

CITY OF HAYWARD

Hayward City Hall 777 B Street Hayward, CA 94541 www.Hayward-CA.gov

Cover Memo

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DATE: May 3, 2016

TO: Mayor and Council

FROM: City Manager

RE: Overview of ABAG/MTC Proposed Merger and Potential Adoption of Council Position on the Issue

RECOMMENDATION

That Council reads this report and provides guidance to the Mayor, Council Member Zermeño (as the City's representative to the Association of Bay Area Governments [ABAG]), and staff regarding the proposed merger of ABAG and the Metropolitan Transportation Commission (MTC).

SUMMARY

The purpose of this report is to seek guidance for the City's representatives to the Association of Bay Area Governments (Council Member Zermeño as Delegate and Council Member Elisa Marquez as alternate) and for staff as it relates to Council's perspective on the critical proposed merger of the Association of Bay Area Governments and the Metropolitan Transportation Commission. (NOTE: Mayor Barbara Halliday serves on ABAG as the Alternate to Mayor Bill Harrison of Fremont as representatives of the Alameda County Mayor's Conference.)

BACKGROUND

<u>Council of Governments (COGs)</u>: COGs (also known as regional councils, regional commissions, regional planning commissions, and planning districts) are regional governing and/or coordinating bodies that exist throughout the United States. CoGs are normally controlled by their member local governments, though some states have passed laws granting CoGs region-wide powers over specific functions, and still other states mandate such councils.

CoGs may either be distinct from-or encompass-regional Metropolitan Planning Organizations (MPOs). MPOs are multi-governmental urban transportation planning entities that arose out of the requirements of the Federal-Aid Highway Act of 1962, which made federal financing for urban transportation projects contingent upon the existence of a "continuing, comprehensive, urban transportation planning process undertaken cooperatively by the states and local governments".

<u>The Association of Bay Area Governments</u>: In 1961, the Bay Area's local governments from the nine Bay Area counties came together to form ABAG as a response to state legislation that would have supplanted local control over all bridges, ports, and transit operations in the Bay Area. ABAG's mission ever since has been to

strengthen cooperation and collaboration among local governments to provide innovative and cost effective solutions to common problems that they face.

In 1970, it issued its Regional Plan, 1970-1990, the Bay Area's first comprehensive regional plan, which it updates periodically. The document outlined a regional open space plan, regional information systems and technology support, criminal justice and training, water policy and waste collection, and earthquake hazards and planning. A major milestone was reached when it completed and released Plan Bay Area in 2013; and ABAG is currently in the process of developing Plan Bay Area 2040.

The ABAG Planning and Research Department works with local governments and stakeholders to develop and implement innovative solutions for issues involving land use planning, housing, transportation, environmental climate change, earthquakes and disaster resilience, and economic equity.

ABAG also offers a variety of cost-effective member service programs-ABAG Pooled Liability Assurance Network (PLAN) Corporation, ABAG Financial Services and ABAG POWER Natural Gas Pool-to address the comprehensive needs of local governments such as financing, risk management, natural gas, and employee training.

ABAG is an advisory body with limited statutory authority and is governed by its General Assembly, which consists of an elected official (delegate) from each city and county that is a member of the organization. The General Assembly determines policy, adopts the annual budget and work program, and reviews policy actions taken or proposed by the organization's Executive Board. A majority of city and county votes are required for action. Of most importance to the issue covered in this report, ABAG focuses on regional land use planning, including housing, and is primarily aligned with municipal governments as their primary planning partners. Their revenue stream is anchored by membership dues, and they receive substantial planning funding from MTC. Other revenue comes from grants and philanthropic sources.

Our local representatives on ABAG from the Alameda County Mayors Conference are Mayor Jerry Thorne from Pleasanton and Mayor Bill Harrison of Fremont; Mayor Barbara Halliday is an alternate to Mayor Harrison. Council Member Francisco Zermeño represents the City of Hayward with Council member Elisa Marquez as his alternate. Supervisors Richard Valle and Scott Haggerty represent Alameda County.

<u>The Metropolitan Transportation Commission (MTC):</u> MTC is the transportation planning, financing, and coordinating agency for the nine-county San Francisco Bay Area and was created in 1970. MTC is designated a regional transportation planning agency (RTPA) by the State of California and a metropolitan planning organization (MPO) by the federal government. MTC is not the Bay Area's council of governments (COG); the Association of Bay Area Governments (ABAG) holds that role.

MTC administers state-provided money through the Transportation Development Act (TDA) and has decision-making authority over the State Transportation Improvement Program (STIP). MTC administers federal funding through various grant programs, including the Transportation for Livable Communities (TLC) Program, Low Income Flexible Transportation (LIFT) Program, and Innovative Climate Grants Program.

MTC manages various regional operational programs, including 511, the Freeway Service Patrol (FSP), call boxes, ridesharing, FasTrak electronic toll collection, regional pavement management (including the pavement

management system software StreetSaver), arterial operations, and regional signal timing programs.

MTC is governed by twenty-one "commissioners", who are elected officials from the nine Bay Area counties according to the following specified formula:

- Sixteen commissioners are appointed by local elected officials.
 - The five most populous counties have two representatives each: The respective counties' Board of Supervisors select one representative and the mayors of the cities within the respective counties appoint the other.
 - The Mayor of Oakland and the Mayor of San Jose each appoint a commissioner
 - The four remaining counties appoint one commissioner each, with the commissioners representing both the cities and the board of supervisors for their respective counties.
- Two members represent regional agencies: ABAG and the <u>Bay Conservation and Development Commission</u>
 https://en.wikipedia.org/wiki/San Francisco Bay Conservation and Development Commission>.
- Three non-voting members are appointed to represent the federal housing department and federal and state transportation agencies.

Members representing the Hayward area include Mayor Tom Bates (City of Berkeley) representing the cities in Alameda County; Supervisor Scott Haggerty, representing Alameda County; and Council Member Julie Pierce (City of Clayton) representing ABAG.

<u>The California Association of Councils of Government (CALCOG)</u>: CALCOG is a voluntary organization. It facilitates communication and information sharing between members, other local officials, state and federal agencies, and the public. Most members represent joint powers agreements of cities and counties, while others are transportation commissions created by statute. All members are governed by locally elected officials chosen by their peers.

CALCOG has thirty-seven members ranging from the Lake County/City Area Planning Council (population 64,000) to the Southern California Association of Governments (population 18 million). Some are transportation providers, (e.g., Orange County Transportation Authority), and others are COGs that take on any issue that the local agencies agree can best be addressed regionally. ABAG acts as a COG in this respect.

Some members benefit from "self-help" revenue such as when a county has passed a sales tax measure to support transportation, and others are federally designated MPOs and are responsible for developing regional transportation plans under federal law and sustainable communities strategies under state law (e.g., MTC).

Each member may appoint a local elected official from their board to serve on the CALCOG board. In addition, to reflect the level of partnership between regional and local agencies, both the California State Association of Counties and League of California Cities may appoint a representative to the CALCOG board. The following elected officials represent our geographic area:

Council Member Julie Pierce (City of Clayton) representing the Contra Coast County Transportation

Authority and president of CALCOG

- Supervisor Scott Haggerty (Alameda County) representing the Alameda County Transportation Commission
- Supervisor Mark Luce (Napa County) representing ABAG
- Council Member Amy Worth (City of Orinda) representing MTC

In addition to a range of programs and operations provided by each agency, both MTC and ABAG have statutory roles and responsibilities under SB 375 http://www.ca-ilg.org/post/basics-sb-375 (Steinberg)^(a) for transportation, housing, and land use planning in the region with a legislative mandate to all the major MPOs in the state to produce a Sustainability Communities Strategy (SCS) every four years. The SCS is required to be included in the region's Regional Transportation Plan (RTP), which is approved and adopted by the region's MPO (MTC). SB 375 changed the relationship between ABAG and MTC from what had been historically a voluntary one to one of statute, defining the responsibilities and forcing the interaction. Plan Bay Area (the region's first SCS) is a long range-integrated transportation and land-use housing strategy for the San Francisco Bay Area. The Plan was jointly approved by ABAG's Executive Board and MTC in July 2013.

DISCUSSION

In October 2015, MTC adopted Resolution 4210 to create an integrated regional planning department to carry out the regional land use and transportation planning responsibilities set forth in SB 375. 4210 created an integrated regional planning department by functionally consolidating MTC and most, but not all, ABAG planning staff into a single unit within MTC. As outlined in Resolution 4210, the respective SB 375 statutory responsibilities by ABAG and MTC for the development of the SCS, (Plan Bay Area) would remain the same after the functional consolidation of planning staff. Most importantly, the resolution pulls back MTC's critical funding to ABAG back to MTC, and allocates minimal "transitional" financial assistance to ABAG for the next five years to mitigate the impact.

Some believe this was intended to result in a functional consolidation of planners working on SB 375 within MTC and ABAG and to reduce duplication; and to bring all planning functions into MTC from ABAG. Others believe this was intended to eviscerate ABAG since the idea was accompanied by the proposal to cease funding from MTC: MTC funds most of the ABAG planning function. In addition, advocates began talking in terms of centralizing governance (rather than just planning) thereby raising serious concerns among many ABAG members about potential loss of local control over critical land use decisions within their respective jurisdictions. It should be noted that, at the time, The ABAG Administrative Committee adopted a resolution (ABAG Resolution 12-15, October 28, 2015) expressing support of MTC's Resolution 4210.

The two planning bodies engaged in a series of discussions regarding regional planning responsibilities and related interagency funding agreements, which resulted in actions being taken by both agencies, one of which was the issuance of a Request for Qualifications (RFQ) to conduct a jointly funded merger study and merger

implementation plan to be completed by June 1, 2016.

"In January 2016, MTC and ABAG hired Management Partners http://www.managementpartners.com/ to conduct the merger study to examine the policy, management, financial, and legal implications associated with further integration, up to and including institutional merger between MTC and ABAG. The engagement also included the development of a merger implementation plan for any option selected by the Joint Committee. In the event that ABAG and MTC approve an alternative merger implementation plan prior to July 1, 2016, Resolution 4210 will not be implemented. A Joint Committee of MTC composed of the ABAG Administrative Committee and the MTC Planning Committee was assigned responsibility for managing the merger study." (c) Composition of the ABAG Administrative Committee can be found https://www.managementpartners.com/ to conduct the merger study associated with further integrations as a further integration as a further integrat

http://abag.ca.gov/overview/administrative_roster.html; and composition of the MTC Planning Committee can be found http://mtc.ca.gov/about-mtc/what-mtc/mtc-organization/standing-committees/planning-committees/, do not composition of the MTC Planning Committee can be found http://mtc.ca.gov/about-mtc/what-mtc/mtc-organization/standing-committees/planning-committees.

ABAG, MTC, and some local government members of each agency are energetically engaged in discussion about the pros and cons of the merger, as well as alternative ways the merger might be accomplished if that is the direction chosen. Several participants are also deeply concerned about the impact such a merger might have on local control and the possible strengthening of regional governance over land use.

There is a core viewpoint that can be identified related to those honestly trying to assess the situation and develop a position on the matter. Elements of that viewpoint are as follows:

- Combining the two agencies, and possibly also bringing in the Air Resources Board, likely makes sense
 from the perspective of good government, efficient use of resources, and elimination of duplication of
 effort.
- While there is support for regional planning, particularly as it relates to housing and transportation, there is a huge difference between "regional planning" and "regional governance of planning", the latter of which is direct erosion of local control; particularly in the area of land use that is so critical to cities.
- The method by which the proposed merger was developed and initiated by MTC was off-putting, destructive to relationships, and unnecessarily divisive.
- The combination of Alameda County Transportation Improvement Authority (ACTIA) and Alameda County Congestion Management Agency (ACCMA) in 2010 offers a good model as to how agencies can be merged in a constructive manner.
- The merger should be properly assessed and alternatives developed in a transparent, inclusive, and collaborative manner.
- The study of a merger should be allowed enough time to be done well and to allow for productive collaboration with a minimum of territoriality involved.
- The current process raises significant concerns on many fronts: (1) It is being forced into an

unreasonably short time period; (2) it is fraught with territoriality, mistrust, and poor communication; and (3) it will not result in transparency, inclusion of critical perspectives, or result in positive collaboration.

Presentations of this situation have been made to the Alameda County Mayors Conference and several other groups. There have been many articles written, both pro and con, about the proposed merger, the decision-making process around the merger, and the possible motives (both overt and covert) for the merger. There has been discussion at the local, regional, and State levels.

Assembly Member Tony K. Thurmond (15th District^(b)-Richmond) chairs the Assembly Select Committee on Regional Planning for the San Francisco Bay Area. The committee was formed to address the planned merger of the ABAG and MTC. Assembly Member Thurmond also stated that he intends for the select committee to address other regional issues, including the lack of affordable housing; environmental issues, such as sea-level rise; strengthening the local economy; and improving public transportation systems. Membership of the Select Committee can be found here http://assembly.ca.gov/regionalplanningsf. (Note: Assembly Member Bill Quirk is a member of the Select Committee.)

Options Identified in the Report from Management Partners (c)

The report from Management Partners has been completed and submitted to the Joint Committee. A "Merger Study Information Sheet" prepared by Management Partners is attached as Attachment I. The report was released earlier this month and can be found http://abag.ca.gov/abag/events/agendas/o042216a-ltem%2007,%20ABAG%20MTC%20Merger%20Study%20Options%20Analysis%20Recommendation.pdf. An "executive presentation" of the options defined by the consultant follows below. The implications and analysis of each can be found in the report linked to this document.

Option 1 - No Structural Change: Maintain MTC and ABAG as separate, independent agencies, including their respective mission, governance structures, legal and statutory authorities. Increase collaboration through a formally adopted conflict resolution process and facilitated sessions between the agencies to improve and streamline the Plan Bay Area process and other regional planning efforts. Review each agency's planning work programs to reduce duplication and improve the effectiveness of those with overlapping services, goals and objectives. This option would require an ongoing funding framework by MTC to support ABAG planning services.

Option 2 - Hire an independent planning director to manage all planning functions: Hire an "independent" planning director (under joint contract to both ABAG and MTC) responsible for all regional planning functions who would report to a Joint Committee of ABAG (Administrative Committee) and MTC (Planning Committee). Under pension agency rules, the planning director would be an employee of either ABAG or MTC; the selection process would need to be determined.

The programs and responsibilities of the planning unit would be determined based on agreements reached during the implementation process; however, staff would be assigned from both agencies. MTC and ABAG would remain as separate, independent agencies, including their respective missions, governance structures, legal and statutory duties, responsibilities and authorities.

While SB 375 statutory duties assigned to each agency would remain, the consolidated staffing function would

be responsible for development of the SCS under the oversight of the Joint Committee. (Whether MTC would continue its current funding framework in support of ABAG planning services would need to be addressed.)

Option 3 - Establish a New Joint Powers Authority (JPA) to Oversee all Planning Functions: Establish a new joint powers authority (JPA) with members from ABAG and MTC for purposes of potentially providing regional planning services (to be defined) to each agency. Hire a planning director reporting directly to the JPA governing board responsible for those powers "common to both agencies" regarding regional land use, housing, and transportation planning as determined by the JPA. Administrative support services to the JPA would be provided under contract by either MTC or ABAG; however, it is assumed each agency would provide proportionate funding to support the JPA. Staff would be assigned under contract from both agencies to support those activities determined to be eligible to be carried out by the JPA reporting to the new planning director, but would remain employees of MTC and ABAG. MTC and ABAG would remain as separate, independent agencies, including their respective mission, and governance structures. (Whether MTC would continue its current funding framework in support of ABAG planning services would need to be addressed.)

Option 4 - Create a New Regional Agency and Governance Model: Enter into a memorandum of understanding (MOU) between MTC and ABAG to create a new governance model that integrates the MPO (MTC) and the COG (ABAG). The MOU would set forth the principles, parameters and basic terms to guide the creation of a new regional agency and governance model for the region. Until a new agency is created and integration achieved, MTC and ABAG would remain as separate, independent agencies, including their respective mission, governance structures, legal and statutory duties, responsibilities and authorities. ABAG would statutorily continue to be responsible for those activities set forth in SB 375 regarding preparation of the SCS.

Option 5 - Create a New Comprehensive Regional Agency and Governance Model: Enter into a memorandum of understanding (MOU) between MTC and ABAG and other regional agencies such as the Bay Conservation and Development Commission (BCDC) and the Bay Area Air Quality Management District (BAAQMD) in the Bay Area to create a new regional agency and governance model that integrates the MPO (MTC) and the COG (ABAG). The MOU would set forth the principles, parameters and basic terms to guide the creation of a new regional agency and governance model for the region. Until a new agency is created and integration achieved, MTC and ABAG would remain as separate, independent agencies, including their respective mission, governance structures, legal and statutory duties, responsibilities and authorities. ABAG would statutorily continue to be responsible for those activities set forth in SB 375 regarding preparation of the SCS.

Option 6 - Execute a Contract between MTC and ABAG to Consolidate Planning Functions within MTC and Enter into an MOU to Create a New Regional Agency and Governance Model: Execute an agreement between ABAG and MTC to consolidate all ABAG planning functions within MTC. Up to twenty-two planning positions could be created in MTC and offered to ABAG incumbents. No planning positions would remain in ABAG except possibly those determined to be directly related to and supported by enterprise programs. The

agreement would address the financial resources to accomplish this objective, an agreed upon work program, and any transition payments to assist ABAG with a financial transition to support its program responsibilities and performance.

Enter into a memorandum of understanding (MOU) between ABAG and MTC to create a new regional agency and governance model that integrates the MPO (MTC) and the COG (ABAG). The MOU would set forth the principles, parameters and basic terms to guide the creation of a new regional agency and governance model for the region.

Until a new agency is created and full integration achieved, MTC and ABAG would remain as separate, independent agencies, including their respective missions, governance structures, legal and statutory duties, responsibilities and authorities. ABAG would statutorily continue to be responsible for those activities set forth in SB 375 regarding preparation of the SCS as well as RHNA.

Option 7 - Enter into a Contract between ABAG and MTC to Consolidate Staff Functions under One Executive Director and Enter into an MOU to Pursue New Governance Options (Full Functional Consolidation): Enter into a contract between ABAG and MTC to provide staffing for all ABAG statutory duties and responsibilities, a work program, functions agreed to be transitioned, as well as the role of the executive director with respect to the ABAG policy body. Enter into a memorandum of understanding (MOU) between MTC and ABAG to establish a timeframe for considering a new governance structure and to set forth principles, goals and parameters for pursuing new governance options. The ABAG JPA and MTC governance structures, as well as their statutory roles and responsibilities, would remain unchanged.

Within a timeframe agreed upon, evaluate the existing governance structure for efficiency, effectiveness and transparency and decide whether to create a new regional governance model. The ABAG and MTC governance structures and consolidated agency would remain in place as well as their statutory authorities, duties and responsibilities until and unless a new regional agency and/or governance structure is agreed upon and implemented.

Both the contract and the MOU are intended to proceed simultaneously. While there are steps in the process, this alternative is explicitly a bridge to an end result which would be a regional agency providing both COG and MPO services, using a combined staff and management.

Actions Taken to Date

The current situation may very well affect the future of land use planning in the immediate Bay Area and have potential negative impact on local control. It may also make regional planning a reality and improve the efficiency and effectiveness of regional planning, particularly related to housing and transportation. Also at stake is a major policy direction: Will land use planning drive transportation development...or will (mostly linear) transportation systems drive land use decisions? To put it another way, will State requirements and Federal and regional funding for planning and transportation systems dictate local land use decisions, and if so, how? Or, will local preference and community design be the prevailing perspective without jeopardizing

critical funding from regional, state, and federal sources?

These issues, while not always articulated thusly, frequently underlie the discussion currently going on within the ABAG-MTC universe. Presented below are the various positions being taken.

<u>Consultant's Report</u>: In their report, Management Partners recommends Option Six as the best option at this time. They further note that if Option Six is too much too soon, Option Seven should be the fallback. Their reasons for selecting this path can be found on Pages 13-14 of their report. (Found http://abag.ca.gov/abag/events/agendas/o042216a-Item%2007,%20ABAG%20MTC%20Merger%20Study%20Options%20Analysis%20Recommendation.pdf for reference.)

- Option 6 Execute a Contract between MTC and ABAG to Consolidate Planning Functions within MTC and Enter into an MOU to Create a New Regional Agency and Governance Model
- Option 7 Enter into a Contract between ABAG and MTC to Consolidate Staff Functions under One Executive Director and Enter into an MOU to Pursue New Governance Options (Full Functional Consolidation).

<u>ABAG-MTC Joint Committee</u>: On April 22, 2016, the Joint ABAG Administrative and MTC Planning Committees, voted to recommend moving forward on Option 7 to their respective full Governance Boards.

<u>Assembly Select Committee</u>: At the April 22, 2016 meeting of the Joint Committee, a letter (Attachment II) was presented signed by several Assembly Members of the Assembly Select Committee on Regional Planning for the Bay Area. That letter recommended Option 4. Chair Thurmon attended the joint meeting and publicly stated that the Assembly was not there to tell the Joint Committee what to do.

• Option 4 - Create a <u>New</u> Regional Agency and Governance Model.

<u>Concerns Expressed</u>: There has been strong, vocal concern expressed about these choices, with the opposition led by Mayor Pat Eklund of Novato. Mayor Eklund has expressed her concern that the options selected will allow the consolidation to go forward without having to tackle the difficult public discussion of governance thereby allowing future regional planning to go forward without a local government voice (i.e., with the Board composition similar to that of the current MTC.) (NOTE: Mayor Eklund is a Past President of the California League of Cities.)

Others sharing her views believe that ABAG, as currently configured, is collaborative and offers a governance voice for all member governmental agencies in the Bay Region, whereas MTC is primarily a representation of counties and transportation agencies. This viewpoint tends to favor Option 4 as well, which they define as:

- Supporting one new agency evolving as a valid merger of both agencies and not the elimination of one
 or the other of the existing entities, resulting in a new agency to replace both ABAG and MTC.
- Allowing both agencies to continue in their current form and duties while the consolidation discussion plays out.
- Allowing for open and constructive dialog involving all stakeholders and the emergence of a new

governance structure that is representative of all members with a balance of power among governmental entities.

NEXT STEPS

- 1. Council discusses the matter, develops a position on the merger, and provides direction to the City's representatives.
- 2. Council Member Zermeño and staff, along with other appropriate City representatives, represent Council's opinion throughout the merger conversation and process.
- 3. Council receives regular feedback as to progress and any needed interaction with other officials representing the Hayward Area.
- 4. A special ABAG General Assembly is scheduled for May 16, 2016, 12:00 Noon to 3:00 pm to continue the discussion.

https://store.abag.ca.gov/authorizenet/ga-spring16-special-meeting.html

END NOTES:

- (a) Under the bill, each of California's eighteen regions is required to generate a land use and transportation plan, which serves as the SCS for each region. The bill necessitates that every MPO must have a 'Sustainable Communities Strategy' included in the regional transportation plan to show how these targets will be met. As a means of integrating transportation, housing, and land-use plans, this SCS will assist Metropolitan Planning Organizations (MPO)'s in meeting the greenhouse gas emission targets for 2020 and 2035, which are assigned by the California Air Resources Board (CARB). Each SCS adopted in California includes land use strategies and transportation investment plans to carry out reductions in greenhouse gas emissions. All the SCS plans developed are generated in accordance with the Regional Transportation Plan (RTP), which regulates transportation financing in each region, as well as with a Regional Housing Needs Allocation (RHNA), which establishes housing goals and housing allocations consistent with the SCS such that the housing and zoning of municipalities must accommodate the plans set out by the RHNA. CARB assigns emissions targets for each region in California, which is responsible for ensuring that these targets are met by 2020 and 2035 and then verifies that each SCS will sufficiently fulfill its aims and meet the emissions targets. The SCS guides local governments, with regard to plans regarding zoning or transportation and also provides incentives to developers who develop projects that help to meet the emission targets. Each SCS includes maps which show the land uses in the region, a plan that considers the housing needs of everyone of all income levels living in the region as well as an analysis of impacts on open spaces.
- (b) The 15th Assembly District is comprised of the cities of Albany, Berkeley, El Cerrito, El Sobrante, Emeryville, Hercules, Kensington, Piedmont, Pinole, Richmond, San Pablo, Tara Hills, and a portion of Oakland.
- (c) Taken from the <u>Options Analysis and Recommendation Report</u> produced by Management Partners as referenced in this staff report. The description of each option is quoted directly from the report.
- (d) As one works to understand the nuances and alternatives of the history and current status of the relationship between

ABAG and MTC and of the current process and alternatives being presented, it is informative to note the membership of all associated bodies and what appears to be influential overlap.

Approved by:

Fran David, City Manager

Attachments:

Attachment I
Attachment II

Merger Study Information Sheet Joint Committee Letter