit an application for the Sustainable Communities Planning Grant Program on behalf of the Sun Corridor by August 23, 2010. The application will request up to $5 million for a three year period; 2) direct MAG staff to solicit signed partnership agreements and Memorandums of Understanding from diverse representatives including, but not limited to, MAG member agencies, nonprofit agencies, educational institutions, and philanthropies. This will demonstrate a high level of community engagement and collaboration; 3) recommend that the MAG Regional Council Chair sign a partnership agreement on behalf of the MAG Regional Council at the July meeting; 4) recommend that MAG, PAG, and CAAG convene local stakeholders to identify strategies at the regional level and work with the Joint Planning Advisory Council to advise on the interface between the planning regions.

Ms. St. Peter stated that the goal is to position the MAG member agencies to receive as much support as possible for local priorities where appropriate. She noted that staff looks forward to any feedback and direction as we strive to assemble a competitive application. Ms. St. Peter stated that concluded her report and she would be happy to take any questions or comments.

Mayor Lopez Rogers asked who are the other mega region applicants. Ms. St. Peter responded that staff has heard that it is Envision Utah and the superregion in Florida that is comprised of Orlando and Tampa Bay. She stated that staff is trying to collect more detail as to what their applications might look like. She noted that there are two categories that people can apply for: 1) develop a regional plan for sustainable development and 2) develop a detailed execution plan if you already have that sustainability plan and looking to identify action steps and implement the plan. Ms. St. Peter reported that Florida may be applying for a category two and Utah is proposing to wipe their slate clean and begin again at level one. Chair Schoaf asked if MAG staff envisioned the application as individual projects within each COG. Ms. St. Peter responded that there are two aspects to the grant. The individual aspect is that each region will address what can make their region more sustainable, and the unifying element or project would be the development of the path that runs along the canal system, which runs through all three counties. Ms. St. Peter also stated that we will look at a cluster study that shows the different industries and occupations that would make a region more sustainable. She noted that each region's response to that cluster study will be very different.

Mayor Smith moved to recommend MAG as the lead applicant to work collaboratively with MAG member agencies, PAG, CAAG, and community partners to submit an application for the Sustainable Communities Planning Grant Program on behalf of the Sun Corridor for up to $5 million for a three year period and due by August 23, 2010; and to direct MAG staff to solicit signed partnership agreements and Memorandums of Understanding from diverse representatives including but not limited to MAG member agencies, nonprofit agencies, educational institutions, and philanthropies. This will demonstrate a high level of community engagement and collaboration; and to recommend that the MAG Regional Council Chair sign a partnership agreement on behalf of the MAG Regional Council at the July meeting; and to recommend that MAG, PAG, and CAAG convene local stakeholders to identify strategies at the regional level and work with the Joint Planning Advisory Council to advise on the interface between the planning regions. Mayor LeVault seconded the motion and the motion carried unanimously.

5. Joint Planning Advisory Council Update

Denise McClafferty thanked the Chair and Executive Committee. Ms. McClafferty stated that on December 17, 2009, MAG, the Central Arizona Association of Governments, and the Pima Association of Governments, signed a resolution that established the Joint Planning Advisory Council (JPAC). She noted the purpose of the JPAC is to coordinate planning activities and cooperatively work together toward a successful and economically viable Sun Corridor. Ms. McClafferty reported that on June 28th, the JPAC held a meeting to present the results of the Global Cities Institute Sun Corridor Study by AECOM, which identified the potential future economic engines for the Sun Corridor. Governor Jan Brewer also attended and opened the meeting with a discussion on Building Arizona's Economy. She noted that following this meeting, it was suggested that a subcommittee or working group be formed at MAG to provide continuity and guidance on projects related to the JPAC, such as the Freight Transportation Framework Study, the proposed inland port, and the I-11 Study. Ms. McClafferty stated that the proposed subcommittee or working group would assist in guiding these activities as they relate to MAG. She stated that staff is looking for guidance on this proposed subcommittee, and should there be agreement on forming a subcommittee or working group, the action requested would be for the Executive Committee to recommend to the Regional Council appointing a MAG subcommittee to provide continuity and guidance on projects related to the JPAC. Ms. McClafferty stated that concluded her report and she would be happy to take any questions or comments.

Chair Schoaf asked if staff had a recommendation on the composition of the subcommittee. Ms. McClafferty responded that staff is looking for guidance on the composition of the subcommittee. She noted that it could be opened up to those individuals interested and would like to serve. Mayor Smith stated that he supports the effort and believes this is our future. He noted that we need to be proactive to develop our assets and complete in the global market. He stated that it is important to keep the discussion going and identify areas to work on jointly. Mayor Smith stated that it is important that Phoenix, the central city, is on board. Councilwoman Neely stated that she sees a huge benefit that the central city be a part of this effort. She noted that we need to continue to focus on not operating in silos. She also noted that there is a huge benefit to all member agencies. Councilwomen Neely stated that GPEC reported that our highest vacancy is in industrial space throughout Maricopa County. She noted that we need to find a new strategy to fill this space. She also stated that we can not afford not to look at other options. Councilwoman Neely stated that she would be happy to take a leadership role in this effort if the Chair and Committee agree. Chair Schoaf stated that he agrees with the comments and feels that it is important to look beyond our own jurisdictions. He noted that the question is what is the composition of this subcommittee. He noted that it is important that we come up with something that we can institutionalize so that this subcommittee has a membership that rotates and is consistent with a process so that it is transparent to all those who are involved. Chair Schoaf stated that it makes sense that Councilwomen Neely lead this effort and develop the composition of the subcommittee and the process that is used on an annual basis to populate that subcommittee.

Mayor Lane stated that he agrees that this is a crossover benefit for the region and the entire state. He noted that there is a cautious area and we need to be aware of political and economic issues. Mayor Lane stated that he feels that a continuing conversation broadens our input, as well as develops relationships to bring it all together. He noted that his only concern is that we are aware

of the political and economical issues that are in front of us as we move forward. Chair Schoaf asked if any other Executive Committee member would like to work with Councilwoman Neely on the composition of this subcommittee. Mayor Lopez Rogers agrees that this effort is important. She stated that we need to look at membership from across the region, as well as businesses and rail. Mayor Lopez Roger stated that she would be happy to work with Councilwoman Neely on the composition of this subcommittee.

Mr. Smith stated that Councilwoman Neely invited him and Mr. Anderson to a meeting with APL Limited. He noted that APL Limited is the fifth largest container shipping company in the world. Mr. Smith stated the APL moved from Oakland, California to the Northeast Valley. He noted that there have been some issue with Union Pacific with the track in the Southwest Valley. APL informed us that they are the second largest shipper on Union Pacific. Mr. Smith noted that the more discussions that occur, the more chances of finding partners working toward a similar goal, such as APL. He noted that we have an asset right in our backyard. Councilwoman Neely stated that she has had conversations with Mary Peters and she is committed to helping us with bringing the two railroads together. She noted that Ms. Peters would be an excellent person to have on this subcommittee. Mayor Smith offered his assistance with the subcommittee. He noted his work on the Superstition Vistas and working across county lines.

Mayor Lane moved to approve forming a subcommittee to discuss the formation of a MAG JPAC working group to provide continuity and guidance on projects related to the JPAC, and to return to the Executive Committee with a recommendation for the composition of this working group. Councilwoman Neely seconded the motion and the motion carried unanimously.

6. MAG Public Involvement Process

Kelly Taft thanked the Chair and the Executive Committee for the opportunity to review MAG's public input process. Ms. Taft stated that at the June Management Committee meeting, a committee member noted that sometimes residents pose questions during the Call to the Audience, but under the open meeting law, members cannot engage in dialogue to address their questions. She noted that the concern was raised that MAG committee members are not always made aware of how specific issues are resolved with members of the public. The member was primarily interested in developing a policy that would more formally close the loop in communicating outcomes to the committee. Ms. Taft stated that because MAG follows a process adopted by the Regional Council and followed by all MAG committees, staff wanted to first seek the Executive Committee's guidance on how staff communicates with committees regarding public input and whether any formal changes to the process are required.

Ms. Taft began with a brief history of the MAG public involvement process. She stated that in 1991, ISTEA legislation required that MPOs adopt a formal public involvement process that includes a public comment component. In 1992, the Regional Council approved a 15 minute *Call to the Audience* for its meetings, with each speaker requested to keep comments within a three minute time period. Ms. Taft stated that in 1994 the Regional Council adopted the four-phase process that is still followed today and is made up of an early phase (when projects are submitted & recommended), a midphase (when a draft plan is completed and available for input), a final phase (just prior to the adoption of the final plan), and continuous involvement (includes a variety

of opportunities for comments ranging from public meetings, hearings, large & small group presentations, and special events). She noted that in 1996, the Regional Council approved recommendations to "re-engineer" the policy process. This resulted in increased public comment opportunities so that in addition to the Call to the Audience, residents could also comment on the Consent Agenda and on Action Items. Ms. Taft stated that in 1998, the Regional Council recommended that the programming process be enhanced through the development of early guidelines to help select transportation projects. This also led to an enhanced public involvement process involving an emphasis on early input from Title VI populations. She noted that beginning in 2001, MAG embarked on an unprecedented public involvement effort surrounding the development of the Regional Transportation Plan. This resulted in the hiring of a full time outreach specialist as well as a disability outreach associate. Ms. Taft noted that in 2006, federal transportation law again addressed public involvement by requiring MPOs to formally adopt a Public Participation Plan. The plan that was approved by the MAG Regional Council was provided to the Committee. She noted that the Public Participation Plan incorporates the input opportunities discussed so far. It also standardized public comment opportunities for all technical and policy committees. She stated that through this adopted process, MAG communicates to residents through a variety of methods and formats. This includes many small and large group presentations in which staff responds directly to questions and comments. She noted that MAG also hosts information booths at dozens of community events every year where information is distributed and questions are answered. Ms. Taft also noted that all of MAG's web pages include a feedback link where residents can email questions or comments to MAG. In addition, project and divisional web pages contain a list of appropriate staff contacts. She added that staff frequently communicates directly to residents via phone and email.

Ms. Taft noted that in addition to these more informal methods of responding to citizens, as part of a formal adopted process, MAG produces three input opportunity reports each year. She noted that this is the primary method used for communicating input and responses to our members. She explained that comments collected or received during the early, mid and final phases are summarized and provided to MAG policy committees for review and consideration. The early phase report contains a summary of input received at the Early Phase Stakeholders meeting, as well as any other comments and materials received during the phase. Ms. Taft noted that this report does not include staff responses, but both the mid phase and final phase input opportunity reports do include transcripts of public hearing testimony accompanied by staff responses. Ms. Taft noted that a sample of the most recent input opportunity report was provided at each place. Ms. Taft stated that under the Arizona open meeting law, a public body may not engage in dialogue with the citizens or collectively discuss, consider or decide an item not listed on the agenda. She noted that individual officers may, however, respond to criticism, direct staff to respond to the individual, or ask that an item be placed on a future agenda. In the past, MAG Chairs have directed MAG staff to follow up with individual members of the public who have provided comment at MAG. She noted that MAG's typical practice is to respond to the resident and copy the committee member or intergovernmental representative on the response as appropriate.

Ms. Taft stated that MAG contacted several communities to see how these types of communications are handled at the local level. She noted that at the City of Avondale, the city clerk automatically sends a thank you letter to those who provide public comment. Council may

direct the City Manager to follow up with the resident and the city manager assigns appropriate staff. She noted that this issue is typically not addressed again at a public meeting unless referred to the agenda. Instead, the follow up is typically provided to members one-on-one outside of the public meeting process and is not discussed or published publicly. She noted that Chandler follows a similar process and will follow up if so directed by council, but responses are not formally addressed at the public meeting. In Litchfield Park, all comments are recorded and staff is assigned to follow up. Outcomes and responses are provided verbally at the next meeting as part of the regular agenda. In some instances, it is noted that no response in required. In Glendale, staff follows up with the resident after the meeting. Ms. Taft noted that depending on the importance of the issue, Glendale staff may follow up with a memorandum to the Council regarding the outcome. She clarified that this is a separate memorandum provided to Council outside of the Council meetings or the agenda process. Ms. Taft continued with the City of Phoenix, where all citizen requests and comments are summarized in written form. The Mayor then determines if a follow-up is warranted, and if so, assigns the appropriate staff. She noted that the follow-up information is noted in a "citizens requests" form that is provided as part of the council packet at subsequent meetings. At the City of Scottsdale, if a citizen addresses the Council during a public meeting, the City Manager will typically assign a staff person to work with that citizen to reach a solution and provide information. She noted that no additional public follow-up is typically done. The City of Tempe assigns a staff person to work with the resident to resolve issues. She noted that outcomes are not typically brought forward at the public meeting, but are handled internally. Ms. Taft stated that concluded her report and she would be happy to take any questions or comments.

Chair Schoaf thanked Ms. Taft for her report, which covered a broad spectrum of public participation. He noted that the concern of the city manager from Litchfield Park was closing the loop after people made comments at a public meeting. Chair Schoaf stated that it is a good idea to complete the process and understand what our response was as an organization. Mayor LeVault asked what MAG does currently. Ms. Taft stated that MAG responds in a variety of ways. She noted if there is a public comment made at a MAG meeting during the public comment period, we typically do not respond unless directed to do so by the Chair or a member of the committee. Ms. Taft stated that if the comment is part of the formal phase, MAG does respond in the input opportunity report. She noted that most of the people who do comment at the MAG meetings are those we interact with outside of the meeting process and we do speak with them and try to address their concerns. Ms. Taft stated that she believes the committee member was requesting that response to public comment be part of the formal agenda process. Mayor LeVault stated that he is generally in favor of anything that enhances and supports citizen participation. Mayor Smith stated that he believes that any citizen who brings an issue before a committee or board should be addressed. He asked what the difference was between a citizen who shows up during a public comment period and someone who writes a letter or phones. He noted that he sees no difference. Mayor Smith stated that if someone shows up for public comment, they should not dictate a future agenda.

Chair Schoaf stated that the concern is strictly limited to comments made at MAG meetings and how staff responds to them and how the committee members are informed of that response. He noted that the citizen expects and deserves a response, similar to the response they receive if they were writing a letter of phoning in a comment. Chair Schoaf explained how it works at Litchfield

Park. He noted that at the meeting following the public comment, the committee acknowledges that fact that it was a question and an answer was provided, or that it was a comment and was referred to the appropriate staff, or whether it was a comment that did not require a specific response. He noted that it does not need to be part of a formal announcement, and suggested that it could be part of the consent agenda. Chair Schoaf noted that this shows the committee closed the loop in a public way. Mayor Lane stated that he supports citizens comments, but also agrees with Mayor Smith that just because a person shows up at a meeting and provides public comment, that he or she should not be able to dictate the agenda. He noted that the simple request to staff to respond to public comments at a meeting would be a good process. Mayor Lopez Rogers noted that in Avondale, the closure is a response from the city manager to the Mayor. Chair Schoaf stated that there needs to be a process when it is required. Councilwoman Neely asked if staff had a recommendation as to what the smoothest process would be. Dennis Smith suggested that when a question comes up on a policy or a program, not a personal comment, then the staff will get back to the chair of that committee to close the loop.

Mayor Smith moved to approve a public comment process for the MAG committees to be that when a citizen has a question on a policy or program, the MAG staff will report back to the chair of that committee on the staff response. Mayor LeVault seconded the motion and the motion carried unanimously.

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

Lindy Bauer stated that a great deal has happened since the last meeting. She noted that on June 23, 2010, the Environmental Protection Agency (EPA) indicated that the proposed consent decree had been lodged with the court, but still has to go out to public notice. According to the proposed consent decree for the lawsuit filed by the Center for Law in the Public Interest, EPA has agreed to a time line on when they would take action on the MAG Five Percent Plan for PM-10. Ms. Bauer noted that EPA intends to propose action on September 3, 2010, and then finalize the action by January 28, 2011. Mayor Smith wanted to clarify that this action is a result of the lawsuit filed by the Center for Law in the Public Interest against EPA for failure to take action on the Plan. Ms. Bauer stated that generally is correct. Mayor Smith noted that the EPA said in lieu of litigating this, we will agree with the consent decree to propose action on the Plan. Ms. Bauer stated that the January 28, 2011 date is when EPA will take final action. She noted that EPA has indicated its intent is a disapproval action. Ms. Bauer stated the EPA published this proposed consent decree in the Federal Register on July 2, 2010, which means that comments need to be submitted by August 2, 2010. In addition, MAG and the Arizona Department of Environmental Quality (ADEQ) have submitted comments to EPA on their technical support document in which EPA disagreed with the exceptional events. She noted that generally, the State has indicated three concerns with EPA's review and nonconcurrence with the exceptional events. They stated that EPA' review has not been consistent with the exceptional events rule. She noted that they also failed to take into account a great deal of information already submitted by ADEQ, and they have not been consistent as to how they have treated other areas. Ms. Bauer stated the EPA rejected an identical argument that Arizona made for an exceptional event, where they agreed with the same argument for San Joaquin. She noted that the process was unfair. She also noted that additional information, as well as supplemental information, had been submitted by ADEQ, which included some of the MAG information. Instead of EPA discussing what their thinking was, EPA instead

came into town on May 25, 2010 and said that they have made their decision. Ms. Bauer stated that the WESTAR letter has also been provided to the committee. WESTAR submitted another letter to EPA on July 6, 2010 indicating that EPA has not yet addressed the concerns of the western states and that EPA is using the flawed exceptional events rule to make some important decisions, to reject exceptional events from California and Arizona when both states believe that they have met all of the exceptional event criteria. Ms. Bauer also noted that there is a letter from Senator Allen sent to the Arizona Chamber of Commerce, the Greater Phoenix Chamber of Commerce, and the Greater Phoenix Economic Council.

Fredda Bisman stated that the agenda reflects that the committee may go into executive session to receive legal advise and discuss legal strategy, and also to interview specialized legal counsel.

Mayor LeVault moved that the Executive Committee go into executive session to receive legal advise and to interview specialized legal counsel. Mayor Lane seconded the motion and the motion carried unanimously. The Executive Committee went into executive session at 1:10 p.m.

The Executive Committee reconvened regular session at 2:00 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 Smith moved to adjourn the Executive Committee meeting. Mayor Lane seconded the motion and it carried unanimously. There being no further business, the Executive Committee adjourned at 2:05 p.m.

_____
Chair

_____
Secretary

Agenda Item #3B

MARICOPA ASSOCIATION of GOVERNMENTS

302 North 1st Avenue, Suite 300 ▲ Phoenix, Arizona 85003
Phone (602) 254-6300 ▲ FAX (602) 254-6490

August 11, 2010

TO: Members of the MAG Regional Council Executive Committee

FROM: Brande Mead, Human Services Program Manager

SUBJECT: 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

Recently, MAG was notified by HUD that they would like for MAG to coordinate and oversee a study in the MAG region, working with Abt Associates, Inc., on the impact of housing and services for homeless families. 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. The FY 2011 MAG Unified Planning Work Program and Annual Budget (UPWP) was approved by the MAG Regional Council on May 26, 2010. This item is to approve an amendment to the MAG 2011 UPWP increasing the budget for the award by an amount up to $20,000 and to enter into a Memorandum of Understanding with Abt Associates, Inc.

This region will be one of up to twelve communities participating in this national study. The study will result in a better understanding of the effects of different types of interventions for homeless families. MAG staff will be responsible for the following activities:

- Serve as the central liaison between the Abt Study Team and participating providers during study set up and implementation.
- Coordinate study activities and communicate with the Abt Study Team and participating providers to ensure that program administrators understand and adhere to study responsibilities and procedures.
- Conduct quarterly assessments with participating providers to ensure study enrollment targets are achieved.
- Participate in evaluation interviews with the Abt Study Team and participating providers.
- Notify the Abt Study Team of local concerns and work with providers to mitigate barriers to achieving successful study implementation.
- Assist the Abt Study Team in obtaining information for reporting requirements.

Results of the study will provide HUD and the MAG region with knowledge of what housing and service interventions work best and how they can be implemented to better serve homeless families in the community. If you have any questions regarding this amendment, please contact me at the MAG office at (602) 254-6300.

Agenda Item #4

MARICOPA ASSOCIATION of GOVERNMENTS

302 North 1st Avenue, Suite 300 ▲ Phoenix, Arizona 85003
Phone (602) 254-6300 ▲ FAX (602) 254-6490

August 11, 2010

TO: Members of the MAG Regional Council Executive Committee

FROM: Dennis Smith, Executive Director

SUBJECT: MAG OFFICE SPACE UPDATE

On May 26, 2010, the Regional Council approved the FY 2011 MAG Unified Planning Work Program and Annual Budget which includes leasing additional office space and tenant improvements. MAG staff met with the City of Phoenix staff to discuss the terms of a new agreement for MAG offices and parking. The current MAG lease for the first, second and third floors, which ends on June 30, 2012 with two one-year extensions, will be terminated, and a new lease executed to include all MAG lease space and parking.

The proposed lease is for ten years with two five-year extensions. This new lease is proposed to begin on January 1, 2011 and work would start with renovations to the fourth floor to create office space. It is estimated that the renovations to the fourth floor would take approximately two months and that staff from the second floor would move up to the fourth floor in March 2011. Renovations would then begin on the second floor to prepare this area for additional meeting space.

Background: In January 2005, MAG first approached the Executive Committee to discuss the need for additional office space. At that time, the Building Lease Working Group (BLWG) was formed, exploratory building project work was done, and that project was deferred. The City of Phoenix advised MAG in April 2010 that the fourth floor of the current office building was going to become vacant, and that MAG could possibly lease additional space in the current building. MAG brought this information to the Executive Committee in their April 19, 2010 meeting and staff was directed to pursue this option. At that time, approximately 3/4 of the fourth floor was leased and the lease-end date was June 30, 2010. The City of Phoenix Transit Police occupies the remainder of the fourth floor, and in order to accommodate MAG's office space needs, would need to move so that MAG could take the lease on the entire fourth floor. The City of Phoenix was recently given notice by the Regional Public Transportation Authority who currently leases the seventh and eighth floors of the building, that they will be moving, and the seventh floor space will be available by December 31, 2010. The City of Phoenix has advised MAG that it plans to move the City of Phoenix Transit Police to the seventh floor, freeing up the remainder of the fourth floor for lease to MAG.

MAG is currently negotiating the lease and parking arrangements. Final details of the lease and the parking agreement are being completed and an update will be presented.

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

Agenda Item #7

The Bottom Line

A weekly commentary from inside the business community

Greater Phoenix transportation funds could be gone with the wind

July 29, 2010
by Glenn Hamer

The Environmental Protection Agency's plan to sanction the region encompassing most of Maricopa County over the area's air quality could initially jeopardize over $1 billion worth of federal transportation funding, grinding project design and construction to a halt while eliminating thousands of jobs. The ultimate sanctions that EPA could impose could cause a loss of $7 billion in transportation funds with devastating consequences. The emerging state versus federal showdown over an overly aggressive regulatory position by the EPA could make the battle between Washington, D.C. and Arizona over immigration look like a game of Tiddlywinks.

What unleashed the federal attack dogs on Arizona? The answer is blowing in the wind.

At issue is the level of particulate matter, known as PM-10. The Maricopa Association of Governments has investigated why an air quality monitor at West 43rd Avenue was registering unusually elevated concentrations of PM-10 above the EPA standard during high wind conditions.

MAG's analysis, along with that of the Arizona Department of Environmental Quality and consultant Sierra Research, indicated that the monitor's location adjacent to a dusty riverbed was responsible for the high PM-10 readings during exceptionally high wind conditions.

EPA, however, despite reams of data-backed documentation and strict adherence to EPA's own procedures for analyzing the documentation, has told MAG and ADEQ that it does not concur with the state's finding of four high wind exceptional events in 2008.

As MAG Executive Director Dennis Smith wrote in his May report, "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!"

Because the high PM-10 readings from the West 43rd Avenue monitor are not being classified as exceptional events, the PM-10 concentrations measured by that monitor will not be excluded from the determination of whether the region is meeting the PM-10 standards. Citing the PM-10 concentrations, EPA has indicated that it intends to deny approval of MAG's Five Percent Plan for PM-10. The plan describes how the region will reduce PM-10 by five percent per year until PM-10 readings reach their EPA-mandated levels and contains control measures for PM-10 that are as stringent as any in the country

The potential sanctions facing Arizona for its perceived failure to attain proper air quality levels and the disapproval of its Five Percent Plan are stiff ones.

If the EPA finds that the region failed to attain three years of clean data for 2008, 2009 and 2010 and the Five Percent Plan is disapproved and that decision is finalized in the Federal Register, the region will enter a conformity freeze 30-90 days after the decision appears in the Register. That will mean that only those projects in the first four years of the Transportation Improvement Plan and Regional Transportation Plan can proceed. Projects would not move forward unless a new Five Percent Plan is submitted that meets Clean Air Act requirements.

If the problems are not corrected within 18 months, then harsher sanctions would be carried out, including stiff limits on the issuance of air quality permits for industry. Finally, if air quality standards haven't been met within 24 months, then over $1 billion worth of federal highway funds could be withheld, putting over $7 billion worth of transportation funds from all sources - and the jobs that come with them - at risk.

The EPA exceptional event rule specifically mentions high wind as legitimate cause of an exceptional event. EPA acknowledges that its exceptional event rule is flawed, but, despite its shortcomings, the rule must still be implemented. Moreover, the Arizona submission strictly followed the data requirements used by California's San Joaquin Valley when it successfully obtained EPA's approval of its demonstration. As a result of EPA's decision, the entire MAG region's transportation funding is in jeopardy due to naturally occurring high wind, local soil conditions and a flawed rule.

MAG and ADEQ are staffed by highly capable and dedicated public servants. They cannot, however, control the weather. ADEQ, which submits the exceptional event documentation on behalf of MAG, intends to submit documentation of seven more exceptional events for 2009. One can only wonder how the EPA will view those submittals. It's worth noting that, following a wet winter and spring, there have been no PM-10 exceedances in 2010. Sometimes Mother Nature works in our favor.

A clear rule with specific, rational requirements prescribing what constitutes an exceptional event needs to be issued by the EPA and codified through the rulemaking process. There are too many outstanding issues over the implementation of the current rule. As the 15-state Western State Air Resources Council recently wrote in a letter to EPA, "Our scarce air quality management resources need to focus on problems we can solve, not on problems over which we have little or no control."

MAG is exploring a legal challenge against the capricious EPA determination and is informing our congressional delegation of the potentially crippling

consequences of the sanctions.

One can't help but think of another more high profile issue when considering this latest difference of opinion between Arizona and the federal government.

The aggressive regulatory position taken by EPA in this air quality case stands in stark contrast to the federal government's passive approach to immigration. While the government drags its feet on immigration reform, yet lectures and litigates over Arizona's response to federal inaction, it ignores scientifically verifiable air quality data and pursues a set of draconian sanctions that could irreparably harm the region's economy. More than just a case of misplaced priorities, the EPA's actions constitute a serious abuse of government power.

Glenn Hamer is the president and CEO of the Arizona Chamber of Commerce and Industry.

The Arizona Chamber of Commerce and Industry is committed to advancing Arizona's competitive position in the global economy by advocating free-market policies that stimulate economic growth and prosperity for all Arizonans. http://www.azchamber.com/.

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Arizona Chamber of Commerce & Industry | 1850 N. Central Ave. | Ste. 1433 | Phoenix | AZ | 85004

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July 30, 2010

VIA ELECTRONIC, U.S. MAIL AND OVERNIGHT DELIVERY

Lisa Jackson
Administrator
U. S. Environmental Protection Agency
EPA Docket Center
Mailcode: 2822T
1200 Pennsylvania Avenue, NW.
Washington, DC 20460-0001

RE: Docket ID No. EPA-HQ-OGC-2010-0428
MAG Comments on the EPA/ACLPI Proposed Consent Decree

Dear Administrator Jackson:

In a separate submission, the State of Arizona, through its Department of Environmental Quality ("ADEQ"), has submitted comments on the above-referenced proposed Consent Decree. The primary purpose of this letter is to express the strong support of the Maricopa County, Arizona cities, towns, and member agencies that constitute the Maricopa Association of Governments ("MAG"), for those comments.

The "MAG 2007 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area" (the "Plan") that is the subject of the Consent Decree was developed by MAG in concert with ADEQ and Maricopa County. It contains controls on PM-10 emissions that are as stringent as any in the country. The ADEQ comments request that the schedule for action on the Plan be postponed for at least six months so that MAG and the other Arizona governmental entities and stakeholders can work cooperatively with EPA to determine what issues, if any, represent barriers to the approvability of the Plan and to resolve those issues cooperatively.

First, it is important to note that the issues raised by the Plan and the Exceptional Events Demonstration that are directly relevant to the effectiveness of the Plan, are not public health issues. As elected officials, our first priority is protection of the health of our citizens. These issues, to the extent that EPA has disclosed them to us, involve elevated levels of PM-10 measured at a single, somewhat isolated ambient air quality monitor. The elevated levels were caused primarily by the effect on the monitor of unusually high winds in a desert environment.

Second, what the ADEQ and MAG comments are about is fairness. MAG and ADEQ have submitted exceptional events demonstrations with voluminous technical support that followed the standards exactly that are set forth in Section 319 of the Clean Air Act and the EPA rules implementing that section. Indeed, EPA has approved a demonstration with substantially less technical support for a California Air Quality Control District. Also, the basis for EPA's initial action on the demonstration is entirely inconsistent with the agency's own rules for exceptional events. Fairness demands that EPA considers these facts as it acts upon the exceptional events demonstration.

Finally, few counties, if any, in the country have been as devastated by this recession as Maricopa County. The effect of even a proposed disapproval of the Plan as proposed in the Consent Decree, due to the uncertainty it would create about future transportation infrastructure, could further substantially damage our economic situation with significant negative impacts on individual families and communities. Since EPA's creation in 1970, we have always been able to work with the agency to resolve our differences informally through candid communications prior to formal agency action. That kind of communication takes time and the willingness of EPA to work with us. The schedule proposed in the Consent Decree is counterproductive as far as resolution of the issues since it precludes such a process. The six-month delay ADEQ is seeking, and that we endorse, will provide the needed time for us to work out our differences.

Thank you for your attention.

Sincerely,

The Regional Council of the Maricopa Association of Governments

Thomas L. Schoaf
Mayor, City of Litchfield Park
Chair, MAG Regional Council

Hugh Hallman
Mayor, City of Tempe
Vice Chair, MAG Regional Council

Marie Lopez Rogers
Mayor, City of Avondale
Treasurer, MAG Regional Council

Robin Barker
Councilmember, City of Apache Junction

Jackie Meck
Mayor, Town of Buckeye

David Schwan
Mayor, Town of Carefree

Richard K. Esser
Councilmember, Town of Cave Creek

Boyd W. Dunn
Mayor, City of Chandler

Michele Kern
Mayor, City of El Mirage

Jay Schlum
Mayor, Town of Fountain Hills

Ron Henry
Mayor, Town of Gila Bend

John Lewis
Mayor, Town of Gilbert

Elaine M. Scruggs
Mayor, City of Glendale

James M. Cavanaugh
Mayor, City of Goodyear

Mary Rose Wilcox
Supervisor, District 5, Maricopa County

Scott Smith
Mayor, City of Mesa

Scott LeMarr
Mayor, Town of Paradise Valley

Bob Barrett
Mayor, City of Peoria

Peggy Neely
Councilmember, City of Phoenix

Gail Barney
Mayor, Town of Queen Creek

Jim Lane
Mayor, City of Scottsdale

Sharon Wolcott
Councilmember, City of Surprise

Adolfo Gamez
Mayor, City of Tolleson

Kelly Blunt
Mayor, Town of Wickenburg

Michael LeVault
Mayor, Town of Youngtown

F. Rockne Arnett
Chair, Citizens Transportation Oversight Committee

Victor Flores
State Transportation Board

cc: Jared Blumenfeld, EPA Region IX Administrator
Joy E. Herr-Cardillo, Arizona Center for Law in the Public Interest

SALT RIVER
PIMA-MARICOPA INDIAN COMMUNITY
10005 East Osborn Road / Scottsdale, Arizona 85256-9722 / Phone (480) 362-7465 / Fax (480) 278-7188

July 30, 2010

VIA ELECTRONIC AND U.S. MAIL

Lisa Jackson
Administrator
U. S. Environmental Protection Agency
EPA Docket Center
Mailcode: 2822T
1200 Pennsylvania Avenue, NW
Washington, DC 20460-0001

RE: Docket ID No. EPA-HQ-OGC-2010-0428
MAG Comments on the EPA/ACLPI Proposed Consent Decree

Dear Administrator Jackson:

In a separate submission, the State of Arizona, through its Department of Environmental Quality ("ADEQ"), has submitted comments on the above-referenced proposed Consent Decree. The primary purpose of this letter is to express the strong support of each of the Maricopa County, Arizona cities, towns, and member agencies that constitute the Maricopa Association of Governments ("MAG"), for those comments.

The "MAG 2007 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area" (the "Plan") that is the subject of the Consent Decree was developed by MAG in concert with ADEQ and Maricopa County. It contains controls on PM-10 emissions that are as stringent as any in the country. The ADEQ comments request that the schedule for action on the Plan be postponed for at least six months so that MAG and the other Arizona governmental entities and stakeholders can work cooperatively with EPA to determine what issues, if any, represent barriers to the approvability of the Plan and to resolve those issues cooperatively.

First, it is important to note that the issues raised by the Plan and the Exceptional Events Demonstration that are directly relevant to the effectiveness of the Plan, are not public health issues. As elected officials, our first priority is protection of the health of our citizens. These issues, to the extent that EPA has disclosed them to us, involve elevated levels of PM-10 measured at a single, somewhat isolated ambient air quality monitor. The elevated levels were caused primarily by the effect on the monitor of unusually high winds in a desert environment.

Second, what the ADEQ and our comments are about is fairness. MAG and ADEQ have submitted exceptional events demonstrations with voluminous technical support that followed the standards exactly that are set forth in Section 319 of the Clean Air Act and the EPA rules implementing that section. Indeed, EPA has approved a demonstration with substantially less technical support for a California Air Quality Control District. Also, the basis for EPA's initial action on the demonstration is entirely inconsistent with the agency's own rules for exceptional events. Fairness demands that EPA consider these facts as it acts upon the exceptional events demonstration.

Finally, few counties, if any, in the country have been as devastated by this recession as Maricopa County. The effect of even a proposed disapproval of the Plan as proposed in the Consent Decree, because of the uncertainty it would create about future transportation infrastructure, could further substantially damage our economic situation with significant negative impacts on individual families and communities. Since its creation in 1970, we have always been able to work with EPA to resolve our differences informally through candid communications prior to formal agency action. That kind of communication takes time and the willingness of EPA to work with us. The schedule proposed in the Consent Decree is counterproductive as far as resolution of the issues because it precludes such a process. The six-month delay ADEQ is seeking and that we endorse, will provide the needed time for us to work out our differences.

Thank you for your attention.

Sincerely,

Diane Enos

Diane Enos
President

ARIZONA DEPARTMENT
OF
ENVIRONMENTAL QUALITY

1110 West Washington Street • Phoenix, Arizona 85007
(602) 771-2300 • www.azdeq.gov

Janice K. Brewer
Governor

Benjamin H. Grumbles
Director

VIA U.S. Mail and Electronic Mail

August 2, 2010

Ms. Lisa Jackson
Administrator
U.S. Environmental Protection Agency
Docket ID Number EPA-HQ-OGC-2010-0428
EPA Docket Center, Mailcode 2822T
1200 Pennsylvania Ave, N.W.
Washington, DC 20460-001

Subject: Docket ID Number EPA-HQ-OGC-2010-0428 – Comments on Proposed Consent Decree

Dear Administrator Jackson:

The Arizona Department of Environmental Quality (ADEQ) provides the following comments on the proposed Consent Decree in Docket ID Number EPA-HQ-OGC-2010-0428. This proposed Consent Decree would resolve a lawsuit that seeks to compel EPA's Administrator to take final action under section 110(k)(2) of the Clean Air Act on the "MAG 2007 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area" (the 5% Plan) developed by the Maricopa Association of Governments in 2007, and submitted by the State of Arizona to EPA as a revision to the State Implementation Plan (SIP) for the Maricopa County serious PM-10 non-attainment area. For the reasons stated below, the schedule agreed upon within the Consent Decree, without consultation with the State of Arizona, should be delayed for at least six months.

BACKGROUND

Based upon the 1990 Clean Air Act amendments, the Maricopa County nonattainment area was initially classified as Moderate for PM-10 particulate pollution. Since that time, ADEQ has provided EPA with a series of plans that continue to reduce the amount PM-10 particulate pollution generated by man-made activity. Despite scientific studies indicating that implementation of the increasingly stringent control measures in these plans would achieve compliance with the EPA PM-10 National Ambient Air Quality Standards (NAAQS), the area had not achieved compliance with the standard. On June 6, 2007, EPA published a final notice finding that the Maricopa County nonattainment area failed to comply with the national ambient air quality standard. As a result, the State of Arizona was required to submit a plan to reduce PM-10 emissions within the nonattainment area by at least five percent per year until the standards is attained (aka the 5% Plan).

In December of 2007, ADEQ submitted the 5% Plan within the deadlines set by EPA. According to the 5% Plan, implementation of new and more stringent control measures would sufficiently reduce emissions in the nonattainment area to reach attainment of the PM-10 standard by calendar year 2010. In fact, the predicted reductions associated with these additional control measures exceeded the annual 5% reduction targets for calendar years 2008, 2009 and 2010. Despite submission of the plan in 2007, and its successful implementation beginning in 2008, EPA has failed to act on the plan. Now, after almost three years, the State of Arizona is being asked to quickly resolve with EPA a very complicated issue that will determine whether EPA can approve the 5% Plan.

EXCEPTIONAL EVENTS

To demonstrate compliance with the PM-10 NAAQS, the State has established an array of ambient air quality monitors throughout the non-attainment area. According to the requirements for the PM-10 NAAQS, if any of these ambient air quality monitors records a daily PM-10 concentration greater than the standard more than once per year on average, over a three-year period (i.e., four or more exceedances in a three year period), then the area is deemed to be nonattainment for the standard. During 2008, the monitoring network observed 11 days with concentrations of PM-10 in excess of the standard. In 2009, the monitoring network observed another seven days in excess of the standard.

The exception to this standard is when an exceedance is determined to be the result of an "Exceptional Event" as defined in 40 CFR § 50.1(j). Under 40 CFR § 50.14(a)(1):

> A State may request EPA to exclude data showing exceedances or violations of the national ambient air quality standard that are directly due to an exceptional event from use in determinations by demonstrating to EPA's satisfaction that such event caused a specific air pollution concentration at a particular air quality monitoring location.

While 40 CFR § 50.14(b) requires EPA to exclude exceedances caused by exceptional events from a determination of nonattainment, EPA's rule does not specify with particularity the minimum requirements for documenting such events. As a result, the exceptional event demonstration process is wrought with uncertainty, delay, and potentially unjustifiable decisions. On July 6, 2010, the Western States Air Resources (WESTAR) Council, an association of 15 western state air quality managers, wrote EPA's Assistant Administrator for the Office of Air and Radiation expressing concern about "...wait[ing] for decisions from EPA that, in some cases, are several years old." The letter went on to state that "...EPA has recently issued decisions not to concur with California and Arizona requests for several exceptional events where both states are highly confident that these exceedances do, in fact, meet all the criteria in the rule for qualifying as exceptional events" (see Attachment 1). Conversations with other WESTAR members revealed that other Western States did not clearly understand EPA's criteria either, resulting in WESTAR's reminder to EPA that there is a need for "...following through on [EPA's] commitment to work with WESTAR on this important issue..."

Despite the lack of clarity in the exceptional event regulations, ADEQ has provided EPA with what it believes to be documentation demonstrating that ten of the exceedances measured in 2008, and seven exceedances measured in 2009 were the result of exceptional events. ADEQ made numerous efforts to consult with EPA Region IX on the exceptional events that occurred in 2008, but did not receive a definitive position from EPA until May 21, 2010, only a few weeks before the announcement of the schedule within this proposed Consent Decree. ADEQ is still trying to work with EPA to document that the exceedances in 2008 were due to exceptional events. We simply need more time to ensure that a final decision on exceptional events will be made upon the best scientific information available.

CONSULTATION PROCESS

Throughout the process of demonstrating that the exceedances in 2008 were due to exceptional events, ADEQ has invited EPA Region IX's participation and direction. Between October 2009 and May of 2010, ADEQ and EPA staff attended numerous technical meetings regarding the 5% Plan, but EPA rarely provided ADEQ with feedback regarding exceptional events. The most substantive discussions occurred at a technical meeting in December of 2009. During the meeting, EPA provided a brief presentation identifying several concerns with ADEQ's 2008 exceptional events demonstrations. On March 17, 2010, ADEQ provided a supplemental response intended to satisfy EPA's concerns (see Attachment 2). On May 21, 2010, with no additional consultation and with no apparent review of ADEQ's supplemental response, EPA provided ADEQ with a letter explaining its non-concurrence with four exceptional event demonstrations for calendar year 2008. On June 30, 2010, ADEQ provided EPA with documentation responsive to the concerns raised in EPA's May 21, 2010 letter (see Attachment 3). On July 2, 2010, ADEQ also submitted comments from the Maricopa Association of Governments (see Attachment 4). We have not yet heard back from EPA on this supplemental information. Again on August 2, 2010, ADEQ submitted additional documentation on the June 4, 2008 exceptional event (see Attachment 5). EPA needs time to review this information before making a decision on the 5% plan.

In the absence of additional consultation regarding the documentation that continues to be submitted, EPA may have no other recourse than to propose the disapproval of the 5% Plan. The potential consequences of such a decision could have a devastating impact on Arizona's already battered economy. Some estimates project that EPA sanctions resulting from disapproval of the 5% Plan would jeopardize over $1 billon worth of federal transportation funding, halting growth and potentially eliminating thousands of Arizona jobs. Those same projections estimate that final sanctions could be seven times more severe. As a result, we ask the court provide us enough time to complete the exceptional events consultation process, prior to EPA's having to make such an important decision on the 5% Plan under the proposed Consent Decree.

PROPOSED SCHEDULE

The Arizona Department of Environmental Quality respectfully requests that the schedule in the proposed Consent Decree be extended by a total of six months, such that EPA's proposed action on the 5% Plan occur no later than March 3, 2011, and that EPA's final action occur no later than July 28, 2011. These additional six months will provide EPA with the time that is necessary to review the additional information that ADEQ has submitted in response to EPA's May 21, 2010 letter, and consult with ADEQ on the exceptional event demonstrations that will play a dispositive role in the final decision that EPA must propose pursuant to this Consent Decree. If you have any questions regarding this correspondence, please contact Eric Massey, the Director of ADEQ's Air Quality Division, at (602) 771-2288.

Sincerely,

for

Benjamin H. Grumbles
Director

Attachments (5):

1. July 6, 2010, WESTAR Letter to EPA Assistant Administrator of the Office of Air and Radiation
2. March 17, 2010, DRAFT – Supplemental Report – Assessment of Qualification for Treatment under the Federal Exceptional Events Rule: High Particulate (PM10) Concentration Events in the Phoenix and Yuma Areas on July 4, 2008
3. June 30, 2010, ADEQ response to EPA May 21, 2010 Letter and Enclosure
4. July 2, 2010, ADEQ transmission of comments prepared by Maricopa Association of Governments and Enclosure.
5. August 2, 2010, ADEQ transmission of Supplemental Information Letter and Enclosure

cc: Jared Blumenfeld, EPA Region IX (w/o attachments)
Dennis Smith, Maricopa Association of Governments (w/o attachments)
Joy Rich, Maricopa County (w/o attachments)

Maricopa County

Board of Supervisors

301 West Jefferson Street
10th Floor
Phoenix, AZ 85003-2143
Phone: 602-506-3406
www.maricopa.gov

August 4, 2010

VIA ELECTRONIC MAIL

Lisa Jackson
Administrator
U. S. Environmental Protection Agency
EPA Docket Center
Mailcode: 2822T
1200 Pennsylvania Avenue NW
Washington, DC 20460-0001

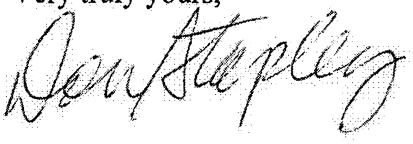
RE: Docket ID No. EPA-HQ-OGC-2010-0428
Maricopa County Arizona Comments on the EPA/ACLPI Proposed Consent Decree

Dear Administrator Jackson:

On July 30, 2010, you received a letter from the Maricopa Association of Governments ("MAG") that was signed by representatives of Arizona cities, towns and member agencies of MAG. Also signing the letter was Maricopa County Supervisor Mary Rose Wilcox. Supervisor Wilcox' signature was intended to show the strong support of the County Board of Supervisors for the comments of MAG and the Arizona Department of Environmental Quality ("ADEQ") on which the MAG comments were based. More specifically, Maricopa County urges your agreement to delay any action on the MAG 2007 Five Percent Plan for PM-10 (the "Plan") for six months to allow Maricopa County and the other public and private stakeholders to resolve any issues that jeopardize the approvability of the Plan.

This letter is intended to further support each of the comments described above from the perspective of a county that has devoted thousands of hours and millions of dollars to develop, implement and enforce regulations that are a key component of the Plan and that are the most stringent regulations for the control of PM-10 emissions in the country. These regulations were developed in consultation with and with the benefit of direct input from your agency. After all of this effort by all concerned, we think it would be extremely unfortunate if the agency would rush to judgment on the Plan as compelled by the schedule in the proposed Consent Decree and we would urge you and the Arizona Center for Law in the Public Interest to consider the six-month delay in acting on the Plan as proposed by ADEQ and the other parties we have named.

Very truly yours,



Don Stapley, Chairman
Maricopa County Board of Supervisors, District 2

cc: Jared Blumenfeld
EPA Region 9 Administrator

Joy E. Herr-Cardillo
Arizona Center for Law in the Public Interest

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

1110 West Washington Street • Phoenix, Arizona 85007
(602) 771-2300 • www.azdeq.gov

Janice K. Brewer
Governor

Benjamin H. Grumbles
Director

August 2, 2010

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

Re: Transmittal of supplemental information regarding June 4, 2008, Exceptional Event

Dear Mr. Blumenfeld:

I am writing to transmit a revised draft report addressing the issues raised by you and your staff regarding the exceptional event documentation for the PM_{10} exceedances at four monitors in Arizona on June 4, 2008, and to ask that you reconsider the position articulated in your May 21, 2010, letter as its relates to implementation of the EPA Exceptional Events Regulation (EER) and its ultimate impact on the approvability of the *MAG 2007 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area* (MAG 5% Plan).

ADEQ is again requesting that Region 9 revisit its May 21, 2010, decision not to concur with ADEQ's request to exclude for determination of compliance with the PM_{10} NAAQS at the West 43rd monitor because those exceedances were the result of exceptional events. ADEQ disagrees with the statement that the ADEQ submittal of November 17, 2009, was inconsistent with the EER and the preamble for the final rule (72 Fed. Reg. 13560, March 22, 2007). At the same time, ADEQ is concerned that the decision did not take into consideration much of the supporting data and analysis that ADEQ submitted in support of its request.

ADEQ also believes that EPA's decision is not consistent with the August 27, 2007, concurrence with California's request to exclude data from the determination of the attainment status for the San Joaquin Valley. According to the EER preamble:

> 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 ... 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....

73 Fed. Reg. at 13576. California and Arizona submitted substantially identical demonstrations that anthropogenic sources were sufficiently controlled, with opposite results.

The reports ADEQ submitted to EPA on November 17, 2009, met all of the requirements of Section 319 of the Clean Air Act and the EER to qualify the exceedances measured on June 4, 2008, as being the result of exceptional events. The reports were released for public review and discussed at a public meeting followed by a formal comment period. ADEQ received no comments from any member of the public, including EPA Region 9.

ADEQ is disappointed that EPA Region 9 did not work with ADEQ to "ensure that proper documentation is submitted to justify data exclusion." (See 72 Fed. Reg.13560 at 13574). Had the collaborative process envisioned in the EER been followed, the additional information and analyses contained in the enclosed report would have been prepared and submitted before EPA's taking a written position on such an important issue. ADEQ did not receive comprehensive feedback on its attempts to submit documentation "demonstrating to EPA's satisfaction that such event[s] caused a specific air pollution concentration ..." (40 CFR 50.14(a)(1)) until your May 21, 2010 letter. ADEQ believes that the information that we are providing today should be used to reconsider non-concurrence with ADEQ's demonstration that the exceedances measured on June 4, 2008, were the result of exceptional events.

I am also requesting to continue the consultation process with Region 9 under the EER and that no final decision be made on these exceptional events until ADEQ and EPA have an opportunity to publicly discuss the enclosed report and complete the research regarding sources contributing to windblown dust in the Salt River.

Thank you for your consideration. If your staff has any questions, please have them contact Nancy Wrona at (602) 771-2311.

Sincerely,

for

Benjamin H. Grumbles
Director

Enclosure

cc: Colleen McKaughan, EPA Region 9 (w/o attachments)
Deborah Jordon, EPA Region 9 (w/o attachments)
Joy Rich, Maricopa County (w/o attachments)
Dennis Smith, MAG (w/o attachments)

Air Resources Board

Mary D. Nichols, Chairman
1001 I Street • P.O. Box 2815
Sacramento, California 95812 • www.arb.ca.gov

Linda S. Adams
Secretary for
Environmental Protection

Arnold Schwarzenegger
Governor

July 22, 2010

Ms. Gina McCarthy
Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Dear Ms. McCarthy:

We need your assistance to improve the procedure for addressing uncontrollable events such as high winds and wildfires in the federal air quality planning process. The intent of U.S. Environmental Protection Agency's (U.S. EPA) rule on exceptional events is to exclude "events for which normal planning and regulatory processes established by the Clean Air Act are not appropriate." Unfortunately, our recent request to exclude high wind events in Imperial County from PM10 planning requirements was denied. The planning implications of this action are detailed in Attachment 1.

In reviewing natural events, U.S. EPA staff is requiring extensive emissions evaluations and rule assessments, rather than focusing on whether the occurrence of an uncontrollable high wind or wildfire event was adequately documented. While the California Air Resources Board has worked with local air districts to provide extensive documentation of the timing and location of these events, U.S. EPA staff has expanded its technical review far beyond the event itself. Establishing that natural high wind and wildfire events occurred, and that they caused atypical elevated concentrations, can be accomplished with a straightforward technical assessment. We are suggesting specific improvements (Attachment 2) to rule implementation to ensure that our air quality planning efforts are appropriately focused to maximize the public health benefits of our programs.

Thank you for your commitment to clean air, and we look forward to working with you to develop a more workable approach to implementing the exceptional events rule.

Sincerely,

Mary D. Nichols
Chairman

Attachments

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website: http://www.arb.ca.gov.

California Environmental Protection Agency

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ATTACHMENT 1

Planning Implications of the Exceptional Event Process in Imperial County

U.S. EPA's December 22, 2009 disapproval of several natural windblown dust events in Imperial County has had serious impacts on the PM10 State Implementation Plan (SIP) process for the region. U.S. EPA's review of these events, and the related planning implications, are discussed below to highlight our concerns regarding implementation of the Exceptional Events Rule (Rule).

Imperial County is located in the far southeastern corner of California. Most of Imperial County consists of large expanses of open desert, primarily managed by the federal government, with average rainfall of less than 3 inches per year. Due to the arid, desert nature of the region, PM10 emissions are dominated by fugitive dust. Windblown dust from open desert lands comprises more than half of these emissions. The federal 24-hour PM10 standard is exceeded on average only two to three times a year. These infrequent occurrences are due to two distinct types of conditions – transport of emissions from Mexico, or naturally occurring high winds.

In 2007 two high wind events occurred impacting a number of sites in the county. ARB and the Imperial County Air Pollution Control District (District) developed comprehensive technical documentation that was submitted to U.S. EPA in 2008. This documentation demonstrated that winds gusting 30 to 40 miles per hour caused elevated PM10 concentrations throughout Southern California as well as Arizona, with PM10 concentrations in Imperial reaching 291 ug/m3. The winds that contributed to both of these events were at least three standard deviations above those seen in the previous three years. A clear causal connection was made between the timing of the increasing winds and a shift in direction to winds blowing over the Anza Borrego Desert and the elevated PM10 concentrations. The documentation also demonstrated that concentrations before and after the events were well below the federal standard. Documentation of these events was supplemented by news media reports and airport observations.

Preparation of the exceptional events documentation was a significant drain on limited resources. Over the past two years, documentation for the Imperial County high wind events involved substantial resources by Imperial County and ARB staff, as well as lengthy review time by U.S. EPA staff. Initial documentation was submitted by ARB in June 2008, and later supplemented with additional information requested by U.S. EPA in July 2009. All told, the documentation submitted on these events totaled over 200 pages, with extensive citations to BACM rule assessment and documentation on the development of a windblown dust emissions model for the region. Throughout the U.S. EPA's review, ARB and Imperial County staff also worked closely with U.S. EPA staff on additional emissions inventory clarifications to help further support the natural events request.

As noted above, on December 22, 2009, U.S. EPA Region 9 issued a letter to ARB stating that they could not concur with the events (Laura Yoshii's letter to James Goldstene – Review of Exceptional Event Request (December 22, 2009).) In their review, U.S. EPA agreed that there were unusually high winds and that the evidence made a "compelling case of a causal relationship" between the wind-driven dust source and the PM10 exceedances (*id.* at p. 22) and that there was evidence that "the event was caused by wind-driven emissions stemming from a regional meteorological occurrence." (*Id.* at p. 23.) U.S. EPA concluded that the evidence presented "demonstrates that the April 12, and June 5, 2007 PM10 exceedances were probably caused by wind-driven PM10 emissions from some sources west of the monitors." (*Id.* at p. 25.) However, U.S. EPA subsequently concluded that the events could not be considered natural events under the Rule because the contribution of individual sources could not be quantified and linked to specific rules. U.S. EPA also raised concerns about the level of control for certain fugitive dust sources. (*Id.* at p. 29.) This is a level of analysis that goes far beyond the simple requirements specified in the section 50.14(c)(3)(iii) of the Rule and what is needed for the necessary technical demonstration that a high wind **event** caused the exceedances.

The District has worked closely with the ARB and U.S. EPA to develop appropriate fugitive dust rules for the region. In 2004, Imperial County was reclassified as a serious PM10 nonattainment area, triggering a Clean Air Act requirement to implement BACM within four years. The District conducted a comprehensive BACM analysis and adopted a suite of fugitive dust controls in 2005 to implement these requirements. At the District's rule adoption hearing, U.S. EPA staff testified that the rules represented BACM and ARB subsequently submitted them U.S. EPA in 2006. While the District moved expeditiously to implement BACM, it was not required to be in place at the time of the 2007 natural events as four years had not passed since the reclassification for PM10.

In reviewing the high wind events, U.S. EPA Region 9 staff's initial written comments from July 2008 acknowledged that the Rule does not require implementation of BACM level controls for contributing anthropogenic sources. (Sean Hogan's letter to Karen Magliano – Evaluation of April 12, 2007 Exceptional Event Request for the Imperial County California PM-10 Nonattainment Area (July 30, 2008), at p. 2.) However, in their final review of these events in December 2009, U.S. EPA concluded "Because BACM is required in serious PM10 nonattainment areas such as Imperial County under CAA Section 189(b), it is appropriate to consider that level of control in evaluating whether reasonable controls are in place for purposes of the Exceptional Events Rule." (Laura Yoshii's letter to James Goldstene – Review of Exceptional Event Request (December 22, 2009), at p. 9.) The review then went on to discuss several deficiencies in what U.S. EPA considered a BACM level of control for the region. We note that the Rule does not specify a required level of control, indeed it only specifies that the **event** itself not be reasonably preventable or controllable

(40 C.F.R. § 50.1(j).). In addition, at the time the events occurred, U.S. EPA had not raised any complaints regarding the appropriateness of the District's rules.

As a result of the disapproval, Imperial County must now implement serious area planning requirements using a design value based on a natural event. For example, the attainment demonstration would need to show a nearly fifty percent reduction in emissions to reduce wind generated concentrations of almost 300 ug/m3 down to the level of the standard. This is clearly not feasible and is precisely what the Rule was intended to avoid. The disapproval also has implications for which sources must be included in the BACM assessment. While the District has committed to working with U.S. EPA on further control measure improvements, development of a serious area SIP will not be possible until future natural events can be approved. Therefore it is essential that U.S. EPA and ARB work together to implement a more workable and appropriate process for approving natural events.

ATTACHMENT 2

Air Resources Board Recommendations to Improve U.S. EPA's Exceptional Events Rule

Focus U.S. EPA Technical Review on the "Event"

The Rule provides the following definition of an exceptional event: "Exceptional event means an event that affects air quality, is not reasonably preventable or controllable, is an event caused by human activity that is unlikely to recur at a particular location or a natural event . . . ." (40 C.F.R. § 50.1(j) (2007).) The Rule's preamble repeatedly describes an exceptional event as the **physical phenomena** that subsequently results in an air quality exceedance. For example, the Rule refers to *high winds*, rather than the dust entrained from the winds (72 Fed.Reg. 13565 (March 22, 2007).), as well as *wildfires*, not the smoke generated by these fires (72 Fed.Reg. 13566 (March 22, 2007).). In California and throughout the west, both high winds and wildfires can be common occurrences due to the west's unique geography, vegetation, and climate.

By their very nature, these physical phenomena are fundamentally not preventable or controllable. Thus we believe that evaluation of whether an event qualifies as exceptional under the Rule should initially focus upon whether the **event** in question is a natural phenomenon, rather than upon an analysis of the emissions caused by the natural phenomenon. Demonstrating that an event occurred resulting in elevated concentrations should not require detailed analysis of individual emissions source categories impacting each monitor, but rather a straightforward technical analysis of air quality and weather conditions to show that the elements justifying the exclusion of an event are met. The fact that the exceptional event analysis should be focused upon the nature of the event is shown by the language of 40 C.F.R. section 50.14(c)(3)(iii) which describes the demonstration necessary to exclude an event. Under section 50.14(c)(3)(iii) an exclusion of data must be supported by evidence that

- there is a clear causal relationship between the measurement under consideration and the **event** that is claimed to have affected air quality;
- the **event** is associated with a measured concentration in excess of normal historical fluctuations, including background; and
- there would have been no exceedance but for the **event**.

Link Rule Assessments to Controllable Emissions

Once this technical evaluation has been completed, a separate step should assess the existing control program. Because the natural events themselves are fundamentally not reasonably preventable or controllable, the rules assessment should focus on whether the control program is reasonable and appropriate for preventing exceedances under the typical range of weather conditions and emission events. It is neither reasonable nor cost-effective for a state to develop rules for events that occur only rarely under extreme circumstances.

We do agree that existing elements of the Rule requiring public notification and mitigation strategies are appropriate to help minimize public exposure during

these events. However, we wish to highlight the Rule's focus on a State's role in developing and enforcing such measures. The Rule's preamble makes clear that it is a State's responsibility to take "reasonable and adequate actions to protect public health." (72 Fed.Reg. 13576 (March 22, 2007).) A State is charged with deciding what actions are reasonable and adequate because "it is EPA's belief that States are in a better position to make decisions concerning what actions should be taken to protect the public when an exceptional event occurs." (*Id.* at p. 13575.)

Additionally, control measures satisfying the Rule's requirements are legally distinct from any RACM or BACM that may be required. As stated in the Rule's preamble, "the implementation of RACM or BACM is not required [under the Rule], but [instead] the State has the necessary flexibility to determine if, and what, controls should be implemented following an event, as well as the level of control that is required." (*Id.* at p. 13575.) Additional support for the distinction between RACM/BACM and "reasonable and adequate" control measures under the Rule is the fact that a State does not need to submit documentation of its mitigation actions to the U.S. EPA to allow for an exceptional event determination (*id.* at p. 13576.); this lack of required documentation stands in contrast to the documentation of control measures a State is required to provide to the U.S. EPA under a RACM or BACM requirement.

Streamline Documentation

Finally, we believe that in order for both states and U.S. EPA to effectively address preparation and review of exceptional events documentation in a timely manner, the documentation process needs to be streamlined. The determination should be based on the overall weight-of-evidence presented, given data availability and considering whether more detailed and time intensive analyses are truly needed. As such, the level of documentation should be commensurate with the complexity of the event. Widespread and severe events such as the historic wildfire outbreak that occurred during the summer of 2008 in California, or windstorms affecting multiple regions and/or states, should require much less documentation than more isolated or lesser magnitude events.