

**TOWN OF
APPLE VALLEY, CALIFORNIA**

AGENDA MATTER

Subject Item:

A RESOLUTION REQUESTING CONSIDERATION OF SUSPENSION OF IMPLEMENTATION OR REVISION OF THE CALIFORNIA GLOBAL WARMING SOLUTIONS ACT (AB 32 OF 2006)

SUMMARY STATEMENT

On February 23, 2010, the Town Council directed that a letter be sent to Governor Schwarzenegger requesting that he exercise his authority and suspend further implementation of AB 32 until the economy has recovered. The letter was sent on February 24, 2010 and is attached for your reference.

The Mojave Desert Air Quality Management District developed a template resolution for use by other local agencies on the same subject as the letter. This template resolution was sent to board members and agencies which had requested copies. Mayor Pro-Tem Sagona requested that this resolution be placed on the March 9, 2010 Council agenda for consideration.

Recommended Action:

Adopt Resolution No. 2010-12, requesting consideration of suspension of implementation or revision of the California Global Warming Solutions Act (AB 32 of 2006).

Proposed by: Linda Mayfield

Item Number _____

T. M. Approval: _____

Budgeted Item Yes No N/A



A Better Way of Life

Town of Apple Valley

14955 Dale Evans Parkway • Apple Valley, California 92307

February 23, 2010

The Honorable Arnold Schwarzenegger
Governor, State of California
State Capitol Building
Sacramento, CA 95814

Dear Governor Schwarzenegger:

The Town of Apple Valley is requesting your consideration of suspending implementation of the California Global Warming Solutions Act (AB 32) of 2006 until the economy has recovered.

The Town of Apple Valley supports sensible implementation of AB 32 to lower greenhouse gas (GHG) emissions, but at the same time is sensitive to the significant negative economic impacts AB 32 will have on consumers and businesses. We are very concerned about the potential impacts of the full implementation of AB 32 and believe that now – during the worst economic climate since the Great Depression – is not the appropriate time. The economy will not improve by requiring businesses to comply with new regulations, and, instead, must be allowed to create jobs.

AB 32 was signed into law during a robust economy; however, implementing it during these challenging times will only exacerbate our economic woes. AB 32 mandates will lead to higher energy costs at a time when we can least afford them. Given the state of California's economy and many people struggling, now is not the time to introduce costly new regulations.

The Town of Apple Valley appreciates your consideration of the issues facing local governments. The Apple Valley Town Council urges you to exercise your power to suspend further implementation of AB 32 until the economy has recovered. We look forward to working with you towards building an economically viable California.

Sincerely,

Peter Allan
Mayor, Town of Apple Valley

PA:lm

cc: Senator George Runner
Assemblyman Anthony Adams
Nancy Cisneros, League of California Cities
Emily Pappas, Lehman Levi Pappas & Sadler

RESOLUTION NO. 2010-12

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY REQUESTING CONSIDERATION OF SUSPENSION OF IMPLEMENTATION OR REVISION OF THE CALIFORNIA GLOBAL WARMING SOLUTIONS ACT (AB 32 OF 2006)

WHEREAS, the California Legislature adopted the California Global Warming Solutions Act, commonly referred to as AB 32, in 2006; and

WHEREAS, AB 32 aims to reduce California's greenhouse gas emissions (GHG) to 1990 levels by 2020 and to 80 percent below 1990 levels by 2050; and

WHEREAS, the California Air Resources Board (CARB) is the government agency charged with determining how the AB 32 goals will be reached; and

WHEREAS, on June 26, 2008, CARB released its AB 32 draft "scoping plan" describing the measures that will be used to reach AB 32's GHG reduction goals for 2020; and

WHEREAS, the scoping plan aims to reduce California's GHG emissions by 169 million metric tons of carbon dioxide equivalent (MMTCO₂E) thru a variety of strategies, including sector-specific regulations, market mechanisms, voluntary measures, fees, incentives and other policies and programs; and

WHEREAS, on December 12, 2008 the scoping plan was finalized with an effective date of 2012; and

WHEREAS, as of November 19, 2009, CARB has passed 12 of 30 measures identified in the scoping plan, including 9 of the early action measures identified in the scoping plan; and

WHEREAS, a variety of scoping plan measures are currently under development including but not limited to Greenhouse Emissions Cap and Trade, Zero Emission Vehicles and Renewable Electricity Standards; and

WHEREAS, USEPA's Mandatory Greenhouse Gas Reporting Rule (74 FR 56260, 10/30/2009) has potential conflicts in its implementation with CARB's regulation requiring GHG reporting; and

WHEREAS, USEPA's the Endangerment & Cause or Contribute Finding for Greenhouse Gasses under Section 202(a) of the Clean Air Act (74 FR 66496, 12/15/2009) and the proposed Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule (74 FR 55292, 10/27/2009) may result in both direct and indirect conflict with CARB's existing and proposed regulations under AB 32; and

WHEREAS, most air districts in California do not have delegation from USEPA to implement and enforce the Prevention of Significant Deterioration program which will hamper any local efforts to coordinate such rules with existing and proposed regulations under AB 32; and

WHEREAS, the U.S. Congress is also considering measures regarding GHG emissions including but not limited to the Wakman-Markey and Kerry-Boxer proposals; and

WHEREAS, such regulatory and potential legislative enactments may supersede or severely impact the ability of CARB and local air districts to implement and enforce regulations adopted pursuant to AB 32; and

WHEREAS, the Town of Apple Valley is a municipality with a population of 75,000; and

WHEREAS, the Town of Apple Valley is located within the Mojave Desert Air Basin and the Mojave Desert Air Quality Management District (MDAQMD), portions of which have been designated as nonattainment for the national ambient air quality standards (NAAQS) for Ozone and PM and nonattainment for state ambient air quality standards (SAAQS for Ozone, PM, Sulfates and Hydrogen Sulfide); and

WHEREAS, the MDAQMD has been identified by CARB pursuant to H&S Code 39610 as overwhelmingly impacted by transported air pollution from the South Coast and San Joaquin Air Basins; and

WHEREAS, without such transported air pollution from the MDAQMD would rarely, if ever, exceed the NAAQS or SAAQS; and

WHEREAS, areas designated nonattainment are mandated under the provisions of the Federal Clean Air Act (FCAA) to require pursuant to New Source Review (NSR) rules, Best Available Control Technology (BACT) and offsetting emissions reductions (Offsets) on major new or modified stationary sources of those nonattainment air pollutants and their precursors regardless of whether or not the area so designated has any control or not over the pollution causing the nonattainment finding; and

WHEREAS, the recently proposed revisions to the national ambient air quality standards for ozone will require even more new or modified stationary sources of air pollution to use BACT and obtain Offsets; and

WHEREAS, the MDAQMD due in part to the limited number of existing sources of air pollutants and the overwhelming impact of transport has few if any available emissions reductions available to provide such offsets; and

WHEREAS, there is a severe jobs/housing imbalance in the jurisdiction of the MDAQMD; and

WHEREAS, over 50% of the residents of the MDAQMD commute at least 40 miles to work and many commute over 100 miles to work daily resulting in substantial emission of both criteria pollutants and their precursors as well as GHGs; and

WHEREAS, location of new facilities and expansion of existing facilities would be one potential method of reducing the average vehicle miles traveled for residents and thus both criteria pollutant and GHG emissions within the MDAQMD; and

WHEREAS, many technologies used to attain BACT levels of air pollution control are based upon the combustion of fossil fuels which also causes emissions of GHGs; and

WHEREAS, without recognition of the impact of transported air pollution upon either the designation itself or upon the NSR rules the location of new facilities and the expansion of existing facilities becomes virtually impossible within the MDAQMD; and

WHEREAS, the requirement to utilize BACT and obtain offsets creates a barrier to new facility location and expansion of existing facilities within the MDAQMD; and

WHEREAS, the current unemployment rate within the MDAQMD averages 16.6%; and

WHEREAS, the lack of new and expanding facilities will further weaken the economy of the MDAQMD as well as result in further pollution of both criteria and GHGs as residents commute greater distances to obtain work; and

WHEREAS, control of Oxides of Nitrogen (NOx) will, due to interactions in the atmosphere increase the levels of methane a potent GHG; and

WHEREAS, California also has a renewable energy mandate for public utilities; and

WHEREAS, there are currently at least 12 renewable energy projects currently under consideration by the California Energy Commission in the desert areas of Southern California all of which have environmental review issues including but not limited to air quality issues; and

WHEREAS, failure to license and construct renewable energy projects will have an impact upon attainment and maintenance of the NAAQS for Ozone and other pollutants as well as upon reductions of GHG emissions; and

WHEREAS, SB 39 of 1989 requires the diversion of municipal waste from landfills; and

WHEREAS, one of the primary methods of diverting green waste from landfills is composting which in and of itself produces GHGs; and

WHEREAS, these and other existing and proposed regulations result in an overall regulatory structure that is inconsistent and confusing making it virtually impossible or incredibly slow to start any new large scale projects within the MDAQMD (and indeed in California overall) at a time where California infrastructure and its economy are in most need of refurbishment; and

WHEREAS, the existing and proposed regulations and unclear guidelines will also make it more difficult for smaller, pollution transport impacted air districts like the MDAQMD, to properly implement and enforce the regulations; and

NOW, THEREFORE, BE IT RESOLVED THAT THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY requests a suspension of the implementation of some, if not all, the regulations promulgated under the California Global Warming Solutions Act (AB 32 of 2006) until such time as the legal and regulatory inconsistencies can be resolved; and

BE IT RESOLVED FURTHER, that such suspension be continued until the pending Federal actions are clear enough such that their impact upon regulations promulgated pursuant to AB 32 may be more accurately assessed; and

BE IT RESOLVED FURTHER, that the California Air Resources Board and other applicable state agencies examine the impact of the regulations promulgated pursuant to AB 32 and for potential direct and indirect conflict with other existing regulations at both the State and Federal level including but not limited to the potential for gains in one area to jeopardize progress in another; and

BE IT RESOLVED FURTHER, that the California Air Resources Board and other applicable state agencies examine the overall economic impact of the regulations promulgated pursuant to AB 32 and their interaction with other existing regulations with emphasis upon the potential for job and other economic activity “flight” from California.

PASSED, APPROVED AND ADOPTED this 9th day of March, 2010.

MAYOR

ATTEST:

TOWN CLERK