



COMMUNITY DEVELOPMENT AGENCY LONG RANGE PLANNING

2850 Fairlane Court, Placerville, CA 95667
Phone (530) 621-4650, Fax (530) 642-0508

January 22, 2015

To: Board of Supervisors

From: Claudia Wade, Senior Civil Engineer

Subject: Capital Improvement Program and Traffic Impact Mitigation Fee Program:
Background and Next Steps

The purpose of this memo is to provide background information on the County's Capital Improvement Program (CIP) and Traffic Impact Mitigation (TIM) Fee Program, as well as a summary of next steps regarding the CIP and TIM Fee updates in process.

A CIP is a planning document that identifies capital projects (e.g. roads and bridges) a local government or other public agency intends to build over a certain time horizon (usually between 5-20 years). CIPs typically provide key information for each project, including delivery schedule, cost and revenue sources. The County's CIP provides a means for the Board of Supervisors (Board) to determine capital project and funding priorities over a 20-year horizon.

An impact or mitigation fee is a fee levied by a local government or other public agency to ensure that new development projects pay for all or a portion of the costs of providing public infrastructure or services to the new development. Since 1984, the County has adopted and updated various fee programs to ensure that new development on the western slope pays to fund its fair share of the costs of improving county and state roads necessary to serve that new development.

In order to maintain the integrity of its roadway network, the County is required to develop and maintain a 10- and 20-Year CIP as well as a 20-Year TIM Fee Program pursuant to General Plan Policy TC-Xb and Implementation Measures TC-A and TC-B. The TIM fee must also comply with the state's Mitigation Fee Act (Assembly Bill 1600).

The General Plan requires the CIP and TIM Fee Program to be updated annually to evaluate and revise (if necessary) revenue estimates and costs associated with labor, material, and land. This annual update is often referred to as the "Minor" update.

In addition, the General Plan requires the CIP and TIM Fee Program to be updated every five years to revise the 20-Year growth forecast and comprehensively re-evaluate the programs. This is often referred to as the "Major" update.

This report provides the following information:

- Overview of the CIP
- Overview of the TIM Fee Program
- Measure Y and its Impacts on the CIP and TIM Fee Program
- What to Expect in the Following 12-18 Months
- Next Steps

Overview of the CIP

The CIP is the long-range plan for individual capital improvement projects the County plans to undertake over a 20-Year timeframe, and includes cost estimates, schedules and funding sources. It provides strategic direction for capital projects over current year, 5-, 10- and 20-Year horizons. The CIP is used as a planning tool and is updated annually as new information becomes available regarding Board priorities, funding sources, project cost estimates, and timing. The CIP is also updated every five years along with the 20-Year growth forecast update.

CIP Format

The County's current 2014 CIP Book includes five capital programs (listed below), the Road Maintenance Program (RMP) and the National Pollution Discharge Elimination System (NPDES) Program. The capital programs include:

- *West Slope Road/Bridge CIP* – e.g. Highway 50 improvements, new roadways, roadway widenings, intersection improvements, bridge improvements
- *Tahoe Environmental Improvement Program (EIP)* – e.g. erosion control and water quality improvements
- *Airport Capital Improvement Program (ACIP)* – e.g. improvements to the Placerville and Cameron Park airports
- *Transportation Facilities Improvement Program (TFIP)* – e.g. facility improvements to be used by the Transportation Division
- *Capital Overlay and Rehabilitation Program (CORP)* – e.g. roadway overlay projects

These programs are separated into the following sections:

- West Slope Road/Bridge Program and ACIP
 - Current Year work plan (Fiscal Year [FY] 2014/15)
 - Five-Year CIP (FY 2014/15 through FY 2018/19)
 - Ten-Year CIP (FY 2018/19 through FY 2023/24)
 - Twenty-Year CIP (FY 2023/24 through FY 2033/34)
- Tahoe EIP and CORP
 - Current Year work plan
 - Five-Year EIP/CIP

The CIP typically includes the following information for each project:

- Project description

- Location map
- Financing plan, including anticipated revenues and expenditures broken down by FY
- Schedule divided into phases, including Planning/Environmental, Design, Right-of-Way (if necessary), Construction, and Environmental Monitoring

Projects that span several years may be listed in more than one funding segment of the CIP, depending on when funds are spent; for instance, a project may be included in the 5-Year CIP for planning and the 10-year CIP for construction. Projects are included in a funding segment if any funds are estimated to be spent during any of the segment's fiscal years.

The Executive Summary section of the 2014 CIP Book included work plans for RMP and NPDES in an effort to coordinate and capture all of the CDA's work plans. Since these activities do not involve capital projects, they may be excluded from future CIPs. In addition, other capital projects being undertaken by the County (i.e., those under the purview of the Environmental Management Division) may be included in future CIPs.

CIP's Relationship to Other Transportation Plans

The County's CIP information is a very important input for the following regional transportation planning efforts and resulting documents:

- El Dorado County Regional Transportation Plan (RTP) developed by the El Dorado County Transportation Commission (EDCTC)
- Metropolitan Transportation Plan/Sustainable Communities Strategy (MTP/SCS) developed by the Sacramento Area Council of Governments (SACOG)
- Metropolitan Transportation Improvement Program (MTIP) developed by SACOG

An RTP is a planning document developed by regional transportation planning agencies such as the EDCTC in cooperation with Caltrans and other stakeholders (e.g. El Dorado County and the City of Placerville). RTPs are required to be prepared per state (Government Code Section 65080 et seq.) and federal statute (23 United States Code [USC] 134–135 et seq.) RTPs are developed to identify transportation needs in a 20 year planning horizon and provide a clear vision of the regional transportation goals, policies, objectives, and strategies to meet those needs. This vision must be realistic and within fiscal constraints. Transportation improvements that are expected to be funded from federal, state, or local sources—or any combination of all three sources—are included in the RTP's list of fiscally constrained projects. In the language of transportation planning, “fiscally constrained” means capable of being financed.

In this same vein, SACOG's MTP/SCS is a federally-mandated, long-range, fiscally-constrained transportation plan prepared for the six-county area that includes El Dorado, Placer, Sacramento, Sutter, Yolo, and Yuba Counties. Most of this area is designated a federal nonattainment area for ozone, indicating that the transportation system is required to meet stringent air quality emissions budgets to reduce pollutant levels that contribute to ozone formation. As the region's Metropolitan Planning Organization (MPO), SACOG has the responsibility for making findings of conformity required under section 176(c) of the federal Clean Air Act within the designated Sacramento Ozone Non-Attainment Area. To receive federal funding, transportation projects

nominated by cities, counties, and agencies must be consistent with the MTP/SCS. Consistency is measured based on whether the project was contained in the plan and its associated computer modeling of transportation and air quality impacts. In addition, any regionally significant transportation project planned for a city or county must be included in the MTP because of its potential effect on travel demand and air pollution. The current MTP/SCS contains more than \$1.85 billion in regionally significant transportation improvements for El Dorado County over a 20 year period. El Dorado County's RTP is used to develop the El Dorado County element of the MTP.

The 2013-16 MTIP is a list of transportation projects and programs to be funded and implemented over the next 3 years. SACOG submits this document to Caltrans and amends the program on a quarterly cycle. The MTIP and its amendments are subject to air quality conformity analysis under federal regulations, which limit the use of federal funds for regionally significant, capacity-increasing roadway projects, to those that do not conflict with the region's air quality management plan.

The El Dorado County RTP 2010-2030 is El Dorado County's portion of the SACOG's MTP/SCS for 2035 described above. Government Code Section 65080 states that RTPs shall include the following components:

- A ***Policy Element*** that identifies mobility goals, objectives, and policies of the region. This element outlines the process for RTP implementation to guide decision-makers.
- An ***Action Element*** that identifies programs and actions to implement the RTP in accordance with the goals, objectives, and policies set forth in the Policy Element. The institutional and legal actions needed to implement the RTP and action plans are also discussed in this section, followed by a detailed assessment of all transportation modes. Priorities for regional transportation programs are established within the Action Element.
- A ***Financial Element*** that summarizes the cost of implementing projects in the RTP within a financially constrained environment. All anticipated transportation funding revenues are compared with the anticipated costs of the transportation programs and actions identified in the Action Element. If shortfalls are identified, strategies are developed to potentially fund the otherwise unfunded projects.
- ***Environmental Documentation*** is required under the California Environmental Quality Act. The environmental documentation states whether there will be an environmental impact of implementing the projects listed in the plan and, if so, what those impacts will be. Depending upon the scope of the plan and the local environment, the appropriate environmental documentation may be a negative declaration, a mitigated negative declaration, or a full environmental impact report.

CIP Updates in Process

This year the County will be working on several phases of the CIP:

- 2014 CIP Mid-Year Update
- 2015 CIP Minor Update
- Major CIP update

The Major CIP update is currently underway and is scheduled to be completed in 2016. To ensure that the County is working within the appropriate CIP budgets for FY 2015/16, the annual minor CIP update will also be processed on a parallel path. The minor CIP update is usually adopted each year in June, along with the County's proposed budget.

The intent of the Minor CIP update is to adjust project costs and verify that the 20-Year forecast used in creating the CIP and TIM Fee programs is valid. The 20-Year forecast that is used to create the TIM Fee and CIP programs is slightly adjusted each year, based on actual residential permit activity as well as an outlook of the regional housing economy.

Staff does not intend to propose adjustments to the forecast as part of the 2015 Minor update, but rather proposes to continue using the adopted forecast (as a very conservative budgeting parameter) until the growth forecast can be comprehensively updated as part of the Major CIP update. In addition, staff does not propose to move any projects forward into the current year, 5-Year or 10-Year CIPs, and will assume the same roadway priorities for the 2015 CIP. Only costs and schedules will be modified as needed. Detailed discussions about growth forecasts and roadway priorities will occur as part of the Major CIP update.

Please note that if the Board determines that the CIP needs to be revised (change of priorities in roadways, addition/deletion of a project, etc.), the Board can direct staff to make changes at any time per General Plan Implementation Measure TC-A.

Staff will be working on the Minor and Major updates to the CIP in parallel. Additionally, Staff is required to do a mid-year update to the existing 2014 CIP book. Staff anticipates the following Board workshops relating to updates to the CIP in early 2015:

<u>CIP Activity</u>	<u>Board Date(s)</u>
❖ Major CIP Update	
○ Kick-Off	February 10, 2015
○ Additional Board dates to be scheduled at a later time.	
❖ 2014 CIP Mid-Year Update	February 24, 2015
❖ 2015 Minor CIP Update	
○ Workshop	March 2015
○ Adoption Hearing	June 2015

All major changes to the CIP program are planned to be made as part of the Major Update. This includes reprioritization of roadways and addition or deletion of roadway improvements. The plan is to complete the Minor update by June of 2015 (in conjunction with the County's budget adoption hearings) and to complete the Major update in 2016.

The proposed 2015 Minor CIP workshop will be presented to the Board for direction in March. Staff anticipates returning to the Board with a finalized 2015 CIP Book for adoption in June.

The CIP forms the basis for the Transportation Division's budget for the upcoming FY.

The Airport CIP and the Tahoe EIP have additional review requirements, primarily tied to their specific funding sources. The Airport CIP is tied directly to the Federal Aviation Administration's annual grant cycle, and the Tahoe EIP is tied directly to the TRPA Regional Plan annual planning cycle.

Overview of the TIM Fee Program

An impact or mitigation fee is a fee levied by a local government or other public agency to ensure that new development projects pay for all or a portion of the costs of providing public infrastructure or services to the new development. The legal requirements for enactment of a development impact fee program are set forth in Government Code §§ 66000-66025 (the "Mitigation Fee Act"), the bulk of which were adopted as 1987's AB 1600 and thus are commonly referred to as "AB 1600 requirements."

Since 1984, the County has adopted and updated various fee programs to ensure that new development on the western slope pays to fund its fair share of the costs of improving county and state roads necessary to serve that new development. The County's single development impact fee is the TIM fee; other public agencies in the County (i.e., El Dorado Irrigation District) levy their own impact fees. The TIM Fee program is used to fund needed road improvements (e.g. new roads, road widening, intersection improvements, and transit) to address future growth during a defined period of time. For the County, the horizon is 20 years.

On September 20, 2005, the Board approved Resolution No. 292-2005 adopting an interim 10 Year TIM Fee Program. On August 22, 2006, the Board approved Resolution No. 266-2006, adopting the 20 Year TIM Fee Program we have today, known as the 2004 General Plan TIM Fee Program. The Board also adopted Resolution No. 265-2006, which certified the TIM Fee Program Supplement to the 2004 General Plan Environmental Impact Report, issued a Supplemental Statement of Overriding Considerations, and made Supplemental Findings of Fact.

Resolution 266-2006 requires the annual review of the TIM Fee Program and directs staff to return to the Board with a recommendation to adjust the TIM fees based on changes in the cost of construction or other costs. Staff characterizes this kind of annual review a "Minor" update. The General Plan's Policy TC-Xb requires the County to "at least every five years, prepare a TIM Fee Program specifying roadway improvements to be completed within the next 20 years to ensure compliance with all applicable level of service and other standards in this plan". This five-year analysis is considered to be a "Major" update, requiring review and update (if necessary) to the County's Travel Demand Model (TDM).

Since the TIM Fee Program was adopted on August 22, 2006, the County has performed five minor updates, from 2007 to 2012:

- On September 25, 2007, the Board adopted Resolution 243-2007 to raise TIM Fees by 14.16%, based on inflation of construction costs during the preceding year. The inflation index used in that adjustment was the Caltrans Price Index for Selected California Construction Items.

- On July 29, 2008, the Board adopted Resolution 205-2008 to:
 - Decrease TIM Fees by 1.73% based on a decrease of construction costs during the preceding year;
 - Switch the inflation cost index from Caltrans to the Engineering News Record-Building Cost Index; and,
 - Shift the index from third quarter (October) to fourth quarter (December).
- On June 2, 2009, the Board adopted Resolution 114-2009, which left the TIM Fee Program rates unchanged from the 2008 annual review.
- On June 8, 2010, the Board adopted Resolution 070-2010, which also left the TIM Fee Program rates unchanged from the 2008 annual review.
- On February 14, 2012, the Board adopted Resolution 021-2012, which allocated approximately \$40,900,000 of a \$138,600,000 TIM fee reduction available to offset lower fees for Age Restricted categories added in Zones 2, 3, and 8. This action added 1,200 units in Zone 8, 600 units in Zone 2, and 400 units in Zone 3. The total 2,200 units represented approximately 10% of the total housing forecast in the TIM Fee Program.

The Board determined that any other major changes to the TIM Fee Program would be done at the time of the Major Update, upon completion of the updated TDM (completed in June 2014).

Measure Y and its Impacts on the CIP and TIM Fee Program

One of the major factors affecting the CIP and TIM Fee Program is Measure Y. On November 3, 1998, voters passed the “Control Traffic Congestion Initiative” (Measure Y) which was implemented as Policy TC-Xa in the General Plan. In November 2008, voters passed an amendment to Measure Y. Attachment A provides a detailed discussion of General Plan Policy TC-Xa (Measure Y) and related General Plan policies TC-Xb through TC-Xi.

Measure Y (General Plan Policy TC-Xa) and its supplemental policies determine the parameters of how and when the roadway network must be analyzed and constructed. Some of the parameters required by General Plan policies as a result of Measure Y include the following:

- Maintaining certain roadway Level of Service (LOS) (i.e., LOS E for Community Regions, LOS D for Rural Centers and Rural Regions)
- Requiring certain time periods of analysis (Monday-Friday for a.m. and p.m. peak hours)
- Requiring creation of 20-Year CIP and TIM Fee Programs
- Setting frequency of CIP and TIM Fee Program updates

All roadway projects in the CIP and TIM Fee Programs must meet the parameters set forth as a result of the Measure Y policies. When evaluating projects, the County must ensure that it is not violating LOS requirements or impacting County-approved development that assumed the construction of roadway facilities within the CIP and TIM Fee Programs.

What to Expect in the Following 12-18 Months

On April 8, 2014, the Board directed Long Range Planning (LRP) staff to issue a request for Proposal (RFP) for the Major CIP and TIM Fee updates. The Board also approved a 1.03%

annual growth forecast (75% occurring within community regions and 25% occurring outside of community regions) as the starting point for initiating the Major Five-Year CIP and TIM Fee updates.

On September 30, 2014 the Board approved a contract with Kittelson & Associates Inc. (KAI) to begin the Major update. On December 16, 2014, the Board approved a contract amendment to include consultant assistance with the public outreach effort. The development of the Major CIP and TIM Fee updates will result in a minimum of five primary documents for the use of County staff and the public:

1. 2015 West Slope Transportation CIP
2. Existing Deficiencies Report
3. 2004 El Dorado County General Plan TIM Fee 2015 Update
4. Nexus Study
5. Environmental Document(s)

A kick-off meeting for the Major CIP and TIM Fee updates will be provided to the Board on February 10, 2015. The kick-off meeting will address project schedule, baseline assumptions, and the Board's goals and objectives for the update process. This will be the first of many presentations to the Board. Several additional meetings will be scheduled with the Board throughout the update process to address key decision points, including:

- Results of Roadway Needs Analysis and what changes, if any, need to be made
- Decisions on important fee program components (e.g., TIM Fee Zones, categories, etc.)
- Funding

The schedule for the Major CIP and TIM Fee update process will be provided at the February 10, 2015 Board hearing.

Next Steps

LRP staff will return to the Board on the following dates:

- February 10, 2015 - Kick-Off presentation for the Major CIP and TIM Fee Updates
- February 24, 2015 - 2014 CIP mid-year update
- March 2015 - 2015 CIP Minor Update Workshop
- June 2015 - 2015 CIP Minor Update Adoption Hearing

COUNTY COUNSEL
EDWARD L. KNAPP

CHIEF ASS'T. COUNTY COUNSEL
PATRICIA E. BECK

PRINCIPAL ASS'T. COUNTY COUNSEL
JUDITH M. KERR

SR. DEPUTY COUNTY COUNSEL
PAULA F. FRANTZ
MICHAEL J. CICOZZI
DAVID A. LIVINGSTON

**EL DORADO COUNTY
OFFICE OF
THE COUNTY COUNSEL**



COUNTY GOVERNMENT
CENTER
330 FAIR LANE
PLACERVILLE, CA
95667
(530) 621-5770
FAX# (530) 621-2937

DEPUTY COUNTY COUNSEL
LESLEY B. GOMES
KATHLEEN A. MARKHAM
JANETH D. SANPEDRO
ABIGAIL L. ROSEMAN
LAUREN C. BOWERS
JOMO K. STEWART

February 3, 2014

Board of Supervisors
330 Fair Lane
Placerville, CA 95667

Re: Interpretation of General Plan Policy TC-Xa (aka Measure Y)

Honorable Chair and Members of the Board of Supervisors:

The Board of Supervisors has recently heard a significant amount of discussion on the current level of service of Highway 50 and the effect any level of service deficiency may have on pending development projects. Whether or not Highway 50 or any other roadway is at Level of Service F is a technical engineering matter that is beyond the scope of this legal memo. Instead, this memo focuses on the ramifications of a confirmed level of service deficiency and, in particular, whether the County can approve any development if a roadway is confirmed to be at Level of Service F. The short answer to that question is that the County can approve such development so long as the County adheres to the mitigation and improvement requirements of the associated General Plan policies (Policies TC-Xb through TC-Xi).

BACKGROUND

Before delving into a discussion of the current General Plan traffic mitigation policies, it is important to first summarize the policies that preceded them. The original Measure Y was approved by voters on November 3, 1998 and provided that it shall remain in effect for ten years. It added the following five policies to the 1996 General Plan:

County tax revenues shall not be used in any way to pay for building road capacity improvements to offset traffic impacts from new development projects. Exceptions are allowed if County voters first give their approval. (Policy 3.2.2.5)

Developer-paid traffic impact fees shall fully pay for building all necessary road capacity improvements to fully offset and mitigate all direct and cumulative traffic impacts from new development upon any highways, arterial roads and their intersections during weekday, peak-hour periods in unincorporated areas of the county. (Policy 3.2.2.4)

Traffic from residential development projects of 5 or more units or parcels of land shall not result in, or worsen, Level of Service "F" (gridlock, stop-and-go) traffic congestion during weekday, peak-hour periods on any highway, road, interchange or intersection in the unincorporated areas of the county. (Policy 3.5.1.6.1.)

The County shall not add any additional segments of Highway 50, or any other roads, to the County's list of roads that are allowed to operate at Level of Service "F" (gridlock) without first getting the voter's approval. (Policy 3.5.1.6.2)

Before giving approval of any kind to a residential development project of 5 or more units or parcels of land, the County shall make a finding that the project complies with the policies added by this initiative. If this finding cannot be made, then the County shall not approve the project, or give final approval to a tentative subdivision map, until all these policy findings can be made, in order to protect the public's health and safety as provided by state law to assure that safe and adequate roads are in place as such development occurs. (Policy 3.2.1.5).

After Measure Y passed, the County and the Control Traffic Congestion Initiative Committee (the proponents of Measure Y) spent considerable time interpreting the new policies.¹ Those efforts culminated in a December 7, 1999, Board of Supervisors meeting at which the Board reviewed a range of options and voted on its preferred interpretations of the Measure Y policies.² Of particular note, the Board interpreted the term "worsen" (as used in Policy 3.5.1.6.1) to mean a measurable amount of traffic that is deemed by traffic engineering standards to have a perceptible impact on traffic congestion. Additionally, with respect to the issue of when traffic improvements needed to address aggregate impacts must be implemented, the Board concluded that, "The development project may proceed if the mitigation measures and roadway improvements are shown in the roadway plan adopted pursuant to General Plan Policy 3.5.1.1., are included in a Capital Improvement Plan which calls for the completion of the improvements within an identified, reasonable period of time, and funding sources have been identified for the full funding of the improvements and are reasonably anticipated to be available."

The Measure Y policies were later incorporated into the adopted 2004 General Plan along with alternative policies that would take effect if the Measure Y policies were not readopted by the voters at its 10-year expiration in 2008. The 2004 General Plan also included a number of other policies designed to further the goals of the General Plan and the Measure Y policies. Further refining its prior interpretation of the term "worsen," the Board included new Policy TC-Xe in the 2004 General Plan, which defined "worsen" as follows: (a) a 2% increase in traffic during a.m. peak hour, p.m. peak hour, or daily; (b) the addition of 100 or more daily trips; or (c)

¹ The 1996 General Plan was challenged in court and it was set aside by court order on February 5, 1999, but that order included the Measure Y policies among the policies to be applied in the interim period pending preparation of a new General Plan and EIR.

² Note that the Board's discretion in this regard was somewhat limited. It could not substitute its policy preferences for those of the voters, but could only interpret ambiguous provisions of the measure in accordance with the voters' intent.

the addition of 10 or more trips during the a.m. peak hour or the p.m. peak hour. Clarifying the timing of necessary traffic improvements, the Board included new Policy TC-Xf:

Prior to occupancy for development that worsens (defined as a project that triggers Policy TC-Xe [A] or [B] or [C]) traffic on the County road system, the developer shall do one of the following: (1) construct all road improvements necessary to regional and local roads needed to maintain or attain Level of Service standards detailed in this Transportation and Circulation Element; or (2) ensure adequate funding is identified and available for the necessary road improvements and those projects are programmed. The determination of compliance with this requirement shall be based on existing traffic plus traffic generated from the project and from other reasonably foreseeable projects.

Because Measure Y was to be in effect for only ten years, in 2008, the Board put a successor measure (also identified as Measure Y) on the ballot. The successor measure proposed certain revisions to Policy TC-Xa, the most significant ones being that (1) the Board can, on a 4/5 vote, add roads to the list of roads allowed to operate at LOS F³ and (2) the County can use financial resources other than developer fees to pay for necessary road improvements. The changes to Policy TC-Xa are as follows, in underline/strikeout format:

Traffic from single family residential subdivision development projects of five or more ~~units or~~ parcels of land shall not result in, or worsen, Level of Service F (gridlock, stop-and-go) traffic congestion during weekday, peak-hour periods on any highway, road, interchange or intersection in the unincorporated areas of the county.

The County shall not add any additional segments of U.S. Highway 50, or any other ~~highways and~~ roads, to the County's list of roads (~~shown in Table TC-2~~) that are allowed to operate at Level of Service F without first getting the voters' approval or by a 4/5ths vote of the Board of Supervisors.

Developer-paid traffic impact fees combined with any other available funds shall fully pay for building all necessary road capacity improvements to fully offset and mitigate all direct and cumulative traffic impacts from new development upon any highways, arterial roads and their intersections during weekday, peak-hour periods in unincorporated areas of the county.

~~County tax revenues shall not be used in any way to pay for building road capacity improvements to offset traffic impacts from new development projects. Exceptions are allowed if county voters first give their approval.~~

~~Before giving approval of any kind to a residential development project of five or more units or parcels of land, the County shall make a finding that the project complies with the policies above. If this finding cannot be made, then the County shall not approve the project in order to protect the public's health and safety as~~

³ Any such actions would be subject to review under CEQA.

~~provided by state law to assure that safe and adequate roads and highways are in place as such development occurs.~~

The successor measure was placed on the November 8, 2008 ballot. The argument in favor of the measure was signed by, among other people, Bill Center and then-Supervisor Sweeney. It passed with 71.47% "yes" votes.

In addition to authorizing the aforementioned successor measure, the Board also adopted a resolution (No. 194-2008) revising the associated traffic policies. Those revisions, however, were contingent upon the voters approving the successor measure amending Policy TC-Xa. Because the voters approved that successor measure, the additional revisions became effective. The primary effect of those revisions was to clarify the timing of the Capital Improvement Program and the traffic improvement concurrency requirements. Specifically, Policy TC-Xf was revised as follows:

At the time of approval of a tentative map for a single family residential subdivision of five or more parcels ~~Prior to occupancy for development~~ that worsens (defined as a project that triggers Policy TC-Xe [A] or [B] or [C]) traffic on the County road system, the ~~developer~~ County shall do one of the following: (1) condition the project to construct all road improvements necessary to regional and local roads needed to maintain or attain Level of Service standards detailed in this Transportation and Circulation Element based on existing traffic plus traffic generated from the development plus forecasted traffic growth at 10-years from project submittal; or (2) ensure adequate funding is identified and available the commencement of construction of ~~for~~ the necessary road improvements are included in the county's 10 year CIP and those projects are programmed. ~~The determination of compliance with this requirement shall be based on existing traffic plus traffic generated from the project and from other reasonably foreseeable projects.~~

By clarifying the concurrency requirements, current Policy TC-Xf provides two ways for a single-family residential project that worsens traffic to mitigate its impacts. First, the County can condition the project to construct all road improvements necessary to maintain or attain the specified level of service standards. Second, the County can ensure that construction of the necessary road improvements is in the 10-year CIP.⁴ In adopting the resolution authorizing those clarifications, the County recognized that allowing a project to rely on the 10-year CIP created the potential for short term increases in traffic (since, theoretically, the residential project could be completed in Year 1, but the road improvements might not be constructed until Year 10). It was determined, however, that any such impacts would be offset by the ability to use additional financial resources to pay for necessary projects and by policies requiring more frequent CIP review, which would allow the County to better prioritize improvements to minimize any short-term level of service deficiencies.

⁴ In contrast, the Board's prior interpretation of this policy required that the construction be completed in a reasonable period of time.

ANALYSIS

Your Board was recently told by some members of the public that a segment of Highway 50 is at LOS F and there are no current plans to improve it. Thus, some argue that the County cannot approve *any* single-family residential subdivision until the level of service of Highway 50 is improved. Such an argument, however, fails to take into account that a project has two ways to mitigate its impacts in accordance with the General Plan.

As described above, if the County determines that a single-family residential project of five or more units will “worsen” traffic, it has two options to mitigate the impacts: (1) condition the project to construct the necessary road improvements or (2) ensure that construction of the necessary road improvements is in the 10-year CIP.⁵ Assuming that Highway 50 is at LOS F and there are no projects in the 10-year CIP that will address that, then the second mitigation option may not be available. However, the first option—condition the project to construct the necessary road improvements—remains available. Pursuant to that option, the County could approve the project by conditioning it to construct the necessary improvements.

There are, however, limits to the County’s ability to condition a project to construct improvements. One of the hallmark concepts in planning is the *Nollan-Dolan* two-part test, often referred to as “nexus.” This test, derived from two U.S. Supreme Court cases addressing the Fifth Amendment’s Takings Clause—*Nollan v. California Coastal Commission* (1987) 483 U.S. 825 and *Dolan v. City of Tigard* (1994) 512 U.S. 374—applies when a public agency requires a dedication (e.g., conveying property) or monetary exaction (e.g., payment of an in-lieu fee or funding public improvements) as a condition of approval. The first part of the test requires that there be an “essential nexus” between the burdens imposed by the project and the condition. (*Nollan, supra*, 512 U.S. at p.837.) Without such a nexus, the condition fails to “substantially advance” a “legitimate state interest.” (*Ibid.*) The second part of the test requires that there be a “rough proportionality” between the magnitude of the exaction/condition and the extent of the project’s impacts. (*Dolan, supra*, 512 U.S. at p.387.) “No precise mathematical calculation is required, but the city must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development.” (*Id.* at p.391.) This two-part test is applicable not only when the public agency requires a dedication or exaction as a condition of approval, but also when it denies a project because the applicant refused to accept a proposed dedication or exaction. (*Koontz v. St. Johns River Water Management Dist.* (2013) 133 S.Ct. 2586, 2595.)

To illustrate how those constitutional requirements could limit the County’s ability to condition and/or approve a project, assume a very large subdivision project will result in LOS F on Highway 50. Further assume that the only way to mitigate that impact is to make interchange improvements with a cost in excess of \$25 million, but that improvement is not in the 10-year CIP and there is no desire to add it to the 10-year CIP. The County could still approve the project if, in accordance with Policy TC-Xf, it conditions the project to construct the interchange

⁵ Non-residential projects may be approved if the traffic mitigation measures are in the 20-year CIP.

improvement because the cost is “roughly proportional” to the magnitude of the development and its impacts.

If the scenario is changed to one involving a relatively small subdivision, the legal analysis would be much different. Though the project may have less of an impact, if there is no way to incrementally improve the affected interchange to mitigate the project’s impacts, the same costly interchange improvements described above will be required. In that case, the cost of the required improvements may not be roughly proportional to the relatively minor impacts from that small project. If so, the County might then have to deny the project.

Though the above scenarios are very basic and omit some possible options for spreading improvement costs over multiple projects,⁶ they illustrate the project-specific nature of the inquiry into the impacts of a project and the allowable conditions that can be imposed to mitigate those impacts. Indeed, documents from the original drafters of Measure Y, the Control Traffic Congestion Initiative Committee, reinforce the project-specific nature of the inquiry. In their July 27, 1998, memorandum, the Committee states, “One significant change from the current policy that is required as a result of this initiative is that ... if an existing road segment already operates below the County’s objective, the development project in question will be mitigated sufficiently to not worsen an existing LOS F condition.” Furthermore, the Committee states, “This is why we have said before that this initiative doesn’t dictate specific solutions, but rather sets policies that require that solutions be found before the County approves major residential projects.”

Accordingly, because the analysis required by the 1998 Measure Y and the they 2008 Measure Y can only be done on a project-by-project basis, it would be premature to simply declare that the County cannot approve any further single-family residential subdivisions. Rather, the County must evaluate each project to determine its impacts and whether feasible mitigation exists. It may be that no such feasible mitigation exists and the County is forced to deny projects on that basis, but that determination can only be made through project-level analysis.

CONCLUSION

The General Plan policies adopted in conjunction with the 1998 Measure Y and the 2008 successor to Measure Y allow two methods to mitigate a project’s traffic impacts. The argument that the existence of LOS F on one segment of Highway 50 precludes the County from approving any further development fails to recognize the mitigation options available to the County. The determination of whether the County can approve a project in compliance with the General Plan traffic policies can only be made on a project-by-project basis. In short, the County is not, on a program-wide basis, precluded from approving further development simply because one segment

⁶ For instance, assuming the County anticipates future development with a need for the improvement, it could approve the project on the condition that the project construct the improvement subject to reimbursement from future development and/or participation in an area of benefit. Though this option may address the takings issues, its viability still depends on the specific project at issue because requiring a small project to advance disproportionately high costs in hopes of future reimbursement may prove economically infeasible.

of roadway may be at LOS F. Additionally, the Board always has the option the voters gave it in the 1998 Measure Y to seek voter approval to add a segment of roadway to the list of roads that are allowed to operate at LOSF, or the additional option the voters gave the Board in the 2008 Measure Y to add that segment by a four-fifths vote of the Board.

Sincerely,

EDWARD L. KNAPP
County Counsel

By: _____


David A. Livingston
Sr. Deputy County Counsel

s:\bd of supervisors-15\correspondence\letter re measure y.docx