EDMUND G. BROWN JR.
Attorney General

State of California
DEPARTMENT OF JUSTICE

1515 CLAY STREET, 20TH FLOOR
P.O. BOX 70550
OAKLAND, CA 94612-0550

Telephone: 510-622-2174
Facsimile: 510-622-2270
E-Mail: laura.zuckerman@doj.ca.gov

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By Facsimile and U.S. Mail
(510) 817-5848

Ms. Ashley Nguyen
EIR Project Manager
Metropolitan Transportation Commission
101 Eighth Street
Oakland, CA 94607

RE: Comments on the Notice of Preparation for Draft Environmental Impact Report For the Transportation 2035 Plan

Dear Ms. Nguyen:

The Attorney General submits these comments to the Metropolitan Transportation Commission ("MTC") on the Notice of Preparation for the Draft Environmental Impact Report ("DEIR") for the proposed Transportation 2035 Plan ("Proposed Transportation Plan"). Although the deadline for comments on the Notice of Preparation has passed, we request that MTC consider these comments in preparing the DEIR.

We commend MTC for committing to evaluate the climate change impacts of the investments identified in the Proposed Transportation Plan. We also commend MTC for working to provide funding for "smart growth" development strategies that will reduce vehicle emissions associated with new development, for working to expand the bicycle network, and for including other elements of a Climate Change Program in the Proposed Transportation Plan. As climate change is one of the most critical environmental challenges to face our communities today, we urge MTC to embrace the opportunity it has in the Proposed Transportation Plan and the accompanying DEIR to show further leadership by identifying a comprehensive transportation strategy that will reduce emissions of the greenhouse gasses ("GHG") that cause global warming.

Global Warming in California

The Intergovernmental Panel on Climate Change of the United Nations has found

overwhelming evidence that global warming is occurring and is caused by human activity.[1] The California Climate Change Center reports that temperatures in the State are expected to rise 4.7 to 10.5°F by the end of the century.[2] Such increases would have serious consequences, including substantial loss of snowpack, an increase of as much as 55% in the risk of large wildfires, reductions in the quality and quantity of agricultural products, exacerbation of California's air quality problems, and adverse impacts on human health from increased heat stress, including heat-related deaths, as well as increases in asthma, respiratory, and other health problems.[3]

California recognizes that global warming is an urgent problem. As reflected in the California Global Warming Solutions Act of 2006 ("AB 32") and Executive Order S-3-05, we must substantially reduce our total GHG emissions by mid-century in order to stabilize atmospheric concentrations of GHGs at a level that will avoid dangerous climate change. This makes it imperative to address GHG emissions from the transportation sector, which account for 38% of the GHG emissions in the State.[4] In the Bay Area, emissions from the transportation sector are even greater, accounting for 50% of the total.[5] If we fail to make better transportation and land-use decisions – at all levels of government and at every opportunity – in a very short time, our climate goals may be out of reach. According to Rajendra Pachauri, Chairman of the United Nations Intergovernmental Panel on Climate Change ("IPCC"), "If there's no action before 2012, that's too late. What we do in the next two to three years will determine our future. This is the defining moment."[6]

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[1]United Nations Intergovernmental Panel on Climate Change, *Fourth Assessment Report: Climate Change 2007* (February 2007) *Working Group I Report, The Physical Science Basis, Summary For Policymakers* ("IPCC 4th").

[2]California Climate Change Center, Our Changing Climate: Assessing the Risks to California (July 2006) page 2, available at <http://www.energy.ca.gov/2006publications/CEC-500-2006-077/CEC-500-2006-077.PDF> (as of September 29, 2008). The report was prepared by the Climate Change Center at the direction of CalEPA pursuant to its authority under Governor's Executive Order No. S-3-05 (June 1, 2005) ("Exec. Order S-3-05").

[3]*Id*. at pp. 2, 10; Exec. Order S-3-05.

[4]California Air Resources Board, Climate Change Draft Scoping Plan (June 27, 2008) page 7 ("Draft Scoping Plan").

[5]Bay Area Air Quality Management District, Source Inventory of Bay Area Greenhouse Gas Emissions (November 2006) page 7.

[6]Rosenthal, *U.N. Chief Seeks More Leadership on Climate Change*, N.Y. Times (November 18, 2007).

California Environmental Quality Act

As the Legislature has recognized, global warming is an "effect on the environment" under the California Environmental Quality Act ("CEQA"), and an individual project's incremental contribution to global warming can be cumulatively considerable.[7] The projects authorized in the Proposed Transportation Plan will result in significant increases in the GHG emissions that contribute to global warming.

CEQA was enacted to ensure that public agencies do not approve projects unless they include feasible alternatives or mitigation measures that substantially reduce the significant environmental effects of the project.[8] CEQA requires that "[e]ach public agency shall mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so."[9] This requirement is recognized as "[t]he core of a DEIR...."[10] Therefore, a DEIR must identify mitigation measures and examine alternatives that would reduce the emissions of greenhouse gases that contribute to global warming.[11] These requirements of CEQA are consistent with federal law, which requires the Proposed Transportation Plan to consider projects and strategies that will "protect and enhance the environment" and "promote energy conservation" and to discuss "potential environmental mitigation activities."[12]

An EIR like the DEIR for the Proposed Transportation Plan must provide an accurate depiction of existing environmental conditions.[13] "Before the impacts of a project can be assessed and mitigation measures considered, an EIR must describe the existing environment. It is only against this baseline that any significant environmental effects can be determined."[14]

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[7]See Cal. Pub. Res. Code, § 21083.05, subd. (a); see also Sen. Rules Comm., Off. Of Sen. Floor Analyses, analysis of Sen. Bill No. 97 (2007-2008 Reg. Sess.), Aug. 22, 2007.

[8]Pub. Resources Code, § 21002.

[9]Pub. Resources Code, §§ 21002.1, subd. (b), and 21081; see also *Mountain Lion Foundation v. Fish and Game Commission* (1997) 16 Cal.4th 105, 134.

[10]*Citizens of Goleta Valley v. Board of Supervisors of Santa Barbara County* (1990) 52 Cal.3d 553, 564-65.

[11]Pub. Resources Code, § 21002.1(a); Cal. Code Regs., tit. 14, § 15130, subd. (b)(5).

[12]23 U.S.C. §§ 134(h) and 134(i)(2)(B)(i). (See text accompanying fn. 19, *infra*.)

[13]Cal. Code Regs., tit. 14, § 15125, subd. (a).

[14]*County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 952.

The DEIR Should Consider Climate Change Impacts, As Well As Effective Methods of Mitigation and Alternatives to Reduce Such Impacts

The Proposed Transportation Plan will authorize expenditure of approximately $223 billion for transportation projects, including road construction and improvements that will provide additional road capacity and accommodate more vehicles. These projects will contribute cumulatively to the Bay Area's existing GHG load. In addition, implementing the Proposed Transportation Plan will result in increased GHG emissions during construction of the authorized projects, resulting in a significant cumulative impact on climate change. The DEIR should evaluate all the anticipated climate change impacts of GHG emissions from these actions, including emissions of black carbon from diesel-powered vehicles, as black carbon also contributes significantly to global warming.[15]

"Smart" land-use strategies can result in a reduction in vehicle miles traveled ("VMT") over the long term, which in turn is critical to reducing GHG emissions from the transportation sector. Statewide, VMT increased approximately 35% from 1990 to 2007, and under a business-as-usual scenario, VMT is currently expected to increase another 20% by 2020.[16] According to the California Energy Commission, if we do not slow this anticipated growth in VMT, the increase will completely nullify the other advances that the State is making to control transportation-related emissions, including lowering the carbon content of fuel.[17]

As the Air Resources Board notes, "[t]he key to addressing the VMT challenge is providing people with more choices through diversified land use patterns, greater access to alternative forms of transportation including transit, biking and walking, and creating cities and towns where people can live, work and play without having to drive great distances."[18] In addition, the way a transportation plan allocates funds among potential transportation projects can make a significant difference in the amount of transportation-generated GHG emissions in the future. The DEIR should discuss whether the Proposed Transportation Plan *maximizes* the use of available funds for public transit, alternative fuel vehicles, carpool, vanpool, rideshare, pedestrian and bicycle projects (including "Safe Routes to School" programs), and other measures that reduce VMT and/or GHG emissions.

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[15]Black carbon is a strong absorber of solar radiation, and black carbon particles mixed with dust and chemicals in the air may be the second biggest contributor to global warming. (See California Air Resources Board, Health Effects of Diesel Particulate Matter pages 4-5, available at <http://www.arb.ca.gov/research/diesel/dpm_draft_3-01-06.pdf> [as of September 29, 2008].)

[16]Draft Scoping Plan Appendices page C-22.

[17]California Energy Commission, The Role of Land Use in Meeting California's Energy and Climate Change Goals, Final Staff Report (August 2007) pages 10, 18.

[18] Draft Scoping Plan Appendices page C-22.

CEQA requires that an EIR evaluate the potential environmental impacts of an entire project, which in this context we believe represents the entire $223 billion of authorized expenditures – not just the $31.6 billion for projects MTC identifies as "discretionary," but also the $191 billion for projects identified as "committed," projects included in the prior Transportation Plan but not yet constructed. The EIR for the prior Transportation Plan was prepared before AB 32, with its GHG-emission reduction goals, was enacted. The prior Transportation Plan and EIR also were adopted before the enactment of the federal act (effective August 2005) (SAFETEA-LU) that requires a Transportation Plan to address projects and strategies that will "protect and enhance the environment, promote energy conservation, improve the quality of life . . . ."[19] Finally, the California Transportation Commission ("CTC") recently adopted the Addendum to the 2007 Regional Transportation Plan Guidelines, "Addressing Climate Change and Greenhouse Gas Emissions During the RTP Process;" this guidance also did not exist when the EIR for the prior Transportation Plan was adopted.[20]

Accordingly, CEQA requires evaluation in the DEIR of climate change impacts both of the "committed" projects and the "discretionary" projects, and ways to eliminate or reduce such impacts. It also requires consideration of an alternative that, where feasible, eliminates from the Proposed Transportation Plan so-called "committed" projects that would contribute to adverse cumulative impacts on climate.[21]

The Proposed Transportation Plan includes projects that MTC has selected for funding with $31.6 billion in "discretionary" funds. To select these projects, MTC stated it used a performance rating system to evaluate the projects' anticipated effectiveness at meeting the region's transportation goals. Among other things, the adopted goals include "climate protection," and the "performance objectives" include reducing VMT and reducing emissions (including GHGs). We commend MTC for adopting these goals and objectives.

The Proposed Transportation Plan also includes an additional $191 billion for projects that were authorized in the last Transportation Plan, which MTC refers to as "committed" projects. MTC indicates that the "committed" projects include about $29 billion for transit and road expansion and $162 billion to maintain the existing transportation system. We understand that the $29 billion of "committed" projects for transit and roadway expansion have been proposed for inclusion in the new Transportation Plan without renewed evaluation of the relative need for, benefits of, or impacts of these projects vis-à-vis others, and regardless of how well they meet MTC's identified goals and performance objectives. We urge MTC to rectify this omission with respect to the "committed" transit and roadway expansion projects (which reflect only 15% of the "committed" funding). MTC's own research shows that achieving reductions in

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[19]23 U.S.C. § 134(h)(1)(E).

[20]It was adopted by the California Transportation Commission on May 29, 2008.

[21]If there is a contractual obligation or other overriding reason to complete a particular low-performing "committed" expansion project, the DEIR should discuss this.

GHG emissions consistent with the goals of AB 32 will be extremely difficult:[22] this highlights the need for careful and complete evaluation of impacts on VMT and GHG emissions of *all* expenditures for road and transit expansion in the Proposed Transportation Plan.

MTC staff's analysis indicates that many of the "committed" expansion projects support only one, in some cases *none*, of the identified performance goals. If low-performing "committed" projects were eliminated where feasible to do so, funding would be available to cover transit shortfalls, particularly for BART, Muni, and AC Transit, which together carry 80% of the transit riders in the Bay Area.[23] If these shortfalls are not addressed, or if they are addressed through fare increases, as recently proposed,[24] ridership may fall, with a concomitant increase in GHG emissions. The DEIR should address the implications of the potential transit shortfalls on GHG emissions and whether those impacts could be reduced by using funds currently proposed to be allocated to low-performing "committed" projects. This would be consistent with the direction in the CTC's guidelines for addressing climate change in RTPs to "[*c*]*onsider shifting* transportation investments towards improving and expanding urban and suburban core transit, programs for walkability, bicycling and other alternative modes, transit

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[22]See Therese W. McMillan, Deputy Executive Director, Policy, Metropolitan Transportation Commission, presentation to California Transportation Futures Symposium (September 3, 2008), Transportation 2035: S.F. Bay Area - Targeting Health Through Environment, available at <http://www.dot.ca.gov/hq/tpp/offices/osp/presentations/McMillan,T.ppt> (as of September 30, 2008).

[23]There is currently a projected $19 billion shortfall in transit capital and operating needs for transit in the Bay Area over the life of the Proposed Transportation Plan, and a projected $4.2 billion shortfall in BART core capacity improvements. (See Commission Meeting presentation (July 23, 2008), Transportation 2035: Financially Constrained Investment Plan, page 22, available at <http://apps.mtc.ca.gov/meeting_packet_documents/agenda_1116/T2035_Recommendations_short_v.3.ppt> [as of October 1, 2008].) These figures were generated before recent increases in public transit ridership due to high gasoline prices. The American Public Transportation Association reports more than a 5% increase in BART ridership in 2008. (See <http://www.apta.com/research/stats/ridership/index.cfm> [as of September 29, 2008].) Thus, the funding needs for existing transit service may well exceed these estimates.

[24]See, e.g., *Consider congestion pricing for BART*, San Francisco Chronicle (September 15, 2008), available at <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2008/09/15/EDIJ12T13A.DTL&hw=BART+fare&sn=001&sc=1000> (as of September 30, 2008); Gordon, *BART considers higher fares*, San Francisco Chronicle (September 12, 2008), available at <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2008/09/12/MNS412SGBC.DTL&hw=BART+fare&sn=002&sc=491> (as of September 30, 2008), which noted that BART trains are currently near capacity in peak hours.

access, housing near transit, and local blueprint plans that coincide with the regional blueprint."[25]

The DEIR should also address, at a minimum, the following issues:

1. ***The impact of high-occupancy toll ("HOT") lanes on carpooling, transit ridership, VMT, and GHG emissions***. A principal benefit of the HOT lane network is savings in travel time for people driving alone (both in the HOT lane and in other lanes). Some commentators have expressed concerns about the effect of HOT lanes on "induced travel," noting that "at the same time that some drivers are encouraged to stay away from congestion or higher peak-period tolls, others are drawn to use the HOT lanes because they are relatively less congested than other options."[26] At least one expert panel has expressed concerns that a proposed increase in freeway lane miles for a "managed lane" network similar to the HOT lane network proposed here would "perpetuate auto-oriented development and reduce transit's competitiveness."[27]

   In recognition of these concerns, the DEIR should evaluate, for each corridor, the effect of (1) creation of a new lane to be used as a HOT lane, or (2) conversion of an existing HOV lane to a HOT lane, whichever is applicable, including any increase in the carpool requirement from 2 to 3 occupants,[28] on the following: (a) carpooling rates, (b) VMT, (c) induced travel (commuters, carpoolers, telecommuters, etc., who are thereby induced to start driving alone), and (d) long-term housing distribution patterns (i.e., "induced growth" of housing in areas

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[25]California Transportation Commission, Addendum to the 2007 Regional Transportation Plan Guidelines: Addressing Climate Change and Greenhouse Gas Emissions During the RTP Process (May 29, 2008) page 2 (emphasis added).

[26] Dahl, *The Price of Life in the Fast Lane* (2003) 111 Envtl. Health Persp., Number 16, available at <http://www.ehponline.org/members/2003/111-16/spheres.html> (as of September 30, 2008), citing the director of the Bridge Tolls Advocacy Project in New York.

[27]See Independent Transit Planning Review Services December 2006 Final Report, prepared for the San Diego Association of Governments (December 2006) pages ES-5 and 3-32, available at <http://www.sandag.cog.ca.us/uploads/publicationid/publicationid_1274_6239.pdf> (as of September 30, 2008). The panel also observed, "Smart Growth efforts will likely be weakened by managed lanes' alleviation of congestion and its encouragement of auto-oriented growth away from transit corridors." (See *id*. at pp. 6-16.)

[28] The Bay Area High-Occupancy/Toll (HOT) Network Study Final Report notes that implementing HOT lanes will likely require increasing carpool occupancy requirements. MTC, Bay Area High-Occupancy/Toll (HOT) Network Study Final Report (September 2007) page 7.

where HOT lanes can be used to commute to employment centers).[29] The DEIR should provide both short-term and long-term evaluation of the environmental impacts/benefits of the HOT lane network. In particular, the EIR should evaluate the potential effects of induced travel where the freeway is expanded to create a HOT lane.[30]

2. ***The effect on GHG emissions of different prioritizations of uses of HOT lane revenues.*** MTC recently adopted "HOT Network Implementation Principles" that indicate HOT lane revenues will be used "to finance and construct the HOT network" and "provide transit services and improvements in the corridors." However, it is not clear when *any* excess revenues will be generated from the HOT lane network, and what the priority will be for investment of such revenues. We understand that, if completing the area-wide HOT lane network is the priority use for HOT lane revenues, the anticipated benefits of excess revenue from the HOT lane network would not accrue to public transit until the network is completed in 2025. The EIR should disclose the anticipated timing and amount of excess revenues (i.e., revenues not need to cover network expenses), and

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[29]The California Department of Transportation's ("Caltrans") own guidance for preparing an EIR recognizes the need to evaluate how a project will influence growth. (See Caltrans, EIR/EA Annotated Outline (April 2008) pages 37-39, available at <http://www.dot.ca.gov/ser/downloads/templates/eir_ea_SER.doc> [as of September 30, 2008]; Caltrans, Guidance for Preparers of Growth-related, Indirect Impact Analyses (May 2006), available at <http://www.dot.ca.gov/ser/Growth-related_IndirectImpactAnalysis/gri_guidance.htm> [as of September 30, 2008].)

[30] The Superior Court for the County of Sacramento recently invalidated Caltrans's EIR for an HOV lane project in Sacramento, in part because it did not adequately evaluate the impacts of induced travel. (See *Environmental Council of Sacramento v. Caltrans* (July 15, 2008, 07CS00967) <http://nastsacramento.blogspot.com> [as of September 29, 2008].) There are numerous reports and studies on the "induced travel" impacts of new freeway lanes and recommended methods of analysis. (See, e.g., U.S. Department of Transportation Federal Highway Administration, Induced Travel: Frequently Asked Questions, available at <http://www.fhwa.dot.gov/Planning/itfaq.htm> [as of September 30, 2008]; Cervero & Hanson, *Induced Travel Demand and Induced Road Investment* (2002) 36 J. Transp. Econ. & Pol'y, Part 3, pp. 469-490; Litman, *Generated Traffic and Induced Travel: Implications for Transport Planning* (September 17, 2007), available at <http://www.vtpi.org/gentraf.pdf> [as of September 30, 2008]; Litman, *Smart Transportation Investments: Reevaluating the Role of Highway Expansion for Improving Urban Transportation* (October 6, 2006), available at <http://www.vtpi.org/cong_relief.pdf> [as of September 30, 2008]; Cervero, *Road Expansion, Urban Growth, and Induced Travel: A Path Analysis* (Spring 2003) 69 APA Journal, No. 2, pp. 145-163; Noland, *Relationships between highway capacity and induced vehicle travel* (2001), 35 Transp. Res. Part A: Policy and Practice, Issue 1, pp. 47-72.)

should compare the anticipated effect on GHG emissions of this planned prioritization of the use of these revenues to the anticipated effect on GHG emissions of an alternative that applies a significant percentage of HOT lane revenues to unfunded transit needs as the revenue is generated (rather than after the HOT network is completed). In particular, the EIR should evaluate the benefits of using HOT lane funds for transit improvements that would maintain and increase transit ridership in the completed HOT lane corridors.[31]

3. ***The projected effects of the different alternatives on VMT and GHG emissions.*** In addition, the DEIR should provide and evaluate at least one alternative designed to maximize the reduction of GHG emissions. As you are aware, there are many policies and/or projects that MTC could consider to help achieve this goal, some of which it is already considering and could fund at a significantly higher level. While this letter is not intended to provide a complete list, some of the possibilities include the following: focus on eliminating transit shortfalls; increase service capacity to meet increased demand for public transit in core urban areas; increase funding for transportation infrastructure to serve infill and mixed use development located near employment centers and provide incentives for such development; increased incentives for use of public transit, ridesharing and carpools; and expanded public transit frequency of operation.

4. ***Green Construction Policy***. To further reduce the impact of the projects in the Proposed Transportation Plan on air quality and climate change, the EIR should evaluate the effect of including a mandatory "green construction" policy. Such a policy could require, for example,

   - use of an emissions calculator in the planning of every construction project, one that uses the proposed equipment fleet and hours of use to project nitrogen oxides, particulate matter, and carbon dioxide emissions, then quantifies the reductions achievable through the use of cleaner/newer

[31] The way the revenue is used could impact the effectiveness of HOT lanes. (See Dahl, R., *The Price of Life in the Fast Lane* (December 2003), 111 Environmental Health Perspectives, Number 16, available at <http://www.ehponline.org/members/2003/111-16/spheres.html> [as of September 29, 2008], citing the transportation director of Environmental Defense, who stated that "[t]he key element for truly effective congestion pricing [ ] is dedication of HOT lane fees to public transit and public health purposes in the same transit corridor.") Along similar lines, the California Air Resources Board's Draft Scoping Plan identifies congestion pricing as a GHG-reduction measure under consideration, emphasizing that the GHG emission reductions would come from "relief of severely congested traffic, some reduction in vehicle travel, *and from the investment of funds in transit infrastructure that would provide additional transportation options during congested hours*." (Draft Scoping Plan p. 38 [emphasis added].)

equipment;[32]

- that all off-road construction vehicles be alternative fuel vehicles, or diesel-powered vehicles with Tier 3 or better engines or retrofitted/repowered to meet equivalent emissions standards as Tier 3 engines;[33]

- use of the minimum feasible amount of GHG-emitting construction materials (cement, asphalt, etc.);[34]

- use of cement blended with the maximum feasible amount of flyash or other materials that reduce GHG emissions from cement production;

- use of lighter-colored pavement with increased reflectivity, which reduces the "heat island" effect;

- recycling of construction debris to maximum extent feasible;

- planting of shade trees in or near construction projects where feasible.

Finally, the DEIR also should consider feasible measures to mitigate and/or reduce emissions of criteria pollutants (including black carbon and other particulate matter) from diesel buses, such as requiring retrofitting of diesel buses with particulate traps, replacing diesel buses

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[32]The calculator used in the Sacramento Metropolitan Air Quality Management District's program is available at <http://www.airquality.org/ceqa/index.shtml#construction> (as of September 29, 2008).

[33]Similarly, the South Coast Air Quality Management District has called for the State, in selecting projects that will be funded from Proposition 1B, to impose a condition that requires "use of lowest emitting construction equipment and fuels available." (South Coast Air Quality Management District Res. No. 07-07 (April 6, 2007), "Resolution Expressing Conditions for Funding Projects with Proposition 1B Funds in the South Coast District.")

[34]A new production method known as "warm-mix" asphalt technology that significantly reduces GHG emissions during application may prove to be a feasible alternative road paving material. (See Moore, *Warm-Mix Asphalt (WMA) Potentially Can Provide Important Benefits for Paving Contractors, Reduce Fuel Costs and Diminish Green-House Gases*, Construction Equipment (March 1, 2007), available at <http://www.constructionequipment.com/article/CA6421459.html> [as of September 29, 2008]. Warm-mix asphalt was used successfully in Yellowstone National Park in August 2007, and, this fall, Logan International Airport in Boston will become the first in the U.S. to pave a runway with the new asphalt mix. (See *"Green" Asphalt Saves Energy and Reduces Greenhouse Gas Emissions* (August 6, 2008), available at <http://fypower.org/news/email_story.html?post_id=3165> [as of September 29, 2008]).

with the lowest-emitting available alternative fuel buses, requiring that all new buses have the lowest level of emissions feasible, and planting particulate-absorbing trees near freeways and busy streets. Emissions of these pollutants is a critical health issue for the region, which does not meet attainment standards for ozone and particulate matter.[35]

Global warming presents California with one of its greatest challenges to date. MTC has the opportunity to take steps to address the problem of climate change constructively, while educating the public and decision-makers. We urge MTC to meet the challenge with the Proposed Transportation Plan and DEIR. Please do not hesitate to contact us if the Attorney General's Office can be of any assistance.

Sincerely,

/S/

LAURA J. ZUCKERMAN
SANDRA GOLDBERG
Deputy Attorneys General

For EDMUND G. BROWN JR.
Attorney General

[35]See generally, e.g., California Air Resources Board, Health Effects of Diesel Exhaust, available at <http://www.oehha.org/public_info/facts/dieselfacts.html> (as of September 29, 2008); California Air Resources Board, Draft Diesel Particulate Matter Health Risk Assessment for the West Oakland Community (March 19, 2008), available at <http://www.arb.ca.gov/ch/communities/ra/westoakland/westoakland.htm> (as of September 29, 2008); and the Bay Area Air Quality Management District's air quality summaries, available at <http://www.baaqmd.gov/pio/aq_summaries/index.htm> (as of September 29, 2008).