



October 16, 2017

Mariah C. Thompson, Staff Attorney
California Rural Legal Assistance, Inc.
3747 E. Shields Ave.
Fresno, CA 93726

Re: Response to your letter 9.5.17 CRLA EJ Comments on 2018 RTP

Ms. Thompson:

Fresno COG has received and thanks California Rural Legal Assistance (CRLA), Inc. for its Sept. 5, 2017 letter addressing the 2018 Regional Transportation Plan (RTP) and the policies, practices and activities that have shaped it to date. Respectfully, Fresno COG offers the following responses to the comments raised (excerpted) in that letter.

COMMENT: *"The 2018 RTP draft does not reflect FCOG's civil rights obligations.*

FCOG has taken actions that remove or weaken civil rights protections and make it difficult to address the needs of protected classes in the 2018 R TP draft.

The list of protected status groups in Title VI and Government Code §11135 have specific meaning. The language used when addressing these legal obligations has tangible impacts. The Fresno COG RTP Roundtable (the Roundtable) made the following modifications to the draft Policy Element, among others, during its August 27, 2017 meeting:

1) The following goal ... Improved mobility and accessibility for all regardless of race, income, national origin, age, or disability, the Roundtable struck the protected classes ... now reads "Improved mobility and accessibility for all."

2) The policy of ... "Encourage local transportation agencies to leverage federal funding to address unique challenges of the low income, disabled, and elderly populations," ... was modified to read: "Encourage local transportation agencies to leverage federal funding to address unique challenges of people who are economically, socially, or physically disadvantaged in order to support their full participation in society."

Removing "regardless of race, income, national origin, age, or disability" from the Policy Element's goal of "Improving mobility and accessibility for all," eliminated reference to civil rights protections for protected groups. Similarly, by removing the terms "disabled" and "elderly" and replacing them with "people who are ... socially, or physically disadvantaged," removes express protections for those groups by replacing terms explicitly recognized as protected under Cal. Gov't Code § 11135 with vague, no legal descriptions. "Disabled"

- City of Clovis
- City of Coalinga
- City of Firebaugh
- City of Fowler
- City of Fresno
- City of Huron
- City of Kerman
- City of Kingsburg
- City of Mendota
- City of Orange Cove
- City of Parlier
- City of Reedley
- City of San Joaquin
- City of Sanger
- City of Selma
- County of Fresno

individuals have explicit rights under Gov't Code § 11135, whereas the law does not mention "physically disadvantaged".

RESPONSE: In developing the 2018 RTP, Fresno COG has taken multiple, documented, formal steps to ensure that civil rights obligations are met and that protected classes of residents have the opportunity to shape the document's outcome.

Beginning with the ad-hoc RTP Roundtable, representatives from organizations speaking on behalf of economically disadvantaged and minority stakeholders have been invited to participate in establishing the RTP's growth principles, policies and priorities from its earliest stages, including receiving several thousands of dollars in "mini-grants" to host public workshops specifically for low-income and minority populations. The workshops themselves elicited more than 1,200 new transportation projects, many of which came from individuals under one of the protected classes. Each and every one of those projects will be included in the RTP for consideration.

Moving into the 2018 RTP's third round of public outreach, one of the four alternative growth scenarios for final consideration places its priority on greater investment in economically disadvantaged communities. Residents throughout the Fresno County region will be able to select one of the four as its preferred alternative, which will then be reported to Fresno COG's Board of Directors prior to any scenario being adopted.

Consistent with these efforts, Fresno COG will also include language in its RTP Policy Element that specifically ensures nondiscrimination practices because of race, color, income or national origin as specified in Title VI/Environmental Justice regulations as well as sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation as specified in California Government Code §11135.

COMMENT: *"FCOG Must Consider Human Health and Environmental Effects on Environmental Justice Communities in the RTP Environmental Justice Analysis.*

A policy, program, or activity will have a disproportionately high and adverse effect on minority or low-income populations, that program, policy, or activity may only be carried out if all the following are true:

a) Further mitigation measures or alternatives that would reduce the disproportionately high and adverse effects are not practicable. In determining whether a mitigation measure or an alternative is practicable, the social, economic and environmental effects of avoiding or mitigating the adverse effects must be considered.

b) There is a substantial need for the program, policy, or activity, based on the overall public interest.

c) Alternatives that would have less adverse effects on protected populations either (a) would have other adverse social, economic, environmental or human health impacts that are severe; or (b) would involve increased costs of extraordinary magnitude.

FCOG has not undertaken this analysis and it cannot meet these elements because mitigation and alternatives certainly exist and the public interest would require transportation policies that overcome historical disadvantage.”

RESPONSE: Fresno COG is in the process of developing its Environmental Justice (EJ) analysis, which will include transportation indicators and other measures to evaluate disparate impacts between EJ and non-EJ populations. Fresno COG will include two additional indicators in its EJ analysis: housing mix, as delineated by EJ and non-EJ areas, and air contaminant exposure, which is measured by the percent of EJ population relative to non-EJ population living within 500 feet of major roadways. Fresno COG is also committed to developing an activities-based model with the capacity to analyze trips by household rather than Traffic Analysis Zones (TAZ) and better track bicycle, pedestrian and transit trips.

In addition, the third round of public outreach, beginning in October 2017, will include questions specifically asking respondents about potential disparate impacts of the four Sustainable Communities Strategy (SCS) growth scenarios to their communities alongside their choice for the best alternative.

COMMENT: *“The indicators FCOG has identified for completing its Environmental Justice Analysis fail to meet the legal requirement to assess human health and environmental effects of the RTP.*

The EJ Subcommittee was asked to select one environmental justice performance indicator that, along with nine (9) other indicators, will be used for project evaluation and ranking in the 2018 RTP/SCS process. EJ Subcommittee members were given a list of six (6) indicators from which to choose and were told that creating a new indicator outside of this list was not an option.

A more comprehensive analysis is required to fully evaluate the adverse effects that an RTP scenario will have on EJ communities. FCOG staff has agreed to provide a narrative description of the current conditions for EJ communities in the EJ Analysis, using data pulled from CalEnviroScreen 3.0. This is a good start, and is a necessary component of an EJ Analysis, however, a description of current conditions, while necessary, is not sufficient. The EJ Analysis must evaluate the potential social and economic, health, aesthetic, and environmental effects of the chosen scenario and how they differ in EJ communities compared to non-EJ communities.”

RESPONSE: In developing the Environmental Justice Analysis, FCOG has identified the following six performance indicators that will analyze the social and environmental impacts in the region and address any disparate impacts on environment justice populations:

- Accessibility - the ease of reaching destinations as measured by the percentage of commuters who can get to work within a given period of time; measured by calculating average travel times during the peak morning commute to desired destinations.
- Mobility - the ability to move throughout the region within a reasonable amount of time, measured by calculating average travel times on highways and transit during the evening peak travel time.
- Access to Community Resources - combination of accessibility and mobility.
- Transit Investment Effectiveness - measures maximized return on transit investments; estimated by dividing the new added average number of daily passenger miles traveled served by RTP transit projects in the full project list by the total \$1,000 of investment inside and outside the EJ TAZs.
- Distribution of Investments - ensuring equitable distribution of transportation investment benefits; compares the ratio of person-miles traveled on roadway & transit projects in an area to the total investment in roads and transit in that area.
- Reliability - compares the percentage of on-time arrivals; calculates vehicle miles traveled on congested highways or in transit vehicles.

Additionally, Fresno COG will include two additional indicators in its Environmental Justice Analysis:

- Housing mix as delineated by EJ and non-EJ areas, and;
- Air contaminant exposure, which is measured by the percent of EJ population relative to non-EJ population living within 500 feet of major roadways.

Access to community resources was selected as the EJ indicator for the SCS preferred scenario selection process by the EJ Subcommittee and confirmed by the RTP Roundtable, Technical Advisory Committee, Policy Advisory Committee and the FCOG Policy Board. Fresno COG is in the process of developing an activities-based model with the capacity to analyze trips by household rather than Traffic Analysis Zones (TAZ) and better track household travel by income level.

COMMENT: *“FCOG must not rely solely on modeling capabilities to conduct the Environmental Justice analysis.*

FCOG is using what is considered the 'traditional approach' most commonly utilized in regional transportation agency practice to determine equity. This three-step approach focuses on (1) defining target populations based on their overall proportion within traffic analysis zones ("TAZs"), (2) defining equity metrics such as transportation system benefits and impacts, and (3) modeling based on the target population and metrics to determine whether the results demonstrate equity. Ordinarily, models do this by determining "whether forecasted changes in metrics from the base year to the forecast year using a travel-demand model are similar to the target population compared to the non-target population.

The traditional approach relies heavily on modeling to make determinations of equity, and FCOG staff has indicated that the FCOG 2018 RTP EJ Analysis will use this model. This model, however, is insufficient to meet FCOG's EJ analysis requirements. FCOG staff stated that it lacks activity-based modeling software and that identifying additional methods for completing the analysis would be too time and labor intensive. The legal requirements however must be met.

FCOG must look beyond reliance on modeling software and conduct a meaningful evaluation of the status of transportation inequity in the Fresno regional area, then evaluate whether the selected RTP scenario will improve equitable outcomes for minority communities or further entrench inequality."

RESPONSE: Data and tool availability limitations constrain the 2018 RTP's EJ analysis, requiring it to be conducted with the existing four-step model that Fresno COG operates for all planning activities, including the 2018 RTP/SCS modeling. The TAZ-based, four-step model must be used to analyze travel-related measures. As indicated above, Fresno COG has agreed to include two additional indicators that measure housing mix and exposure to air contaminants, which do not require the traffic model. Analysis that is finer than the TAZ level could be conducted with an activity-based model, which is currently under development and is planned to be applied in the 2022 RTP process. The three-step process in the EJ analysis uses the most current data and tools available to FCOG and compares the impacts of the 2018 RTP among the EJ population and the non-EJ population. The indicator results will demonstrate whether the 2018 RTP will bring any disparate impact to the EJ population that is "appreciably more severe or greater in magnitude than the adverse effect that will be suffered by the non-minority and / or non-low-income population".¹The three-step analysis approach meets the requirement of EJ analysis.

Accordingly, Fresno COG's analysis is supported by fully substantial evidence.

Additionally, in April and June 2017, Fresno COG hosted a series of public workshops intended to garner exactly the kind of input requested regarding adverse impacts. The workshops were exclusively designed to meet the needs of minority and economically

¹ U.S Department of Transportation, Updated Environmental Justice Order 5610.2(a)(amended 5/2/2012, pp 15

disadvantaged people by conducting them during late afternoon/evening hours, providing a dinnertime meal and offering free child care and language interpretation services.

Beginning in October, a third round of workshops and public outreach will ask participants to choose a preferred growth scenario from among the four that have been approved to date. Those scenarios will include quantifiable indicators such as air pollution, health-related improvements, farmland conservation and other specific factors, compared across all scenarios. Round three will employ a three-prong approach to public input:

- Booths at different festivals throughout the Fresno County region where attendees can select the scenario that most closely aligns with their values and principals. These include events in some of the most economically disadvantaged communities in the region;
- A Web-based survey that informs visitors about the RTP/SCS and encourages them to select a preferred alternative.
- A “speakers’ bureau” that relies on different community organization and service club meetings throughout the region to address audiences already gathered for their regular monthly activity and again informs and encourages participants to select a preferred scenario based on their individual values and principles.

In addition, Fresno COG agrees to include a question or questions in its third round of public outreach, beginning in October 2017, which asks respondents about potential disparate impacts of the four Sustainable Communities Strategy (SCS) growth scenarios for their communities alongside their choice for the best alternative.

COMMENT: “FCOG must integrate fair housing and SB 375 Considerations into the 2018 RTP.

MPOs should incorporate Affirmatively Furthering Fair Housing (AFFH) policies and practices into regional transportation plans wherever possible, and approach planning with an eye toward the goals of decreased segregation, increased access to fair housing for minority communities and equitable land use planning.”

RESPONSE:

Fresno COG has been striving to contribute to providing a range of housing choices for people of different income. Our efforts have been through our own programs such as Blueprint integration (Circuit Engineers/Planners Program), Regional Housing Needs Allocation (RHNA), RTP process, Measure C TOD program, and also through supporting affordable housing programs/policies implemented by our member jurisdictions.

It is Fresno COG's policy, as stated in the 2018 RTP/SCS Policy Element 6.3.1 A.1 xiv, to support local jurisdictions' efforts to encourage housing development for all income groups, including low income residents.

The 2018 RTP/SCS Policy 6.3.1 C. 1 I states that "During planning processes, seek to ensure that planning efforts are as consistent as feasible with planning efforts such as: the Blueprint Planning Principles, Health in All Policies, the intent of SB375 (Senate Bill 375 also known as the Sustainable Communities Protection Act of 2008), Caltrans' Complete Streets Program, performance-based planning initiated by MAP-21, California Transportation Plan 2040, and statewide and federal air quality goals, etc."

In April 2009, the San Joaquin Valley Policy Council adopted a list of Blueprint Smart Growth Principles as part of the Blueprint planning efforts since 2006. These principles can be found at:

http://www.fresnocog.org/files/Blueprint/ProgressReport/Fresno%20County%20BP%20Document%20Revised%20Final%2007_27_09.pdf

Among the 13 Smart Growth Principles, there are two that address fair/affordable housing issues:

- Provide a range of housing opportunities and choice
- Make development decisions predictable, fair and cost-effective

Fresno COG has been committed to the implementation of such Blueprint principles and has been dedicating funding through Circuit Engineers/Planners contracts to help local governments to integrate the Blueprint Smart Growth Principles into their general plans.

The 2018 RTP/SCS adheres to such Blueprint principles and strives to provide a range of housing options for future residents in this region. All the four SCS scenarios provide a mix of housing types with multifamily and townhomes accounting for at least 45% of total new housing, compared with 25% multifamily housing at current level.

In addition, Fresno COG's Measure C TOD program encourages local governments to "build compact designs with higher housing densities, affordable, accessible housing, and mixed uses". Under the TOD program, "A project that supports an affordable housing development will be scored favorably. Affordable housing means housing that has an Affordable Housing Cost or Affordable Rent as defined in Section 50052.5 or 50053(a) of the California Health and Safety Code, or any successor section thereto." The Measure C TOD program has an annual funding of \$850,000 and total funding of \$17 million in 20 years. The TOD Program Policy and Guideline can be found at:

http://www.fresnocog.org/sites/default/files/publications/2017_TOD_Program_Policies_and_Guidelines-final.pdf

COMMENT: *“The goals listed in Cal Gov't Code §65580 and §65581 that FCOG must consider include that:*

- 1. The availability of housing is of vital statewide importance, and the early attainment of decent housing and a suitable living environment for every Californian, including farmworkers, is a priority of the highest order.*
- 2. The provision of housing affordable to low- and moderate-income households requires the cooperation of all levels of government.*
- 3. Local and state governments have a responsibility to use the powers vested in them to facilitate the improvement and development of housing to make adequate provision for the housing needs of all economic segments of the community.*

Fair housing policies and principles should be integrated into the equity analysis and the policy and action elements of the 2018 RTP draft. FCOG staff, however, recommended that the Roundtable, "not incorporate ... access to affordable housing for residents of all income levels" as a core value of the RTP/SCS."

RESPONSE: The mandates for the Sustainable Communities Strategy under SB 375 have been clearly delineated through both statute and case law:²

Specifically, a Sustainable Communities Strategy will:

- Identify the general location of uses, residential densities, and building intensities within the region;
- Identify areas within the region sufficient to house all the population of the region, including all economic segments of the population, over the course of the planning period of the regional transportation plan;
- Identify areas within the region sufficient to house an eight-year projection of the regional housing need for the region;

Fresno COG has been striving to contribute to providing a range of housing choices for people of different income. Our efforts have been through our own programs such as Blueprint integration (Circuit Engineers/Planners Program), Regional Housing Needs Allocation (RHNA), RTP process, Measure C TOD program, and also through supporting affordable housing programs/policies implemented by our member jurisdictions. Please refer to the previous section for more detailed description of Fresno COG' efforts in fair/affordable housing.

² Sections 14522.1, 14522.2 65080, 65080.01, 65400, 65583, 65584.01, 65584.02, 65584.04, 65587 and 65588 of the Government Code, and Sections 21061.3, 21159.28 and Chapter 4.2 (commencing with Section 21155) to Division 13 of the Public Resources Code, relating to environmental quality.

COMMENT: "Fresno COG must take effective steps to comply with its civil rights and environmental justice obligations under state and federal law, including, but not limited to Government Code § 11135, and Title VI."

RESPONSE: Fresno COG planning activities are in accordance with Title IV regulations as identified in the recent FHWA and FTA FCOG Transportation Planning Certification Review, June 28, 2017.

To date, CRLA has been invited to and has fully participated in Fresno COG's EJ Subcommittee and RTP Roundtable meetings, as have other social justice-based organizations that have indicated an interest in doing so. In addition, multiple such organizations received funding through FCOG's "mini-grant" program to help organize and host public input workshops and will continue in that capacity moving into October's round three of public input.

Furthermore, Fresno COG has met with CRLA and the Leadership Counsel for Justice and Accountability on at least three separate occasions to discuss the EJ analysis process in depth. The agency has gone far beyond the mandates of Title VI, EO 12898 and SB 375 in its public participation process, which has garnered nearly 1,100 public comments and resulted in an additional 1,218 projects for the RTP just to date.

In closing, Fresno COG has, on multiple occasions, committed to working with CRLA and its partners to improve the Regional Transportation Plan development process. We hope to continue open communications and fostering improvement for the entire Fresno County region.

Sincerely,

A handwritten signature in blue ink that reads "Tony Boren". The signature is written in a cursive, flowing style.

Tony Boren, Executive Director