



# CALIFORNIA RURAL LEGAL ASSISTANCE, INC.

FIGHTING FOR JUSTICE, CHANGING LIVES

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October 31, 2017

Tony Boren, Executive Director  
Fresno Council of Governments  
2035 Tulare Street #201  
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VIA ELECTRONIC MAIL TO: [toboren@fresnocog.org](mailto:toboren@fresnocog.org); [traih@fresnocog.org](mailto:traih@fresnocog.org)

Re: RTP Roundtable Preferred Scenario Selection for 2018 RTP

Dear Mr. Boren:

California Rural Legal Assistance (CRLA) serves on the EJ Subcommittee to provide recommendations and feedback regarding FCOG's compliance with its environmental justice obligations during the 2018 RTP/SCS drafting process. 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.

Fresno COG released four Sustainable Communities Strategy (SCS) scenarios on October 5, 2017. FCOG has been conducting public outreach and will continue public outreach to receive public feedback until November 9, 2017. The RTP Roundtable selected a preferred scenario on October 25, 2017 for recommendation to the TTC and the PAC for inclusion in the 2018 RTP/SCS. The TTC and PAC will vote on a preferred scenario on November 3, 2017.

These comments address FCOG's Title VI, environmental justice, and state civil rights legal obligations related to public participation during the RTP/SCS process, and identify current omissions in addressing these legal requirements.

## **I. FCOG MUST COMPLY WITH CIVIL RIGHTS OBLIGATIONS**

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

Metropolitan Planning Organizations (MPOs) have civil rights obligations under federal and state law. Title VI of the federal Civil Rights Act of 1964 prohibits recipients of federal financial assistance from discriminating on the basis of race, color, or national origin in the provision of their policies, programs or activities. California Government Code §11135 prohibits discrimination on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation by any agency receiving state funding. FCOG is subject to both Title VI and Government Code §11135 obligations in the development and implementation of its regional transportation plans.

Federal civil rights and environmental justice protections prohibit MPOs from enacting policies, practices or activities that will have a differential effect on low-income and minority populations. Planning for programs, policies and activities must explicitly consider the effects they will have on minority and low-income populations. CRLA provided a detailed account of these obligations in our letter dated September 5, 2017, incorporated here by reference.

Federal and state civil rights law further requires that environmental justice communities (EJ communities), defined as minority and/or low-income populations, are meaningfully included throughout the RTP/SCS process. This includes meaningful involvement in the identification of potential impact that policies, programs and activities may have on those populations. 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

b. The RTP Roundtable Preferred Scenario selection process does not satisfy FCOG civil rights obligations

FCOG staff have worked with, and received feedback from, community-based organizations (CBOs) serving EJ communities to increase access to the planning process for those communities. This has included working with CBOs to schedule and conduct workshops, hold booths at community events, conduct outreach, and improve the call-for-projects surveying effort. The RTP Roundtable, TTC, and PAC process for selecting a preferred SCS scenario does not demonstrate the same meaningful public engagement.

Public outreach on the preferred scenarios had not concluded before the RTP Roundtable voted on a recommended scenario on October 25th. Twenty-seven outreach events were scheduled for the scenario selection period, but five were calendared for after the RTP Roundtable vote, representing approximately 19% of total outreach events. Several events and the online survey do not conclude until after the TTC and PAC vote on November 3rd.

These concerns were raised in the October 25, 2017 RTP Roundtable meeting, but were dismissed by RTP Roundtable members.

FCOG staff presented the RTP Roundtable with the survey results from the public outreach efforts completed prior to October 25, 2017. 75.8% of survey participants are from minority populations and 60.3% have a median household income of \$36,000 or lower compared to a state median of \$64,500. Nearly half (45.1%) of the survey respondents come from a household with a median household income of less than \$25,000 annually. This indicates that a majority of respondents were members of environmental justice communities.

Survey respondents demonstrated the following preferences for the proposed SCS scenario:

- Scenario A, which would “[p]rovide a range of transportation options to all Fresno County residents, such as carpooling, vanpooling, and buses, with a focus on improving air quality” received 30.4% of votes.
- Scenario B, which would “[i]nvest in bike and pedestrian projects in dense urban areas to encourage people to use their cars less” received 34.6 % of votes.
- Scenario C, which would “[e]ncourage growth and investment in existing small cities and disadvantaged communities” received 19% of votes.
- Scenario D, which would “[m]aintain, repair and enhance existing streets and roads” received 16% of votes.

The RTP Roundtable chose Scenario D as their preferred scenario although more than twice as many survey respondents preferred Scenario B, which would provide innovative new transportation solutions with a focus on active transportation, transit-oriented development, and GHG-reducing programs, than Scenario D, which would focus primarily on road maintenance and expansion projects. 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.

Civil Rights laws require that EJ communities be meaningfully included throughout the RTP/SCS process. Inclusion in outreach events alone does not represent meaningful participation in the RTP/SCS process if FCOG fails to consider feedback provided by EJ populations. Further, when voting takes place prior to the conclusion of the public outreach period, decision-makers cannot fully consider feedback from EJ populations when making decisions that impact them.

Scenario selection by the RTP Roundtable, the TTC, and the PAC will all occur prior to the conclusion of the public outreach period, and the RTP Roundtable selected the scenario least preferred by EJ communities without any justification for this decision. These facts raise concerns about the extent to which the participation by EJ communities in the 2018 RTP/SCS process is meaningful as is required by law.

The RTP Roundtable, TTC, and PAC must comply with their legal obligations to meaningfully include EJ populations throughout the planning process. Decision-makers within FCOG must conclude public outreach efforts to EJ communities prior to making planning decisions that could substantially impact them, and genuine consideration must be given to the opinions of environmental justice populations during the planning process. Anything short of this type of meaningful involvement falls short of FCOG obligations.

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Sincerely,



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