



February 14, 2012

Mr. Jacob Lieb
Southern California Association of Governments
818 West Seventh Street, 12th Floor
Los Angeles, CA 90017-3435

**Building
Industry
Association
of Southern
California, Inc.**

**Re: Building Industry Association of Southern California, Inc.'s
Comments on the Drafts of the 2012 Regional Transportation
Plan & Sustainable Communities Strategy (RTP/SCS) and the
Program Environmental Impact Report (PEIR)**

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Dear Mr. Lieb:

Building Industry Association of Southern California, Inc. (BIASC) is a regional trade association that represents more than 1,000 member companies. Together, BIASC's members build most of the homes and communities throughout the same six-county region in which Southern California Association of Governments (SCAG) is the metropolitan planning organization. Naturally, therefore, BIASC is profoundly interested in SCAG's role in land use regulations and all regional planning for development and redevelopment.

Given our strong interest in the subject, BIASC is grateful for this opportunity to provide comments concerning both (i) SCAG's Draft 2012 Regional Transportation Plan (RTP) – which includes an inaugural Sustainable Communities Strategy (SCS), and (ii) the draft of the Program Environmental Impact Report (PEIR), in which the environmental impacts of the 2012 RTP/SCS are discussed.

First, BIASC appreciates SCAG's staff's professionalism and extremely hard work up to this point. In 2008, when the California Legislature enacted Senate Bill 375 (SB 375) and thus mandated the creation of a regional land use plan, the Legislature assigned SCAG's staff daunting new challenges. Throughout SCAG's process of developing the SCS, BIASC has enjoyed a positive working relationship with SCAG's staff professionals; and we look forward to continuing that working relationship.

Second, BIASC brings to the SCS development process an ingrained, institutional philosophy about how land-use decision-making should be undertaken. We believe that sound land-use decisions are best made by the persons who best understand the local contexts in which development and redevelopment take place. Given our philosophical predisposition, BIASC has worried from the start that an SCS for SCAG's region, if not thoughtfully considered and fashioned, can harm our vitally important industry, our regional economy, and our society.

Baldy View Chapter
L.A./Ventura Chapter
Orange County Chapter
Riverside County Chapter

In addition, BIASC is well aware that attempts made elsewhere to adopt and implement “top-down” regional land-use strategies have fared quite poorly. For example, in July 2010, the British Government abolished its “regional spatial strategies” (RSS) law – six years after its enactment. In announcing the RSS law’s abolishment, Britain’s Planning Minister explained:

“[T]hese controversial [regional spatial] strategies have proved that top-down targets do not build homes. All they have produced is the lowest peak time house building rates since 1924 and fuelled resentment in the planning process that has slowed everything down.”¹

Because of both (i) BIASC’s longstanding preference for local land use decision-making, and (ii) our concerns about the consequences of an ill-conceived SCS, BIASC has participated very actively in the public processes that led up to the draft documents on which we now comment. BIASC’s principles and preferences have been expressed many times to SCAG’s staff, leaders, committees and regional council members in many forums. Notwithstanding our consistent participation and urging, however, we must now respectfully point out our remaining concerns about the Draft RTP/SCS and the Draft PEIR.

In terms of the sheer quantity of concerns, most of them relate to the Draft PEIR. BIASC’s specific comments on the Draft PEIR are so numerous that a lengthy appendix accompanies this letter, in which our concerns are expressed in some detail. BIASC respectfully asks SCAG to respond, in accordance with CEQA and prior to consideration of the final PEIR for certification and approval by SCAG’s Regional Council, to each issue presented in the appendix.

To briefly summarize BIASC’s Draft PEIR concerns here, though, they are threefold. First, the Draft PEIR indicates that hundreds of specific mitigation measures would need to be analyzed and incorporated to the extent feasible in every future project throughout the SCAG region. Importantly, many of the listed mitigation measures were never before assembled for presumptive application to individual projects. Instead, many of them were drawn from “model policies” that were intended for consideration only at a jurisdictional planning level – not an individual project level. *See* Model Policies for Greenhouse Gases in General Plans, June 2009, at p. i (disclaimer), found at <http://www.capcoa.org/wp-content/uploads/downloads/2010/05/CAPCOA-ModelPolicies-6-12-09-915am.pdf> and incorporated herein by reference.

Second, many of the mitigation measures set forth in the Draft PEIR have no relationship to the RTP/SCS or its impacts (e.g., mitigation measures ranging from low-flow toilets to green roofs). Other mitigation measures are quite far-fetched, such as the requirement to remove obstacles to “edible landscaping” at all projects throughout SCAG’s six-county region.

¹ See http://www.dlpconsultants.co.uk/pdfs/client_briefing/42%20Client%20Briefing%20Abolition%20of%20RSS%20&%20SoS%20Statement.pdf

Most worrisome about the Draft PEIR, however, is this: If the Draft PEIR were finalized as presently drafted, SCAG would mandate the application of project mitigation measures that already conflict with, or will quickly conflict with, evolving and dynamic regulations covering a variety of topics. For example, the Draft PEIR prescribes mitigation requirements concerning matters that involve storm water management, home energy efficiency standards, fire protection, landscaping, water supply analyses, and municipal sewage treatment facilities – all of which are matters and activities that are subject to evolving standards.

For these reasons and those more thoroughly explained in the accompanying appendix, BIASC respectfully urges SCAG to clarify and cull the Draft PEIR.

Concerning the actual policy documents at issue (i.e., the Draft RTP and the Draft SCS themselves), BIASC has one fundamental concern: Page 148 of the Draft SCS suggests that local governments should look to “transportation analysis zone” (TAZ) maps to determine whether a particular project is consistent with the land use designation, density, and building intensity of the SCS. BIASC believes that this section needs to be revised for three distinct reasons.

First, BIASC is informed that the TAZ maps break land masses up into relatively small-scale areas averaging perhaps only about 150 acres in size (and even smaller in more densely populated areas). Requiring determinations about the consistency of future land uses to the SCS – concerning use designations, density, building intensity and the applicable SCS policies – at that fine a scale would be overly-prescriptive. SCAG need not be nearly so prescriptive because SB 375 requires only that an SCS “identify the *general* location of uses, residential densities, and building intensities *within the region*...” Calif. Government Code § 65080(b)(2)(B)(i) (emphasis added). Given this legislative mandate, there is no reason for SCAG to measure and compare land-use characteristics within the region at the very fine TAZ level vis-à-vis policy determinations.

Instead, the final RTP/SCS should permit local agencies to measure and compare land use characteristics with the regional strategy at a level consistent with the need for reasonable ongoing flexibility in local land use control. Therefore, the level of comparison should be, at the finest, at a city jurisdictional level (including any sphere of influence) – given that there are nearly 200 separate jurisdictions within the SCAG region. BIASC specifically urges SCAG to identify and compare such land use characteristics at no finer a scale than (i) the cities (including their respective adjoining spheres of interest), and (ii) concerning the unincorporated areas outside of local spheres of interest, by comparison to the rough-scale map that indicates generally the locations of building intensification shown in the SCS. See Exhibit 2 to the Draft SCS Background Documentation, found at http://rtpscs.scag.ca.gov/Documents/2012/draft/SR/2012dRTP_SCSBackgroundDocumentation.pdf.

Second, BIASC is concerned that any prescriptive use of TAZ maps for policy purposes could have negative consequences vis-à-vis the pending process for a required federal

conformity determination. Under the federal laws that relate to the federal funding of regional transportation infrastructure, an RTP must be constructed using “the latest planning assumptions.” “Using the ‘latest’ planning assumptions means that the conformity determination is based on the most current information that is available to state and local planners...” U.S. E.P.A. Guidance for the Use of Latest Planning Assumptions in Transportation Conformity Determinations (EPA420-B-08-901, December 2008), ¶ 2.2 (emphasis in the original), found at: <http://www.epa.gov/otaq/stateresources/transconf/policy/420b08901.pdf> and incorporated herein by reference. If and to the extent that SCAG’s TAZ-level maps and the data reflected in them are unacceptable to local planners and were not available to them when the RTP was developed, then fine-scale data based upon the TAZ maps should not be incorporated into the RTP via the SCS. They would instead need to be separated out from the RTP and – at most – made part of an “alternative planning scenario” (APS) under California Government Code section 65080(b)(2)(H). We believe that any conflict between the federally-mandated RTP approach and the SCS TAZ-level maps can be avoided by making all relevant policy determinations based on comparisons viewed at the city level (including any sphere of influence) and by reference to the generalized locations depicted for intensification in unincorporated county areas (for example, in Exhibit 2 to the *Background Documentation* as noted above).

Third, no TAZ-level maps were provided to the public as part of either the Draft RTP/SCS or the Draft PEIR, nor were they included in any of the appendices that SCAG provided to the public. Hopefully, the omission reflects SCAG’s pre-publication determination to forgo the use of any TAZ-level maps for policy purposes. If this were the case, then it appears that SCAG’s staff inadvertently failed to revise page 148 of the Draft SCS prior to its publication for comment; and SCAG should now revise that page to reflect a more appropriate approach (the jurisdictional approach suggested above). If, however, SCAG actually intended the policy prescription that is suggested on page 148 of the Draft SCS, then SCAG must be faulted for having failed to disclose an essential component of the RTP/SCS, which is the new level of policy prescription that such TAZ-level maps would impose or induce through the implementation of SB 375.

Under judicial precedents decided pursuant to the California Environmental Quality Act (CEQA), SCAG’s public disclosures in the Draft RTP/SCS and the Draft PEIR would be inadequate if they failed to disclose TAZ-level policy prescriptions affecting the region’s population distributions and concentrations:

The detail [of draft disclosure concerning changes induced in population distribution, population concentration, and the human use of the land] required in any particular case necessarily depends on a multitude of factors, including, but not limited to, the nature of the project, the directness or indirectness of the contemplated impact and the ability to forecast the actual effects the project will have on the physical environment.

Napa Citizens for Honest Government v. Napa County Bd. of Supervisors (2001) 91 Cal.App.4th 342, 369 (emphasis added).

In short, if SCAG were planning to utilize the TAZ-level maps as actual policy drivers (as page 148 of the Draft SCS may suggest), then SCAG needed to disclose the details of those TAZ maps; and SCAG did not. *See* CEQA Guidelines, Tit. 14, § 15144 (“an agency must use its best efforts to disclose all that it can”). SCAG would also need to have analyzed environmental impacts in much more detail than presented in the Draft PEIR, including the thousands of direct conflicts between TAZ maps for established communities and CEQA thresholds relating to General Plan compliance, Quimby Act compliance, impacts to protected greenbelts and historic resources, local congestion and traffic safety impacts, impacts to schools and other public services. Therefore, BIASC respectfully asks SCAG to revise page 148 of the SCS to avoid the insinuation that TAZ-level maps should be utilized for any future regulatory or policy purpose.

As a final additional comment on the draft policy documents, we note that two of SCAG’s brethren metropolitan planning organizations (one in the San Diego area another in the Sacramento area) have each included a 2050 planning year horizon in their respective RTP/SCS documentation. Such a long-term perspective seems appropriate to consider because land use and transportation patterns evolve relatively slowly; and they are subject to numerous variables (e.g., the economy, and the allocation of federal funding for regional transportation projects). Accordingly, SCAG’s ambitious vision for higher density development patterns along transit corridors may not be realized for many decades.

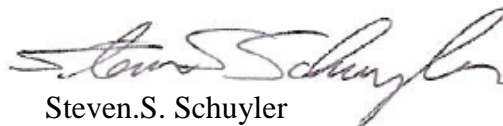
In the nearer term (2020 and 2035), the statewide targets for GHG reductions which were established pursuant to Assembly Bill 32 (2006) may be more feasibly be realized through other measures such as renewable energy, cleaner cars and cleaner fuels, and stationary source controls, as the California Air Resources Board’s AB 32 Scoping Plan explains. It is possible that, in light of analytical constraints prescribed by CARB, the SCAG region cannot realistically attain the 2020 and 2035 GHG emission reduction targets established by CARB, in which case an APS may be appropriate. Therefore, SCAG’s consideration of a longer-term, 2050 planning horizon may be a useful framework for informing local agencies and other interested stakeholders about a more feasible, longer-term regional planning effort.

To conclude, BIASC wishes to once again commend SCAG’s staff for its willingness to be open and frank with BIASC’s representatives about a whole range of points of views concerning the RTP/SCS and its potential impacts. BIASC looks forward to working with SCAG’s staff through the completion of this challenging process and beyond as the final RTP takes shape and ultimately takes effect.

Respectfully,



Andrew R. Henderson
Vice President and General Counsel



Steven.S. Schuyler
Vice President Government Affairs

cc: Mr. Hasan Ikhata

Attachment (appendix)