



# CALIFORNIA RURAL LEGAL ASSISTANCE, INC.

FIGHTING FOR JUSTICE, CHANGING LIVES

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May 29, 2018

Via electronic mail to: [kcai@fresnocog.org](mailto:kcai@fresnocog.org)

Kristine Cai, Planning Director  
Fresno Council of Governments  
2035 Tulare Street, Suite 201  
Fresno, CA 93721

Re: Comments on Draft 2018 Fresno County Regional Transportation Plan

Dear Ms. Cai:

California Rural Legal Assistance, Inc. (CRLA) is a non-profit law firm that has served rural communities throughout California for more than fifty years. CRLA's Community Equity Initiative specializes in environmental justice, equitable land use planning, and civil rights law. CRLA served on the Environmental Justice Subcommittee (EJ Subcommittee) for the 2018 Fresno County Regional Transportation Plan (RTP)/Sustainable Communities Strategy (SCS) process.

The draft 2018 RTP/SCS was released on April 5, 2018 for a fifty-five (55) day public comment period. CRLA submits these comments in response to the Notice of Public Hearing and request for public comment. The Fresno Council of Governments (FCOG) staff modified the draft in response to comments on the Environmental Justice element. FCOG however, must include additional information in the draft 2018 RTP/SCS to bring the rest of the document into compliance with the requirements of the California Government Code.

## **I. The RTP Must Identify and Quantify Existing Transportation Needs in Fresno County**

### *a. The RTP must identify and quantify existing transportation needs*

California Government Code §65080(b)(1) mandates that a jurisdiction's RTP "identifies and quantifies regional needs." Cal Gov't Code §65080(b)(1)(A)-(F) provide examples of quantification indicators that include "measures of equity and accessibility, including, but not limited to, percentage of the population served by frequent and reliable public transit, with a breakdown by income bracket, and percentage of all jobs accessible by frequent and reliable public transit service, with a breakdown by income bracket,"<sup>1</sup> and "measures and means of travel, including but not limited to, percentage share of all trips (work and nonwork) made by" single occupant vehicles, carpools, public transit, walking, and cycling.<sup>2</sup>

It is clear from the language of Cal Gov't Code §65080(b)(1)-(F) that the regional transportation needs assessment must address specific, quantifiable, needs of the jurisdiction's residents.

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<sup>1</sup> Cal Gov't Code §65080(b)(1)(E)

<sup>2</sup> Cal Gov't Code §65080(b)(1)(C)

*b. The draft RTP does not specify or quantify transportation needs*

The draft 2018 RTP/SCS fails to include the requisite specificity to meet the requirements of Cal Gov't Code §65080(b)(1). The needs assessments in the Action Element identify very few specific needs in the Fresno County region and do not quantify or measure those identified. The RTP briefly mentions issues in general terms before listing member agency accomplishments and strategies related to the issue. Very few if any specifics, data, or measurements are provided.

The Highways, Streets, and Roads section<sup>3</sup> of the Needs Assessment provides but one example of this inadequacy; the same issue is present in every needs assessment in the RTP. It states:

The regional streets and highways network include multiple issues and needs that require Fresno COG's attention. Among these are financing for maintenance, rehabilitation, reconstruction and construction; travel demand modification; capacity problems; general plan circulation element inconsistencies and transportation corridor needs. The following text analyzes each of these issues in further detail.

The text that follows this section does not analyze these needs or quantify them. Each identified need has a subheading which includes further generic text, objectives, or simply lists previous studies completed on these topics without providing any data, analysis, recommendation or conclusion from the studies or further description of the issues they identified. The further detail section on Transportation Corridor Needs states, in its entirety:

All new regional transportation projects are required to take a "Multimodal Transportation Systems Corridor" planning approach. In keeping with this federal direction, the COG is working in partnership with Caltrans, local jurisdictions and the private sector to identify transportation corridors and projects that will provide a multimodal system for Fresno County Residents.

This contains no information about transportation corridor needs in Fresno County, their significance, effect on transportation access for residents, who they affect, or how to resolve them. Vague references to transportation issues and a list of previous studies is not sufficient to meet the requirements of Cal Gov't Code §65080(b)(1). FCOG must revise each needs assessment in the RTP and conduct a thorough analysis of the transportation needs in the region. The analysis must quantify each need, measure its severity, and address transportation access and ease for county residents.

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<sup>33</sup> §4.3 2018 RTP/SCS Action Element

*c. The RTP fails to identify transportation needs in rural communities*

Fresno County residents are not served, or are underserved, by traditional public transit and face transportation barriers that are not identified in the regional transportation plan. FCOG must include comprehensive identification and quantification of transportation needs within the region and discuss the limits of current transportation services and infrastructure in rural communities.

Traditional transit systems do not meet the transportation needs of small rural communities. Legal restrictions on traditional transit related to farebox return requirements and ridership numbers make the cost of operating a dedicated traditional route to small communities too high for ticket prices to be affordable to residents. FCRTA has attempted numerous traditional demonstration routes in small communities that failed to meet farebox return requirements. Transit systems must be planned and developed that are not restricted by farebox and ridership requirements so that rural communities unable to sustain traditional transit systems can still have access to affordable transportation options.

Every community that was unable to meet farebox requirements to sustain a FCRTA demonstration route presently is unserved by public transit. Transit service has not been attempted in many other small communities for similar reasons. Thousands of residents in Fresno County thus have no access to public transit. The lack of access and challenges posed by farebox and ridership requirements are not identified or discussed in the draft RTP. The RTP should identify how many individuals in the County of Fresno lack access to transit service, experience infrequent service, are without weekend or evening service, and other indicia of access.

Residents in unincorporated areas also lack access to infrastructure for active transportation such as sidewalks, bike paths, street lights, recreational spaces, and experience higher levels of flooding, lower enforcement of traffic safety laws, and greater isolation from services. Obstacles to active transportation should be identified and quantified in the RTP. Safety information for bicyclists and pedestrians in rural areas also should be quantified with information about injuries and fatalities.

A full analysis of the transportation needs for residents in rural areas must be conducted to meet FCOG's legal obligations.

**II. The Urban and Rural Transit Needs Assessments Are Inadequate and FCOG May Not Rely on the Unmet Transit Needs Assessment Process**

The needs assessments for urban and rural transit fail to comply with Cal Gov't Code §65080(b)(1) because they do not identify actual transit needs and rely only on the conclusions from the Unmet Transit Needs Assessment process.

*a. The transit needs assessments fail to identify any transit needs*

The needs assessment for urban transit in the Fresno region consists entirely of a description of the annual Unmet Transit Needs Assessment (UTNA) process followed by the conclusion: “[w]ithin Fresno County, there are no adopted findings of unmet transit needs that are reasonable to meet.”<sup>4</sup> The rural transit needs assessment is four paragraphs long: two paragraphs describe current programming and are irrelevant for a needs assessment, two paragraphs describe the UTNA process.<sup>5</sup> The needs assessment fails to identify a single transit need in urban or rural areas in the Fresno region. The subsequent section of the rural transit component generally describes lack of funding, commuter options, and farmworker transit; this section primarily describes current programming rather than quantifying need.

A description of a process to identify needs is not the same thing as identifying needs. Many communities in Fresno County are without any access to public transit; those served with transit experience limited schedules, long travel times, and lack of weekend transit. The RTP must analyze and quantify these needs.

*b. Conclusions from the Unmet Transit Needs Assessment process do not meet RTP mandates*

The UTNA process occurs annually and allows a jurisdiction to shift funding from transit projects into street and road projects if it finds no unmet transit needs exist within the jurisdiction. This process is distinct from the requirement under Cal Gov’t Code §65080(b)(1) that a region identify and quantify transportation needs in its RTP.

FCOG may not use conclusions from the UTNA process to meet the requirements of Cal Gov’t Code §65080(b)(1) because the UTNA process is flawed, fails to adequately identify the needs of residents<sup>6</sup>, is prohibitively narrow, and only formally acknowledges needs that were both previously identified and included in a former RTP.

The 2017 UTNA process failed to result in meaningful resident involvement or comply with FCOG’s own public participation and civil rights policies. Workshops for the UTNA process were poorly advertised, held in inconvenient locations and times, were very limited in number, and were difficult to reach for individuals without access to public transit. The mailing list for letters announcing the UTNA primarily included government staff and planners and contained very few residents or representatives from local organizations representing the rural poor. The 2017 process failed to garner meaningful public participation. FCOG then erroneously determined that there were no unmet transit needs in the region and adopted a resolution to move money out of transit projects and into projects for streets. The results of this process are not an adequate representation of the transit needs in Fresno County.

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<sup>4</sup> Draft 2018 RTP/SCS Pg 4-27

<sup>5</sup> Draft 2018 RTP/SCS Pg 4-41

The UTNA process also has a definition of unmet transit needs that is too narrow and circular to comport with the mandates of Cal Gov't Code §65080(b)(1). FCOG's definition of unmet transit needs for the UTNA process is "[t]hose public transportation or specialized transportation needs that are identified in the Regional Transportation Plan and that have not been implemented or funded." The draft RTP in turn relies on the inadequate UTNA process and fails to analyze or quantify needs assessment in compliance with Cal Gov't Code §65080(b)(1).

Conclusions from the UTNA process thus may not be used to satisfy the requirement that a jurisdiction identify current transportation needs in the RTP for the region. FCOG instead must conduct an independent analysis of transportation needs for the RTP.

#### **IV. The SCS Scenario Process Did Not Reflect Meaningful Public Participation**

##### *a. MPOs have civil rights obligations related to public participation*

Federal and state civil rights and environmental justice protections prohibit Metropolitan Planning Organizations (MPOs) (FCOG) from enacting policies, practices or activities that will have a differential effect on low-income and minority populations FCOG must ensure meaningful involvement of these populations in RTP policies, programs and activities. State law under SB 375 also includes mandates related to public participation and requires MPOs to include a broad range of stakeholders throughout the RTP/SCS development process. CRLA provided a detailed account of these obligations in letters dated September 5, 2017 and October 31, 2017 which are incorporated here by reference.

##### *b. The SCS Selection Process Failed to Meaningfully Consider Public Opinion*

The SCS scenario was selected before public outreach had concluded and strong public preferences were ignored by the RTP Roundtable, Transportation Technical Committee (TTC), and Policy Advisory Committee (PAC) when they chose the preferred scenario.

Public outreach on the preferred scenarios had not concluded before the RTP Roundtable voted on a recommended scenario on October 25<sup>th</sup>, 2017. These concerns were raised by community-based organizations in the October 25 RTP Roundtable meeting, but were dismissed by RTP Roundtable members.

The RTP Roundtable also ignored strong public preferences and chose the scenario that ranked lowest among residents who had weighed-in. FCOG staff presented the RTP Roundtable with the survey results from the public outreach efforts completed prior to October 25, 2017. The public demonstrated the following preferences for the proposed SCS scenario as of that date: Scenario A received 30.4% of votes. Scenario B received 34.6 % of votes. Scenario C received 19% of votes. Scenario D received 16%

of votes. The majority of respondents were members of environmental justice communities and had a legal right to have their opinions meaningfully considered.<sup>7</sup>

The RTP Roundtable chose Scenario D as their preferred scenario although more than twice as many survey respondents preferred Scenario B. The RTP Roundtable did not address either the public preference for Scenarios A and B nor the fact that they were selecting the scenario least preferred by the public when they made their decision. The Roundtable asserted that the TTC and PAC could overturn their decision and choose a more popular scenario, but questioning by CRLA staff indicated that the TTC/PAC had never failed to adopt RTP Roundtable recommendations. The RTP Roundtable selected the least-popular SCS scenario, and this selection was affirmed by the TTC and PAC.

Civil rights laws require that EJ communities are meaningfully included throughout the RTP/SCS process

*c. FCOG Failed to Include Any Information on Public Preferences in the RTP/SCS*

FCOG does not identify the public preferences for SCS scenarios in the draft 2018 RTP/SCS. It contains information about the number and location of workshops, the types of material presented, the fact that information was presented in multiple languages, and the collaboration between community-based organizations and FCOG for increasing public turnout. It does not include the results of the public participation process. The public demonstrated a clear and strong preference for innovative land use planning that emphasized GHG reduction, high-density development, and transit-oriented growth; this preference was disregarded in favor of the unpopular scenario that placed a higher preference on roadway capacity-increasing projects. The RTP/SCS must include information about the public preferences for Scenarios A and B and the fact that these scenarios were not chosen by FCOG.

**V. The RTP Must Identify Land Uses and Sufficient Areas in the Region to House the Population**

California Government Code §65080(B) mandates that jurisdictions

- (i) identify the general location of uses, residential densities, and building intensities within the region;
- (ii) identify areas within the region sufficient to house all of the population of the region, including all economic segments of the population, over the course of the planning period of the regional transportation plan taking into account net migration into the region, population growth, household formation, and employment growth;
- (iii) identify areas within the region sufficient to house an eight-year projection of the regional housing need for the region pursuant to Section 65584<sup>8</sup>

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<sup>7</sup> See CRLA Comment Letter dated October 31, 2017 for percentages of minority and low-income respondents

<sup>8</sup> Cal. Govt Code §65080(B)

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The draft 2018 RTP/SCS "Checklist for MPOs erroneously states that the mandates of §65080 are met on pg. 1-3. It lists the scope of the RTP and contains a few paragraphs generally describing the location of Fresno county, but there is no information about housing needs identified in this section or anywhere else in the draft RTP. The growth and housing mix assumptions included in the SCS reference materials are not sufficient to meet this legal requirement. The RTP must fully describe the location of land uses throughout Fresno County and identify sufficient areas to house the entire population in the region, including very-low, low, moderate, and above-moderate income individuals. The areas identified must be sufficient to house the population over the current eight-year RHNA period as well as the entire RTP implementation period, and must accommodate anticipated demographic changes.

CRLA appreciates the opportunity for comment and remains available to answer questions.

Sincerely,



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