



San Francisco Bay Chapter

Serving Alameda, Contra Costa, Marin and San Francisco counties

23 May 2016

Chair Rebecca Kaplan and Commissioners
Alameda County Transportation Commission
Suite 800
1111 Broadway
Oakland CA 94607

Via T. Lengyel tlengyel@alamedactc.org

Re: Draft Alameda Countywide Transportation Plan (April 2016)

Dear Chair Kaplan and Commissioners:

Sierra Club members have reviewed the [draft Alameda Countywide Transportation Plan](#) (CTP) and offer the following comments and questions for your consideration.

An Environmental Impact Report is required

There is no Environmental Impact Report for the 2016 CTP, yet in the 21 April 2016 staff [memo](#) to the Commission, background information was presented on the multi-billion dollar plan that should have resulted in subjecting the CTP to a thorough environmental analysis—

The Alameda Countywide Transportation Plan is a long-range planning and policy document that guides future transportation investments for all transportation modes and users in Alameda County.

A staff [memo](#) dated 2 May 2016 provided to the Planning, Policy and Legislation Committee raises the issue of whether the CTP is required to undergo a CEQA analysis, and concludes that the CTP does not have to adhere to CEQA requirements. The first rationale, that the Metropolitan Transportation Commission (MTC) does not require a congestion management agency (CMA) such as ACTC to conform to CEQA, is not relevant, as state law does not grant MTC the power to exempt a CMA from CEQA.

The second rationale, that the CTP is a policy document, fails to mention that the P in CTP stands for “plan.”

As well, the draft CTP raises a number of significant environmental and human impact issues, such as “asthma hospital visit rates” and freeway projects in the county.

A fuller assessment of this issue, concluding that an EIR is required for a countywide transportation plan that becomes, by statute, the “primary basis” for the RTP, was provided to ACTC by Public Advocates last October; a copy of that letter is attached for your information.

An Environmental Impact Report would lead to a better CTP

An EIR would be useful both for the public and for Commissioners to better understand the environmental outcomes of the CTP. Consider greenhouse gas emissions (GHG) for example—will the CTP result in a reduction of GHGs per capita of 15% by 2035 (a requirement for Plan Bay Area, the Bay Area’s Regional Transportation Plan)?

The Bay Area’s Regional Transportation Plan must result in a significant reduction in vehicle miles traveled (VMT) per capita of cars and light duty trucks to be supportive of the requirements of SB 375, the California Sustainable Communities and Climate Protection Act of 2008. However, the 2016 CTP will not lead to a significant reduction in VMT per capita; see, for example, page 5 of the performance results in the 21 April 2016 staff [memo](#) on the CTP, where VMT per capita (per day?) is given as 20.4 in 2015 and is expected to be 19.9 in 2040. It does not seem likely that a 2.5% reduction in VMT per capita will lead to a 15% reduction in GHGs per capita by 2035 or 2040.

Statewide policies such as better motor vehicle fuels and more efficient cars are not the result of the CTP; ACTC is impermissibly double counting

There are statements in the draft [CTP](#) and the above-referenced 2 May 2016 staff [memo](#) about GHG reductions that show benefits of statewide improvements that are anticipated as the result of fuel efficiency standards and low carbon fuels standards. See, for example, page 8–9 (Projects, Programs, and Performance)—“The evaluation shows significant impacts from fuel efficiency and fuel economy standards in lowering greenhouse gas emissions.”

Page 6–69 (Modal Strategies) picks up the same theme with, “Increased fuel efficiency, alternative fuel vehicles, and vehicle technology innovations have changed the fundamental assumptions about the environmental impacts of driving. The number of vehicle models using alternative fuels and increased fuel efficiency has increased dramatically in the last several years.”

The draft 2016 CTP may be correct about reduced GHGs from driving in the years ahead, but ACTC and the CTP should *not* take credit for the

...benefits of statewide standards that are anticipated as the result of fuel efficiency standards and the low carbon fuels standards (LCFS) as part of the region’s efforts to reduce GHG emissions through integrated land use and transportation planning.

The above quotation is from a Plan Bay Area [note](#) about SB 375. The note continues with

Were MTC/ABAG to include those benefits in the SB 375 analysis, the region would be taking credit for emissions reductions in the land use and transportation planning sector that the state is taking credit for as part of ARB’s responsibilities, thus double counting.

The 21 April 2016 staff [memo](#) clearly illustrates how double counting may mislead both the public and Commissioners about what the 2016 CTP will do in regards to cutting GHGs from VMT per capita (from 2015 to 2040) when it states “carbon emissions (CO2) pounds per capita for autos and light duty trucks that occurs within the boundary of Alameda County...are projected to go down approximately 49%.” Much, perhaps all, of the reduction is due to double counting; the 2 May 2016 staff [memo](#) states:

The draft 2016 CTP acknowledges that the transportation industry is in the middle of a major transition impacted by technological changes ranging from automated vehicles to shared mobility. This transformation warrants new tools to capture the impacts of any transportation investment on the transportation system and the environment. In this regard, the California Air Resources Board’s Emission Factors (EMFAC) Model, which is generally used to estimate the Greenhouse Gas emissions of transportation projects, was significantly changed between the 2012 CTP and the 2016 CTP in terms of capturing the fuel efficiency and vehicle technology of automobiles. The 2016 CTP employed the 2014 EMFAC version that estimated significant reduction in GHG emission for the future year 2040 compared to the prior version used for the 2012 CTP.

Concluding questions

Will the ACTC reconsider its decision to not have the CTP put through a thorough CEQA analysis?

Given the expected 2.5% reduction in VMT per capita by 2040, what will be the change in GHGs per capita from the CTP?

If there is no EIR and the GHG reductions by 2035 are less than 15% from the base year of 2005, why should MTC accept the 2016 CTP?

What would be the impact on other counties in the region if ACTC fails to meet its share of the GHG reduction requirement?

If you have any questions about this letter, please contact me at mwillia@mac.com. The Sierra Club looks forward to your response. Thank you for your consideration.

Sincerely,



Matt Williams
Chair, San Francisco Bay Chapter Transportation and Compact Growth Committee

cc: MTC
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Air Resources Board Member Gioia
Chair, San Francisco Bay Chapter Executive Committee
Northern Alameda County Group
Southern Alameda County Group
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October 21, 2015

BY ELECTRONIC MAIL (ssuthanthira@alamedactc.org)

Chair Scott Haggerty and Commissioners
Alameda County Transportation Commission
1111 Broadway, Suite 800
Oakland CA 94607

RE: CEQA Requirements in the Countywide Transportation Plan

Dear Chair Haggerty and Commissioners:

We write to advise you that the failure of the Alameda CTC to prepare an Environmental Impact Report (EIR) in connection with your adoption of the 2016 Countywide Transportation Plan (CTP) would violate the California Environment Quality Act (CEQA).

Alameda CTC wrote in its September 24 response to a recent inquiry from the Sierra Club that it would not prepare an EIR, stating:

“Alameda CTC is developing the 2016 CTP following the CTP Guidelines approved by the Metropolitan Transportation Commission on September 24, 2014. The updated MTC's CTP Guidelines do not require county agencies to conduct their own environmental analysis. The projects and programs in the CTPs provide the basis of/input into the Regional Transportation Plan that goes through the environmental analysis process. In this regard, Alameda CTC's legal counsel confirmed that Alameda CTC's CTP is exempt from the California Environmental Quality Act analysis.”

As ACTC correctly acknowledges in this response, it is required to use the CTP Guidelines of the Metropolitan Transportation Commission (MTC) in developing and adopting its new CTP.¹ Among other things, MTC's Guidelines require fiscal constraint in the CTP, prioritization of investments in the “near-, mid-, and long-term,” the use of Plan Bay Area's performance measures, and the preparation of an equity analysis. They also require ACTC to develop its CTP by means of “a broad and open public participation process that includes” “under-represented interests and communities.”

However, both of the stated legal rationales for the purported CEQA exemption – that MTC's 2014 CTP Guidelines are silent on the CEQA

¹ See CAL. GOV'T CODE § 66531(c).

question, and that Plan Bay Area will undergo its own CEQA review – miss the mark. The duty to conduct an EIR arises not from MTC’s Guidelines, but by statute. As discussed below, the CTP is a “project” within the meaning of CEQA, and the fact that portions of the CTP will be incorporated in the EIR for the regional plan does not create an exemption under CEQA.

Under CEQA, which applies to “discretionary” actions, all local agencies must prepare an EIR “on any project which they propose to carry out or approve that may have a significant effect on the environment.”² A project “means an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment...”³ A CTP clearly fits this definition of “project,” and California case law supports this conclusion.

In *Edna Valley Association v. San Luis Obispo County*,⁴ the Court of Appeal held that San Luis Obispo County’s regional transportation plan (RTP) was a “project” that required an EIR. The court noted that earlier case law recognized that the legislature intended CEQA “to be interpreted in such a manner as to afford the fullest possible protection of the environment within the reasonable scope of the statutory language.”⁵ In addition, the court noted that the adoption of a local general plan or its elements fall within the definition of a project, and that elements like a circulation element “clearly resemble” the RTP.⁶ In addition, the court noted that “[i]t cannot be disputed that the [RTP] at issue, when implemented, may have a significant effect upon the environment.”⁷

All the same reasoning applies to Alameda CTC’s 2016 CTP. The 2016 CTP is a county transportation plan under section 66531 of the Government Code. As such, it constitutes discretionary action with respect to the expenditure of uncommitted revenues. It (along with the CTPs of the other eight Bay Area county agencies) will become “the primary basis” of the next RTP that MTC and ABAG adopts in 2017.⁸

The 2016 CTP, which will have significant effects on the environment, resembles both an RTP (particularly the RTP in *Edna Valley Association*, which governed a single county) and elements of a general plan such as a circulation element consisting of existing and proposed transportation routes. In fact, a CTP has a broader geographic scope than a general plan, and goes beyond a general plan in guiding the expenditure of large sums of public funding. Therefore, just as the adoption of an RTP or of a local general plan circulation element constitute a discretionary “project” under CEQA,⁹ so too does the adoption of a CTP.

Equally misguided is the argument that the preparation of an EIR for the 2017 update of Plan Bay Area results in an exemption from CEQA for the 2016 CTP. CEQA exemptions are provided exclusively by state statute and regulation. For instance, SB 375 created a new exemption for “transit priority projects” that further SB 375’s Sustainable Communities

² CAL. PUB. RES. CODE § 21151(a).

³ *Id.* § 21065.

⁴ 67 Cal. App. 3d 444 (1977).

⁵ *Id.* at 447 (internal citations omitted).

⁶ *Id.*

⁷ *Id.*

⁸ CAL. GOV’T CODE § 66531(f).

⁹ *Id.*

Strategy.¹⁰ CEQA provides no exemption for a CTP update, under SB 375 or otherwise. In short, no existing exemption applies to ACTC's CTP.

The exemption argument appears to rest on a mistaken understanding of the concept of CEQA "tiering." Tiering allows "using the analysis of general matters contained in a *broader* EIR (such as one prepared for a general plan or policy statement) with later EIRs and negative declarations on *narrower* projects."¹¹ As noted above, the 2016 CTP is by statute a direct input to, and the "primary basis" of, the next RTP.¹² In other words, the situation here is the reverse of that in which tiering can apply: the "later EIR" will be the broader one, not the narrower one. CEQA does not permit this kind of reverse tiering.

ACTC's argument is akin to claiming that a specific plan is exempt from CEQA merely because it will later be incorporated into a general plan that will undergo CEQA review. It is with good reason that that is not the law. Lumping the environmental review of more localized impacts into that of a higher-level plan would impermissibly exclude a range of local impacts from analysis and mitigation. As just one example, the EIR for the nine-county Plan Bay Area might show an overall reduction in GHG emissions, while an individual county's plan showed an increase.¹³ That increase would escape identification and mitigation if it were not subject to independent environmental review, a result at odds with the statute's requirements.

In short, because the EIR for Plan Bay Area will only assess the *aggregate* impacts of nine county transportation plans, a range of potentially significant impacts within Alameda County will not be addressed in that EIR. And while certain project-level impacts may be analyzed in individual project EIRs that tier off of the programmatic one, the cumulative impacts of the CTP will not.

For these reasons, MTC's longstanding CTP Guidelines adopted in 2000 provided explicitly – and correctly – that "MTC's RTP is subject to CEQA review. In order for Countywide Plans to be the 'primary basis' for the RTP, they too must undergo CEQA during their development."¹⁴ That rationale remains correct under CEQA. The 2014 update of MTC's CTP Guidelines does not purport to create a new CEQA exemption, but simply declines to address CEQA. That

¹⁰ CAL. PUB. RES. CODE § 21155.1.

¹¹ CAL. CODE REGS. §15152 (a) (CEQA Guidelines 2014) (emphasis added). *See* CAL. PUB. RES. CODE § 21068.5. ("TIERING OR TIER -- "Tiering" or "tier" means the coverage of general matters and environmental effects in an environmental impact report prepared for a policy, plan, program or ordinance followed by narrower or site-specific environmental impact reports which incorporate by reference the discussion in any prior environmental impact report and which concentrate on the environmental effects which (a) are capable of being mitigated, or (b) were not analyzed as significant effects on the environment in the prior environmental impact report.").

¹² CAL. GOV'T CODE § 66531(f).

¹³ Plan Bay Area's EIR in 2013 anticipated a related issue, noting that "At a regional and programmatic level over the entire planning period, the sum of these discrete short-term effects are considered less than significant," but that localized impacts could, nonetheless, be significant. For instance, "one local area experiencing construction of many projects consecutively[] could result in localized delay impacts that are significant. These must be evaluated at the project level." MTC and ABAG, Plan Bay Area draft Environmental Impact Statement, ch. 2, p. 29.

¹⁴ MTC, GUIDELINES FOR COUNTY TRANSPORTATION PLANS (2000), p. 6.

Scott Haggerty, Chair, and Commissioners, ACTC
October 21, 2015

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omission is not inappropriate, given the fact that the statute requiring MTC's adoption of CTP Guidelines makes no mention of the inclusion of guidelines for CEQA compliance.¹⁵

Apart from the legal requirement to conduct an EIR, compliance with CEQA will provide an important vehicle for the full and inclusive public participation, the performance analysis, and the equity analysis that MTC's Guidelines require.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Marcantonio', followed by a period.

Richard Marcantonio
Managing Attorney

Cc: Art Dao, Executive Director (adao@alamedactc.org)
Tess Lengyel, Deputy Director of Planning and Policy (tlengyel@alamedactc.org)

¹⁵ CAL. GOV'T CODE § 66531(f).