



Western Riverside Council of Governments Technical Advisory Committee SPECIAL MEETING AGENDA

**Thursday, June 15, 2017
9:30 a.m.**

**County of Riverside
Administrative Center
4080 Lemon Street
5th Floor, Conference Room C
Riverside, CA 92501**

In compliance with the Americans with Disabilities Act and Government Code Section 54954.2, if special assistance is needed to participate in the Technical Advisory Committee meeting, please contact WRCOG at (951) 955-8320. Notification of at least 48 hours prior to meeting time will assist staff in assuring that reasonable arrangements can be made to provide accessibility at the meeting. In compliance with Government Code Section 54957.5, agenda materials distributed within 72 hours prior to the meeting which are public records relating to an open session agenda item will be available for inspection by members of the public prior to the meeting at 4080 Lemon Street, 3rd Floor, Riverside, CA, 92501.

The Technical Advisory Committee may take any action on any item listed on the agenda, regardless of the Requested Action.

- 1. CALL TO ORDER (Gary Nordquist, Chairman)**
- 2. ROLL CALL**
- 3. PLEDGE OF ALLEGIANCE**
- 4. PUBLIC COMMENTS**

At this time members of the public can address the Technical Advisory Committee regarding any items with the subject matter jurisdiction of the Committee that are not separately listed on this agenda. Members of the public will have an opportunity to speak on agenda items at the time the item is called for discussion. No action may be taken on items not listed on the agenda unless authorized by law. Whenever possible, lengthy testimony should be presented to the Committee in writing and only pertinent points presented orally.

5. CONSENT CALENDAR

All items listed under the Consent Calendar are considered to be routine and may be enacted by one motion. Prior to the motion to consider any action by the Committee, any public comments on any of the Consent Items will be heard. There will be no separate action unless members of the Committee request specific items be removed from the Consent Calendar.

- A. **Summary Minutes from the May 18, 2017, Technical Advisory Committee meeting are available for consideration.** **P. 1**

Requested Action: 1. *Approve Summary Minutes from the May 18, 2017, Technical Advisory Committee meeting.*

- B. **Legislative Activities Update** **P. 5**

Requested Actions: 1. *Recommend that the Executive Committee adopt an “Oppose” position for Senate Bill (SB) 649 (Hueso) and authorize the Executive Director to transmit a letter on behalf of WRCOG indicating WRCOG’s opposition for SB 649.*
2. *Recommend that the Executive Committee adopt a “Support with amendments” position for Senate Bill (SB) 242 (Skinner) and authorize the Executive Director to transmit a letter on behalf of WRCOG indicating WRCOG’s support with amendments for SB 242.*

6. **REPORTS/DISCUSSION**

- A. **Transportation Uniform Mitigation Fee (TUMF) Program Nexus Study Update and request to provide recommendation to Executive Committee on Nexus Study approval and establishment of fee structure** **Christopher Gray, WRCOG** **P. 35**

Requested Actions: 1. *Recommend that the Executive Committee approve the 2016 TUMF Nexus Study.*
2. *Consider recommendations regarding TUMF Program implementation and fee phasing provided by the Public Works Committee, and forward recommendations to the Executive Committee for consideration.*

- B. **Community Choice Aggregation Program Activities Update** **Barbara Spoonhour, WRCOG** **P. 117**

Requested Action: 1. *Request that the member jurisdictions forward the draft CCA Joint Powers Agreement and Bylaws to its respective City Attorneys for review and comment.*

7. **REPORT FROM THE EXECUTIVE DIRECTOR** **Rick Bishop**

8. **ITEMS FOR FUTURE AGENDAS** **Members**

Members are invited to suggest additional items to be brought forward for discussion at future Technical Advisory Committee meetings.

9. **GENERAL ANNOUNCEMENTS** **Members**

Members are invited to announce items/activities which may be of general interest to the Technical Advisory Committee.

10. **NEXT MEETING:** **The next Technical Advisory Committee meeting is scheduled for Thursday, July 20, 2017, at 9:30 a.m., in the County of Riverside Administrative Center, 5th Floor, Conference Room C.**

11. **ADJOURNMENT**

1. CALL TO ORDER

The meeting of the Technical Advisory Committee was called to order at 9:42 a.m. by Chairman Gary Nordquist at the County of Riverside Administrative Center, 5th Floor, Conference Room C.

2. ROLL CALL

Members present:

Bonnie Johnson, City of Calimesa
Michelle Nissen, City of Eastvale
Alex Meyerhoff, City of Hemet
Grant Yates, City of Lake Elsinore
Rick Dudley, City of Murrieta
Andy Okoro, City of Norco
John Russo, City of Riverside (9:51 a.m. arrival)
Aaron Adams, City of Temecula
Gary Nordquist, City of Wildomar (Chair)
George Johnson, County of Riverside
John Rossi, Western Municipal Water District
Roger Meyer, Morongo Band of Mission Indians

Staff present:

Steve DeBaun, Legal Counsel
Rick Bishop, Executive Director
Ernie Reyna, Chief Financial Officer
Jennifer Ward, Director of Government Relations
Chris Gray, Director of Transportation
Andrew Ruiz, Program Manager
Christopher Tzeng, Program Manager
Daniel Ramirez-Cornejo, Staff Analyst
Anthony Segura, Staff Analyst

Amber Bolden, Intern
Lupe Lotman, Executive Assistant
Janis Leonard, Executive Assistant

Guests present:

Bryan Martinez, Eastern Municipal Water District
Kim Summers, City of Murrieta
Araceli Ruiz, County of Riverside District 1
Erin Sasse, League of California Cities
Kim Saruwatari, Riverside County Emergency Management Department
Victoria Jarregui Burns, Riverside County Emergency Management Department
Arnold San Miguel, Southern California Association of Governments

3. PLEDGE OF ALLEGIANCE

Bonnie Johnson, City of Calimesa, led the members and guests in the Pledge of Allegiance.

4. PUBLIC COMMENTS

Arnold San Miguel announced that

5. SPECIAL PRESENTATION

Chairman Nordquist presented a Proclamation to Rick Dudley in honor of his upcoming retirement.

6. CONSENT CALENDAR (Meyerhoff/Russo) 12 yes; 0 no; 0 abstention. Items 6.A – 6.J were approved by a unanimous vote of those members present. The Cities of Banning, Canyon Lake, Corona, Jurupa Valley, Menifee, Moreno Valley, Perris, and San Jacinto, the Eastern Municipal Water District, and the March Joint Powers Authority were not present.

A. Summary Minutes from the April 20, 2017, Technical Advisory Committee meeting.

Action: 1. *Approved the Summary Minutes from the April 20, 2017, Technical Advisory Committee meeting.*

B. Finance Department Activities Update

Action: 1. *Received and filed.*

C. Financial Report Summary through March 2017

Action: 1. *Received and filed.*

D. Regional Streetlight Program Activities Update

Action: 1. *Received and filed.*

E. Western Riverside Energy Partnership Update

Action: 1. *Received and filed.*

F. Environmental Department Activities Update

Action: 1. *Received and filed.*

G. Clean Cities Coalition Activities Update

Action: 1. *Received and filed.*

H. International City / County Management Association Activities Update

Action: 1. *Received and filed.*

I. Final draft Fiscal Year 2017/2018 Agency Budget

Action: 1. *Recommended that the Executive Committee approve the WRCOG final draft Budget for Fiscal Year 2017/2018, substantially as to form.*

J. BEYOND Framework Fund Round II Funding Awards

Action: 1. *Received and filed.*

7. REPORTS/DISCUSSION

A. Report from the League of California Cities

Erin Sasse reported that Governor Brown has signed SB 1, resulting in funding for the four new cities, as well as funding for transportation, and some funding for parks.

The Governor is proposing a trailer bill that unwinds local control regarding medical marijuana.

AB 1250 (as amended, Jones-Sawyer. Counties and cities: contracts for personal services) limits the ability to contract services; jurisdictions are requested to oppose this bill.

The League is still opposed to AB 890 (as amended, Medina. Local land use initiatives: environmental review) due to CEQA requirements.

AB 302 (as amended, Gipson. ~~Vehicular air pollution: incentives.~~ South Coast Air Quality Management District: fleets) will allow AQMD to create regulations on fleets, encouraging all fleets to go to zero or near-zero emission vehicles.

The League is opposed to SB 167 (as amended, Skinner. Housing Accountability Act) due to burden of proof being placed on the city regarding denial of housing projects. Cities could be imposed a \$100,000 fine per unit if a project is denied.

The League is pushing for SB 540 (as amended, Roth. Workforce Housing Opportunity Zone), which would provide CEQA upfront and allow up to five years for housing projects. Housing is the League's priority for the remainder of the year.

In the May Revise for the Department of Parks and Recreation, \$53.4 million in additional funding for parks: \$31.5 million to repair state parks and infrastructure; \$1.5 million to establish a pilot project to provide transportation to parks from urban areas and schools; \$1 million to support off highway vehicle recreation; \$1 million for an increase of the abandoned watercraft abatement program; \$1 million increase to establish recruitment and training program for hard to fill classifications such as park rangers, life guards, maintenance workers, etc.; and \$18 million for the Jurupa area recreation and park district.

Action: 1. *Received and filed.*

B. Transportation Uniform Mitigation Fee (TUMF) Program Activities Update

Christopher Gray reported that SB 1 and SB 132 have passed, which provides funding for select cities for certain projects; those projects will be removed from the TUMF Network. After an additional review, other projects were deemed complete and also removed from the TUMF Network. This has resulted in a reduction of fees.

Three formal comment letters have been received by the public sector, and eight from the private sector. Mr. Gray briefly reviewed a few responses to comments with Committee members, such as soft costs, funding sources, right-of-way, and retail / service fee calculation, to name a few.

The TUMF Nexus Study Ad Hoc Committee is recommending a two-year freeze and subsequent 2-year phase-in for the proposed maximum retail fee, and a 2-year single-family residential phase-in.

Action: 1. *Received and filed.*

C. Presentation by the Riverside County Emergency Management Department

Ms. Saruwatari reported that the Emergency Management Department (EMD) was created approximately two years ago, when several programs were merged into one.

There are many hazards in Riverside County, ranging from the transportation of hazardous materials through the County, underground hazardous materials storage, and fuel pipelines. Additionally, three of the five most active earthquake faults in the state are in Riverside County.

Emergency Management Programs have legal requirements under the Emergency Services Act, which clearly outlines the roles and responsibilities of the County and its cities. Having no plan may expose jurisdictions to increased liability and loss of disaster response funds.

EMD is funded by grants and fire department contracts. EMD provides three levels of service: cities that do not contract with Cal Fire / Riverside County Fire; cities that do contract with Cal Fire / Riverside County Fire; and cities that contract with EMD directly.

Action: 1. *Received and filed.*

7. REPORT FROM THE EXECUTIVE DIRECTOR

Rick Bishop and the TAC members thanked Rick Dudley for his leadership in the subregion during his tenure in Murrieta.

8. ITEMS FOR FUTURE AGENDAS

Committee member Michelle Nissen requested a presentation from the Riverside County Economic Development Agency regarding its projects and resources.

9. GENERAL ANNOUNCEMENTS

Rick Bishop indicated that even though this Committee is dark during the month of June, staff is considering the convening of a Special meeting in order to develop forward recommendations on the TUMF Nexus Study to the Executive Committee at its July meeting.

10. NEXT MEETING

The next regular Technical Advisory Committee meeting is scheduled for Thursday, July 20, 2017, at 9:30 a.m., in the County of Riverside Administrative Center, 5th Floor, Conference Room C. A Special meeting will be convened on June 15, 2017.

11. ADJOURNMENT

The meeting of the Technical Advisory Committee adjourned at 10:43 a.m.



Western Riverside Council of Governments Technical Advisory Committee

Staff Report

Subject: Legislative Activities Update

Contact: Jennifer Ward, Director of Government Relations, ward@wrcog.coq.ca.us, (951) 955-0186

Date: June 15, 2017

The purpose of this item is to seek Committee positions on two pieces of legislation pending in the 2017/2018 legislative cycle that are relevant to the issues contained within WRCOG's Legislative Platform.

Requested Actions:

1. Recommend that the Executive Committee adopt an "Oppose" position for Senate Bill (SB) 649 (Hueso) and authorize the Executive Director to transmit a letter on behalf of WRCOG indicating WRCOG's opposition for SB 649.
2. Recommend that the Executive Committee adopt a "Support with amendments" position for Senate Bill (SB) 242 (Skinner) and authorize the Executive Director to transmit a letter on behalf of WRCOG indicating WRCOG's support with amendments for SB 242.

Overview of SB 649: Wireless telecommunications facilities

SB 649, authored by Senator Ben Hueso, is intended to establish a statewide framework for streamlining the permit siting process of small cell wireless facilities. The bill would standardize the planning and permitting processes, and the amount of fees that each local jurisdiction can charge for small cell installations, and require local jurisdictions make most of their vertical infrastructure in the public right-of-way available to small cell wireless facilities. Historically, local jurisdictions had authority to implement discretionary permit fees, but this bill would limit fees between \$100 and \$850 for small cell installation within the utility right-of-way, and these permit fees would also be automatically renewed for equivalent durations.

In addition to this bill requiring that most vertical infrastructure in the right-of-way become available for installations, it also requires infrastructure within commercial or industrial zones become accessible. SB 649 defines the "small cell" facilities as a potential package of equipment to not exceed 21 cubic feet, with no individual piece exceeding 9 cubic feet. The definition of equipment size does not include equipment like cables, meters, and other ancillary devices. This legislation precludes local discretionary review of specified "small cell" wireless on existing, new structures within the right-of-way.

The League of California Cities, in conjunction with the Urban Counties of California, Rural County Representatives of California, Protect our Local Streets Coalition, and the American Planning Association has developed a joint letter of opposition to SB 649 (Attachment 1), citing this legislation as shutting out public input by eliminating local consideration of the aesthetic and environmental impact of "small cells." WRCOG member jurisdictions, including the Cities of Corona, Eastvale, Lake Elsinore, Moreno Valley, and Murrieta have also signed and transmitted letters of opposition of SB 649 (Attachments 2-5).

WRCOG Opposition of SB 649

WRCOG is seeking authorization to sign and transmit a letter indicating an “Oppose” position to SB 649. Opposition to this bill is supported by the statements within the General Advocacy goal of WRCOG's adopted 2017/2018 Legislative Platform, which specify that WRCOG will oppose legislation that seeks to limit local control or reduce funding opportunities to local jurisdictions.

Overview of SB 242: Property Assessed Clean Energy program: program administrator

SB 242, authored by Senator Nancy Skinner, intends to standardize consumer protections for residential Property Assessed Clean Energy (PACE) Programs, which would affect and include HERO, CaliforniaFIRST, and Spruce.

SB 242 establishes consumer protections beyond those already contained in AB 2693, a PACE consumer protections bill that was chaptered in California last year. Protections proposed in SB 242 would require a PACE program administrator to include a property owner's ability to repay a PACE assessment as part of the underwriting criteria; call 100% of participating property owners to ensure they understand key terms of the potential assessment; and will require that all contracts entered into on or after January 1, 2018, provide a property owner with forbearance or a payment holiday on the PACE assessment under specific circumstances. The League of Cities is supportive of this bill and has transmitted a letter (Attachment 6).

Staff supports the majority of the language in the SB 242, but has reservations regarding Section 5923 (b): *“A program administrator is permitted to reimburse documented expenses to a contractor or third party for approved cobranded advertising and marketing campaigns and collateral, training, and training events.”*

WRCOG recommends that this language be removed from the legislation to better distinguish and maintain the separation between the PACE administrator financing the project and the contractor doing the work for the project.

WRCOG Support with amendments of SB 242

WRCOG is seeking authorization to transmit a letter indicating a position of “Support with amendments” for SB 242. This bill is supported by the goals within the Energy and Environment section of WRCOG's adopted 2017/2018 Legislative Platform, which specify that WRCOG will support legislation that removes barriers for the WRCOG PACE Programs. WRCOG staff feel that enhancing consumer protections reduces barriers to further expansion and success for the PACE industry.

Prior Action:

None.

Fiscal Impact:

This item has no impact on WRCOG's Agency budget.

Attachments:

1. Urban Counties of California, Rural County Representatives of California, League of California Cities, Protect our Local Streets Coalition, American Planning Association joint opposition letter for SB 649.
2. Corona opposition letter for SB 649.
3. Lake Elsinore opposition letter for SB 649.
4. Moreno Valley opposition letter for SB 649.
5. Murrieta opposition letter for SB 649.
6. League of California Cities support letter for SB 242.

Item 5.B

Legislative Activities Update

Attachment 1

Urban Counties of California, Rural
County Representatives of California,
League of California Cities, Protect
our Local Streets Coalition, American
Planning Association joint opposition
letter for SB 649

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March 28, 2017

The Honorable Ben Hueso
Chair, Senate Utilities, Energy and Communications Committee
State Capitol, Room 4035
Sacramento, CA 95814

Subject: **OPPOSITION to SB 649 (Hueso) – “Small Cell” Wireless Infrastructure Permitting (as amended March 28th)** – In Senate Energy, Utilities, and Communications Committee
April 5th, 2017

Dear Senator Hueso:

The California Chapter of the American Planning Association (APA California), the League of California Cities (LCC), the Urban Counties of California (UCC), the Rural County Representatives of California (RCRC) and Protect our Local Streets Coalition (POLS) all must respectfully oppose your bill, SB 649. SB 649 would unnecessarily shut out public input by eliminating local consideration of the aesthetic and environmental impacts of “small cells.” These not-so-small “small cell” structures would be required to be allowed on public property in ANY zone in a city or county. SB 649 would also require cities and counties to lease or license publicly-owned facilities.

We appreciate the opportunity to meet with supporters of the bill prior to the amendments. However, the language in print is even more problematic than what was mocked up for discussion at our meeting. In fact, the new language in print leaves us with more questions and concerns, listed below:

By-Right Approval for “Small Cells”

SB 649 would tie the hands of local government by prohibiting discretionary review of “small cell” wireless antennas and related equipment, regardless of whether they will be collocated on existing structures or located on new “poles, structures, or non-pole structures,” including those within the public right-of-way. This would shut out the public from the permitting process and preempt adopted local land use plans by mandating that “small cells” be allowed in all zones as a use by-right.

Without a discretionary permit, the these not-so-small cell structures would not be subject to the California Environmental Quality Act (CEQA) or consideration of aesthetics, design and nuisance impacts. Nothing would prevent, for example, a small cell(s) to be placed on a city/county owned light pole that is directly in front of a resident’s window, or placed on a traffic signal, which was never intended to hold wireless infrastructure.

It's important to note the Federal Communications Commission (FCC) still preserves local government's authority to require a discretionary permit. Why should California go beyond the FCC to remove local discretion?

Not So Small

Unfortunately, these “small cells” are not necessarily small. ***The definition is not inclusive of ALL infrastructure necessary to support 5G technology.*** The definition explicitly excludes:

- Electric meters and any required demarcation box
- Concealment elements
- Any telecommunications demarcation box
- Grounding equipment
- Power transfer switches
- Cut-off switches
- Vertical cable runs

Unknown Terms

“Single administrative permit.” (Sec. 65964.2(b)(1)) There are permits that are “ministerial,” such as a building permits, and permits that involve “discretionary” authority, such as encroachment permits, and either may be “administrative” depending on the process adopted by a local government. Building permits involve a building inspector verifying the safety of a building project. Projects in a public right of way (PROW) may also require an encroachment permit, which involves an inspector verifying that a project complies with PROW requirements. Building permits and encroachment permits cover entirely different concerns. Building inspectors do not check for Americans with Disabilities Act requirements that are not in the California Building Standards Code, and encroachment permit inspectors do not check the safety of the electrical connections. It is untenable to suggest that local governments should be forced to choose only one, but that appears to be one possible interpretation. Another possible interpretation is that an administrative body, such as a planning department, would be free of all supervision of the elected body that it serves. (Elected bodies are not “administrative” bodies.) This is an admittedly unusual outcome, but it appears to be a reasonable interpretation.

Whatever the “single administrative permit” should mean, it is also not clear how it is used in the bill. Sec. 65964.2(b) exempts small cells from all discretionary review if the listed criteria are met. This would appear to call for items to be included in an application that demonstrate satisfaction of the exemption requirements, and the first two items do just that. The third item, however, is the phrase “single administrative permit.” We fail to understand how this is an element of an application for a small cell.

“Similar construction projects” (Sec. 65964.2(b)(3)(B)) states that single administrative permits may include “the same administrative permit requirements as similar construction projects...” We are unaware of any construction projects similar to small cells. ***Placing small cells on publically owned property is a recent occurrence with no precedent to guide policy discussions. SB 649 attempts to borrow from over a century of policies applicable to utility poles, and graft them onto public property that has no prior connection to delivering utility services***

How is “the regulation of any antennas mounted on cable strands” to be interpreted? (Sec. 65964.2(b)(3)(D)) This section lists items that the single administrative permit may not be subject to. It’s not clear what it means to say that a permit for a small cell may not be subject to the regulation of something that is not a small cell. ***If this means strand mounted antennas may not be regulated, it is a threat to public safety.***

Mandatory Leasing of City or County Property at Little to No Cost

SB 649 takes an extensive body of policy and legal precedent developed for access to utility poles and applies it to publicly owned property. Utility poles have always been treated as “shared facilities,” meaning that each pole was intended to serve multiple utility users wherever possible. This has led to the extensive regulations governing access to utility poles. Street lights and traffic signals are not “shared facilities.” They were installed for purposes unrelated to utilities and they were built at public expense. The costs associated with these public structures are unique, and, most importantly, they have never been the subject of utility-style regulations. SB 649 doesn’t acknowledge these critical differences, and simply treats any “vertical infrastructure in the public right of way” just like a utility pole.

Section 65964.2(b) would limit the rent a local government can charge a wireless company to place a small cell on public property to a “cost-based” fee. When local governments spend taxpayer money on street and traffic lights, it’s not expected that they would one day become used for the benefit of one industry. SB 649 provides favorable treatment to one industry over others who are paying the appropriate market rate for access to city property. The public is entitled to the fair-market value for using their property, and the local governments are the legal owners and landlords renting the property. When local governments rent public property, they are obligated to act in the public’s interest and receive fair-market value.

Control of property, including the ability to charge fair rent, is an essential property right. To the extent SB 649 deprives a local government of essential property rights, it may constitute a Separation of Powers violation, a regulatory taking, or a prohibited gift of public resources under Art XVI§6 of the State Constitution.

Reinventing the Wheel

The Wireless Telecommunications Bureau recently issued a Public Notice for comment on potential FCC actions to help expedite the deployment of small cells, including streamlining at the local level. The comment period just closed in March of 2017. It is appropriate to allow this process to complete before taking action on this matter.

Small Cell Deployment is New

As we understand per discussions with supporters, small cells are just in the beginning stages of being deployed. Given that many jurisdictions may not have even processed a small cell permit yet, or only handled a small number, we are unclear where the concerns are coming from that have prompted the need for this bill. We haven’t seen any examples yet to demonstrate a lack of deployment. We understand that there is a desire to have certainty for providers when

applying for these permits – local governments want certainty too. Complete applications help -
- quick response to potential redesign also helps, for example. ***To provide a more streamlined statewide process, it may be more beneficial to require the Office of Planning and Research (OPR) to develop a model ordinance or other guidance for both jurisdictions and providers to use, rather than passing legislation at this time.***

What's Next?

The wireless industry continues to push legislation every year to further remove local government's discretion over wireless structures. We can't help but wonder what else, or what other types of structures or industries will be next in line.

While the undersigned organizations support the deployment of facilities to ensure that Californians have access to telecommunications services, this goal is not inherently in conflict with appropriate local planning and consideration for the environmental and aesthetic impacts of such facilities. **A better approach would be one that encourages coordination and up-front planning to ensure that wireless technology can be deployed as quickly as possible but with due consideration for aesthetics and the environment.**

Finally, we want to note that we greatly appreciate the time your staff, Nida Bautista, has taken to meet with us to discuss our concerns. Please do not hesitate to contact us with any questions about our position.

Sincerely,



Jolena Voorhis
Executive Director
Urban Counties of California
jolena@urbancounties.com



Tracy Rhine
Legislative Representative
Rural County Representatives of California
TRhine@rcrcnet.org



Rony Berdugo
Legislative Representative
League of California Cities
rberdugo@cacities.org



Syrus Devers
Protect our Local Streets Coalition
Best Best & Krieger LLP
Syrus.Devers@bbklaw.com



Lauren De Valencia
Legislative Representative
American Planning Association, California Chapter
lauren@stefangeorge.com

cc: The Honorable Senator Ben Hueso, Chair Senate Energy, Utilities & Communications Committee
Members and Consultant, Senate Energy, Utilities & Communications Committee
Kerry Yoshida, Senate Republican Caucus
The Governor and OPR

Item 5.B

Legislative Activities Update

Attachment 2

Corona opposition letter for SB 649

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OFFICE OF: Mayor

Phone: 951-736-2371
Fax: 951-736-2493

400 S. Vicentia Ave. P.O. Box 940, Corona, California 92878-0940
City Hall Online All The Time – <http://www.discovercorona.com>

April 12, 2017

The Honorable Ben Hueso
California State Senate, District 40
State Capitol Building, Room 4035
Sacramento, CA 95814
VIA FAX: 916-651-4940

RE: SB 649 (Hueso). Wireless and Small Cell
Telecommunications Facilities.
Notice of Opposition

Dear Senator Hueso:

The City of Corona respectfully opposes your SB 649 related to the permitting of wireless and small cell telecommunications facilities. This proposal unnecessarily and unconstitutionally strips local authority over public property and shuts out public input and local discretion by eliminating consideration of the aesthetic and environmental impacts of “small cells.”

This proposal would prohibit local discretionary review of “small cell” wireless antennas, including equipment collocated on existing structures or located on new “poles, structures, or non-pole structures,” including those within the public right-of-way and buildings. The proposal preempts adopted local land use plans by mandating that “small cells” be allowed in all zones as a use *by-right*.

As such, the proposal provides a de facto exemption to the California Environmental Quality Act (CEQA) for the installation of such facilities and precludes consideration by the public of the aesthetic, nuisance, and environmental impacts of these facilities, all of which are of particular importance when the proposed location of facilities is within a residential zone.

SB 649’s use of the Federal Communications Commission (FCC) definition of a “small cell” include other “small cell” equipment such as electric meters, concealments, telecom demarcation boxes, ground-based enclosures, battery backup power systems, grounding equipment, power transfer switches, cutoff switches, cables, or conduits. While proponents argue that an individual “small cell” has very little impact, the cumulative size specifications of all the small cells and associated equipment far exceed the perceived impacts from a single cell.

The proposal also unconstitutionally preempts local authority by *requiring* local governments to make available sites they own for the installation of a “small cell.” While the city may place “fair and reasonable terms and conditions” on the use of city property, the proposal does not provide the city with any discretion to deny a “small cell” to be located on city property except for fire department sites. In effect, this measure unconstitutionally gives control of public property to private

telecommunications companies, while also precluding local governments from leasing or licensing publicly owned property.

The measure would limit the rent a local government can charge a wireless company to place a small cell on public property to a “cost-based” fee. SB 649 provides favorable treatment to one industry over others who are paying the appropriate market rate for access to city property. The public is entitled to the fair-market value for using their property, and the local governments are the legal owners and landlords renting the property. When local governments rent public property, they are obligated to act in the public’s interest and receive fair-market value. Control of property, including the ability to charge fair rent, is an essential property right.

This bill strips local government of the authority to protect the quality of life of our residents, and to protect public property and the public right-of-way from relatively unconstrained access by small cells.

Local governments typically encourage new technology into their boundaries because of its potential to dramatically improve the quality of life for their residents. **However, SB 649 goes too far by requiring local governments to approve “small cells” in all land use zones, including residential zones, through a ministerial permit, thereby shutting the public out of decisions that could affect the aesthetics of their community and the quality of their environment.**

For these reasons, the City of Corona **opposes** your SB 649.

Sincerely,



Dick Haley
Mayor

cc: Senator Richard Roth
Assembly Member Sabrina Cervantes
[Nidia Bautista](#), Consultant, Senate Energy, Utilities and Commerce Committee
[Kerry Yoshida](#), Principal Consultant, Senate Republican Caucus
Erin Sasse, League Regional Public Affairs Manager (via email)
[Meg Desmond](#), League of California Cities

Item 5.B

Legislative Activities Update

Attachment 3

Lake Elsinore opposition letter for
SB 649

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The Honorable Ben Hueso
California State Senate, District 40
State Capitol Building, Room 4035
Sacramento, CA 95814
VIA FAX: 916-651-4940

RE: SB 649 (Hueso). Wireless and Small Cell
Telecommunications Facilities.
Notice of Opposition (As Amended March 28, 2017)

Dear Senator Hueso:

The City of Lake Elsinore respectfully opposes your SB 649 related to the permitting of wireless and small cell telecommunications facilities. This proposal unnecessarily and unconstitutionally strips local authority over public property and shuts out public input and local discretion by eliminating consideration of the aesthetic and environmental impacts of "small cells."

This proposal would prohibit local discretionary review of "small cell" wireless antennas, including equipment collocated on existing structures or located on new "poles, structures, or non-pole structures," including those within the public right-of-way and buildings. The proposal preempts adopted local land use plans by mandating that "small cells" be allowed in all zones as a use ***by-right***.

As such, the proposal provides a de facto exemption to the California Environmental Quality Act (CEQA) for the installation of such facilities and precludes consideration by the public of the aesthetic, nuisance, and environmental impacts of these facilities, all of which are of particular importance when the proposed location of facilities is within a residential zone.

SB 649's use of the Federal Communications Commission (FCC) definition of a "small cell" include other "small cell" equipment such as electric meters, concealments, telecom demarcation boxes, ground-based enclosures, battery backup power systems, grounding equipment, power transfer switches, cutoff switches, cables, or conduits. While proponents argue that an individual "small cell" has very little impact, the cumulative size specifications of all the small cells and associated equipment far exceed the perceived impacts from a single cell.

The proposal also unconstitutionally preempts local authority by **requiring** local governments to make available sites they own for the installation of a "small cell." While the city may place "fair and reasonable terms and conditions" on the use of city property, the proposal does not provide the city with any discretion to deny a "small cell" to be located on city property except for fire department sites. In effect, this measure unconstitutionally gives control of public property to private telecommunications companies, while also precluding local governments from leasing or licensing publicly owned property.

951.674.3124

130 S. MAIN STREET

LAKE ELSINORE, CA 92530

WWW.LAKE-ELSINORE.ORG



The measure would limit the rent a local government can charge a wireless company to place a small cell on public property to a "cost-based" fee. SB 649 provides favorable treatment to one industry over others who are paying the appropriate market rate for access to city property. The public is entitled to the fair-market value for using their property, and the local governments are the legal owners and landlords renting the property. When local governments rent public property, they are obligated to act in the public's interest and receive fair-market value. Control of property, including the ability to charge fair rent, is an essential property right.

This bill strips local government of the authority to protect the quality of life of our residents, and to protect public property and the public right-of-way from relatively unconstrained access by small cells.

Local governments typically encourage new technology into their boundaries because of its potential to dramatically improve the quality of life for their residents. **However, SB 649 goes too far by requiring local governments to approve "small cells" in all land use zones, including residential zones, through a ministerial permit, thereby shutting the public out of decisions that could affect the aesthetics of their community and the quality of their environment.**

For these reasons, the Lake Elsinore **opposes** your SB 649.

Sincerely,

Robert E. Magee
Mayor

cc: Senator Jeff Stone, 28th District, fax: 916-651-4928
Assembly Member Melendez, 67th District, fax: 916-319-2167
Erin Sasse esasse@cacities.org
[Nidia Bautista](#), Consultant, Senate Energy, Utilities and Commerce Committee
[Kerry Yoshida](#), Principal Consultant, Senate Republican Caucus
[Meg Desmond](#), League of California Cities

951.674.3124

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Item 5.B

Legislative Activities Update

Attachment 4

Moreno Valley opposition letter for
SB 649

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HP LaserJet M1522nf MFP

Fax Confirmation Report

MOVAL COUNCIL
9514133760
Mar-31-2017 9:39AM

Job	Date	Time	Type	Identification	Duration	Pages	Result
278	3/31/2017	9:38:14AM	Send	919166514940	1:00	2	OK



March 29, 2017

The Honorable Ben Hueso
California State Senate, District 40
State Capitol Building, Room 4035
Sacramento, CA 95814

RE: SB 649 as Proposed to be Amended by RN 17 08941 (Hueso). Wireless and Small Cell
Telecommunications Facilities.
Oppose

Dear Senator Hueso:

The City of Moreno Valley respectfully opposes your SB 649 and proposed amendments in RN 17 08941 (proposal) related to the permitting of wireless and small cell telecommunications facilities. This proposal unnecessarily and unconstitutionally strips local authority over public property and shuts out public input and local discretion by eliminating consideration of the aesthetic and environmental impacts of "small cells."

This proposal would prohibit local discretionary review of "small cell" wireless antennas, including equipment collocated on existing structures or located on new "poles, structures, or non-pole structures," including those within the public right-of-way and buildings. The proposal preempts adopted local land use plans by mandating that "small cells" be allowed in all zones as a use by-right, including all residential zones.

The proposal provides a de facto exemption to the California Environmental Quality Act (CEQA) for the installation of such facilities and precludes consideration by the public of the aesthetic, nuisance, and environmental impacts of these facilities, all of which are of particular importance when the proposed location of facilities is within a residential zone.

SB 649's use of the Federal Communications Commission (FCC) definition of a "small cell" include other "small cell" equipment such as electric meters, concealments, telecom demarcation boxes, ground-based enclosures, battery backup power systems, grounding equipment, power transfer switches, cutoff switches, cables, or conduits. The proposal allows for an unlimited number of antennas of less than three cubic feet each or six cubic feet for all antennas, while placing no height restrictions on the pole. While proponents argue that an individual "small cell" has very little impact, the cumulative size specifications of all the small cells and associated equipment far exceed the perceived impacts from a single cell.

Office of the Mayor

City Hall
14177 Frederick Street
P.O. Box 88005
Moreno Valley, CA 92552-0805
Phone: 951-413-3008
Fax: 951-413-3760
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March 29, 2017

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California State Senate, District 40
State Capitol Building, Room 4035
Sacramento, CA 95814

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The proposal provides a de facto exemption to the California Environmental Quality Act (CEQA) for the installation of such facilities and precludes consideration by the public of the aesthetic, nuisance, and environmental impacts of these facilities, all of which are of particular importance when the proposed location of facilities is within a residential zone.

SB 649's use of the Federal Communications Commission (FCC) definition of a "small cell" include other "small cell" equipment such as electric meters, concealments, telecom demarcation boxes, ground-based enclosures, battery backup power systems, grounding equipment, power transfer switches, cutoff switches, cables, or conduits. *The proposal allows for an unlimited number of antennas of less than three cubic feet each or six cubic feet for all antennas*, while placing no height restrictions on the pole. While proponents argue that an individual "small cell" has very little impact, the cumulative size specifications of all the small cells and associated equipment far exceed the perceived impacts from a single cell.

The proposal also unconstitutionally preempts local authority by requiring local governments to make available sites they own for the installation of a "small cell." While the City may place "fair and reasonable terms and conditions" on the use of City property, the proposal does not provide the city with any discretion to deny a "small cell" to be located on city property except for fire department sites. In effect, this measure unconstitutionally gives control of public property to private telecommunications companies, while also precluding local governments from leasing or licensing publicly owned property.

This bill strips local government of the authority to protect the quality of life for our residents, and to protect public property and the public right-of-way from relatively unconstrained access by small cells.

The City of Moreno Valley adopted a strategic plan in 2016 which emphasizes beautification and enhancing the quality of life of everyone who lives, works and plays in Moreno Valley. Local governments usually welcome new technology because of its potential to dramatically improve the quality of life for their residents. **However, SB 649 goes too far by requiring local governments to approve "small cells" in all land use zones, including residential zones, through a ministerial permit, shutting the public out of decisions that could affect the aesthetics of their community and the quality of their environment.**

For these reasons, the City of Moreno Valley respectfully **Opposes** this proposal.

Sincerely,

A handwritten signature in dark ink, appearing to read "Yxstian Gutierrez", written in a cursive style.

Dr. Yxstian Gutierrez
Mayor
City of Moreno Valley

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Item 5.B

Legislative Activities Update

Attachment 5

Murrieta opposition letter for SB 649

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CITY OF MURRIETA

March 24, 2017

Honorable Senator Ben Hueso
California State Senate
State Capitol, Room 4035
Sacramento, CA 95814

**RE: OPPOSITION TO SENATE BILL 649 (HUESO): WIRELESS
TELECOMMUNICATIONS FACILITIES**

Dear Senator Hueso:

The City of Murrieta opposes SB 649 (Hueso), a measure relating to the permitting of wireless and small cell telecommunications facilities. This bill unnecessarily preempts local authority and shuts out public input and local discretion by eliminating consideration of the aesthetic and environmental impacts of “small cells.”

SB 649 would preclude local discretionary review of specified “small cell” wireless antennas and related equipment, regardless of whether they will be collocated on existing structures or located on new “poles, structures, or non-pole structures,” including those within the public road right-of-way and on buildings. The bill preempts adopted local land use plans by mandating that “small cells” be allowed in all zones as a use by right, including all residential zones.

The bill provides a de facto exemption to the California Environmental Quality Act (CEQA) for the installation of such facilities and precludes the consideration by the public of the aesthetic, nuisance, and environmental impacts of these facilities, all of which are of particular importance when the proposed location of facilities is within a residential zone. Currently, wireless telecommunications companies have the ability to work with local governments and the public to design wireless telecommunications infrastructure that limit aesthetic impacts, addresses any potential environmental and public safety issues, and gain the support of the surrounding community. SB 649 goes too far by requiring local governments to approve “small cells” in all land use zones through a ministerial permit, thereby shutting the public out of decisions that could affect the aesthetics of their community and the quality of their environment.

SB 649’s use of the Federal Communications Commission (FCC) definition of a “small cell” include other “small cell” equipment such as electric meters, concealment, telecom demarcation boxes, ground-based enclosures, battery backup power systems, grounding equipment, power transfer switches, cutoff switches, cables, or conduits. The proposal allows for an unlimited number of antennas of less than three cubic feet each or six cubic feet for all antennas, while placing no height restrictions on the pole. While proponents argue that an individual “small cell” has very little impact, the cumulative size specifications of all the small cells and associated equipment far exceed the perceived impacts from a single cell.

The proposal also unconstitutionally preempts local authority by requiring local governments to make available sites they own for the installation of a “small cell.” While the city may place “fair and reasonable terms and conditions” on the use of city property, the proposal does not provide the city with

any discretion to deny a “small cell” to be located on city property except for fire department sites. In effect, this measure unconstitutionally gives control of public property to private telecommunications companies, while also precluding local governments from leasing or licensing publicly owned property.

Local governments typically encourage new technology into their boundaries because of its potential to dramatically improve the quality of life for their residents. However, SB 649 goes too far by requiring local governments to approve “small cells” in all land use zones, including residential zones, through a ministerial permit, thereby shutting the public out of decisions that could affect the aesthetics of their community and the quality of their environment. For these reasons, the City of Murrieta opposes SB 649.

Sincerely,

A handwritten signature in blue ink that reads "Rick Gibbs". The signature is fluid and cursive, with the first name "Rick" and last name "Gibbs" clearly distinguishable.

Rick Gibbs
Mayor

Cc: Assemblywoman Melissa Melendez
State Senator Jeff Stone
Murrieta City Council
David Jones, Emanuels Jones and Associates
League of California Cities

Item 5.B

Legislative Activities Update

Attachment 6

League of California Cities support
letter for SB 242

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1400 K Street, Suite 400 • Sacramento, California 95814
Phone: 916.658.8200 Fax: 916.658.8240
www.cacities.org

March 29, 2017

The Honorable Mike McGuire
Chair, Senate Governance and Finance Committee
1020 N Street, Room 112
Sacramento, CA 95814

**RE: SB 242 (Skinner) – Property Assessed Clean Energy Program: Program Administrator
As amended March 20, 2017 – SUPPORT**

Dear Senator McGuire,

The League of California Cities is pleased to support SB 242 (Skinner), which will require all PACE programs administered by non-governmental third parties to meet the highest operating standards. SB 242 establishes uniform requirements for PACE programs including: underwriting standards, telephone confirmation for all homeowners, eligible measures standards, contractor standards, marketing standards, forbearance, and reporting requirements.

The PACE program is a finance mechanism that makes improvements to residential properties possible, including installing renewable energy sources, electric vehicle charging infrastructure, or energy or water efficiency upgrades. Since the California Legislature became the first state in the nation to pass PACE-enabling legislation in 2008, PACE has helped California homeowners, local governments, and the state achieve significant policy goals:

- 130,000 homes improved
- 33,000 jobs created
- \$5 billion energy costs saved
- \$6 billion total economic impact
- 20 billion kWh saved (equivalent to over 1 million homes' annual energy consumption)
- 4.2 million metric tons carbon reduced (equivalent to taking 880,000 cars off the road for a year)
- 9 billion gallons water saved (enough to fill 14,000 Olympic swimming pools)

More than 400 cities and counties in California have voted to adopt PACE programs, which are now available to serve more than 90% of Californians. Most PACE programs are administered by private companies, which are overseen by local government sponsors. Thanks to the public-private partnerships that serve as the foundation for PACE programs, the public policy benefits listed above have come at virtually no cost to the government.

As PACE has grown, it has become important for the state to establish clear standards that uniformly govern all PACE program. For these reasons, the League supports SB 242 (Skinner). If you have any questions, please contact me at (916) 658-8250.

Sincerely,

A handwritten signature in blue ink, appearing to read "Erin Evans-Fudem".

Erin Evans-Fudem
Legislative Representative
League of California Cities

cc: The Honorable Nancy Skinner
Members, Senate Governance and Finance Committee
Jimmy MacDonald, Consultant, Senate Governance and Finance Committee
Ryan Eisberg, Consultant, Senate Republican Caucus



Western Riverside Council of Governments Technical Advisory Committee

Staff Report

Subject: Transportation Uniform Mitigation Fee (TUMF) Program Nexus Study Update and request to provide recommendation to Executive Committee on Nexus Study approval and establishment of fee structure

Contact: Christopher Gray, Director of Transportation, gray@wrcog.cog.ca.us, (951) 955-8304

Date: June 15, 2017

The purpose of this item is to provide Committee members with an update on the progress of the TUMF Nexus Study update, including phase-in options for the proposed TUMF schedule, and to request that the Committee develop recommendations on the adoption of the Nexus Study and fees, and forward to the Executive Committee for consideration.

Requested Actions:

1. Recommend that the Executive Committee approve the 2016 TUMF Nexus Study.
2. Consider recommendations regarding TUMF Program implementation and fee phasing provided by the Public Works Committee, and forward recommendations to the Executive Committee for consideration.

WRCOG's TUMF Program is a regional fee program designed to provide transportation and transit infrastructure that mitigates the impact of new growth in Western Riverside County. Each of WRCOG's member jurisdictions and the March JPA participates in the Program through an adopted ordinance, collects fees from new development, and remits the fees to WRCOG. WRCOG, as administrator of the TUMF Program, allocates TUMF to the Riverside County Transportation Commission (RCTC), groupings of jurisdictions – referred to as TUMF Zones – based on the amounts of fees collected in these groups, and the Riverside Transit Agency (RTA). The TUMF Nexus Study is intended to satisfy the requirements of California Government Code Chapter 5 Section 66000-66008 (also known as the California Mitigation Fee Act), which governs imposing development impact fees in California. The Study establishes a nexus, or reasonable relationship, between the development impact fee's use and the type of project for which the fee is required. The TUMF Program is a development impact fee and is subject to the California Mitigation Fee Act (AB 1600, Govt. Code § 6600), which mandates that a Nexus Study be prepared to demonstrate a reasonable and rational relationship between the fee and the proposed improvements for which the fee is used. AB 1600 also requires the regular review and update of the Program and Nexus Study to ensure the validity of the Program. The last TUMF Program Update was completed in October 2009.

Draft TUMF Nexus Study

On February 28, 2017, WRCOG released the draft 2016 TUMF Nexus Study for review and comment, with the comment period extending through April 21, 2017. WRCOG received 12 formal comment letters from member jurisdictions and stakeholders. Staff, in conjunction with legal counsel and consultants, has prepared responses to comments, which are attached.

Staff would note that they have met extensively with key stakeholders throughout this process including but not limited to the BIA, NAIOP, retail developers, and individual developers. To date, WRCOG has received three letters of support from developers or developer representatives and two letters of support from the Chamber of

Commerce from the Cities of Corona and Menifee. The City of Calimesa also submitted a letter of support on the draft 2016 TUMF Nexus Study.

The final draft fee schedule in the 2016 TUMF Nexus Study is as follows:

Land Use type	Current fee	Draft Nexus Study fee	% Change from current fee
Single-family Residential	\$8,873	\$9,418	6%
Multi-family Residential	\$6,231	\$6,134	-2%
Industrial	\$1.73	\$1.77	3%
Retail	\$10.49	\$12.31	17%
Service	\$4.19	\$4.56	9%

Based on the above-proposed fee schedule, staff has prepared the following phase-in options for potential implementation by the Executive Committee and a corresponding table with estimated revenue:

Implementation Options	Description
Option 1	Implement full fee for all land use types.
Option 2	Freeze the retail land use fee for two years, followed by a two-year phase-in.
Option 3	Ad Hoc Committee – freeze the retail land use fee for two years, followed by a two-year phase-in, plus a two-year phase-in for the single-family land use fee.
Option 4	Freeze the retail land use fee for four years.
Option 5	Implement the recommendation from the retail development community (TUMF reduction for retail land use types to \$7.50 / sq. ft.).
Option 6	Freeze single-family and retail land uses for four years.
Option 7	10% reduction to retail (from current fee) for two years, then \$10.49 / sq. ft. for two years.
Option 8	Public Works Committee – implement a 50% phase-in for the single-family residential and retail land uses beginning July 1, 2018. Full fee implementation on July 1, 2019.

Staff can consider any potential fee options as directed by member jurisdictions.

To analyze the impact of any of the proposed implementation scenarios, WRCOG also prepared a financial model to estimate changes in the TUMF revenues. This model assumes the following:

- Current fee levels would be \$40 million annually, which is consistent with the last three fiscal years of collections;
- The distribution between the various fee categories would be the same as they are today; and
- Adding the City of Beaumont to the TUMF Program would generate an additional \$2 million per year in TUMF revenue, which represents the likely near-term revenues WRCOG would obtain from the addition of the City to the TUMF Program.

Current TUMF revenue collections and estimated revenue (with draft Nexus Study fees) by land use, based on previous assumptions, are provided below:

Land Use type	Current annual revenue collections	Estimated annual revenue collections
Single-family Residential	\$24M	\$26M
Multi-family Residential	\$6M	\$6M
Industrial	\$5M	\$5M
Retail	\$3M	\$4M
Service	\$2M	\$2M
Beaumont	\$0	\$2M
Total	\$40M / year	\$45M / year

Staff has prepared a corresponding table with estimated revenue based on the options for TUMF schedule implementation. With adoption of the Nexus Study, the City of Beaumont will rejoin the TUMF Program, for which staff has included estimated revenue from the City of Beaumont in future revenue projections. The estimated revenue data is based on cumulative revenue for the next four fiscal years (through fiscal year 2020/2021).

Implementation option	Estimated revenue (through FY 2020/2021)	Estimated revenue loss (through FY 2020/2021)	Revenue loss as a % of total estimated revenue
Option 1 (full fee)	\$180M	\$0M	0%
Option 2 (Retail phase-in)	\$178M	\$2M	1.1%
Option 3 (Retail and residential phase-in)	\$177M	\$3M	1.7%
Option 4 (Retail freeze)	\$177M	\$3M	1.7%
Option 5 (Retail reduction)	\$173M	\$7M	3.9%
Option 6 (Retail and residential freeze)	\$171M	\$9M	5%
Option 7 (10% retail reduction)	\$176M	\$3.5M	2%
Option 8 (PWC recommendation)	\$178M	\$2.M	1.5%

Staff has also prepared the following considerations for Committee members to review prior to selecting a preferred implementation option:

- Revenue loss – Staff would consider any revenue loss in the range of 1-2% to be minor; any additional revenue loss might require some additional adjustments to the Program (reduce funding, etc.). Phasing options that minimize the revenue loss are preferable.
- Certainty – The private development process is a long-term effort with projects often requiring a minimum of two years for the entitlement process. A phasing approach should provide a higher level of certainty to developers in their planning processes.
- Responsive to comments – WRCOG received several specific requests to evaluate phasing options related mainly to retail and single-family residential land uses. Phasing approaches should have some level of responsiveness to these specific requests.
- Administrative burden – This topic primarily relates to whether a phasing approach makes it more difficult for member jurisdiction staff to collect and verify fees. Staff would consider phasing approaches that have extensive numbers of steps (3-4 incremental increases) as potentially problematic.

Regardless of the option that is selected, the Executive Committee reserves the right to review and make further recommendations as necessary. Note that the recommendation from the TUMF Nexus Study Ad Hoc Committee is based on the fee schedule prior to the TUMF Network adjustments made due to SB 1 and SB 132. WRCOG will be reconvening the Nexus Study and Program Ad Hoc Committees to review the implementation options and make a recommendation to finalize the Nexus Study update. This is in addition to recommendations that will come from the Public Works Committee and Administration & Finance Committee.

At its June 8, 2017, meeting, the Public Works Committee reviewed the 2016 TUMF Nexus Study and made the following recommendations:

1. Recommended that the Executive Committee approve the 2016 TUMF Nexus Study.
2. Recommended that the Executive Committee implement a 50% phase-in for the single-family residential and retail land uses beginning July 1, 2018. Therefore, the full 2016 TUMF Nexus Study would be in effect by July 1, 2019, for all land uses. For reference, below is the fee schedule based on the recommendation from the Public Works Committee.

The phase-in option recommended by the Public Works Committee is a variation of the preferred option selected by the TUMF Nexus Study Ad Hoc Committee earlier this year. Staff will be reconvening the Ad Hoc Committee to review the implementation recommendations by the Public Works, Administration & Finance, and Technical Advisory Committees.

Public Works Committee – TUMF Phase-In Recommendation				
Land Use type	July 2017	January 2018	July 2018	July 2019
Single-family Residential	\$8,873	\$8,873	\$9,146	\$9,418
Multi-family Residential	\$6,231	\$6,231	\$6,134	\$6,134
Industrial	\$1.73	\$1.73	\$1.77	\$1.77
Retail	\$10.49	\$10.49	\$11.40	\$12.31
Service	\$4.19	\$4.19	\$4.56	\$4.56

3. Recommended that the Executive Committee review an automatic construction cost index adjustment in January 2019 as specified in the TUMF Administrative Plan.

WRCOG anticipates the following schedule of the draft 2016 TUMF Nexus Study by the WRCOG Committees:

July 10, 2017: Executive Committee takes action on the draft 2016 TUMF Nexus Study.
 Fall 2017: Member jurisdictions adopt updated TUMF Ordinance / Resolution.
 January 2018: Any change in fee goes into effect.

At its June 5, 2017, meeting, the Executive Committee provided an opportunity for stakeholders to comment on the TUMF Nexus Study. Based on the comments and discussion by the Executive Committee, staff is providing the following work plan to address issues as they relate to the TUMF Program and fee calculations:

- Shopping center fee calculation: WRCOG will continue to work with the retail development community and member jurisdictions to identify a "blended" rate for shopping center developments based on a mix of service and retail land uses. Staff will review various shopping center developments within the subregion to determine the average proportion of service to retail land uses that would be used for future shopping center developments. Staff expects that this component of the TUMF Calculation Handbook will be forwarded to the Executive Committee in the fall.
- Distribution center / fulfillment center fee calculation: WRCOG will review and determine whether distribution centers have unique trip generating characteristics that vary from the standard industrial land use. Staff will review available data and conduct additional studies as needed to present to the Committee

structure within the next three months. Provided that there is sufficient data to support this approach, staff will develop a component for the TUMF Calculation Handbook by the end of 2017.

- TUMF project implementation plan: Because needs among member jurisdictions vary, WRCOG will provide support to any member jurisdiction through consultants to implement TUMF projects. The support will focus on project phasing and securing funding sources to implement projects. This is an ongoing effort that WRCOG is currently assisting the City of Wildomar with for the Bundy Canyon Road widening.
- WRCOG regional commuting study: Preparing this study will determine locations in which Riverside County residents travel to for work. This will assist WRCOG and member jurisdictions in determining employment locations for economic development purposes. Staff is currently evaluating a number of sources and approaches to determine which best fits the needs of member jurisdictions.
- Regional logistics fee study: WRCOG is participating in an advisory role to the logistics fee study being conducted by the Riverside County Transportation Commission (RCTC). This effort is being led by RCTC with Riverside County, Highland Fairview, and the City of Moreno Valley being parties to the study. Staff will provide any information on truck trip patterns with member jurisdictions as the information becomes available.
- Active senior living fee calculation: On June 5, 2017, the Executive Committee approved the inclusion of this type of development to the TUMF Calculation Handbook. Staff received requests and direction to review this type of development and determined that active senior living developments have lower trip generation rates than the standard residential land uses. Staff will distribute the updated TUMF Calculation Handbook for member jurisdiction use.
- SB 743 implementation study: WRCOG received a grant from the Southern California Association of Governments (SCAG) to assist member jurisdictions and developers with the implementation of SB 743, which requires that California Environmental Quality Act documents address Vehicle Miles Traveled impacts. WRCOG will be preparing guidance materials and holding workshops with key stakeholders to assist with the transition to this new approach. Staff anticipates that the study will take place over an 18-month period.
- Riverside County traffic model update: WRCOG is working with partner agencies (RCTC, Riverside County, SCAG, and Caltrans) to update the county-wide traffic model for use in future Nexus Study updates. A scope of work with RCTC and Riverside County has been finalized. Staff is currently developing a funding plan and determining whether the Coachella Valley Association of Governments will be a participant in the update. This effort is anticipated to be completed over the next couple of years.
- Active transportation plan (ATP): In coordination with member jurisdictions, WRCOG has prepared a final list of projects with the focus on key regionally significant projects as staff is evaluating the option of including active transportation projects in future TUMF Nexus Study updates, thereby potentially making the projects eligible for TUMF funding.

Prior Actions:

<u>June 8, 2017:</u>	The Public Works Committee recommended that 1) the Executive Committee approve the 2016 TUMF Nexus Study; 2) the Executive Committee implement a 50% phase-in for the single-family residential and retail land uses beginning July 1, 2018, with full fee implementation of all land uses by July 1, 2019; and 3) the Executive Committee review an automatic construction cost index adjustment in January 2019.
<u>June 5, 2017:</u>	The Executive Committee received report.
<u>May 18, 2017:</u>	The Technical Advisory Committee received report.

Fiscal Impact:

TUMF activities are included in the Agency's adopted Fiscal Year 2016/2017 Budget under the Transportation Department.

Attachments:

1. Draft TUMF Nexus Study comments.
2. Draft TUMF Nexus Study response to comments.

Item 6.A

Transportation Uniform Mitigation
Fee (TUMF) Nexus Study Update

Attachment 1

Draft TUMF Nexus Study comments

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City of Calimesa

April 20, 2017

Mr. Christopher Gray, Director of Transportation
Western Riverside Council of Governments
4080 Lemon Street
3rd Floor, MS 1032
Riverside, CA 92501-3609

Subject: Transportation Uniform Mitigation Fee (TUMF)
Nexus Study, 2016 Program Update

Dear Mr. Gray:

The City of Calimesa (City) has reviewed the Draft 2016 TUMF Nexus Study Program Update dated February 28, 2017 and other materials provided by WRCOG. The City expresses appreciation to WRCOG for addressing our 2015 Draft TUMF Nexus Study comments regarding substantial fee increases in retail and service land use categories (increases of 55% and 58%). As mentioned previously, the City is positioned to experience substantial growth over the next decade (doubling or tripling our population) that would include the retail and service industries. The City desires to attract retail and service industries in order to provide needed revenue to sustain all City provided public services since residential, industrial, and office uses typically do not generate enough tax revenue to offset the cost of associated public services.

The City also appreciates WRCOG implementing a phased approach for the fee increases for single family residential and retail land use categories. This will allow the City time to work with developers on moving current projects forward without the threat of substantial fee increases in the near term.

Although fee increases are not ideal, the City recognizes that sometimes it is necessary in order to achieve the desired goals. If you have any questions, please let me know.

Sincerely,

Bonnie Johnson
City Manager

cc. Jeff Hewitt, Mayor
Michael Thornton, City Engineer

TEL: 951.413.3100
WWW.MOVAL.ORG



**Letter
A2**

14177 FREDERICK STREET
P.O. BOX 88005
MORENO VALLEY, CA 92552-0805

April 20, 2017

Mr. Christopher J. Gray
Director of Transportation
Western Riverside Council of Governments
4080 Lemon Street, MS-1032
Riverside, CA 92501

Subject: Draft Final Report TUMF Nexus Study 2016 Update
City of Moreno Valley Comments

Dear Mr. Gray:

Chris

The City of Moreno Valley staff has reviewed the draft Final Report TUMF Nexus Study 2016 Update dated February 28, 2017.

Attached is the City's final comment master list for your consideration.

If you have any questions, please contact me at 951.413.3100.

Sincerely,

Ahmad R. Ansari, P.E.
Public Works Director/City Engineer

HN/vl

c: Project File

City of Moreno Valley - Comments on February 28, 2017 Draft TUMF Nexus Study	
Date Prepared: April 6, 2017	
No.	Comment
1	The original Draft TUMF Nexus Study was distributed in August of 2015 and included comments from private developers, the BIA and governmental agencies. Include a summary of how comments/questions were addressed in the Final TUMF Nexus Study.
2	There was no mention in the TUMF Nexus Study of any fee reductions for affordable housing or senior housing projects. WRCOG staff has recently informed a prospective developer in Moreno Valley that a reduced fee for senior housing will be implemented in the next two to three months. It is strongly recommended that a fee reduction mechanism for affordable housing and senior housing be evaluated and implemented within the final TUMF Nexus Study.
3	An updated fee chart was provided at the March 6, 2017 WRCOG Executive Committee meeting that included a phase-in option for fee increase implementation from July 1, 2017 to July 1, 2020. In order to minimize the proposed increases in fees across the board, it is highly recommended that a phase-in fee implementation mechanism be considered as an option and included in the Final TUMF Nexus Study.
4	Clarify whether Cities will be required to make up the difference in fees if the implementation is phased and measured against a 100% threshold on the effective date.
5	Include a section on how WRCOG will handle reimbursements/credits from developers and agencies who built facilities on the network under the currently-adopted Nexus Study, and those facilities are now being deleted from the network in the 2017 study.
6	Provide explanation of how Maximum TUMF Share was calculated for each facility in Moreno Valley, for example, which outside fund sources and from what reference. For example, Gilman Springs Road from 60 to Alessandro; and Reche Vista from City limit to Heacock. Also provide detail in Section 4.5, p. 39 what amounts and locations are covered in Existing Obligated Funding. Also provide more information in Section 4.7.
7	Provide explanation of how new "% completed" were developed. Several differ from those reported by Moreno Valley. Specifically, several percents are too high for the facility.
8	City was aware that Perris Boulevard street segment was potentially to be removed from network or retained with zero dollars. However, City requests that some TUMF monies be shown for the Perris/60 interchange.
9	City's formal comments dated August 27, 2015 are not shown in the comment matrices nor were they addressed. Please incorporate and they are repeated here:
9a	Dear Ms. Taylor-Berger: The City has the following comments on the Draft 2015 TUMF Nexus Study dated August 17, 2015: Include State Route (SR) 60/Moreno Beach Interchange as a line item – this location is already on the 2009 network as a Type 2 interchange and appears to have been missed. On the Draft 2015 network, the SR-60/Moreno Beach interchange cost would be \$37,483,000, the same as other Type 2 interchanges.
9b	Ironwood Avenue from SR-60 to Day Street as shown in Appendix G-1 should state "Full funding available from other sources" instead of "City to fund with local sources."

Letter A2 Cont.

City of Moreno Valley

9c	Since SR-60/Nason Interchange is shown on the 2015 Draft Nexus study at \$11,128,000, please reference the City's February 6, 2015 request that WRCOG acknowledge the City's \$19,106,000 savings as satisfaction against the \$999,302.77 loss to the network. (As an alternate option as suggested in our letter, for ease of accounting \$14,100,000 could be shown on the network, which would consist of \$13,069,951 allocated in TUMF TIP funds plus \$1,000,000 50% TUMF reduction deficit make-up).
10	Heacock from San Michelle to Harley Knox segment - will the \$300k network reduction affect current funding on the proposed TIP? City is moving forward with the Heacock project and opposes any reduction in funding for this segment. Same comment for all ongoing and TIP projects.
11	Nason from Fir (south of SR-60) to Alessandro was completed in 2016 with 100% City funds and City will bill (or request savings against the network) for the 2009 TUMF maximum share. Include update in exhibit H-1.
12	Section 1.1.1., subsection (4) - "list of roads that have existing capacity deficiencies" - where is this list?
13	Include the August 8, 2015 comment letter from the BIA's consultant, referenced on p. 35 in Section 4.3.
14	Section 4.3, page 35, reference to Appendix G should include a description of what's included in G-1 and G-2, and the dates of actions by WRCOG and committees.
15	Provide a fee comparison table to show differences from 2009 to 2017.
16	In Appendix A, correct the spelling of the committee member Gutierrez's first name to the following: Vxstian
17	In Appendix F, page F-3, the pavement thickness appears too thin for the streets in the TUMF program. For example, for minor arterials and above, the City's minimum pavement thickness is 0.5-ft of asphalt and 1.0-ft aggregate base. This promotes a stronger pavement structure and longer life, avoiding premature reconstruction. The City recommends WRCOG verify pavement sections with their member agencies.
18	In Exhibit F-2, master unit cost summary, "ramp realignment" cost is blank.
19	In Exhibit F-2, master unit cost summary, what types of street lights are assumed and are eligible - LED, HPSV, or other?
20	Referencing Exhibit F-4, Land Use cost assumption page, include in the study an explanation of how the 25% was derived.
21	In Appendices G, G-1 and G-2, include dates of each agency's comments.
22	In Appendices G, G-1 and G-2, include City's of Moreno Valley's comments of 8/27/15. Specific comments are listed in #9 above.
23	In Appendix G-1 and H-1, Theodore Street from 60 to Eucalyptus, comment should state City will provide \$19.7 million in local funding, not \$20 million. Reference City's February 5, 2015 comment letter. Please clarify exact amount of TUMF and City share.
24	In Appendix G-2, Ironwood from 60 to Day should remain on the network, with zero dollars, contingent on allocating the funds to another Moreno Valley street.
25	In Exhibit G-2 and H-1, Day /60 Interchange maximum value can be \$15 million. \$17,897,000 is too high for the improvements needed. Allocate surplus funds to another Moreno Valley street.
26	In Appendix G-2, Moreno Beach/60 interchange, see previous comment for this location. Restore as Type 2 interchange at 35% completion level.
27	Figure 4.4 - Transit Center (Mobility Hub) should be shown on the NW corner of Alessandro Boulevard and Nason Street.
28	Page 46 - Harley Knox terminates at Redlands Avenue, not Evans Road. Diagrams and any costs associated should be updated.

\\ZURICH-I\CapProj\WRCOG\2017 TUMF Nexus Study\TUMF Nexus Study City Comments - Master List FINAL -vI

29	Page 28 - reference to year 2035. Horizon year is 2040.
30	Exhibit E-1 should be updated to reflect 2017 built conditions. Perris Boulevard 4 lanes s/o Heacock; Cactus Avenue 6 lanes Elsworth Street to Heacock Street; Ironwood Avenue 4 lanes Heacock to Perris.
31	Page 46 - Day Street (SR-60 to Eucalyptus) should reflect 80% complete 5 lanes exist, 6 future. Funds should be added to complete the segment.
32	Page 10 Nexus Study and TUMF Fee Calculation Handbook consideration should be given to add a special category for Amazon Fulfillment Centers.
33	In Appendix F, page F-2 Typical Roadway Cross Section, City recommends updating the 4-foot bicycle lane to a minimum of 6 feet, as this is the typical width on Arterial Roadways.
34	In Exhibit H-1, Alessandro from 215 to Perris: correct the % complete from 74% to 60%. Alessandro from Perris to Nason: correct % complete from 19% to 15%.
35	In Exhibit H-1, Gilman Springs from 60 to Alessandro, why does this not have full value?
36	In Exhibit H-1, Eucalyptus from 215 to Towngate: correct the % complete from 42% to 25%.
37	In Exhibit H-1, Heacock from Cactus to San Michelle: correct the % complete from 77% to 15%.
38	In Exhibit H-1, Day from Ironwood to 60: correct the number of existing lanes from 4 to 3.
39	In Exhibit H-1, Eucalyptus from Heacock to Kitching: correct the number of future lanes from 2 to 4.
40	In Exhibit H-1, Lasselle from JFK to Oleander, change Oleander to Harley Knox.
41	In Exhibit H-1, Pigeon Pass/CETAP corridor from Cantarini to Ironwood, change number of future lanes to 4.
42	In Exhibit H-1, Nason from 60 to Alessandro, the City completed widening with 100% City funds and will bill WRCOG the maximum TUMF share from 2009 study (Fir to Alessandro segment).
43	In Exhibit L-1, include Logistics in the Industrial sector.

County of Riverside

Letter
A3

RIVERSIDE OFFICE:
4080 LEMON STREET, 5TH FLOOR
RIVERSIDE, CA 92501
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SUPERVISOR KEVIN JEFFRIES FIRST DISTRICT

April 14, 2017

Christopher Gray, Director of Transportation
Western Riverside Council of Governments
4080 Lemon Street, 3rd Floor MS 1032
Riverside, CA 92501-3609

Re: Comments on Draft TUMF Nexus Study

In the time during which the TUMF rate study has been produced, the state has approved higher fuel taxes and related vehicle fees. The state has also been investigating the concept of implementing a per-mile-fee for California drivers. Previously, the state implemented a new-development regulatory structure that seeks to discourage long distance commuting while encouraging transit and multi-use "walkable" developments.

WRCOG's proposal to significantly increase the TUMF for new retail business facilities will put western Riverside County at a significant competitive disadvantage in not only seeking small and medium business creation - but will substantially harm our ability to advance permanent job creation in those sectors. Additionally this office believes that the proposed fee structure will significantly hamper our ability to comply with and/or achieve the above state regulatory directives for live - work housing balances in western Riverside County.

The preliminary TUMF study conclusion itself acknowledges the potential adverse impact of the proposed increases fee structure, as evidenced by the recommendation to delay (or spread) the substantial increases over a few years.

Furthermore, the proposed rate structure continues to appear to incentivize warehouse and mining development in Riverside County over other non-residential uses. These rates appear to only consider trip counts, and do not seem to take into account the extra burden of heavy trucks on congestion and road maintenance costs.

In closing, spreading an excessive fee increase over a few years will not make Western Riverside County any more competitive in advancing and achieving local job creation this county so desperately needs, and will instead simply serve to advance the personal and financial costs of "exporting" our county's labor force each day.

Respectfully,

A handwritten signature in black ink, appearing to read "Kevin D. Jeffries".

KEVIN D. JEFFRIES
Supervisor, First District

April 13, 2017



*Riverside
County Chapter*

Building Industry Association
of Southern California

3891 11th Street
Riverside, California 92501
(951) 781-7310
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Christopher J. Gray
Director of Transportation
Western Riverside Council of Governments
4080 Lemon Street
3rd Floor, MS 1032
Riverside, CA 92501-3609

Re: Comments of Building Industry Association of Southern California, Inc., Riverside County Chapter Concerning the Timeline for Implementation / Collection of Fees Outlined in the 2016 Draft TUMF Nexus Study

Dear Mr. Gray,

The Building Industry Association of Southern California, Inc., Riverside Chapter (BIA) is a regional trade association that represents more than 400 member companies. Together, our members employ more than 50,000 workers and professionals building new home communities throughout Southern California. On behalf of our membership, we are submitting these comments concerning the timeline for implementation / collection of fees outlined in the 2016 Draft Transportation Uniform Mitigation Fee (TUMF) Nexus Study, released on February 28, 2017.

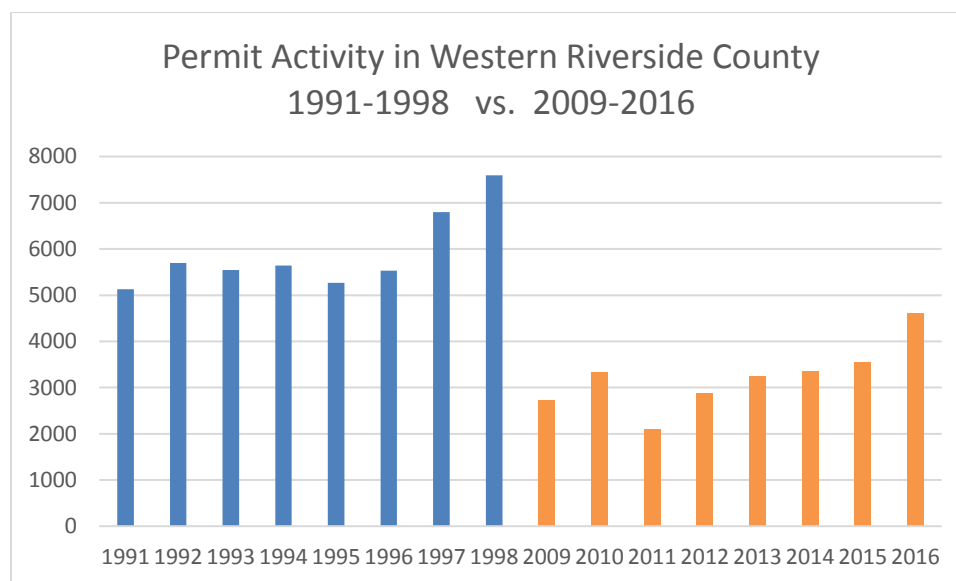
We appreciate the close working relationship that the BIA has with Western Riverside Council of Governments (WRCOG) staff. We particularly appreciate the WRCOG staff meeting with us to answer our questions in detail and receive our feedback concerning the 2016 Draft TUMF Nexus Study. Over the past couple of weeks, we have met with WRCOG staff several times concerning: 1) facilities included in the TUMF; 2) design; 3) engineering and construction costs; and 4) right of way acquisition methodology / costs outlined in the study. We greatly appreciate the longstanding partnership that we have with the WRCOG team.

California is currently experiencing a housing supply and affordability crisis with social and economic consequences for communities both in Western Riverside County and throughout the state. In California, housing costs are being driven upwards by a severe shortage of housing. According to state reports,

California is only adding 80,000 new housing units annually - 100,000 units short of what is needed to meet the current housing demand each year. The average single family home in California costs \$440,000 - two and a half times the national average. Rents are also 50 percent higher than the rest of the country. WRCOG's increase to the TUMF will directly translate into higher rental and housing prices in the future.

It is correctly stated in the WRCOG study of regional fees, titled: "*Analysis of Development Impact Fees in Western Riverside County*", that "single family development has long been a key development sector in Western Riverside County."¹ Unfortunately, instead of working to bolster this economic driver in the region, the proposed TUMF study seeks to increase fees on a struggling industry by adding to the cost of building. Furthermore, the study is inequitable in its treatment of development industry types, favoring retail development over single family home development. The BIA feels it is unfair that the retail development industry is receiving a two-year freeze on the collection of the proposed TUMF, when single family home development is not. A more equitable approach would be for WRCOG to apply the same two-year freeze and subsequent two-year phase in for single family home development that is being applied to the retail development industry in the study. This is important given the depressed development climate currently playing out in our region.

Permit Activity in Western Riverside County



The above graph depicts permit activity in Western Riverside County in the years 1991-1998, a time widely understood to have been the most troubled time for the housing industry, versus the more recent permit activity between 2009-2016, which demonstrates an even slower permit activity than the 1990s. One study by the Public Policy Institute of California (PPIC) describes the 1990s as showing "a disturbing

¹ EPS & RCG. "Analysis of Development Impact Fees in Western Riverside County." Western Riverside Council of Governments (WRCOG) Report (Dec 2016): Pg. 30

and widely noted decline in the construction of new housing units in California.”² Just as there was a slow recovery following the 1990s recession, a similar pattern can be seen following the “Great Recession” of the 2000s, although it is clear from the above graph, that the current recovery is slower than it was during the bad years of the 1990s. Given that the current housing climate is worse than it was in the 1990s, a time that was devastating for the building industry, it is hard to understand why there is any consideration of inflating the cost of building homes by increasing fees, particularly during a housing affordability / supply crisis.

We applaud the recently released report produced by WRCOG which provides an analysis of development Impact fees in Western Riverside County. Our reading of WRCOG’s analysis, combined with the above permit data, would strongly suggest that now is not the time to raise fees, no matter how insignificant some might consider them to be. This report correctly states that “Developers ... will review a number of conditions before determining whether to move forward with site acquisition / optioning and pre-development activities. Factors will include: ... expected development costs ... and development impact fees.”³ The report further articulates that “development impact fees act as an additional development cost that can influence development feasibility and potentially the pace of new development.”⁴ Raising fees associated with the development of single family homes, will very likely make certain development projects unfeasible. This is the exact opposite of what we need right now, unless the intention of the TUMF implementation is to further depress housing growth and exacerbate the statewide housing crisis.

Given the state of the housing market / development climate for single family homes, **the BIA respectfully requests that WRCOG apply the same two-year freeze and subsequent two-year phase in for single family home development that is being applied to the retail development industry in the study.**

Thank you for your consideration of the Building Industry’s concerns / request regarding the timeline for implementation / collection of fees outlined in the 2016 Draft TUMF Nexus Study.

Sincerely,



Clint Lorimore, *Director of Government Affairs*
Riverside County Building Industry Association

² Johnson, Hans P., Moller & Dardia. “In Short Supply? Cycles and Trends in California Housing.” Public Policy Institute of California (PPIC) Report (2004): Pg. iii

³ EPS & RCG. “Analysis of Development Impact Fees in Western Riverside County.” Western Riverside Council of Governments (WRCOG) Report (Dec 2016): Pg. 29

⁴ Ibid. Pg. 1

MEMORANDUM

TO: Mr. Bill Blankenship, CEO
Building Industry Association of So. California – Riverside County

FROM: Dave Lanferman, RUTAN & TUCKER

DATE: April 19, 2017

RE: **WRCOG Transportation Uniform Mitigation Fee (“TUMF”) -- 2016 Update**

EXECUTIVE SUMMARY:

This summarizes my observations on, and questions about, the DRAFT “2016 Update to Nexus Study for the Transportation Uniform Mitigation Fees,” recently released by the Western Riverside Council of Governments (“WRCOG”) in connection with WRCOG’s consideration of the proposed amendment or renewal of its TUMF program. I appreciate the opportunity to provide this review for the Building Industry Association, as my practice has focused on mitigation fees and exactions for more than 30 years and my experience includes analyses of hundreds of “nexus studies” as well as litigating the validity or invalidity of nexus studies and fees in more than a hundred cases in trial courts, the Courts of Appeal, and the California Supreme Court.

Based on review of the WRCOG Draft 2016 Nexus Study, it is necessary to conclude that there are several problems with the Draft Study, including apparent inconsistencies with the Mitigation Fee Act, and several significant questions which should require that additional analyses or evidence be provided to WRCOG and the public before any further action is taken. The following Memo provides more detail as to these issues. Among the major issues raised by the Draft Study are the following:

* The Draft Study accurately recites the requirements of the Mitigation Fee Act that must be met in order to adopt or amend valid fees, but significant parts of the Draft Study fail to comply with those requirements;

1

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* The Draft Study’s proposed change so as to calculate “impacts” based on new use of a VMT methodology may be theoretically acceptable, but it raises important questions about the accuracy and fairness of the assumptions and conclusions of the VMT inputs used in the Draft Nexus Study for allocation of costs of new TUMF improvements, e.g., assumptions or data supporting the proposed reliance use of “peak hour” trips for residential sources. WRCOG should be asked to provide additional, more focused, data on these issues.

2

* The Draft Study fails to properly take into account the probability of new State funding for many of the improvements included in the study;

3

* The Draft Study does not appear to take into account – and credit -- other, non-TUMF, funding sources for the proposed facilities and improvements (e.g., existing surpluses, interest, local non-TUMF tax revenues generated by new development, etc.)

4

* The Draft Study, in its present draft form, does not appear to provide sufficient evidence and analysis to meet the requirements of the Mitigation Fee Act or other applicable laws.

5

1. Background – TUMF Program:

The Western Riverside Council of Governments (“WRCOG”) established its so-called “Transportation Uniform Mitigation Fee” program more than 15 years ago, creating a set of development “mitigation fees” intended to provide funding for arterial highway and road improvements of regional significance in Western Riverside County. WRCOG is now in the process of conducting its “third comprehensive review” of the TUMF program.

The initial TUMF was based on a nexus study that was adopted in November 2002. The TUMF program calls for the fees and nexus justifications to be reviewed periodically, at least every five years. The first review of the TUMF fee was documented in a “TUMF nexus study 2005 Update” approved in February 2006. “A second comprehensive review of the TUMF Program was conducted in 2008 and 2009,” and adopted in October 2009. The third comprehensive review was conducted in 2014 and 2015, leading to a Draft Nexus Study circulated in August 2015. WRCOG decided to delay finalizing that Nexus Study until the 2016 SCAG “2016 Regional Transportation Plan/Sustainable Communities Strategy” (2016 RTP/SCS) growth forecast was available. That SCAG forecast became available in April 2016, and WRCOG resumed work on the third review of the Nexus Study.

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The current Draft of the 2016 Update to the TUMF was released for public review on February 28, 2017.

The cover letter to this Draft of the 2016 Update to the TUMF Nexus Study acknowledges several “significant changes and revisions” to WRCOG’s previous approaches to the TUMF and its nexus studies, including use of “Vehicle Miles Traveled” (“VMT”) as a new methodology in the fee calculation process.

WRCOG’s cover letter also acknowledges that: “Because of these updated data and new methodological approaches, the resulting fees are substantially different for many of the land use categories in the Draft TUMF Nexus Study....” Among the differences in the resulting fees recommended by this Draft are some substantial increases in the TUMF fees on residential development. This memo briefly addresses some questions raised by those proposed increases.

2. Threshold Issues Raised by "Transportation Impact Fees" – Generally:

Despite the increased reliance upon traffic impact fees by many agencies in California, such fees suffer inherent conceptual and causal weaknesses not common to other infrastructure fees. There are legitimate concerns about the "accuracy" or fairness of using “development mitigation fees” in the context of funding improvements to streets, highways, and other components of a road system that serves, and benefits, a large, open-ended, community:

"The level of difficulty in proving the rational nexus between a particular development and its impact on the road system is much greater than that for water, sewer, or parks. The road system is a capital system that can be characterized by nonexclusive use and joint consumption by the public generally. Calculating the specific prorated shares of expansion costs, which are attributable to new growth for water and sewer, is fairly simple. In contrast, the same calculation in the case of *roads* is difficult if not impossible to accomplish in a manner that accurately and consistently reflects the actual cost and benefit of the capital system to individual households. (Harry A. Stewart; *Impact Fees: The Mettle Public Officials Need to Meddle in Development Impact Fees: Policy Rationale: Practice. Theory and Issues*. (Arthur C. Nelson, Ed., American Planning Association, 1988) p. 71.)

Transportation planners have pointed out the difficulties inherent in using an "impact fee" approach to fairly allocate the costs of traffic improvements, especially in the context of "off-site" improvements.

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Streets and highways are distinctly different from pipeline infrastructure. Even if short-run demand were inelastic, off-site origins and destinations are not sufficiently predetermined to be able to assign off-site segments of the network to particular development.

Only some small portion of the street system that gives direct access to property can be financed efficiently through impact fees, and the bulk of this is on-site to most development.

One obvious error in some current practice is the calculation of traffic impact fees based on loading the network with the new development's traffic and looking for congestion. *This violates the basic principle of impact fee design, namely, that all users face the marginal cost.* Removing some existing users would eliminate the congestion, so any group of users could be called the marginal consumers. Moreover, if existing users are not paying peak congestion charges, there is no reason new development should.

(Douglass B. Lee, Senior Transportation Plan, USDOT Systems Center, Cambridge, Mass., "Evaluation of Impact Fees Against Public Finance Criteria" in Development Impact Fees, *supra*.)

3. **"Nexus" Requirements - Generally:**

A. **WRCOG must show "reasonable nexus" and "rough proportionality" between impacts caused and the amount of fees charged to justify TUMF:**

Generally, the state and federal constitutions, as well as the California Mitigation Fee Act (Gov. Code §§ 66000- 66008) require that any agency seeking to establish or impose fees or other exactions as conditions of development approval must demonstrate a "nexus" (i.e., a rational and causal relationship) between the fees or exactions to be imposed and some deleterious public impacts or needs created by the new development upon which the fees are to be imposed. (*San Remo Hotel v. City & County of San Francisco* (2002) 27 Cal.4th 643.) Moreover, the US Supreme Court has repeatedly emphasized that fees imposed as mitigation for development impacts must be shown to be "roughly proportional" in amount to the reasonably estimated costs of providing the mitigation for which they are imposed. (*Koontz v. St. Johns River Water Mgt. Authority* (2013) 133 S.Ct. 2586.)

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See, e.g., *Ehrlich v. City of Culver City* (1996) 12 Ca1.4th at 865 [explaining that Mitigation Fee Act “codifies, as the statutory standard applicable by definition to non-possessory monetary exactions, the ‘reasonable relationship’ standard employed in California and elsewhere to measure the validity of required dedications of land (or fees ...) that are challenged under the Fifth and Fourteenth Amendments.”]. That standard is thus of constitutional import:

By interpreting the reasonable relationship standard adopted by Gov’t Code § 66001 as imposing a requirement consistent with the *Nollan/Dolan* standard, we serve the legislative purpose of protecting developers from disproportionate and excessive fees, and carry out the legislative intent of imposing a statutory relationship between monetary exaction and development project that accurately reflects the prevailing [constitutional] takings clause standard. (*Id.* at 867.)

(1) Geographic or territorial nexus questions: The rational nexus test includes consideration of the *geographical* connection between where the fees are collected and where the funds are to be expended or applied. Although the TUMF program has created “zones” for the allocation of TUMF revenues, it is still not clear that the use of such zones suffices to address the limitations on the police power of the individual jurisdictions collecting the fees or the requirements for a reasonable geographic nexus between the source of the fee revenues and the impacts to be mitigated by the expenditures of the fees.

Here, the TUMF program allows fees to be collected from development in one area of the WRCOG and to be expended on roads in areas that are far distant from the homes or employment of the fee payers. It is questionable whether the WRCOG is vested with legal authority to transfer fee proceeds beyond the jurisdictions in which they are collected or generated. Also, the imposition of development fees depends upon exercise of police power authority, which generally can be exercised only within the territorial boundaries of the city or county imposing the fee or regulation. (*City of South San Francisco v. Berry* (1953) 120 Cal.App.2d 252, 253 [“The *police power* has been given the county and the city respectively, *for exercise only ‘within its limits’*”]; *Miller v. Fowle* (1949) 92 Cal.App.2d 409, 411 [““A municipal corporation has generally *no extraterritorial powers of regulation*””]; 74 Ops.Cal.Atty.Gen. 211 (1991) [“[T]he rule presently enunciated by the courts is that the *police powers* of cities and counties granted under the Constitution do not extend beyond their territorial limits”].)

(2) Temporal nexus questions: In addition, the rational nexus test usually requires that there must be a *temporal* connection between when the fee is imposed or collected, and when the agency collecting the fee uses it to provide the public benefits or facilities for which the fee is imposed. (See, e.g. Gov. Code §§ 66001(c) and 66006.)

It is not clear that the TUMF program is depositing, accounting for, and applying the fee revenues collected in a timely manner as required by the Fee Act. If fees are not spent or

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committed to specific projects within the time frames required by the Fee Act, such fees may be subject to claims for refunds by fee payers or their successors.

Credits for prior fee collections? If the TUMF program currently has any previously-collected fee proceeds on deposit which have not already been spent on or committed to specific TUMF improvement programs, those ‘surplus’ or uncommitted fee balances should be shown as a credit going forward.

9

Interest on collected fees? Does the TUMF program disclose its interest earnings on collected, but unspent, fee revenues? Any such interest accruals should be shown as a credit going forward.

10

B. Reasonable “fees” or disguised “taxes”?

The courts have emphasized that these nexus requirements are of constitutional significance, and essential to the validity of any attempt to impose “mitigation fees” of any type. The requirement for demonstration of a reasonable nexus is also one critical distinction between a “fee” from a “tax.” Purported “fees” which exceed the reasonable costs of providing the facilities or services for which they are imposed are properly regarded as “taxes” rather than fees. (*California Farm Bureau Federation v. State Water Resources Control Board* (2011) 51 Cal.4th 421, 428, 435-443.) Therefore, in the review of nexus studies or other justifications for imposing a purported “fee,” this distinction is important. If the charge is not shown to be justified as a fee, then it may be viewed as a disguised “tax” and would be subject to distinct and rigorous voter approval requirements under the California Constitution, as well as other limitations inherent in state law. (E.g., *Weisblat v. City of San Diego* (2009) 176 Cal.App.4th 1022.)

11

C. WRCOG bears the burden of proof to justify its TUMF:

The WRCOG bears the burden of producing evidence to justify its fees, not only as to the amount of the fees but as to their nature and as to their allocation. See, *Shapell Industries v. Governing Board* (1990) 1 Cal.App.4th 218, 235 [emph. added], explaining that “the Board imposing the fee must therefore show that a valid method was used for arriving at the fee in question,” See also, *Home Builders Ass’n of Tulare/Kings Counties v. City of Lemoore* (2010) 185 Cal.App.4th 554, 561:

12

[B]efore imposing a fee under the Mitigation Fee Act, the local agency is charged with determining that the amount of the fee and the need for the public facility are reasonably related to the burden created by the development project. If such a fee is challenged, the local agency has the burden of producing evidence in support of its determination. [Citation.] The local agency must show that a valid

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method was used for determining the fee in question, one that established a reasonable relationship between the fee charged and the burden posed by the development. (*Shapell Industries, supra...*)

4. **Questions as to the Nexus Study’s compliance with the Mitigation Fee Act?**

The Draft Nexus Study (p. iii) asserts that it “is intended to satisfy the requirements of” the Mitigation Fee Act (Gov. Code §§ 66000- 66008). The Fee Act mandates that an agency seeking to establish fees as a condition of development approval must provide the reasoned analysis, supported by substantial evidence in the record, and must specify determinations regarding the justification for the fees. The Nexus Study itself acknowledges these requirements.

However, questions can be raised here as to whether or not this Nexus Study actually complies with the Fee Act. Those below are not exclusive.

(A) Gov. Code § 66001(a)(2) -- Identification of specific facilities to be funded by TUMF? Gov. Code § 66001(a)(2) requires that the agency establishing fees must “identify the use to which the fee is to be put” and if that intended use is “financing public facilities” then the agency must identify those facilities. While the Draft Nexus Study appears to have a fairly specific list of facilities and improvements that are to be funded by the TUMF, has that list been “finalized” or adopted in a capital improvement plan by the governing board of WRCOG or the participating agencies? WRCOG and its members should demonstrate that adequate and reasonably funding commitments have been secured to cover that portion of the costs of new facilities which cannot lawfully be attributed to “new” development paying TUMF fees.

13

(B) Gov. Code § 66001(b) -- Determination of reasonable costs of facilities? Gov. Code § 66001(b) requires the WRCOG to make certain determinations based on finding a reasonable relationship between the “reasonable costs” of the proposed facilities “attributable to the development on which the fee is imposed,” and the proposed new TUMF fees.

14

(C) Gov. Code § 66000(g) – Existing deficiencies? California law expressly prohibits the calculation or imposition of fees on new development in order to address existing needs or deficiencies. (Gov. Code § 66000(g) [prohibiting fees from including any costs attributable to “existing deficiencies”]; *Bixel Assoc. v. City of Los Angeles* (1989) 216 Cal.App.3d 1208.) It is not clear from my review of the Draft Update as to whether the study sufficiently segregates existing transportation deficiencies and roads operating at below-standard levels from new and improved roadways and facilities due needed as a consequence of new development. Lanes of highway and road surface, and other transportation infrastructure, must generally be built in large bulk units not easily susceptible to nuanced allocation.

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(D) Gov. Code § 66005.1 – Special treatment for transportation impact fees imposed on housing developments meeting transit-oriented criteria? The Nexus Study does not appear to acknowledge this statute, which was added to the Mitigation Fee Act in 2008, and became effective in January 2011. Section 66005.1 specifically applies to any fee imposed “for purposes of mitigating vehicular traffic impacts” – like the TUMF. It requires that for housing developments meeting certain criteria (e.g. located within ½ mile of a transit station), the agency must set the traffic impact fees “at a rate that reflects a lower rate of trip generation” than the rate generally applicable to housing that does not meet those criteria (with some exceptions).

16

Here, by contrast, it appears that the Draft Nexus Study simply sets one rate for single family residential development and another flat rate for multi-family residential development without attempting to provide a lower differential rate for housing developments of either type meeting the criteria of § 66005.1.

5. Other Questions raised by the Draft TUMF Nexus Study - 2016 Update:

a. Cost Estimates:

* Selection of appropriate road segments to be funded by Fee?

17

* Some of the costs may be for improvements in *quality* (not just *capacity* improvements to the existing road facilities - this creates benefits enjoyed by all existing users and should thus be allocated differently. Cf. Gov’t Code § 66001(g).

18

* Costs attributable to building less than 100% of new lanes? (See discussion under item 4(C) above.

19

* The WRCOG cover letter admits that approximately \$300 million of project costs was removed from the Nexus study as a result of prior reviews and public inputs.

* Excessive “contingency” percentages. The cost estimates used in the study appear to include unusually large (excessive?) “contingency” percentages over and above the remaining cost estimates. It would be reasonable to try to ascertain if the Nexus Study is adequately supported by substantial evidence as to these estimates.

20

b. Traffic Impacts- Trip Calculations – Use of VMT:

* The Draft Nexus Study points out that this fee analysis, for the first time, is based on use of VMT methodologies, in contrast to previous TUMF Nexus Studies. WRCOG’s cover letter acknowledges that this change in methodology appears to result in allocating a larger percentage of the estimated costs of mitigation projects to “residential” development than under previous approaches.

21

* WRCOG cites no legal authority specifically approving the use of that VMT methodology for the purposes of calculating or allocating transportation impact mitigation fees. While WRCOG notes that VMT analyses are increasingly used in the context of CEQA studies and for measuring project-specific (or program-specific) “impacts” on traffic in that context, that is not the same as attempting to use VMT for the purposes of *allocating* the costs of mitigating traffic/transportation impacts between various sub-sets of users of open-ended public roads and highways. Attempting to rely on VMT in this new Draft Nexus Study for the purpose of allocating the estimated costs of mitigation work therefore should require that WRCOG provide more comprehensive data/evidence supporting the assumptions in the Draft Nexus Study, and should more fully account for VMT from all sources of anticipated increases in traffic impacts using TUMF facilities.

22

* To the extent that VMT is being used, some observations may be made:

Fees should be proportionate to new development’s contribution to the anticipated increase in traffic impacts. “Traffic impact” here is measured as “peak-hour” vehicle-miles of travel, and is the product of peak-hour trips generated per dwelling unit (or per square feet of gross floor area for nonresidential use), the percentage of these trips that are not stopping as part of a longer trip somewhere else (i.e., non-pass-by trips), and a relative index of trip length within the area.

23

* Question as to whether data supports the assumptions about residential units as sources of peak hour trips;

24

* Question as to whether estimates here as to trips per day are properly adjusted for "peak hour" congestion.

25

* Question as to whether the trips attributed to/generated by residential users are properly adjusted for travel at times outside of “peak hour.” Non-peak trips would have less impact -- and create less need for additional improvements and fees. | 26

c. Allocation of Costs?

* Assuming \$3,139M is accurate estimate of total costs of all proposed improvements, the Draft Nexus Study appears to impose all such costs on new private sector development. | 27

* Are there any allocations to “orphan shares” (users who add to impacts and transportation needs but which are exempt from TUMF for policy reasons)? | 28

* Any allocation of costs to *existing* users – other users who benefit from improvements in *quality* of transportation system? | 29

* Any allocation of costs to *exempt or public sector* users or users not otherwise subject to the TUMF fees? | 30

* Any allocation of costs to users of subject road system originating *outside* the TUMF program area? | 31

d. No credits for contributions from other funding sources?

* New State funding -- e.g., SB 132 provides substantial new funding for transportation improvements in Riverside County (\$427 M), and at least some of those funds would be targeted at TUMF projects (e.g., Interstate 5/Limonite Interchange; Hamner Bridge widening; possibly others such as McKinley grade separation and Jurupa Avenue grade separation). Such State contributions should therefore be reflected as credits in the Draft Nexus Study and thus reducing the TUMF project costs to be funded by fees on new development.) | 32

* Other Transportation Funding Sources (feds, regional, local taxes, etc.) | 33

* Although we are informed that approximately \$80 million of proposed projects/facilities were removed from the Draft Study in anticipation of State transportation funding being provided for those projects, it appears that the Draft Study should remove additional projects, or otherwise reflect appropriate credits, | 34

Building Industry Association of So.
California – Riverside County
April 19, 2017
Page 11

for additional State transportation funding being provided in the Governor’s recent allocation of SB-1 revenues.

* NOTE: Governor Brown’s new proposal for increased gas taxes and vehicle registration fees to provide more State funding for road improvements... is this addressed in the TUMF Nexus Study?

e. Credits for additional tax revenues/street improvements from new development?

* New development ultimately will be paying property and gasoline taxes, in addition to TUMF fees, that will be used to fund arterial roads. In addition, local jurisdictions in WRCOG will require subdividers and other developments to provide (at developer cost) internal streets and key access road improvements, in addition to roads and highways funded by TUMF.

35

6. CEQA Compliance?

CEQA compliance is an additional issue that should be raised at the appropriate time before the WRCOG considers or adopts any new TUMF requirements, although CEQA is distinct from the “nexus study” requirement addressed in this memo. CEQA provides only limited exemptions for actions establishing fees – and those limited exemptions only apply if the fees are not designed to increase services or expand a system. (Pub. Res. Code § 21080(b)(8); CEQA Guidelines § 15273.) That is not the case here, since the TUMF itself admits that it is largely intended to expand and improve road facilities. Therefore action on the new TUMF fees is not exempt from CEQA (cf., CEQA Guideline § 15273(b).)

36

Actions like those proposed by WRCOG, adopting new TUMF fees to fund capital projects for the expansion of a system or public service, are subject to CEQA, (CEQA Guideline sec. 15273(b). (See also *Calif. Native Plant Society v. County of El Dorado* (2009) 170 Cal.App.4th 1026 [local action establishing ‘mitigation fees’ must undergo CEQA analysis]; *Terminal Plaza Corp. v. City & County of San Francisco* (1986) 177 Cal.App.3d 892 [before adopting a local ordinance that required new development to either replace hotel units being converted to other uses or to pay in-lieu impact fees, city was required to comply with CEQA].)

MEMORANDUM

TO: Bill Blankenship
FROM: George Lenfestey
SUBJECT: 2016 Nexus Study Review
DATE: April 20, 2017
CC:

Proactive Engineering Consultants West (PECW) was asked by the Riverside County Chapter of the BIA to participate in reviewing the WRCOG 2016 NEXUS study up-date of the TUMF Program.

LANE MILE COSTS

The initial review was limited to confirming that the 2016 up-date had made the Lane Mile Network changes recommended by PECW/BIA when we conducted our last review in 2015. The changes we requested in 2015 to WRCOG related to eliminating new lane improvements from the network which already existed physically on the ground. Many of the changes we requested in 2015 were not made with the 2016 up-date. PECW/BIA had several conference calls with WRCOG staff, and ultimately they agreed with over 90% of our recommendations and up-dated their study accordingly, for a total reduction amount of over \$80,000,000.

1

PLANNING ENGINEERING/CONSULTING COSTS

In addition to reviewing the lane mile network changes, PECW and the BIA continue to question WRCOG on the high “percentage of construction” cost numbers for consulting fees for Planning and Engineering. TUMF uses a flat 10% of construction cost for “Planning Consulting Fees” and 25% for “Engineering Consultant Fees”. Both are two times the average regional cost for public works planning and engineering consulting. When questioned about the high numbers (which currently total over \$640,000,000 in the 2016 up-date) WRCOG responded that they are told by the public works directors that 10% for planning and 25% for engineering is needed. If the consulting percentages were reduced to industry standards of 5% for planning and 12% for engineering, the total cost would reduce by more than **\$320,000,000**.

2

Based on first hand experience with several very complex TUMF road widening projects within the City of Moreno Valley (Cactus, Nason & Kitching), the total planning and engineering fees contracted by public bid were only at 15% of the construction cost. Most TUMF projects are not as involved and as expensive to plan and engineer as these three examples. When applying a flat percentage to construction cost to determine consulting fees, an average construction project should be used- not the most complicated or most straight forward.

In Addition, PECW consulted with a principal at a national engineering company who has worked in the Southern California region for 25 plus years on interchange projects. Below is his breakdown of all the consulting fee required for preliminary and final engineering of a "Type 2" interchange as described by TUMF:

- 1) PSR- \$200,000 plus \$100,000 for Caltrans review
- 2) PR/EIR- \$1,000,000
- 3) Final Engineering- \$3,000,000
- 4) Const. Support- \$200,000

Total- \$4,500,000. TUMF is using 35.0% x \$25,558,000 (construction cost for Type 2 interchange) = \$8,945,300. The actual industry standard cost for planning and engineering interchange improvements are one half of amount stated in the TUMF study.

RIGHT OF WAY COSTS

The last issue PECW was asked to review was the cost to acquire Right of Way (ROW) for the Land Use Category 2. TUMF identifies three separate land use categories within the network. Land use 1 (for developed urban areas), Land Use 2 (developed suburban areas) and Land Use 3 (for undeveloped rural areas). The 2016 up-date increased all three categories, however Land Use 2 increased by 280%. The study calculated the cost to acquire Right of Way by a simple formula: (segment length x number of new lanes x cost per lane mile). The cost for acquiring R/W in Land Use 3 is \$287,000 per lane mile. The cost for acquiring R/W in Land Use 2 is \$2,263,000/lane mile. There are two major flaws with the Nexus study in their calculations for determining cost of Right of Way.

- 1) The study does not make any adjustments for segments where portions of, or all of the Right of Way needed for the new lane construction is already dedicated.
- 2) The study does not make any adjustments for segments where portions of, or all of the Land Use Categories are actually 3 (undeveloped) and not 2 (developed).

There are over 210 road segment on the network with a total Right of Way cost of \$798,781,000 plus a 10% contingency. PECW reviewed 30 of the most expensive road segments within the network which represented approximately \$394,428,000 or approximately 50% of the total cost. Using the County of Riverside's web site, we were able to verify numerous road segments where all or a portion of the required Right of Way had already been dedicated. Using Google Earth we were able to determine numerous segments where all or a portion of the Land Use 2 (developed) should be revised to Land Use 3 (undeveloped). After making the correction to the calculations the cost for Right of Way reduced from \$398,428,000 to \$133,536,060 (0.335% reduction). If this same percent reduction is applied to the total, the Right of Way cost would reduce from \$798,781,000 to \$267,717,000. With contingency applied, this would reduce the cost for Right of Way acquisition by **\$584,170,000**.



The 30 facilities PECW studied were located throughout the service area of Riverside County including most cities and unincorporated areas and represents approximately 50% of the total cost allocation for right of way acquisition. BIA/PECW recommended to WRCOG that they review and confirm our findings and continue to study in detail the 30 next highest priced facilities which represents an additional cost of \$181,000,000. The top 60 facilities out of the 210 total road way segments represents over \$575,000,000 or approximately 72% of the right of way cost within TUMF network.

To review the 30 road segment referenced in this memo, please click on the link below.

<https://www.dropbox.com/sh/pmiohif5ti8ciym/AABELewVDkYS9g5BzZybu2wDa?dl=0>

April 21, 2017

Western Riverside Council of Governments
4080 Lemon Street
3rd Floor, MS 1032
Riverside, CA 92501-3609

Email: gray@wrcog.cog.ca.us

Attention: Christopher J. Gray, Director of Transportation

Reference: Draft 2017 TUMF Nexus Study

Gentlemen,

KWC Engineers has received and reviewed your recent Draft 2017 TUMF Nexus Study. Our firm represents Castle & Cooke who has for the past 15+ years been developing 2,000+ acres in the City of Lake Elsinore within their Alberhill District area. WRCOG major regional transportation projects within the City are important to supporting ongoing development.

In our review of the Nexus Study we have seen how the WRCOG has included TUMF eligible facilities within and adjacent to our Alberhill project, particularly along the Temescal Canyon Road, Lake Street and Nichols Road corridors, along with the I-15 Freeway interchanges at Lake Street and Nichols. In addition, WRCOG has added other additional significant TUMF eligible improvements within Lake Elsinore which bodes well with the emerging development within the City. We understand that City's management and WRCOG have spent significant time selecting projects within the City. Based on the proposed TUMF Study, we have estimated that Castle & Cooke's projects will generate over \$100,000,000 in TUMF revenue to WRCOG. The amount of TUMF eligible improvements is significantly improved over the 2009 Nexus Study. We are in support of those TUMF eligible facilities that are currently proposed in the Draft TUMF 2017 Nexus Study.

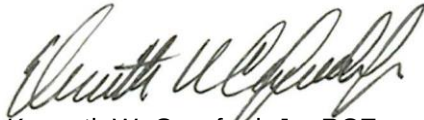
Our other comment of the study is relative to the proposed fee increase, particularly for single and multi-family housing, and commercial development. As always we are concerned when fee increases are required of developers, and in this case the significant increase of \$3.00/SF for the commercial fee will be challenging for those of us developing commercial property. Our suggestion to WRCOG is to consider a phased fee increase over time for all your fee increases.

On behalf of Castle & Cooke, we support the TUMF Nexus Study and we ask for your consideration of our suggestion for the phased fee increase over time.

Should you have any questions, and/or comments, please feel free to contact me directly.

Sincerely,

KWC ENGINEERS



Kenneth W. Crawford, Jr., RCE
President
(951)734.2130 Ext. 204
ken.crawford@kwcengineers.com

cc: Laura Whitaker – Castle & Cooke
Mark Jones – Jones & Beardsley
John Giardinelli – Giardinelli Law Group

Strategically Engineering our Client's Vision



March 15, 2017

Rick Bishop, Executive Director
Christopher Gray, Director of Transportation
Western Riverside Council of Governments
4080 Lemon Street
3rd Floor, MS 1032
Riverside, CA 92501-3609

Rick Bishop and Christopher Gray:

NAIOP, the Commercial Real Estate Development Association, is the leading organization of developers, owners, and related professionals in office, industrial, retail and mixed-use real estate. The NAIOP Inland Empire Chapter covers Riverside and San Bernardino Counties. NAIOP members are proud to develop through research, discussion, and exchange of information better standard for the development and operation of industrial and office properties in the Inland Empire.

Our mission is to advance the real estate profession, contribute to the greater community in which we all live and work and positively impact the economic development and improved quality of life throughout the Inland Empire.

As an industry group, we appreciate the effort WRCOG took to involve NAIOP as a stakeholder in your study and decision making process. We understand the need to raise fees from time to time and continue to remember and appreciate WRCOG's willingness to lower fees in difficult economic times. We hope the stakeholder process WRCOG undertook becomes a model for future decision making in the County and we support the newly proposed TUMF fee.

We look forward to working together and are available as a resource, please do not hesitate to contact us and keep us on your distribution list with updates going forward.

Sincerely,

Robert Evans
Executive Director

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Pacific Retail Partners

April 20, 2017

Western Riverside Council of Governments (WRCOG)

4080 Lemon Street, 3rd Floor, MS1032

Riverside, CA 92501-3609

Mr. Christopher Gray, Director of Transportation

RE: Comments to the Draft TUMF Nexus Study (published online on 4/12/17)

Mr. Christopher Gray:

Thank you for the opportunity to respond.

My company, Pacific Retail Partners, is in the shopping center development / brokerage business. We have been active in the Inland Empire since our inception in 1992. We own and operate several shopping centers in Riverside County and have 3 projects currently under construction.

We have had to deal with all the development fee increases over the past 10 years and are now asked to deal with a TUMF increase. While we have paid the current TUMF fee, it has become a greater and greater burden as construction costs (hard and soft) and other city fees have increased while rents remained relatively flat (comparable to rents prior to the recession 2008).

The TUMF calculation for the retail fee has always been confusing for us. We believe it has been inaccurate since inception.

Our concerns regarding the Nexus Study and the TUMF fee program are as follows:

- 1) The methodology does not reflect reality. A Shopping Center is a “follower” of the residential market. Homes are built first (and therefore create the first trip to the new area), then a new Shopping Center becomes viable. Many of the trips to Shopping Centers are simply serving the passer by trips already created by the residential properties.

1

Pacific Retail Partners

Letter
A9
Cont.

- 2) We use the term "Shopping Center" intentionally. A Shopping Center is a mix of "Retail" and "Service". There is a mix of these uses in a Shopping Center. Uses like a drycleaner, hair salon, food establishments, banks, credit unions and dentists all fall under Service. We have been paying a TUMF fee on our Shopping Centers based upon the "Retail" fee structure, while more than 50% of shop space today is not Retail, but rather Service. The county may have been over collecting against Shopping Centers since the inception of TUMF.
- 3) The Shopping Center world is changing rapidly. The internet has become a strong competitor and Shopping Centers will need to reinvent themselves. Paying the largest fee per square foot currently and now being asked to pay the largest increase will severely hurt the industry. Also, we would like to confirm that the new study contemplates all the new "delivery truck" trips from fulfillment centers. These "Delivery Trips" should reduce retail trips.
- 4) We think cities and counties still want retail for the tax dollars. Punishing retail with the largest fee and increase seems counterproductive to this goal. Fees (all fees) for a Shopping Center currently being developed in Riverside County cities is fast approaching \$40/sf. In addition to fees, Shopping Center developers are asked to pay mitigation "fair share" costs for road improvements not covered by a transportation fee or program. These costs are just fees under a different name.

2

3

4

We would like to meet to discuss the above questions / concerns.

Please provide a copy of this letter to the attached Executive Committee.

Thank you.

Sincerely,



Joe Meyer

Pacific Retail Partners

Cc: Tom Swieca, Fountainhead Development

1949 Arroyo Drive, Riverside, CA 92506
(951) 248-1100

Executive Committee

Western Riverside Council of Governments
4080 Lemon Street, 3rd Floor. MS1032
Riverside, CA 92501-3609
(951) 955-7985

The Executive Committee is WRCOG's decision-making policy board. The Executive Committee is comprised of elected officials from each of WRCOG's member agencies, and meets monthly to discuss policy issues and consider recommendations from WRCOG's Technical Advisory Committee. The Riverside County Superintendent of Schools is currently an ex-officio member of the Executive Committee.

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CORONA DIVISION

April 28, 2017

Mr. Christopher Gray

Western Riverside Council of Governments

4080 Lemon Street

3rd Floor, MS 1032

Riverside, CA 92501

RE: Support for the TUMF Nexus Study

Dear Christopher:

On behalf of the hundreds of employers we work with daily, thank you to WRCOG for your work to update the Transportation Uniform Mitigation Fee (TUMF) program through the completion of the required nexus study.

TUMF is a key part of Riverside County's multi-jurisdictional public-private policy strategy to build great infrastructure and great communities and this nexus study helps keep the program on track for the challenges ahead for developers and communities.

The inclusion in the TUMF program of important funded projects of regional impact and significance, including the westernmost portion of the Cajalco Parkway/Interstate 15 interchange expansion, will help the City of Corona complete this project decades earlier than projected. In addition, by including this project in the nexus study, WRCOG recognizes the importance of completing the entire Cajalco Interchange project on a timeline that nearly matches the I-15 project expansion by RCTC that begins right at Cajalco meaning tens of thousands of commuters from Western Riverside will benefit greatly from the up-to-date infrastructure and reduced traffic.

Jobs and economic development in the Western Riverside County region require great infrastructure like the projects supported in the nexus study and we respectfully request the adoption of the nexus study by WRCOG leadership.

Thank you again for your hard work and we look forward to working with you to complete this great project for Western Riverside County.

Sincerely,

Bobby Spiegel, President | CEO

CORONA Chamber of Commerce

Office 951.737.3350 or Cell 951.733.1836

**Letter
A10**



**Letter
A11**

April 28, 2017

Mr. Christopher Gray
Western Riverside Council of Governments
4080 Lemon Street
Riverside, CA 92501

RE: Support for the TUMF Nexus Study

Dear Christopher:

We are the managing partner for Arantine Hills Holdings, LP, owners of the Arantine Hills project in south Corona, and we would like to thank you and the WRCOG for your diligent efforts to update the Transportation Uniform Mitigation Fee (TUMF) program through the completion of the required nexus study.

TUMF is a key part of Riverside County's multi-jurisdictional public-private policy strategy to build great infrastructure and great communities and this nexus study helps keep the program on track for the challenges ahead for developers and communities.

The inclusion in the TUMF program of important funded projects, including the westernmost portion of the Cajalco Parkway/Interstate 15 interchange expansion, which is fully funded and out to bid currently, will help the City of Corona complete this project up to 20 years earlier than projected, serving tens of thousands of commuters daily throughout Western Riverside County. In addition, by including this project in the nexus study, WRCOG recognizes the importance of completing the entire Cajalco Interchange project on a timeline that nearly matches the I-15 project expansion by RCTC that begins right at Cajalco.

The completion of these two projects on complementary timelines will have an incredibly positive impact on families, commuters, employers, and the entire Western Riverside region and we thoroughly support and urge the adoption of the nexus study by WRCOG leadership.

Thank you again for your hard work and we look forward to working with you to complete this great project for Western Riverside County.

Sincerely,

John Sherwood
Vic President, Community Development
The New Home Company

85 Enterprise, Suite 450, Aliso Viejo, CA 92656 • T 949. 382. 7800 • NWHM.com





May 24, 2017

Mr. Christopher Gray
Western Riverside Council of Governments
4080 Lemon Street
3rd Floor, MS 1032
Riverside, CA 92501

RE: Support for the TUMF Nexus Study

Dear Christopher,

On behalf of the hundreds of businesses we work with daily, thank you to WRCOG for your work to update the Transportation Uniform Mitigation Fee (TUMF) program through the completion of the required Nexus Study.

TUMF is a key part of Riverside County's multi-jurisdictional public-private policy strategy to build infrastructure and great communities. This Nexus Study helps keep the program on track for the challenges ahead for developers and communities.

The inclusion in the TUMF program of important funded projects of regional impact and significance, including the I-215 Scott Road interchange, will help the City of Menifee complete this project earlier than projected.

Jobs and economic development in the Western Riverside County Region require great infrastructure like the projects supported in the Nexus Study and we respectfully request the adoption of the study by WRCOG leadership.

Thank you for your hard work. We look forward to working with you to complete this great project for Western Riverside County.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Timothy Dalton". The signature is fluid and cursive, with a long horizontal stroke at the end.

Timothy Dalton
Executive Director
Menifee Valley Chamber of Commerce

29737 New Hub Drive, #102 • Menifee, CA 92586
951-672-1991 • www.menifeevalleychamber.com

MEMORANDUM

To: Christopher Gray, Christopher Tzeng, and
Daniel Ramirez-Cornejo, WRCOG

From: Teifion Rice-Evans and Jenny Lin

Subject: Peer Review of the Transportation Uniform Mitigation Fee
(TUMF) Nexus Study 2016 Update Final Report: DRAFT
February 28, 2017; EPS #151155

Date: April 12, 2017

The Economics of Land Use



Economic & Planning Systems, Inc. (EPS) was asked by WRCOG to conduct a peer review of the TUMF Nexus Study 2016 Update prepared by Parsons Brinckerhoff and dated February 28, 2017 (Nexus Study Update). The overall purpose of this Peer Review is to indicate whether the Nexus Study Update provides a reasonable approach to establishing the necessary nexus as defined by the requirements in the Mitigation Fee Act (also known as Government Code 66000 et seq. and AB1600). EPS is a land use economics and public finance consulting firm that frequently prepares nexus studies for California public agencies and reviews them for different stakeholders. Our peer review and comments are based on that expertise and experience.

Our overall finding is that the Nexus Study Update follows a reasonable methodology, makes the necessary Mitigation Fee Act findings, includes accurate calculations, and establishes a reasonable maximum, updated TUMF fee.

In implementing the program, it will be important for WRCOG to ensure that the non-fee funding required for the portion of costs that cannot or will not be covered by the TUMF fee are obtained and allocated.¹ This is the funding required for the unfunded existing needs/deficiencies identified in the Nexus Study Update as well as the funding required to backfill any fee exemptions (e.g., government buildings), discounts (e.g., Class A/B Office), unique trip characteristics (e.g., high-cube warehouses, fuel filling stations, wineries etc.), and fee adjustment phase-ins (as being proposed).

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¹ The Nexus Study Update notes on page 8 that: "The available alternative funding sources were reviewed as part of the Nexus update, specifically including the completion of a detailed review of available federal, state, and local funding sources administered by the RCTC".

This Peer Review memorandum is divided into several sections, corresponding with components considered critical by EPS to any nexus study update: (1) appropriate consideration of/adjustments for the complexities of fee updates (relative to initial fee establishment); (2) Mitigation Fee Act findings rationale/narrative; and (3) technical analysis from the perspectives of consistency with the rationale, reasonableness of technical decisions, and calculation accuracy.

It is critical to note that **this Peer Review does not**: (1) review the source data of assumptions (e.g., ITE trip generation manual, SCAG 2016 RTP forecasts, among many others); (2) review the transportation project lists or unit cost assumptions; or (3) evaluate the transportation model, modelling, or standards applied.² These items are all beyond the scope of this Peer Review.

Fee Update Complexities

The unique challenge in conducting fee updates is to ensure that there are no conflicts/issues between the original/prior fee study and the new fee study. Some of these conflicts can be avoided by a well-established initial fee program where appropriate flexibility is included in the implementing documents (e.g., Nexus Study and Ordinance) to allow for adjustments to project lists and other key inputs. The other key issue is to ensure an appropriate accounting for the collection of TUMF revenues (and their use/application) under the prior fee schedule/nexus study and the updated nexus study. Based on conversations with WRCOG staff, it is our understanding that (1) the overall TUMF Program provides the flexibility to refine program parameters over time (for example, allowing for changes in the transportation improvement project list as has occurred in the TUMF Nexus Study Update), and (2) reviews have been conducted that indicate the TUMF revenues expended to date have been appropriately used and that any remaining fee balances have been accounted for in the TUMF Nexus Study Update to avoid double-charging development for the same capital improvements.

Mitigation Fee Act Findings

Development impact fees, such as the TUMF, are adopted under the Mitigation Fee Act which requires an appropriate “nexus” between new development and the proposed capital improvements. The TUMF Nexus Study Update provides the rationale for its nexus and the support for the necessary nexus findings throughout the Nexus Study Update. The most direct summary of the overall rationale is provided in *Section 5.1* (pages 53/43) of the TUMF Nexus Study Update. The technical mechanics and assumptions associated with the nexus rationale and findings are covered in more detail in the subsequent Technical Analysis section. This section summarizes the TUMF Nexus Study Update nexus rationale for five of the key requirements outlined in the Mitigation Fee Act (the bolded portion of points below are from the Mitigation Fee Act and are followed by a summary of the TUMF Nexus Study Update's rationales/responses):

- 1. Purpose: Identify the purpose of the fee.** The purpose of the updated TUMF fee is to alleviate future congestion caused by new development and to provide adequate mobility to transit-dependent travelers.

² Where the source or derivation of key assumptions was unclear, the Peer Review does point this out.

2. **Use: Identify the use to which the fee is to be put.** The TUMF revenues will be used to fund capacity improvements/enhancements to the arterial roadway system as well as improvements to the public transit system. Arterial system improvements could include new or realigned roads, additional lanes on existing roads, new or expanded bridges, new or upgraded interchanges, or grade separation of at-grade crossings.
3. **Relationship: Determine how there is a reasonable relationship between the fee's use and the type of development on which the fee is imposed.** The expected significant growth in residential and nonresidential development in Western Riverside County will result in increasing congestion on arterial roadways. A reasonable level of mobility (as supported by transportation system improvements) is required by new households and businesses occupying new residential and nonresidential development. The use of the TUMF fees is specifically designed to mitigate the cumulative regional impacts of this new development moderating congestion levels for new development. The technical analysis (as discussed further below) uses transportation modelling analysis to identify existing transportation needs/deficiencies to ensure the TUMF fee revenues are not used to fund improvements whose need is unrelated to new development.
4. **Need: Determine how there is a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed.** As noted above, the expected significant growth in residential and nonresidential development in Western Riverside County will result in increasing congestion on arterial roadways. Without improvements to the transportation system, congestion will increase and travelers will experience worsening travel conditions with slow travel speeds and lengthy delays. All capital improvements (including roadway improvements and public transportation) were selected to serve inter-community travel and thereby alleviate congestion. The transportation model analysis indicated that the completion of the proposed improvements would improve regional mobility (including a 13 percent reduction in total peak period vehicle hours of travel, a 34 percent reduction in peak period hours of delay, and a 16 percent reduction in the share of traffic experiencing congestion in the peak periods).
5. **Proportionality: Determine how there is a reasonable relationship between the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed.** As discussed in more detail in the subsequent section, the Updated Nexus Study establishes the relationship between the costs attributable to new development and different types of new development/land use by (1) continuing the distinctions between broad land use categories (single-family residential, multifamily residential, industrial, retail, service, and government buildings/public); (2) allocating costs based on transportation generation/demand characteristics (e.g., Vehicle Miles Traveled (VMT), trip generation rates, and service population (for transit improvements); and (3) allocating only the costs of improvements (or portions of improvements) that are associated with new development (i.e., do not address existing needs/deficiencies).

Technical Analysis

The TUMF Nexus Study Update Final Report (Draft February 28, 2016) represents the latest version of the TUMF Nexus Study Update. Prior drafts have been issued, reviewed, and critiqued, and the latest TUMF Nexus Study Update has made a number of refinements since the last formal draft (Draft 2015 Nexus Study). It is our understanding that some of these

refinements include incorporation of more current information (e.g., the 2016 SCAG RTP growth forecasts); others include important adjustments (e.g., removal of completed transportation projects from the project list); and others are the result of efforts by Western Riverside County jurisdiction policy-makers, WRCOG staff, and their consultants to ensure that only key transportation improvement projects are included in the transportation project list (and associated fee calculation).

Because of the regional nature of the TUMF Program and the large number of jurisdictions and subareas involved, the TUMF Nexus Study requires even more steps than the typical (and already often complicated) transportation impact fee analysis for a single jurisdiction. As noted above, additional complexities are added when updating fee programs compared to their initial establishment. *Figure 1.1, page 5*, in the Nexus Study Update provides a good overview flowchart of the large number of technical steps followed by a step-by-step discussion

In order to review the accuracy of the technical calculations and highlight the key assumptions/methodologies employed, EPS developed a tableset that replicates the core dynamics/assumptions of the updated TUMF fee calculations and reviewed the descriptions/explanations included in the TUMF Nexus Study Update. This review and tableset supported the evaluation of the technical accuracy of the calculations and the consistency between the study narrative and calculations and the identification of critical assumptions and sources. It should be noted, that the tableset does not replicate all the calculations/components of the Nexus Study Update. It also should be noted that for rounding reasons, some of the numbers reports in the EPS tableset are slightly different from those in the Nexus Study Update.

The key components of the TUMF technical analysis that were evaluated and highlighted are described below with reference to the TUMF fee calculation summary tableset (**Tables 1 through 9** below).

Total TUMF Network Capital Improvement Costs

The TUMF Nexus Study Update notes that the identified TUMF network includes transportation improvements that serve inter-community travel and that will require future improvement to alleviate congestion. Once all TUMF projects completed by the end of 2015 were removed, the total cost of the TUMF network transportation improvements summed to **\$3.74 billion**, as shown in **Table 1**. This includes three primary components:

- Arterial Highway/Street Improvements total **\$3.54 billion** (excluding habitat mitigation costs) and represent about 94.5 percent of the total TUMF network transportation improvement costs. Cost detail is provided for all the transportation improvement projects in the Nexus Update Study.
- Transit improvement total **\$153.2 million** and represent 4.1 percent of the total TUMF network transportation improvement costs. The Nexus Study Update identifies the proposed transit improvements and provides the associated cost estimates.
- The total contribution through the MSHCP for TUMF project environmental impacts is assumed to be **\$46.9 million** or 1.3 percent of the total TUMF network transportation improvement costs. Environmental mitigation costs would be incorporated into the individual project cost without the regional Western Riverside Conservation MSHCP. The Nexus Study

Update cites MSHCP documents, though the derivation of this mitigation contribution amount is not provided.³

Table 1 Transportation Cost Estimates – Gross and Net

Item	All Transportation Improvement Costs (including mitigation)	Arterial Highway/ Street Improvements	Transit Improvements	Habitat Mitigation (MSHCP)
Gross Project List Cost	\$3,740,314,000	\$3,540,337,000	\$153,120,000	\$46,857,000
<i>minus</i> Obligated/ Dedicated Funds (for existing needs and new needs)	\$209,933,500	\$209,933,500	\$0	\$0
<i>minus</i> Unfunded Existing Needs/ Existing Deficiencies	\$510,274,500	\$447,586,500	\$60,481,000	\$2,207,000
Net Project List Costs	\$3,020,106,000	\$2,882,817,000	\$92,639,000	\$44,650,000

Source: TUMF Nexus Study 2016 Update (DRAFT February 28, 2017) - Parsons Brinckerhoff; EPS.

Existing Transportation Needs and Funding

The TUMF fee cannot pay for existing deficiencies in the transportation improvement network or pay for improvements (or portions of improvements) that are already funded. Once existing deficiencies/needs and funding were removed, the net cost of the TUMF network transportation improvements was **\$3.02 billion**, including \$2.88 billion for arterial highway/street improvements and \$92.6 million for transit improvements (see **Table 1**). The adjustments shown are as follows:

- The Nexus Study Update consultants worked with the relevant public agencies to determine that **\$209.9 million** was already allocated towards TUMF network arterial highway/street improvements.
- The Nexus Study Update used the transportation model to determine where new TUMF transportation projects would help resolve existing needs in the network and where the improvements would only be required to accommodate new development. In sum, **\$447.6 million** in TUMF unfunded project improvement costs were associated with existing needs in the arterial highway/street improvement projects (about 12.5 percent of total highway/street improvement costs).
- The TUMF transit improvement costs were also allocated between existing needs and future needs. The allocation to existing needs/demand was tied to the estimated share of future transit trips from existing development, about 39.5 percent of future transit trips. This represented about **\$60.5 million** of the TUMF transit improvement costs.

³ The Nexus Update Study notes that MSHCP-related studies indicated pre-MSHCP historical level of an additional 3 to 5 percent in transportation project costs to mitigate for environmental impacts. The MSHCP mitigation fee nexus study assumes a 5 percent of project cost payment to support MSHCP implementation.

TUMF Fee Eligible Costs

Table 2 estimates the total TUMF fee eligible program costs; i.e., the total (maximum) costs that could be funded by the TUMF fees. As indicated, the full net cost of \$3.02 billion for the TUMF network improvements are included. While existing development will use the new transportation improvements, because existing deficiencies are accounted for (see above), the Nexus Study Update allocates the remaining net costs to new development. In other words, the additional new capacity improvements (once existing deficiencies have been netted out) and the identified net costs are only required due to new development and would not be undertaken “but for” new development.

In addition, consistent with other development impact fee programs throughout California, the various costs of administering the TUMF program can be included. The Nexus Update Study indicates a TUMF administrative cost of \$119.0 million. This represents an addition of 3.9 percent above the net TUMF project costs; this is generally consistent with other development impact fee programs. Adding in the administrative costs, the total TUMF fee funding eligible cost is **\$3.14 billion**.

Table 2 TUMF Eligible Costs

Item	Cost/ Assum.
Net Project Cost (after existing need/ dedicated funding)	\$3,020,106,000
Allocated to TUMF	100%
TUMF Project Costs	\$3,020,106,000
TUMF Administrative %	3.9%
TUMF Administrative Costs	\$119,018,240
Total TUMF Eligible Fee Program Costs (inc. Administrative Costs)	\$3,139,124,240

Source: TUMF Nexus Study 2016 Update (DRAFT February 28, 2017) - Parsons Brinckerhoff; EPS.

Development Forecast

The amount and type of new development is a critical driver of the need for new transportation improvements as well as different types of transportation demands/needs generated. The development forecast is a critical component of most development impact fee calculations. The Nexus Study Update uses the latest growth and development forecasts for Western Riverside County, the SCAG 2016 RTP forecasts. There are other sources of forecasts for growth and

development in Western Riverside County, though the Nexus Study Update considers these forecasts to be the best available.

Table 3 summarizes the forecasts for new residential units (households/housing) and new jobs. As shown, a total of about **250,000 new housing units** are forecast to be developed between 2012 and 2040, representing an annual average growth of about 8,900 each year and an overall growth of 48 percent over this period. The residential growth is forecast to be about 70 percent single-family development and 30 percent multifamily development, consistent with the existing distribution.

The forecasts for job growth are higher and include a total of about **401,000 new jobs** between 2012 and 2040, representing an annual average growth of about 14,300 jobs each year and an overall growth of 87 percent over this period. The amount and pace of job growth was highest in the service sector at 275,000 new jobs representing almost 70 percent of the new job growth and more than doubling of the existing number of service jobs. The second highest growth is forecast for the industrial sector with over 80,000 new jobs between 2012 and 2040, a two-thirds increase in the current number of industrial jobs.

Table 3 Western Riverside County Growth Forecast

Item	2012	2040	2012-2040 Change *		
			Absolute	Ann. Avg.	% Inc.
Residential (Units)					
Single Family	366,588	539,631	173,043	6,180	47%
Multi Family	<u>158,561</u>	<u>235,600</u>	<u>77,039</u>	<u>2,751</u>	<u>49%</u>
Total Residential	525,149	775,231	250,082	8,932	48%
Nonresidential (Jobs)					
Industrial	120,736	201,328	80,592	2,878	67%
Retail	65,888	101,729	35,841	1,280	54%
Service	253,372	528,092	274,720	9,811	108%
Government/ Public	<u>20,791</u>	<u>30,306</u>	<u>9,515</u>	<u>340</u>	<u>46%</u>
Total Nonresidential	460,787	861,455	400,668	14,310	87%

* Columns include absolute growth, average annual growth, and overall percentage growth.

Source: SCAG RTP 2016 Forecasts; TUMF Nexus Study 2016 Update (DRAFT February 28, 2017) - Parsons Brinckerhoff; EPS.

Cost Allocations between Residential and Nonresidential Development

A critical determinant of the transportation impact fees is the methodology used to allocate costs between residential and nonresidential development and, as discussed below, between different residential uses and different types of nonresidential land uses. A number of transportation impact fee studies use a trip generation rate approach to allocating costs between residential and nonresidential land uses and to land uses within each of these broader categories.

The Nexus Study Update, instead, uses a combined Trip Purpose and VMT approach to allocations between residential and nonresidential land uses. The shift in focus to VMT is driven by the emphasis on VMT by SB 643. Standardized information on typical VMT is not, however,

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currently available for individual land uses (e.g., multifamily development, industrial development etc.) so trip generation rates were still used to allocate between different residential land uses and different nonresidential land uses.

More important than the choice to use VMT rather than trip generation rates for this broader cost allocation is the focus on Trip Purpose and the associated approach to allocating the VMT associated with each trip purpose between residential and nonresidential uses. Specifically, the Nexus Study Update assumes that the vehicle miles travelled associated with trips that have “home” as their origination or destination should be considered as being driven by residential development. The remaining vehicle miles travelled associated with trips between non-home locations (e.g., between work and retail or from service to service) are all considered as being driven by nonresidential development. This is consistent with the Trip Purpose allocations in the prior Nexus Studies (where trip production was used as the base metric rather than VMT).

The Nexus Study Update indicates that the rationale behind this approach to allocating all “home-based” VMT to residential development was based on the NCHRP Report #187 Quick Response Urban Travel Estimation Techniques and Transferable Parameters User’s Guide (Transportation Research Board, 1978). In particular, it cites the following from Chapter 2 of this report: “HBW (Home Based Work) and HBNW (Home Based Non-Work Trips) are generated at the households, whereas the NHB (Non-Home Based) trips are generated elsewhere”.

As shown in **Table 4**, of the new peak period VMT growth associated with new development of 4.7 million miles, about **71 percent** are associated with “home-based” trips and **29 percent** are associated with non-home related trips. As a result, the total TUMF fee eligible costs of about \$3.14 billion were allocated using these same proportions as follows: **\$2.2 billion to new residential development** and **\$910 million to nonresidential development**.

Table 4 TUMF Cost Allocation between Residential and Nonresidential

Item	VMT/ Cost	%
New Peak Period VMT Growth by Trip Purpose		
Home-Based Trip VMT	3,330,462	71.0%
Non-Home Related Trip VMT	<u>1,359,143</u>	<u>29.0%</u>
Total VMT Growth	4,689,605	100.0%
Allocation of TUMF Fee Program Costs		
New Residential Development	\$2,229,342,129	71.0%
New Nonresidential Development	<u>\$909,782,111</u>	<u>29.0%</u>
Total Fee Program Costs	\$3,139,124,240	100.0%

Source: RivTAM; TUMF Nexus Study 2016 Update (DRAFT February 28, 2017) - Parsons Brinckerhoff; EPS.

Additional Cost Allocation and Fee Calculations

The allocations between different types of residential development and different types of nonresidential and the associated fee calculations were then conducted using the more common trip generation rate basis.

As shown in **Table 5**, the Nexus Study Update used the trip generation rates from the ITE Manual (the 2012 version was used) for single-family and multifamily development along with the forecast number of units to determine the appropriate allocation of the \$2.2 billion in TUMF fee-eligible project improvement costs associated with residential development. This resulted in an allocation of \$1.73 billion in costs to single-family development (77.5 percent) and \$501 million in costs to multifamily development (22.5 percent). This then translates into updated, maximum residential TUMF fees of about **\$9,985 per single-family unit** and about **\$6,500 per multifamily unit**.

Table 5 TUMF Fee Calculation - Residential Uses

Item	New Dwelling Units	Trip Generation (per unit)	Total Trips	%	Cost Allocation	TUMF Fee
Single Family Development	173,043	9.52	1,647,369	77.5%	\$1,728,249,708	\$9,987.40 per unit
Multi Family Development	<u>77,039</u>	6.2	<u>477,642</u>	<u>22.5%</u>	<u>\$501,092,421</u>	\$6,504.40 per unit
Total	250,082		2,125,011	100.0%	\$2,229,342,129	na

Source: ITE Trip Generation Manual (2012); TUMF Nexus Study 2016 Update (DRAFT February 28, 2017) - Parsons Brinckerhoff; EPS.

The approach for nonresidential development requires a similar analysis, though with one additional step. Because the growth forecasts by industry sector were expressed in jobs, the Nexus Study Update had to convert jobs by sector into a measure of new development (gross building square feet). The Nexus Study Update provides estimates of the new gross building square feet required to accommodate the forecasted jobs, including about 105 million square feet for service sector jobs, 64.7 million for industrial sector jobs, 17.9 million square feet for retail sector jobs, and a smaller number for government/public sector jobs (see **Table 5**). This implies square feet per job requirements ranging from 283 square feet per government/public sector job to 803 square feet per industrial job. The Nexus Study Update indicates that the relationship between new jobs and new gross building space required was derived from a range of Southern California studies over the last twenty five years.

As shown in **Table 6**, the trip generation rates from the ITE manual were applied to jobs forecasts for each industry sector to determine the distribution of overall trip generation from each sector. This distribution was then applied to the \$910 million allocation of TUMF fee-eligible project improvement costs to nonresidential development as a whole and divided by the respective gross building square feet by sector to derive the maximum nonresidential TUMF fees. As shown, the maximum nonresidential TUMF fees include about **\$1.90 per gross building square foot of industrial**, about **\$13.00 per gross building square foot of retail**, about **\$4.85 per gross building square foot of service**, and about **\$17.00 per square foot of government / public building**.

Table 6 TUMF Fee Calculation – Nonresidential Uses

Item	Net New Job Growth	Avg Sq. Ft per New Job	New Gross Building Sq. Ft.	Trip Generation (per employee)	Total Trips	%	Cost Allocation	TUMF Fee
Industrial	80,592	803	64,710,138	3.75	302,220	13.4%	\$121,621,598	\$1.88 per sq. ft.
Retail	35,841	500	17,920,500	16.20	580,624	25.7%	\$233,659,067	\$13.04 per sq. ft.
Service	274,720	383	105,211,915	4.60	1,263,712	55.9%	\$508,552,290	\$4.83 per sq. ft.
Government/ Public	<u>9,515</u>	283	<u>2,696,349</u>	12.00	<u>114,180</u>	<u>5.1%</u>	<u>\$45,949,156</u>	\$17.04 per sq. ft.
Total	400,668		190,538,902		2,260,736	100%	\$909,782,111	na

Source: ITE Trip Generation Manual (2012); Various Southern California Land Use Density Documents; TUMF Nexus Study 2016 Update (DRAFT February 28, 2017) - Parsons Brinckerhoff; EPS.

Summary of TUMF Program

Tables 7, 8, and 9 provide some additional summary tables reflecting the Nexus Update Study. **Table 7** shows the updated TUMF fee schedule and applies it to development forecast. As shown, the total TUMF revenue (in 2016 dollars) that would be generated under the updated fee schedule is **\$3.09 billion**, below the \$3.14 billion TUMF eligible cost as public buildings are exempted from the fee program.

Table 7 Updated TUMF Maximum Fee and Revenue Generation Summary

Item	New Development	TUMF Fee	Fee Revenue Estimate	
Residential				
Single Family	173,043 units	\$9,987 per unit	\$1,728,249,708	56%
Multi Family	<u>77,039</u> units	\$6,504 per unit	<u>\$501,092,421</u>	<u>16%</u>
Total Residential	250,082 units		\$2,229,342,129	72%
Nonresidential				
Industrial	64,710,138 sq. ft.	\$1.88 per sq. ft.	\$121,621,598	4%
Retail	17,920,500 sq. ft.	\$13.04 per sq. ft.	\$233,659,067	8%
Service	105,211,915 sq. ft.	\$4.83 per sq. ft.	\$508,552,290	16%
Government/ Public	<u>2,696,349</u> sq. ft.	\$17.04 per sq. ft.	Not Applicable	
Total Nonresidential	190,538,902 sq. ft.		\$863,832,955	28%
Total Fee Revenue (2017\$)			\$3,093,175,084	100%

Source: TUMF Nexus Study 2016 Update (DRAFT February 28, 2017) - Parsons Brinckerhoff; EPS.

Table 8 provides an overall summary of the transportation improvement costs considered in the Nexus Study Update, the maximum expected revenues from the updated TUMF program, and the funding that will be required from other sources. As shown, the transportation improvement and TUMF program administration costs total about \$3.86 billion. Under the updated maximum TUMF fees, the maximum fee revenues sum to \$3.09 billion. The remaining \$766 million in funding includes about \$210 million in obligated funding and an additional \$556 million from other sources. These other sources are expected to include State, federal, Measure A, and local funding sources. As discussed earlier in this memorandum, additional fee adjustments, exemptions, and phase-ins will reduce the revenue from the TUMF fees and increase the funding need from other sources.

Table 8 TUMF Program – Sources and Uses

Item	Amount
USES	
Total Project Costs	\$3,740,314,000
TUMF Program Administration	\$119,018,240
Total Costs/ Uses	\$3,859,332,240
SOURCES	
TUMF Revenues *	\$3,093,175,084
Obligated/ Dedicated Funds	\$209,933,500
Non-Fee Funding Required *	\$556,223,656
Existing Deficiency Component	\$510,274,500
Public/ Gov. Building Component	\$45,949,156
Total Revenues/ Sources	\$3,859,332,240

* Due to the proposed fee increase phase-in and other reasons, the level of non-fee funding would likely be higher and the TUMF revenues lower.

Source: TUMF Nexus Study 2016 Update (DRAFT February 28, 2017)

- Parsons Brinckerhoff; EPS.

Finally, **Table 9** shows the updated, maximum TUMF fee alongside the current TUMF fees. As shown, the fee changes are lowest for multifamily development at 4 percent, next lowest for industrial development at 9 percent, single-family development at 13 percent, and services at 15 percent, and highest for retail development at 24 percent.

Table 9 Potential Change in TUMF Fees

Item	New Metric	TUMF Current (2009 Adoption)	TUMF Updated (2016 Update)	% Change
Residential				
Single-Family	per unit	\$8,873	\$9,987	13%
Multifamily	per unit	\$6,231	\$6,504	4%
Nonresidential				
Industrial	per sq. ft.	\$1.73	\$1.88	9%
Retail	per sq. ft.	\$10.49	\$13.04	24%
Service	per sq. ft.	\$4.19	\$4.83	15%

Source: WRCOG; TUMF Nexus Study 2016 Update (DRAFT February 28, 2017) - Parsons Brinckerhoff; EPS.

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Item 6.A

Transportation Uniform Mitigation
Fee (TUMF) Nexus Study Update

Attachment 2

Draft TUMF Nexus Study response
to comments

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Master Responses

- Response MR-1: The purpose of the Nexus Study is to substantiate the maximum allowable TUMF fee for each land use to mitigate the impacts of new growth, which must be approved by the WRCOG Executive Committee. Implementation decisions such as detailed phase in options, are made subsequent to the adoption of the Nexus Study. Any information regarding phasing is not be included in the Nexus Study as any decisions on phasing are subject to change when the Executive Committee approves the Nexus Study. The cover memorandum which WRCOG prepared for the Draft Nexus Study outlined many of these programmatic issues. In September 2016, the WRCOG Executive Committee formed an Ad Hoc Committee to review the Nexus Study components and identify a preferred option to finalize the study. The Ad Hoc Committee recommended that the various WRCOG Committees (including the Public Works Committee, the Technical Advisory Committee, the Administration & Finance Committee, and ultimately the Executive Committee) consider a 2-year freeze and subsequent 2-year phase in for the proposed maximum retail fee, plus a 2-year single-family residential phase-in option for implementation. When the Nexus Study is brought forward for action by the various WRCOG Committees, WRCOG Staff will also be presenting any recommended phasing proposals for consideration at that time as well.
- Response MR-2: The Draft TUMF Nexus Study supersedes the previous Draft 2015 TUMF Nexus Study and incorporates significant changes and revisions including, but not limited to the following: 1) The socio-economic data has been revised to incorporate the latest growth projections from the Southern California Association of Governments (SCAG) 2016-2040 Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS); 2) WRCOG staff, consultants, and member agency staff completed an extensive exercise to review all of the transportation projects in the Nexus Study, which resulted in the removal of approximately \$300 million in projects based on completed projects and projects which did not meet the criteria for inclusion in the Nexus Study; 3) The Nexus Study has been revised to include funding for future projects in the City of Beaumont, which has agreed to rejoin the TUMF Program once WRCOG approves an updated Nexus Study; 4) Many of the technical items in the Nexus Study have been updated, including data on employees per square feet and the unit cost assumptions for the facilities included in the Program. The unit cost assumptions are the basis for the TUMF Network cost; 5) This Nexus Study also incorporates the use of Vehicle Miles Traveled (VMT) as an element of the fee calculation process, which is a new approach in the TUMF Program and consistent with implementation of SB 743.



2016 TUMF Nexus Study Response to Comments

- Response MR-3: WRCOG staff prepared and distributed responses to all comments received on the 2015 Nexus Study. These responses were made available on the WRCOG Website and distributed. The WRCOG Committees received notification including the Public Works Committee and Executive Committee on January 14, 2016 and February 1, 2016 respectively. The main conclusion of these responses to comments was the need to comprehensively update the Nexus Study in many key areas including the demographic forecasts, the unit costs, the roadway network, and other underlying data in the Nexus Study. Since the 2015 Nexus Study was never approved by the Executive Committee and the 2017 Nexus Study is a new document, WRCOG did not consider it necessary to demonstrate how all of the comments were addressed in the 2017 Nexus Study.
- Response MR-4: The Nexus Study uses updated unit cost assumptions which were developed by the TUMF Nexus Study Consultant (PB) in consultation with WRCOG staff. These unit costs were provided to the Public Works Committee which approved those unit costs for use in the Nexus Study on May 12, 2016. Therefore, no updates will be made to the unit costs as these costs were previously approved. Any changes to the unit costs or unit cost assumptions would require WRCOG to revisit the issue with the Public Works Committee, which would unnecessarily delay the Nexus Study.
- Response MR-5: The purpose of the Draft Nexus Study is to substantiate the maximum allowable TUMF fee for each land use, which must be approved by WRCOG Executive Committee. Implementation decisions such as detailed fee calculations or phasing, are made subsequent to the adoption of the Nexus Study. Any information regarding phasing should not be included in the Nexus Study as any decisions on phasing are subject to change when the Executive Committee approves the Nexus Study. The cover memorandum which WRCOG prepared for the 2017 Nexus Study outlined many of these programmatic issues and provided further information about these topics.
- Response MR-6: As part of the Nexus Study update, WRCOG engaged in a comprehensive review of the network by taking multiple approaches. First, WRCOG engaged the services of WG Zimmerman Engineering to review the status of facilities in the Nexus Study, particularly those whom commenters had indicated were complete or partially complete but were funded through the Nexus Study. Second, WRCOG conducted a detailed review of each facility to verify that it met the criteria outlined in the Administrative Plan and Nexus Study for inclusion in the Program. Third, WRCOG allowed each jurisdiction to submit additional requests for projects to be included in the TUMF Network. At the conclusion of this process, WRCOG distributed these project lists to individual jurisdictions and then made further edits as necessary. The proposed network was then distributed to the Public Works Committee and the Executive Committee for their approval which occurred December 8, 2016 and January 9, 2017, respectively. Each WRCOG member jurisdiction had an opportunity to provide comments on the TUMF



2016 TUMF Nexus Study Response to Comments

Network throughout this process and no further changes to the network will be forthcoming. The only possible network edits will be to remove any completed or partially completed projects based on a review of existing conditions for each roadway in question.

Response MR-7: WRCOG understands that various parties such as our member agencies and developers may be concerned about the status of existing agreements involving TUMF facilities. WRCOG would like to remind everyone that Credit Agreements and Reimbursement Agreements are contracts between the various parties. For example, a TUMF Reimbursement Agreement is a legally binding contract between WRCOG and a member jurisdiction. Reimbursement and Credit Agreements are not invalidated with the adoption of a new Nexus Study. Therefore, all of the City's current Reimbursement Agreements will be honored at their current levels regardless of the project status in the 2017 Nexus Study. The April 13, 2017 Public Works Committee meeting included an agenda item where WRCOG formally notified all of its member jurisdictions of the status of these agreements.



LETTER A1
City of Calimesa
Bonnie Johnson, City Manager
April 20, 2017

Response A1-1: WRCOG appreciates the letter of support and looks forward to working with the City of Calimesa as we move forward with the Nexus Study Update. Also, please see MR-1 regarding phasing.



LETTER A2

City of Moreno Valley

Ahmad Ansari, Public Works Director/City Engineer

April 20, 2017

- Response A2-1: Please see MR-3.
- Response A2-2: WRCOG has received several requests regarding a fee reduction for senior housing developments. Currently there is an exemption in the Program for low income/affordable housing. WRCOG has notified the Public Works/Planning Directors Committees that the senior housing component will be addressed through an update to the TUMF Calculation Handbook. The TUMF Calculation Handbook addressed specific categories of developments with unique trip generating characteristics (fueling stations/wineries/high cube warehouses) and senior housing developments will be added as a component in the coming months. WRCOG Staff presented an approach to address this issue to the Public Works and Planning Directors' Committees on May 11, 2017.
- Response A2-3: Please see MR-5.
- Response A2-4: Cities will not be responsible for any reduction in fees associated with phasing. If any phasing is implemented, WRCOG will identify mechanisms within the existing plan to account for the loss in fees.
- Response A2-5: Please see MR-7.
- Response A2-6: Please see MR-6. That information is provided in Exhibit H-2 of the Nexus Study contain the values of obligated funding and existing need. Staff reviewed SCAG's draft 2017 Federal Transportation Improvement Program (FTIP) to determine additional obligated funding that can potentially be removed from the TUMF Network (Staff provided an item to the PWC in August 2016).
- Response A2-7: Please see MR-6.
- Response A2-8: Please see MR-6. Perris Boulevard/SR-60 Interchange is included in the TUMF Network; the existing need calculation on the interchange determined that the facility is operating at a deficient level in the base year and improvements cannot be attributed to new growth consistent with the requirements of AB 1600.
- Response A2-9: Please see MR-3.
- Response A2-10: Please see MR-6. The City requested that the Moreno Beach Drive/SR-60 Interchange be reviewed for potential inclusion in the TUMF Network in 2016. WRCOG included improvements to the overcrossing (bridge component) of the interchange as WRCOG previously provided the City with \$12 million in funding for improvements to other areas of the interchange.



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Response A2-11:	Please see MR-6.
Response A2-12:	Please see MR-7.
Response A2-13:	Please see MR-7.
Response A2-14:	Please see MR-6. WRCOG did not receive a request from the City during the 2017 TIP Update to add funding for this project.
Response A2-15:	Please see MR-6. Facilities that have differing Max TUMF Share from the Total Cost have been adjusted to reflect these existing need deficiencies and/or obligated funding. Exhibit H-2 of the Draft TUMF Nexus Study contains the amounts of existing need and/or obligated funding for specific facilities.
Response A2-16:	Please see MR-3.
Response A2-17:	Please see MR-6.
Response A2-18:	Please see MR-5.
Response A2-19:	Staff will make this correction.
Response A2-20:	Please see MR-4.
Response A2-21:	Please see MR-4.
Response A2-22:	Please see MR-4. The lighting shown on the master unit cost summary is for traffic signal lighting.
Response A2-23:	Please see MR-4.
Response A2-24:	Please see MR-3.
Response A2-25:	Please see MR-3.
Response A2-26:	Please see MR-6. Staff reviewed SCAG's draft 2017 Federal Transportation Improvement Program (FTIP) to determine additional obligated funding that can potentially be removed from the TUMF Network (Staff provided an item to the PWC in August 2016). Exhibit H-1 reflects figures in the FTIP, which show \$17.9M for the Project.
Response A2-27:	Please see MR-6.
Response A2-28:	Please see MR-4.
Response A2-29:	Please see MR-6.
Response A2-30:	The Exhibits included in the TUMF Network contain disclaimers that the projects sites are subject to change/updates based on the latest information derived from each member agency. "Data and information represented on this map is subject to updates, modifications and may not be complete or appropriate for all purposes"



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Response A2-31:	Please see MR-6.
Response A2-32:	Note 7 will be updated to reflect correct horizon year (2040).
Response A2-33:	Model run results reflect Riverside County Travel Demand Model (RivTAM) 2012 network provided by Riverside County Transportation Department (RCTD) with updated 2015 arterial network completed by WSP/ Parsons Brinckerhoff, September 2016.
Response A2-34:	Please see MR-6.
Response A2-35:	WRCOG can review this item for potential inclusion provided that the direction is given from the WRCOG Committee structure. Staff presented an item to the Public Works Committee and received direction to move forward with components in the TUMF Calculation Handbook for senior/active adult housing and mixed use development.
Response A2-36:	Please see MR-4.
Response A2-37:	Please see MR-6.
Response A2-38:	Please see MR-6. This particular segment has an existing need component that reduces the total cost value to the Max TUMF Share.
Response A2-39:	Please see MR-6.
Response A2-40:	Please see MR-6.
Response A2-41:	Please see MR-6.
Response A2-42:	Please see MR-6.
Response A2-43:	Please see MR-6. Staff will make the minor name change to the TUMF Network.
Response A2-44:	Please see MR-6.
Response A2-45:	Please see MR-6. WRCOG did not receive a request from the City during the 2017 TIP Update to add funding for this project to the Central Zone TIP. We would remind City Staff that reimbursements are processed only after the Zone collaboratively elects to add funding for a project to the 5-year TIP. Additionally, all of the funding for the Central Zone is currently programmed and providing additional funding for one project would require that funding to another project be reduced.
Response A2-46:	Logistics is related to warehousing in the context of the table and would be reflected under the industrial sector.



LETTER A3

County of Riverside, First District

Kevin Jeffries, Supervisor, First District

April 14, 2017

Response A3-1: Please see MR-1. Additionally, the WRCOG Executive Committee has the options to approve and adopt policies that incentivize particular types of development. Currently in the TUMF Program, there is a discount in TUMF for Class A and Class B office development, as approved by the Executive Committee. Staff can explore bringing forward a policy to discount or exempt local serving retail development. Additionally, Staff is evaluating an update to the fee calculation handbook related to the analysis of developments with a mix of service and retail uses. WRCOG distributed a formal memo regarding TUMF calculation for mixed land use (shopping centers) developments to the Public Works and Planning Directors' Committees on May 11, 2017. This memo is available upon request.

RCTC is conducting a regional transportation study to evaluate a logistics related regional fee. A result of the study could be a new a program that the County and cities in the County could adopt. Such a program would, for example, set a fee on new distribution center warehouses, based on facility size, to address issues related to impacts associated with these types of uses.

Response A3-2: In 2016, WRCOG retained a consultant to conduct a comprehensive review of fees assessed on new development for all TUMF land uses in and around the WRCOG subregion. A key finding of this study concluded that except for the retail land use, fees assessed on new development in western Riverside County are similar to fees assessed on new development in San Bernardino County. The Fee Analysis Study can be reviewed at the WRCOG website (<https://ca-wrcog.civicplus.com/DocumentCenter/View/803>). Because of the findings from the Fee Analysis Study and other consideration the TUMF Nexus Study Ad Hoc Committee recommended that the WRCOG Committee structure consider a 2-year freeze and subsequent 2-year phase in for the proposed maximum retail fee, plus a 2-year single-family residential phase-in option for implementation.

Response A3-3: Please see MR-2. The Nexus Study does not, in and of itself, incentivize certain types of development. Allowable land uses are established through local jurisdiction general plans and zoning. Fee programs, like TUMF, are designed only to assess the impact of these uses on various types of infrastructure. If jurisdictions do not desire such uses, they have the authority to update those policy documents accordingly. The fundamental basis of the Nexus Study fees are the costs of improvements and the level of growth by land use type. For each different type of land use defined in the TUMF (residential, industrial, retail, etc.), fees are



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assigned primarily based the trips generated by that land use type. Therefore, the differences in fees by land uses ultimately derive from the travel behavior of persons using those land use types.

In the case of industrial uses, WRCOG acknowledges that there are unique aspects of these uses which make it difficult to fully mitigate impacts. For example, industrial trips tend to use freeway facilities more heavily than arterials. Because of these considerations and others, Riverside County Transportation Commission has commissioned a specific study to determine the feasibility of a logistics fee which would address additional impacts generated by these types of uses which are not addressed by the TUMF Program. WRCOG is participating in that study in an advisory capacity.

Response A3-4: Please see A3.1



LETTER A4

Building Industry Association, Riverside County Chapter

Clint Lorimore, Director of Government Affairs

April 13, 2017

Response A4-1: Please see MR-1.



LETTER A5

**Rutan & Tucker, LLP on behalf of BIA
Dan Lanferman, Rutan & Tucker, LLP
April 19, 2017**

Response A5-1: This comment makes a generalized statement about the nexus requirements of the Mitigation Fee Act, and does not identify specific areas where the Nexus Study fails to comply with state law. Specific comments on the Draft Nexus Study are addressed in this Response to Comments, and all fee requirements have been evaluated under the Mitigation Fee Act and have been found to satisfy the Act's nexus and other requirements. The Nexus Study has been independently peer reviewed to evaluate whether a reasonable approach has established the necessary nexus as required by the Mitigation Fee Act. The peer review concluded that the Nexus Study follows a reasonable methodology, makes the necessary Mitigation Fee Act findings, includes accurate calculations, and establishes a reasonable maximum, updated TUMF Fee.

Response A5-2: On September 27, 2013, California Governor Jerry Brown signed SB 743 into law fundamentally changing the way that transportation impacts are to be assessed pursuant to the California Environmental Quality Act (CEQA). The new law requires CEQA guidelines to be amended to provide an alternative to Level of Service for evaluating transportation impacts. The intent of the change is to introduce alternate criteria that "promote the reduction of greenhouse gas emissions, the development of multimodal transportation networks, and a diversity of land uses." (New Public Resources Code Section 21099(b)(1).) The primary effect of the new law is to establish the use of VMT as the preferred basis for measuring traffic impacts, in recognition of the fact that VMT more accurately reflects traffic impacts as it takes into account both the number of trips being made and the distance of those trips.

Linking the TUMF to VMT enables developers to continue to use TUMF participation as partial mitigation for their cumulative regional transportation impacts under the new SB 743 requirements. Previous input from our member agencies have stressed the importance of maintaining the linkage between TUMF and CEQA. Furthermore, consistent with SB 743, consideration of travel impacts in terms of peak period VMT more accurately reflects the realities of travel behavior as the basis for determining impacts on the regional transportation system by reflecting the peak demands on the system based on the number of trips AND the cumulative distance these trips occupy facilities in the system. Variation in trip length for different trip purposes is important to quantify since the impact associated with a trip is not limited to whether a trip occurs or not. A longer distance trip occupies more roadways over a longer period of time (all else being equal), and therefore goes through more intersections and consumes more capacity requiring greater levels



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of mitigation. As the purpose of the TUMF is to mitigate the traffic impacts of future growth, a VMT based approach better aligns with this purpose than a more simplistic trip-based methodology.

For the purposes of TUMF, VMT by trip purpose is derived from RivTAM for both the base and horizon years, and the growth in peak period VMT on the arterial network in Western Riverside County is used as the basis for calculating the proportional allocation of travel impacts resulting from growth in differing trip purposes and associated land uses. Additionally, cumulative travel demand in the peak period is also measured as the basis for identifying deficient roadway segments to be mitigated as part of the TUMF program, and also to account for existing deficiencies for exclusion from the program. Since RivTAM was developed based on the SCAG regional travel demand model, the underlying model travel characteristics were developed based on national and regional travel behavior surveys, including the 2010 U.S. Census and the 2010 California Household Travel Survey. The methodology for using travel demand models, including RivTAM, as the basis for calculating VMT is consistent with NEPA and CEQA guidance, and accepted industry practice.

- Response A5-3: As stated in Section 4.5 (Existing Obligated Funding) the TUMF network cost was adjusted accordingly to reflect the availability of obligated funds. This includes federal/state/local funding as included in the Southern California Association of Governments 2017 Federal Transportation Improvement Program (FTIP). A total of \$209.9 million in obligated funding was identified for improvements to the TUMF system. As stated in Section 4.6 (Unfunded Existing Improvement Needs) the cost for facilities identified as currently experiencing LOS E or F was adjusted. This was done by identifying the portion of any TUMF facility in the RivTAM 2012 Baseline scenario with a volume to capacity (v/c) ratio of greater than 0.9 (the threshold for LOS E), and extracting the share of the overall facility cost to improve that portion. The unfunded cost of existing highway improvement needs (including the related MSHCP obligation) totals \$449.8 million (Exhibit H in Nexus Study). The approval of SB1 and SB132 will result in an additional \$80 million in TUMF Network cost, for which the Nexus Study has been adjusted to account for recent state legislation.
- Response A5-4: Sections 4.5 (Existing Obligated Funding) and 4.6 (Unfunded Existing Improvement Needs) address accounting for obligated state/federal funding and existing need calculations.
- Response A5-5: Please see A5.1. The Nexus Study provides substantial evidence that is reasonable, credible, and of solid value to support the findings of the Study and meet the requirements of the Mitigation Fee Act.



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- Response A5-6: The Nexus Study contains criteria that a facility must meet to be considered for inclusion in the TUMF Program. Facilities are screened against the criteria before calculations for existing need are conducted.
- Response A5-7: WRCOG is authorized by state law and its joint powers agreement to act within the jurisdiction of its members. The police power is not limited to the jurisdictional boundaries of a public agency. If authorized by their governing bodies, Government Code § 6502 allows two or more public agencies by agreement to jointly exercise any power common to the contracting parties, including the authority to levy a fee, assessment, or tax. *San Diegans for Open Gov't v. City of San Diego*, 242 Cal. App. 4th 416 (2015). "It shall not be necessary that any power common to the contracting parties be exercisable by each such contracting party with respect to the geographical area in which such power is to be jointly exercised." State law recognizes the statewide importance of regional planning for the improvement of highways in that their effects can go beyond agency boundaries. *People ex rel Younger v. County of El Dorado*, 5 Cal.3d 480, 498 (1971); *So. Calif. Roads Co. v. McGuire* (2 Cal. 2d 115, 123 (1934)). A public improvement is not limited to being the municipal affair of the member agency when such project or projects "intrudes upon or transcends the boundary of one or several municipalities . . ." *Wilson v. City of San Bernardino*, 186 Cal. App. 2d 603, 611 (1960).
- WRCOG has the authority to transfer fee proceeds beyond the jurisdictions in which they are collected or generated. WRCOG is authorized by state law and its enabling joint powers agreement to explore avenues for intergovernmental coordination and specifically administer the TUMF fee program on behalf of its member agencies. Pursuant to Gov't Code § 66484, a local ordinance may require the payment of a fee as a condition of approval of a final map or as a condition of issuing a building permit for purposes of defraying the actual or estimated cost of constructing bridges and other thoroughfares. Section 66484 does not limit the fee condition to jurisdictional boundaries of the agency, but allows it to be calculated, collected, and expended based on the area of benefit. Member cities to a JPA may collect fees and remit those fees to the JPA for expenditure outside the jurisdiction.
- Response A5-8: WRCOG utilizes the Zone Transportation Improvement Programs (TIPs) to programmed TUMF funding for priority projects within a specific Zone. In 2016, WRCOG conducted a Five Year Expenditure Report to substantiate the purpose, need and use of regional development impact fees. This Five Year Expenditure Report was reviewed and distributed to WRCOG's committees for their review and comment. This document was approved by our Executive Committee on October 3, 2016.
- Response A5-9: As show the Five-Year Expenditure Report, WRCOG currently has approximately \$50 million in TUMF funds for disbursement to our member agencies, based on a reimbursement process. There are currently 29



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- projects with active reimbursement agreements totaling more than \$50 million. As such, the existing funds which WRCOG maintains are allocated to these projects which were previously completed or under construction. One example project is Nason Street, which was completed and was removed from the Nexus Study. However; WRCOG still has \$10 million of reimbursement to provide to the City of Moreno Valley for expense incurred related to construction.
- Response A5-10: WRCOG analyzed interest collected to date in our Expenditure Report, which were reinvested in the program and are dispersed to reimburse agencies for project expenses. On an annual basis, WRCOG currently accrues only \$400k in interest expenses.
- Response A5-11: This comment makes a general statement of law as to the reasonableness of fees that is required by the Mitigation Fee Act and Proposition 26. The Nexus Study provides substantial evidence that the proposed fees are the reasonable costs to providing necessary facilities and other improvements throughout the TUMF areas of benefit and contain a sufficient nexus to new development.
- Response A5-12: Please see MR-1. WRCOG utilizes the Zone Transportation Improvement Programs (TIPs) to program TUMF funding for priority projects within a specific Zone. In 2016, WRCOG conducted a Five Year Expenditure Report to substantiate the purpose, need and use of regional development impact fees.
- Response A5-13: The TUMF Network was reviewed and approved by the WRCOG Public Works Committee and Executive Committee, in December 2016 and January 2017, respectively. Funding to implement these projects come from a variety of sources. First, approximately 1/3 of all TUMF projects are delivered through fee credit agreements, financing districts, or similar mechanisms. Under these approaches, property owners construct TUMF improvements in exchange for TUMF credits. Second, WRCOG agencies regularly employ a variety of funding mechanisms such as Measure A, local DIF fees, City general funds, other regional funds, state funds, federal funds, grants, and other sources.
- Response A5-14: The TUMF unit cost assumptions were developed utilizing recent data available before approval by the WRCOG Public Works Committee.
- Response A5-15: Sections 4.5 (Existing Obligated Funding) and 4.6 (Unfunded Existing Improvement Needs) address accounting for obligated state/federal funding and existing need calculations.
- Response A5-16: The TUMF Calculation Handbook is utilized by WRCOG to address the TUMF assessment for various categories of development that have unique trip generating characteristics. On November 5, 2012, the WRCOG Executive Committee approved the revised TUMF Calculation Handbook to include a component for Transit Oriented Development.



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	The Handbook was updated to meet the requirement that impact fees for residential projects that meet specified Transit-Oriented Development (TOD) criteria, and to take into consideration the reduction in vehicle trips associated with TODs compared to residential projects without TOD characteristics.
Response A5-17:	The Nexus Study contains criteria that a facility must meet to be considered for inclusion in the TUMF Program. Facilities are screened against the criteria before calculations for existing need are conducted.
Response A5-18:	The TUMF Program specifically limits project eligibility to only capacity expansion in terms of new roadway lanes and new freeway ramp configurations, and associated widening of bridges, etc. The TUMF program specifically excludes projects that do not add new capacity and that are intended only to address maintenance or rehabilitation needs, except to the extent that the rehabilitation of existing roadway lanes, ramps or bridges are necessary as part of a broader capacity expansion project, in which case any associated rehabilitation work must be completed within the maximum TUMF share for the expansion project (i.e. no additional TUMF funding is made available to specifically accommodate rehabilitation costs above and beyond the TUMF maximum share costs associated with an eligible TUMF capacity expansion project).
Response A5-19:	Sections 4.5 (Existing Obligated Funding) and 4.6 (Unfunded Existing Improvement Needs) address accounting for obligated state/federal funding and existing need calculations.
Response A5-20:	Contingency rate of 10% utilized in the TUMF program is significantly less than the industry norm for conceptual cost estimation purposes. Specifically, Caltrans Cost Estimation Guidelines (August 2014) advocate for contingency rates of 30% to 50% of total costs to be used at the conceptual planning phase, with contingency rates reduced to 15% for cost estimation completed during PS&E.
Response A5-21:	See response A5.2
Response A5-22:	See response A5.2
Response A5-23:	See response A5.2
Response A5-24:	See response A5.2
Response A5-25:	See response A5.2. The TUMF nexus primarily utilizes peak hour conditions as the basis for the fee determination, although average and median daily trip generation rates for individual land uses are used on a comparative basis for weighting residential and non-residential fees, respectively, based on the considerably more expansive availability of



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	daily trip generation rate data versus hourly or peak period trip generation rates.
Response A5-26:	See response A5.2. The TUMF nexus primarily utilizes peak hour conditions as the basis for the fee determination to reflect the maximum levels of impact on the transportation system.
Response A5-27:	This statement is factually incorrect. There is an entire section of the Nexus Study (Section 4.6, pages 39-41) which documents the analysis related to Existing Need.
Response A5-28:	The WRCOG Executive Committee approves any policy changes to the TUMF Program, which can include exempting certain types of development. These are policy decisions that the Executive Committee approves through input from member jurisdictions.
Response A5-29:	An impact fee to address future development, the TUMF can only be charged on new development. Existing users on the TUMF Network are addressed through the calculation of existing need (Section 4.6, pages 39-41).
Response A5-30:	Government/public buildings, public schools, and public facilities are exempt from the TUMF, as described in the TUMF Ordinance and Administrative Plan. Though the use is exempt, the Nexus Study contains and describes the process of calculating a fee for this use to ensure that the impact of this use is not being passed on to another land use. Through policy action by the WRCOG Executive Committee, the use is exempt and the cost of the impacts of these uses are not passed onto other land use types.
Response A5-31:	The TUMF Network does not include the freeways of Western Riverside County as these facilities primarily serve longer distance inter-regional trips and a significant number of pass-through trips that have no origin or destination in Western Riverside County. Since pass-through trips have no origin or destination in Western Riverside County, new development within Western Riverside County cannot be considered responsible for mitigating the impacts of pass through trips. Additionally, VMT used as the basis for various TUMF calculations discussed previously specifically excludes the VMT for any portion of the trip that occurs outside Western Riverside County ensuring that only VMT in the TUMF arterial system is being accounted for in TUMF calculations. The application of the VMT methodology allows for the specific exclusion of arterial travel impacts outside of Western Riverside County to more accurately reflect associated impacts compared to prior versions of the TUMF which simply excluded a trip end from the calculation with no real consideration for the proportion of the trip that occurred in Western Riverside County.



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- Response A5-32: The approval of SB132 will result in an additional \$80 million in TUMF Network cost, for which the Nexus Study will be adjusted to account for recent state legislation as obligated funds.
- Response A5-33: Sections 4.5 (Existing Obligated Funding) and 4.6 (Unfunded Existing Improvement Needs) address accounting for obligated state/federal funding and existing need calculations.
- Response A5-34: SB132 obligates State funding for three specific projects included in the TUMF Network. Furthermore, to the extent gas taxes, etc. have been specifically identified in the regional TIP for use on an eligible TUMF project, these funds have been identified as obligated funding in the TUMF Program. Any additional funds raised by SB 1 would not automatically reduce the need for TUMF fees as SB 1 funds can be used for a wide range of projects, in addition to those associated with TUMF. Section 36 of SB 1 states that "Funding for the program (Road Maintenance and Rehabilitation program) shall be prioritized for expenditure on basic road maintenance and road rehabilitation projects, and on critical safety projects. Specifically, projects such as road maintenance and rehabilitation; safety projects; railroad grade separations; complete street components, including active transportation purposes, pedestrian and bicycle safety projects, transit facilities, and drainage and storm water capture projects in conjunction with any other allowable project; and traffic control devices can be funded from the program."
- Response A5-35: The TUMF Program (under the TUMF Administrative Plan) contains a provision which states that if a developer is conditioned to build a portion of the TUMF Network, the developer can receive credit for constructing the TUMF improvements. In addition, TUMF can be collected from a developer where there is a reasonable relationship between the fee charged and the burden posed by new development, even if the developer is required by a WRCOG member agency to construct internal city streets and access roads that are not included in the TUMF Program. Federal and state law does not preclude a member agency from imposing development requirements independent of TUMF for local impacts caused by new development.
- Response A5-36: The proposed action is not a "project" as defined by CEQA. The proposed action is a revision to an existing financing mechanism dependent on future actions to prioritize and schedule improvements to the RSHA. The appropriate environmental documentation will be completed before a project can commence construction.
- The TUMF was developed to mitigate the cumulative impacts of future growth and was not developed to mitigate project-specific traffic impacts. Accordingly the program does not relieve any development project of the responsibility to mitigate project-specific impacts identified in the environmental analysis prepared for the project. When a development



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project is required to construct RSHA facilities as project-specific mitigation, it shall be eligible for credit and or reimbursement.



LETTER A6

Proactive Engineering Consultants West on behalf of BIA

George Lenfestey

April 20, 2017

Response A6-1: Please see MR-6. The TUMF Network will be adjusted accordingly to account for facilities identified by the BIA as completed and/or partially completed. The TUMF Network will also be adjusted to account for obligated funding identified in recent state legislature (SB 132).

Response A6-2: The TUMF Program currently allows planning, engineering and contingency costs for eligible projects to be reimbursed through the Program. The TUMF Nexus Study currently defines planning costs as those associated with "planning, preliminary engineering and environmental assessment costs" with the eligible amount being 10% of the estimated TUMF eligible construction cost only. Engineering costs are defined in the TUMF Nexus Study as "project study report, design, permitting and construction oversight costs" based on 25% of the estimated eligible construction cost only. Contingency is provided based on 10% of the total estimated eligible facility cost.

The estimated cost factors for planning, engineering and contingency were initially established in 2002 by the WRCOG Public Works Committee responsible for the development of the initial TUMF Nexus Study. The percentage multipliers were established by consensus of the PWC based on the collective experience of members in delivering similar public highway projects. Furthermore, the contingency rate of 10% utilized in the TUMF program is significantly less than the industry norm for conceptual cost estimation purposes. Specifically, Caltrans Cost Estimation Guidelines (August 2014) advocate for contingency rates of 30% to 50% of total costs to be used at the conceptual planning phase, with contingency rates reduced to 15% for cost estimation completed during PS&E.

WRCOG has also reviewed the California Multi-Agency CIP Benchmarking Study, which involved several jurisdictions (Los Angeles, Long Beach, Oakland, San Diego, Sacramento, and San Jose) within the State and included components such as performance benchmarking, best management practices, and an online discussion forum. Included in the Study was a review of average delivery costs as a percentage of total project costs. For street projects (including widening/grade separations/bridges/bikeways/pedestrian ways/streetscapes) the average design cost of these types of projects is 31%.

Response A6-3: Since the inception of the Program, the Nexus Study includes an overall 75% global reduction to account for instances in which right-of-way is already secured. Even such, right-of-way is always uncertain and the total cost for right-of-way is not determined until a project is physically



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under way. BIA analysis show that almost 10 million square feet of right-of-way is needed for the 30 projects in the Network which they sampled (portion of the Program). BIA analysis confirmed that WRCOG understates how much right-of-way is required for TUMF projects by 30-40%. The comment letter does not acknowledge the global 75% reduction as shown on Exhibit F-3 of the Appendices to the Draft Nexus Study.



LETTER A7
KWC Engineers
Kenneth Crawford, President
April 21, 2017

Response A7-1: WRCOG appreciates the letter of support and looks forward to working with KWC Engineers as we move forward with the Nexus Study Update. Also, please see MR-1.



LETTER A8

NAIOP, Commercial Real Estate Development Association

Robert Evans, Executive Director

March 15, 2017

Response A8-1: WRCOG appreciates the letter of support and looks forward to working with NAIOP as we move forward with the Nexus Study Update.



LETTER A9
Pacific Retail Partners
Joe Meyer
April 20, 2017

- Response A9-1: The TUMF nexus accounts for the differing trip generation and attribution characteristics of residential and non-residential uses. Specifically, the allocation of mitigation costs to residential vs. non residential uses is based on trip purpose, with all home based trips, including home based shopping trips, being assigned to the residential use as the primary generator of the trip (consistent with the argument being made). Only work based other or other based other trips (including commercial and retail deliveries) are attributed to non-residential uses. Furthermore, trips for retail and service uses are also adjusted to reflect the influence of pass by trips.
- Response A9-2: WRCOG maintains a Fee Calculation Handbook and Administrative Plan which implement the Nexus Study through the collection of fees at an individual project level. This comment is primarily oriented towards the manner in which fees are collected for retail uses. WRCOG Staff is currently evaluating several approaches to ensure that the fee collection process replicates the assumptions in the Nexus Study. WRCOG Staff has previously met with several stakeholders regarding this topic and would be open to meeting with any stakeholder to discuss these issues or others as it relates to the ongoing implementation of the TUMF Program.
- Response A9-3: Retail development does generate trips that create an impact on the TUMF Network, which is accounted for in the Nexus Study. The WRCOG Executive Committee does have the authority to review particular types of development to make changes in TUMF calculations through policy revisions. The TUMF nexus is based on the latest available information available regarding the trip generation characteristics of specific use types, and the fee is weighted accordingly to reflect the differences in trip generation rates for different uses. Furthermore, the TUMF nexus is updated on a regular basis to account for changes in trip generation characteristics over time.
- Response A9-4: Please see MR-1. In 2016, WRCOG retained a consultant to conduct a comprehensive review of fees assessed on new development for all TUMF land uses in and around the WRCOG subregion. A key finding of this study concluded that except for the retail land use, fees assessed on new development in western Riverside County are similar to fees assessed on new development in San Bernardino County. The study completed can be reviewed on the WRCOG website.



LETTER A10
Corona Chamber of Commerce
Bobby Spiegel, President/CEO
April 28, 2017

Response A10-1: WRCOG appreciates the letter of support and looks forward to working with the Corona Chamber of Commerce as we move forward with the Nexus Study Update.



LETTER A11

The New Home Company

John Sherwood, Vice President, Community Development

April 28, 2017

Response A11-1: WRCOG appreciates the letter of support and looks forward to working with the New Home Company as we move forward with the Nexus Study Update.

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Western Riverside Council of Governments

Technical Advisory Committee

Staff Report

Subject: Community Choice Aggregation Program Activities Update

Contact: Barbara Spoonhour, Director of Energy and Environmental Programs,
spoonhour@wrcog.coq.ca.us, (951) 955-8313

Date: June 15, 2017

The purpose of this item is to provide the Committee with an update on efforts to establish a Community Choice Aggregation Program for the Western Riverside subregion.

Requested Action:

1. Request that the member jurisdictions forward the draft CCA Joint Powers Agreement and Bylaws to its respective City Attorneys for review and comment.

Community Choice Aggregation (CCA) allows cities and counties to aggregate their buying power to secure electrical energy supply contracts on a region-wide basis. In California, CCA (Assembly Bill 117) was chaptered in September 2002 and allows for local jurisdictions to form a CCA for this purpose. Several local jurisdictions throughout California are pursuing formation of CCAs as a way to lower energy costs and/or provide "greener" energy supply. WRCOG's Executive Committee has directed staff to pursue the feasibility of Community Choice Aggregation for Western Riverside County. WRCOG, the San Bernardino Council of Governments (SBCOG), and the Coachella Valley Association of Governments (CVAG) have funded a joint, two-county feasibility study in response to the Executive Committee's direction; the study has recently been completed.

CCA Activities Update

Draft Joint Powers Agreement and Bylaws: WRCOG's members have expressed a preference for WRCOG to provide staff support to the potential CCA during the initial stages of Agency start-up and operations, but have also agreed that a CCA should be a separate agency from WRCOG considering that the CCA members will include some but not all of the members who are in WRCOG. Consistent with this direction, staff and legal counsel have developed the attached draft documents. For the most part, the provisions in the Agreement are standard with and similar to WRCOG's JPA and other CCA JPA Agreements. A major deviation from the standard language is related to the proposed management arrangement between WRCOG and the CCA for the provision of management and oversight of CCA operations. Staff is working to refine the Scope of Services and will be presenting it to the Administration & Finance Committee at its July meeting.

On June 5, 2017, the CCA Ad Hoc Committee received a report on the revised draft CCA JPA (Attachment 1) and directed staff to release the draft CCA JPA and Bylaws to its members so that the member jurisdictions could provide the document to their respective legal counsels for review and input. Staff requests that comments be submitted to Ryan Baron with Best Best & Krieger at Ryan.Baron@bbkllaw.com by June 30, 2017. This will allow both staff and legal time to incorporate the comments by the July Administration & Finance Committee meeting date.

Request for Proposals (RFP) for CCA Operational Services: WRCOG released a RFP for CCA Operational

Assistance, which closed on April 6, 2017; the RFP was written in a manner whereby respondents could provide bids on all aspects of CCA operation for a potentially fully outsourced scenario. WRCOG and CVAG received nine (9) proposals and interviewed six (6) firms on May 23, 2019. WRCOG and CVAG will be holding a second interview with the top two proposers within the next few weeks. It is anticipated that a staff recommendation for consulting firm(s) selection will be brought to the Administration & Finance Committee in July.

Staffing: Staff is in the process of refining the Scope of Work / Services that WRCOG would provide to the CCA over the next three years. Currently, staff is looking to provide staffing, contract management, and seed money for the initial operations of the CCA. A draft Scope of Work / Services will be released in July for member review and comments.

Timeline: Staff is working to refine the timeline for launch of the CCA and has a goal of launching the municipal and 5% of the commercial accounts by July 2018, and the residential accounts a few months afterwards. A draft timeline is presented below.

Administrative / Governance	June	July	August	September	October	November	December	January	February	March	April	May	June	July	August
WRCOG Technical Advisory Committee to forward JPA															
WRCOG Administration & Finance Committee to forward JPA															
WRCOG Executive Committee approve JPA document															
Retain consulting firm(s)															
Cities to adopt Ordinance															
CCA Board to hold first meeting															
Adopt Implementation Plan															
Work with SCE on data transfer															
Launch Phase 1															
Launch Phase 2															
Marketing															
Branding: Program name, logo, core messaging															
Develop interactive website with translation and opt-out features															
Update FAQs and develop basic program collateral															
Develop and implement public outreach and marketing plan (including multi-lingual, multi-cultural)															
Community engagement presentations, public workshops, event tabling, local sponsorships/memberships, key stakeholder meetings, et al															
Press outreach / earned media (op-eds, feature stories, local radio and TV)															
Implement advertising campaign (paid media, social media, et al)															
Develop call center script / call center live															
Prepare customer enrollment notices; by phase, including NEM customers															
Manage customer enrollment printing and mailing															
Manage subsequent enrollments and develop ongoing community presence															

Prior Actions:

May 1, 2017:

The Executive Committee directed the Executive Director to move forward with the development of a Community Choice Aggregation Program focused on the Western Riverside subregion.

April 20, 2017:

The Technical Advisory Committee received report.

April 12, 2017:

The Administration & Finance Committee 1) concurred with the CCA Ad Hoc Committee recommendation that the Executive Committee direct the WRCOG Executive Director to move forward with the development of a Community Choice Aggregation Program for the Western Riverside subregion; 2) received report on the draft Joint Powers Agreement; and 3) concurred with the CCA Ad Hoc Committee recommendation to direct the

WRCOG Executive Director to set funding aside for the potential hiring of a Community Choice Aggregation Director.

Fiscal Impact:

WRCOG costs associated with CCA administration would be initially paid for from existing Agency carryover funds, and would be recouped from the CCA once it becomes operational. (An agreement between WRCOG and the CCA will identify responsibilities and mechanisms for cost recovery.) Salary costs will be covered from existing Agency carryover funds and will be recouped when the CCA becomes operational.

Attachments:

1. Revised draft Joint Powers Agreement.
2. CCA Bylaws.

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Item 6.B

Community Choice Aggregation
Program Activities Update

Attachment 1

Revised draft Joint Powers
Agreement

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JOINT POWERS AGREEMENT COMMUNITY CHOICE ENERGY

This Joint Powers Agreement (“**Agreement**”), effective as of _____, 2017 (“**Effective Date**”) is made and entered into pursuant to the provisions of Title 1, Division 7, Chapter 5, Article 1 (Section 6500 *et seq.*) of the California Government Code relating to the joint exercise of powers among the parties set forth in **Exhibit A** (“**Member Agencies**”). The term “**Member Agencies**” shall also include an incorporated municipality or county added to this Agreement in accordance with Section 3.1.

RECITALS

A. In 2002, AB 117 was signed into law allowing public agencies to aggregate the electrical load of interested consumers within their jurisdictional boundaries and purchase electricity on behalf of those consumers.

B. The Member Agencies desire to establish a separate public agency, known as _____ (“**Authority**”), under the provisions of the Joint Exercise of Powers Act of the State of California (Government Code § 6500 *et seq.*) (“**Act**”) in order to collectively study, promote, develop, conduct, operate, and manage energy programs, and exercise any powers common to the Authority’s members to further these purposes.

C. The Member Agencies have each adopted an ordinance electing to implement through the Authority a community choice aggregation program pursuant to California Public Utilities Code § 366.2. The priority of the Authority will be the consideration of those actions necessary to implement the program.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions hereinafter set forth, it is agreed by and among the Member Agencies as follows:

SECTION 1. FORMATION OF AUTHORITY

1.1 **Creation of Agency.** Pursuant to the Joint Exercise of Powers Act, California Government Code § 6500 *et seq.* and other pertinent provisions of law, there is hereby created a public entity to be known as the _____. The Authority shall be a public entity separate and apart from the Member Agencies.

1.2 **Effective Date and Term.** This Agreement shall become effective and Authority shall exist as a separate public agency on the date this Agreement is executed by at least two Member Agencies after adoption of the ordinances required by California Public Utilities Code § 366.2(c)(10). The Authority shall continue to exist, and this Agreement shall be effective, until this Agreement is terminated in accordance with Section 5, subject to the rights of a Member Agency to withdraw from the Authority.

1.3 Member Agencies. The names, particular capacities, and addresses of the Member Agencies are shown on Exhibit A, attached hereto, as may be amended from time to time.

1.4 Purpose. The purpose of this Agreement is to establish an independent public agency in order to exercise powers common to each Member Agency to study, promote, develop, conduct, operate, and manage energy, energy efficiency and conservation, and other energy-related and climate change programs (the “CCA Program”), and to exercise all other powers necessary and incidental to accomplishing this purpose. The Member Agencies intend for this Agreement to be used as a contractual mechanism by which the Member Agencies are authorized to participate in the CCA Program. The Member Agencies intend that other agreements shall define the terms and conditions associated with the implementation of the CCA Program and any energy programs approved by the Authority.

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1.5 Powers. The Authority shall have all powers common to the Member Agencies and such additional powers accorded to it by law. The Authority is authorized, in its own name, to exercise all powers and do all acts necessary and proper to carry out the provisions of this Agreement and fulfill its purpose, including, but not limited to, each of the following powers:

1.5.1 Serve as a forum for the consideration, study, and recommendation of energy services for the CCA Program;

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1.5.2 To make and enter into any and all contracts to effectuate the purpose of this Agreement, including, but not limited to, those relating to the purchase or sale of electrical energy or attributes thereof, and related service agreements;

1.5.3 To employ agents and employees, including, but not limited to, engineers, attorneys, planners, financial consultants, and separate and apart therefrom to employ such other persons, as it deems necessary;

1.5.4 To acquire, contract, manage, maintain, and operate any buildings, works, or improvements, including, but not limited to, electric generating facilities;

1.5.5 To acquire property by eminent domain, or otherwise, except as limited by section 6508 of the Act, and to hold or dispose of property;

1.5.6 To lease any property;

1.5.7 To use and be sued in its own name;

1.5.8 To incur debts, liabilities, and obligations, including, but not limited to, loans from private lending sources pursuant to its temporary borrowing powers, such as California Government Code § 53850 *et seq.* and authority under the Act;

1.5.9 To form subsidiary or independent corporations or entities, if appropriate, to carry out energy supply and energy conservation programs, or to take advantage of legislative or regulatory changes;

1.5.10 To issue revenue bonds and other forms of indebtedness;

1.5.11 To apply for, accept, and receive all licenses, permits, grants, loans, or other assistance from any federal, state, or local agency;

1.5.12 To submit documentation and notices, register, and comply with orders, tariffs, and agreements for the establishment and implementation of the CCA Program and other energy and climate change programs;

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1.5.13 To adopt rules, regulations, policies, bylaws, and procedures governing the operation of the Authority; and

1.5.14 To receive gifts, contributions, and donations of property, funds, services, and other forms of financial assistance from persons, firms, corporations, and any governmental entity.

1.6 Manner of Exercising Powers. The powers of the Authority are subject to the restrictions upon the manner of exercising power possessed by a general law city,

Deleted: the [INSERT MEMBER AGENCY

SECTION 2: GOVERNANCE

2.1 Board of Directors. The governing body of the Authority shall be a Board of Directors consisting of one director for each Member Agency appointed in accordance with Section 2.2.

2.2 Appointment of Directors. The governing body of each Member Agency shall appoint and designate in writing one regular Director who shall be authorized to act for and on behalf of the Member Agency on matters within the powers of the Authority. The governing body of each Member Agency shall also appoint and designate in writing one alternate Director who may vote in matters when the regular Director is absent from a Board meeting. The person appointed and designated as the regular Director and the alternate Director shall be a member of the governing body of the Member Agency.

2.3 Terms of Office. Each regular and alternate Director shall serve at the pleasure of the governing body of the Member Agency that the Director represents, and may be removed as Director by the governing body of the Member Agency at any time. If at any time a vacancy occurs on the Board, a replacement shall be appointed by the governing body to fill the position of the previous Director within 30 days of the date that such position becomes vacant.

2.4 Quorum. A majority of the Directors of the entire Board shall constitute a quorum, except that less than a quorum may adjourn a meeting from time to time in accordance with law.

2.5 Powers of the Board of Directors. The Board may exercise all the powers enumerated in this Agreement and shall conduct all business and activities of the Authority consistent with this Agreement and any bylaws, operating procedures, and applicable law.

2.6 Executive Committee. The Board may establish an executive committee consisting of a smaller number of Directors. The Board may delegate to the executive committee such authority as the Board might otherwise exercise.

2.7 Committees. The Board may establish advisory committees as the Board deems appropriate to assist the Board in carrying out its functions and implementing the purposes of this Agreement.

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2.8 Director Compensation. The Board may adopt policies establishing a stipend to compensate work performed by a Director on behalf of the Authority as well as policies for the reimbursement of expenses incurred by a Director.

2.9 Voting by the Board of Directors. Each member of the Board or participating alternate shall be entitled to one vote. Action of the Board on all matters shall require an affirmative vote of a majority of all Directors present and qualified to vote constituting a quorum.

2.10 Officers.

2.10.1 Chair and Vice Chair. On an annual basis, the Directors shall select from among themselves, a Chair and a Vice-Chair. The Chair shall be the presiding officer of all Board meetings. The Vice-Chair shall serve in the absence of the Chair. The term of office of the Chair and Vice-Chair shall continue for one year. There shall be no limit on the number of terms held by either the Chair or Vice-Chair. The office of either the Chair or Vice-Chair shall be declared vacant and a new selection shall be made if: (a) the person serving dies, resigns, or the Member Agency that the person represents removes the person as its representative on the Board, or (b) the Member Agency that he or she represents withdraws from the Authority pursuant to the provisions of this Agreement.

2.10.2 Secretary. The Board shall appoint a Secretary who need not be a member of the Board. The Secretary shall be responsible for keeping the minutes of all meetings of the Board and all other official records of the Authority.

2.10.3 Treasurer/Auditor. The Board shall appoint a qualified person to act as the Treasurer and a qualified person to act as the Auditor, neither of whom need be members of the Board. If the Board so designates, and in accordance with the provisions of applicable law, a qualified person may be appointed as the Treasurer and Auditor.

Such person or persons shall possess the powers of, and shall perform those functions required of them by California Government Code §§ 6505, 6505.5, and 6505.6, and by all other applicable laws and regulations and amendments thereto.

2.11 Meetings. The Board shall provide for its regular meetings, the date, hour, and place of which shall be fixed by resolution of the Board. Regular, adjourned, and special meetings shall be called and conducted in accordance with the provisions of the Ralph M. Brown Act, California Government Code § 54950 *et seq.*

2.12 Executive Director. The Executive Director shall be the chief administrative officer of the Western Riverside Council of Governments, or whomever is appointed by the Board thereafter. Compensation shall be fixed by the Board. The powers and duties of the Executive Director shall be subject to the authority of the Board.

Commented [2]: Was WRCOG doing a recruitment for a director for CCA? If so, does this need to be changed?

2.13 Initial Administration of Authority. The Authority will be initially administered by the Western Riverside Council of Governments ("WRCOG"), which shall provide Executive Director, staff, and consultant services to the Authority. WRCOG shall provide administrative services for three years from the Effective Date of this Agreement, pursuant to a services agreement, attached hereto as Exhibit B. The term and conditions of the administrative services agreement may be extended by mutual agreement of WRCOG and the Authority without further amendment of this Agreement, as set forth in the administrative services agreement.

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2.14 Additional Officers and Employees. The Board shall have the power to authorize such additional officers and assistants as may be appropriate, including retaining one or more administrative service providers for planning, implementing, and administering the CCA Program. Such officers and employees may also be, but are not required to be, officers and employees of the individual Member Agencies.

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2.15 Bonding Requirement. The officers or persons who have charge of, handle, or have access to any property of the Authority shall be the members of the Board, the Treasurer, the Executive Director, and any such officers or persons to be designated or empowered by the Board. Each such officer or person shall be required to file an official bond with the Authority in an amount which shall be established by the Board. Should the existing bond or bonds of any such officer be extended to cover the obligations provided herein, said bond shall be the official bond required herein. The premiums on any such bond attributable to the coverage required herein shall be the appropriate expenses of the Authority.

2.16 Audit. The records and accounts of the Authority shall be audited annually by an independent certified public accountant and copies of such audit report shall be filed with the State Controller, and each Member Agency to the Authority no later than fifteen (15) days after receipt of said audit by the Board.

SECTION 3: PARTICIPATION IN AUTHORITY AND IMPLEMENTATION OF CCA PROGRAM

3.1 Participation in Authority. An interested incorporated municipality or county may become a Member Agency of the Authority and a party to this Agreement upon approval by the Board and satisfaction of the following:

3.1.1 Adoption of a resolution by the governing body of an incorporated municipality or county requesting participation and an intent to join the Authority;

3.1.2 Adoption of an ordinance required by California Public Utilities Code § 366.2(c)(12) and execution of all necessary CCA Program documents by an incorporated municipality or county;

3.1.3 Adoption by the Board of a resolution authorizing participation of the additional incorporated municipality or county;

3.1.4 Payment of a membership payment, if any; and

3.1.5 Satisfaction of any conditions established by the Board.

3.2 Continuing Participation. The Member Agencies acknowledge that participation in the CCA Program may change by the addition or withdrawal or termination of a Member Agency. The Member Agencies agree to participate with additional Member Agencies as may later be added. The Member Agencies also agree that the withdrawal or termination of a Member Agency shall not affect this Agreement or the remaining Member Agencies' continuing obligations under this Agreement.

3.3 Implementation of CCA Program

3.3.1 Enabling Ordinance. Each Member Agency shall adopt an ordinance in accordance with California Public Utilities Code § 366.2(c)(12) specifying that the Member Agency intends to implement a community choice aggregation program by and through its participation in this Authority.

3.3.2 Implementation Plan. The Authority shall cause to be prepared an implementation plan meeting the requirements of California Public Utilities Code § 366.2 and any applicable regulations of the California Public Utilities Commission ("CPUC"). The Board shall approve the implementation plan prior to it being filed with the CPUC.

3.4 Authority Documents. The Member Agencies acknowledge and agree that the operations of the Authority will be implemented through various program documents and regulatory filings duly adopted by the Board, including, but not limited to, operating rules, an annual budget, and plans and policies related to the provision of the CCA Program. The Member Agencies agree to abide by and comply with the terms and conditions of all such Authority documents that may be approved or adopted by the Board.

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Commented [3]: Adoption of a resolution of intent is required when a city authorizes another city to be the CCA on its behalf. The city CCA then adopts an ordinance.

Two or more cities authorized to be CCAs can form a JPA after first adopting an ordinance.

Commented [4]: The statute requires adoption of an ordinance by the member cities joining a CCA JPA.

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Commented [5]: Adoption of a resolution is not required by state law, but many JPAs utilize this procedure for adding new member agencies. If the procedure is deleted, this will read:

Approval by a vote of all Directors of the Board authorizing participation of the additional incorporated municipality or county

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Commented [6]: Some CCA JPAs specify that the Authority will craft an integrated resource plan and business plan. The IRP is required by the CPUC but neither of these need to be specified in the JPA

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3.5 Termination of CCA Program. Nothing contained in this Agreement shall be construed to limit the discretion of the Authority to terminate the implementation or operation of the CCA Program at any time in accordance with any applicable requirements of state law.

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SECTION 4: FINANCIAL PROVISIONS

4.1 Fiscal Year. The Authority's fiscal year shall be twelve (12) months commencing July 1 of each year and ending June 30 of the succeeding year.

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4.2 Treasurer. The Treasury of the member agency whose Treasurer is the Treasurer for the Authority shall be the depository for the Authority. The Treasurer of the Authority shall have custody of all funds and shall provide for strict accountability thereof in accordance with California Government Code § 6505.5 and other applicable laws. The Treasurer shall perform all of the duties required in California Government Code § 6505 *et seq.* and all other such duties as may be prescribed by the Board.

4.3 Depository & Accounting. All funds of the Authority shall be held in separate accounts in the name of the Authority and not commingled with the funds of any Member Agency or any other person or entity. Disbursement of such funds during the term of this Agreement shall be accounted for in accordance with generally accepted accounting principles applicable to governmental entities and pursuant to California Government Code § 6505 *et seq.* and other applicable laws. There shall be a strict accountability of all funds. All revenues and expenditures shall be reported to the Board. The books and records of the Authority shall be open to inspection by the Member Agencies at all reasonable times.

4.4 Budget. The Board shall establish the budget for the Authority, and may from time to time amend the budget to incorporate additional income and disbursements that might become available to the Authority for its purposes during a fiscal year.

4.5 Initial Funding of Authority. WRCOG has funded certain activities necessary to implement the CCA Program. If the program becomes operational, these initial costs shall be included in the customer charges for electric services to the extent permitted by law, and WRCOG shall be reimbursed from the payment of such charges by customers of the Authority pursuant to a reimbursement agreement between Authority and WRCOG. Prior to such reimbursement, WRCOG shall provide such documentation of costs paid as the Board may request. The Authority may establish a reasonable time period over which such costs are recovered. In the event the program does not become operational, WRCOG shall not be entitled to any reimbursement of the initial costs.

Deleted: 4.5 Expenditures. All expenditures shall be made in accordance with the approved budget and upon approval of any officer so authorized by the Board. The Treasurer shall draw checks and warrants or make payments by other means for claims or disbursements not within an applicable budget only upon the prior approval of the Board. ¶

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4.6 No Liability to the Member Agencies. The debts, liabilities, or obligations of the Authority shall not be the debts, liabilities, or obligations of the individual Member Agencies unless the governing board of a Member Agency agrees in writing to assume any of the debts, liabilities, or obligations of the Authority.

SECTION 5: WITHDRAWAL AND TERMINATION

5.1 Right to Withdraw. A Member Agency may withdraw its membership in the Authority, effective as of the beginning of the Authority's fiscal year, by giving no less than 180 days advance written notice of its election to do so, which notice shall be given to the Authority and each Member Agency. Withdrawal of a Member Agency shall require an affirmative vote of the Member Agency's governing board. A Member Agency that withdraws its participation in the Authority pursuant to this subsection may be subject to certain continuing liabilities as described in Section 5.4. The withdrawing Member Agency and the Authority shall execute and deliver all further instruments and documents, and take any further action that may be reasonably necessary, as determined by the Board, to effectuate the orderly withdrawal of such Member Agency.

Commented [7]: Note that this requires an affirmative vote of the entire Board, not a majority of a quorum.

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5.2 Right to Withdraw Prior to Program Launch. After receiving bids from power suppliers, the Authority must provide to the Member Agencies the report from the electrical utility consultant retained by the Authority that compares the total estimated electrical rates that the Authority will be charging to customers as well as the estimated greenhouse gas emissions rate and the amount of estimated renewable energy used with that of the incumbent utility. If the report provides that the Authority is unable to provide total electrical rates, as part of its baseline offering, to the customers that are equal to or lower than the incumbent utility or to provide power in a manner that has a lower greenhouse gas emissions rate or uses more renewable energy than the incumbent utility, a Member Agency may immediately withdraw its membership in the Authority without any financial obligation, as long as the Member Agency provides written notice of its intent to withdraw to the Authority Board no more than thirty (30) days after receiving the report.

Commented [8]: The other withdrawal option that some CCAs offer is the ability to withdraw after an amendment to the CCA whereby a Member Agency doesn't agree with the amendment. I believe we agreed not to include such a provision. However, if you do want to include, it would read as follows:

Right to Withdraw After Amendment. Notwithstanding Section 5.1, a Party may withdraw its membership in the Authority following an amendment to this Agreement adopted by the Board which the Party's Director(s) voted against provided such notice is given in writing within thirty (30) days following the date of the vote. Withdrawal of a Party shall require an affirmative vote of the Party's governing board and shall not be subject to the six month advance notice provided in Section 5.1. In the event of such withdrawal, the Party shall be subject to the provisions of Section 5.4.

Commented [9]: This is 15 days in other CCAs but we settled on 30.

Moved up [1]: A Member Agency that withdraws its participation in the Authority may be subject to certain continuing liabilities as described herein. The withdrawing Member Agency and the Authority shall execute and deliver all further instruments and documents, and take any further action that may be reasonably necessary, as determined by the Board, to effectuate the orderly withdrawal of such Member Agency.

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5.3 Involuntary Termination. Membership in the Authority may be terminated for material non-compliance with the provisions of this Agreement or any other agreement or Board operating procedure relating to the Member Agency's participation in the CCA Program upon a vote of the Board.

5.4 Continuing Liability. Except as provided by Section 5.2, upon the withdrawal or involuntary termination of a Member Agency, the Member Agency shall remain responsible for any claims, demands, damages, or liabilities arising from the Member Agency's membership or participation in the Authority through the date of its withdrawal or termination. Claims, demands, damages, or liabilities for which a withdrawing or terminated Member Agency may remain liable, include, but are not limited to, losses from the resale of power contracted for by the Authority to serve the Member Agency's load and the administrative costs associated thereto. The Authority may withhold funds otherwise owed to the Member Agency or require the Member Agency to deposit sufficient funds with the Authority, as reasonably determined by the Authority to cover the Member Agency's costs described above. Upon notice by a Member Agency that desire to withdraw from the Authority, the Authority shall notify the Member Agency of the minimum waiting period under which the Member Agency would have no costs for withdrawal if the Member Agency agrees to stay in for such period. The waiting period will be set to the minimum duration such that there are no costs transferred to remaining ratepayers. If the Member Agency elects to withdraw from the Authority before the end of the minimum

waiting period, the charge for exiting shall be set at a dollar amount that would offset the actual costs to the remaining ratepayers served by the Authority, and may not include punitive damages that exceed actual costs.

5.5 Mutual Termination. This Agreement may be terminated by mutual agreement of all the Member Agencies; provided, however, that this subsection shall not be construed as limiting the rights of a Member Agency to withdraw in accordance with Section 5.1.

5.6 Disposition of Authority Assets Upon Termination of Agreement. Upon termination of this Agreement, any surplus money or assets in possession of the Authority for use under this Agreement, after payment of all liabilities, costs, expenses, and charges incurred by the Authority, shall be returned to the then-existing Member Agencies in proportion to the contributions made by each.

SECTION 6: MISCELLANEOUS PROVISIONS

6.1 Dispute Resolution. The Member Agencies and Authority shall make efforts to settle all disputes arising out of or in connection with this Agreement. Before exercising any remedy provided by law, a Member Agency or Member Agencies and the Authority shall engage in nonbinding mediation in the manner agreed to by the Member Agency or Member Agencies and the Authority. In the event that nonbinding mediation does not resolve a dispute within 120 days after the demand for mediation is made, any Member Agency or the Authority may pursue any all remedies provided by law.

6.2 Liability of Directors, Officers, and Employees. The Directors, officers, and employees of the Authority shall use ordinary care and reasonable diligence in the exercise of their powers and in the performance of their duties pursuant to this Agreement. No current or former Director, officer, or employee will be responsible for any act or omission by another Director, officer, or employee. The Authority shall defend, indemnify, and hold harmless the individual current and former Directors, officers, and employees for any acts or omissions in the scope of their employment or duties in the manner provided by California Government Code § 995 *et seq.* Nothing in this section shall be construed to limit the defenses available under the law to the Member Agencies, the Authority, or its Directors, officers, or employees.

6.3 Indemnification. The Authority shall acquire such insurance coverage as the Board deems necessary to protect the interests of the Authority, the Member Agencies, and the Authority's ratepayers. The Authority shall indemnify, defend, and hold harmless the Member Agencies and each of their respective members board or council members, officers, agents, and employees, from any and all claims, losses, damages, costs, injuries, and liabilities of every kind arising directly or indirectly from the conduct, activities, operations, acts, and omissions of the Authority under this Agreement.

6.4 Amendment of Agreement. This Agreement may be amended in writing with the approval of not less than two-thirds (2/3) of a vote of the Member Agencies.

Commented [10]: This provision is sometimes added to CCA liability provisions. I would think that the Board could also fashion additional termination requirements in its operating procedures:

In addition, such Party shall also be responsible for any costs or obligations associated with the Party's participation in any program in accordance with the provisions of any agreements relating to such program provided such costs or obligations were incurred prior to the withdrawal of the Party. The Authority may withhold funds otherwise owing to the Party or may require the Party to deposit sufficient funds with the Authority, as reasonably determined by the Authority and approved by a vote of the Board of Directors, to cover the Party's financial obligations for the costs described above. Any amount of the Party's funds held on deposit with the Authority above that which is required to pay any financial obligations shall be returned to the Party. The liability of any Party under this section 6.3 is subject and subordinate to the provisions of Section 2.2, and nothing in this section 6.3 shall reduce, impair, or eliminate any immunity from liability provided by Section 2.2.

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6.5 Assignment. Except as otherwise expressly provided in this Agreement, the rights and duties of the Member Agencies may not be assigned or delegated without the advance written consent of all other Member Agencies. Any attempt to assign or delegate such rights or duties without express written consent shall be null and void. This Agreement shall inure to the benefit of, and shall be binding upon, the successors and assigns of the Member Agencies. This section does not prohibit a Member Agency from entering into an independent agreement with another entity regarding the financing of that Member Agency's contributions to the Authority, or the disposition of proceeds which that Member Agency receives under this Agreement, so long as such independent agreement does not affect, or purport to affect, the rights and duties of the Authority or the Member Agencies under this Agreement.

6.6 Severability. If any part of this Agreement is held, determined, or adjudicated to be illegal, void, or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

6.7 Further Assurances. Each Member Agency agrees to execute and deliver all further instruments and documents, and take any further action that may be reasonably necessary to effectuate the purposes of this Agreement.

6.8 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

6.9 Notices. Any notice authorized or required to be given pursuant to this Agreement shall be validly given if served in writing either personally, by deposit in the United States mail, first class postage prepaid with return receipt requested, or by a recognized courier service. Notices given (a) personally or by courier service shall be conclusively deemed received at the time of delivery and receipt and (b) by mail shall be conclusively deemed given 48 hours after the deposit thereof (excluding Saturdays, Sundays and holidays) if the sender receives the return receipt. All notices shall be addressed to the office of the clerk or secretary of the Authority or Member Agency, as the case may be, or such other person designated in writing by the Authority or Member Agency. Notices given to one Member Agency shall be copied to all other Member Agencies. Notices given to the Authority shall be copied to all Member Agencies.

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[INSERT SIGNATURE PAGES]

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EXHIBIT A
List of Member Agencies

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EXHIBIT B

**Administrative Services Agreement with the
Western Riverside Council of Governments**

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Item 6.B

Community Choice Aggregation
Program Activities Update

Attachment 2

CCA Bylaws

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**BYLAWS FOR THE
_____ ENERGY AUTHORITY**

**ARTICLE I
FORMATION**

These Bylaws are provided for the organization and administration of the _____ Energy Authority (“**Authority**”) which has been established pursuant to the _____ Authority Joint Powers Agreement (“**Agreement**”). These Bylaws supplement the Agreement.

**ARTICLE II
PURPOSES**

The Authority is formed to study, promote, develop, conduct, operate, and manage energy and energy-related climate change programs, and to exercise all other powers necessary and incidental to accomplishing this purpose. These programs include, but are not limited to, the establishment of a Community Choice Aggregation Program known as the CCA Energy Program in accordance with the terms of the Agreement.

**ARTICLE III
BOARD OF DIRECTORS**

Section 1. Board of Directors.

The Authority shall be governed by a Board of Directors composed of one representative of each of the Member Agencies. The Board shall have all the powers and functions as set forth in Section 1.5 of the Agreement. The governing body of each Member Agency shall appoint and designate in writing to the Authority one regular Director who shall be authorized to act for and on behalf of the Member on all matters within the power of the Authority. The governing body of each Member Agency shall also appoint and designate in writing to the Authority one alternate Director who may vote on all matters when the regular Director is absent for a Board meeting. Both the Director and the Alternate Director shall be members of the governing body of the Member Agency.

Section 2. Appointment

Each Director and Alternate Director shall serve at the pleasure of the governing body of the Member Agency that the Director represents and may be removed as Director or Alternate Director by such governing body at any time.

Section 3. Vacancy

If at any time a vacancy occurs on the Board, for whatever reason, a replacement shall be appointed by the governing body of the subject member to fill the position of the previous Director within ninety days of the date that such position becomes vacant.

**ARTICLE IV
OFFICERS AND TERMS OF OFFICE**

Section 1. Officers

There shall be a Chairperson, a Vice-Chairperson, a Secretary and a Treasurer.

- A. Chairperson. The Chairperson of the Authority shall be a Director. Duties of the Chairperson are to supervise the preparation of the business agenda, preside over Authority meetings, and sign all ordinances, resolutions, contracts and correspondence adopted or authorized by the Board. The term of office of the Chairperson shall be for one year.
- B. Vice-Chairperson. The Vice-Chairperson shall be a Director. The Vice-Chairperson shall perform the duties of Chairperson in the absence of such officer. The term of office of the Vice-Chairperson shall be for one year.
- C. Secretary. The Secretary will supervise the preparation of the meeting minutes and the maintenance of the records of the Authority. The term of the Secretary shall be for one year. The Secretary does not need to be a Director.
- D. Treasurer and Auditor. The Treasurer shall have custody of all the money of the Authority and shall have all of the duties and responsibilities specified in Government Code § 6505.5. The Treasurer shall report directly to the Board and shall comply with the requirements of treasurers of incorporated municipalities. The positions of Treasurer and Auditor may be combined into one position known as the Treasurer/Auditor of the Authority. Neither the Treasurer nor the Auditor needs to be a Director. The term of the Treasurer and Auditor shall be for one year. The Board may transfer the responsibilities of the Treasurer and Auditor to any person or entity permitted by law.
- E. Election of Officers. An annual meeting of the Board shall be held in [INSERT MONTH] of each year or as soon thereafter as possible to elect the officers of the Authority.
- F. Terms of Office. The elected Chairperson and Vice-Chairperson shall assume office at the close of the meeting of their election and each officer shall hold office for one year, or until his or her successor shall be elected.
- G. No Term Limits. There are no limits on the numbers of terms that an officer of the Authority may serve.
- H. Committees. The Board or the Chairperson may delegate specified functions or actions to a committee that may be established by the Board. Each duly established committee may establish any standing or ad hoc committees determined to be appropriate or necessary. The duties and authority of all committees shall be subject to the approval and direction of the Board.

ARTICLE V MEETINGS

Section 1. Regular Meetings

The Board by resolution shall establish the date, time and meeting location of all regular meetings of the Board. Special meetings may be called upon the request of a majority of the members of the Board or by the Chairperson.

Section 2. Open Meetings

The meetings of the Board, the Executive Committee and all other committees established by the Board shall be governed by the provisions of the Ralph M. Brown Act (California Government Code § 54950 *et seq.*).

ARTICLE VI VOTING

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Each member of the Board shall have one vote on all matters unless otherwise provided by the Agreement or these Bylaws. Unless the Agreement or these Bylaws require a two-thirds vote, action on all items shall be determined by a majority vote of the quorum present and voting on the item.

ARTICLE VII POLICY REGARDING CONFIDENTIAL INFORMATION DISCLOSED DURING CLOSED SESSIONS

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It is vital that members of the Board divulge certain privileged information obtained in closed sessions at the Authority to their own governing bodies meeting in closed sessions. Thus, these Bylaws adopt the policy set forth in California Government Code § 54956.96, which authorizes the disclosure of closed session information that has direct financial or liability implications for that Member Agency to the following individuals.

- A. All information received by the governing body of the Member Agency in a closed session related to the information presented to the Authority in closed session shall be confidential. However, a member of the governing body of a Member Agency, or his/her duly appointed alternate to the Authority, may disclose information obtained in a closed session that has direct financial or liability implications for that Member Agency to the following individuals:
1. Legal counsel of that Member Agency for purposes of obtaining advice on whether the matter has direct financial or liability implications for that Member Agency.
 2. Other members of the governing body of the Member Agency present in a closed session of that Member Agency, as well as other persons that may be invited to attend the closed session by the Member Agency's governing body.

- B. The governing body of the Member Agency, upon the advice of its legal counsel, may conduct a closed session in order to receive, discuss, and take action concerning information obtained in a closed session of the Authority pursuant to this policy.

ARTICLE ~~VIII~~
EXECUTIVE DIRECTOR

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Section 1. Duties.

In addition to those duties set forth in the Agreement, the duties of the Executive Director are:

- A. To administer all contracts.
- B. To have full charge of the administration of the business affairs of the Authority.
- C. To exercise general supervision over all property of the Authority.
- D. To accept, on behalf of the Authority, easements and other property rights and interests.
- E. To be responsible for the purchase of all supplies and equipment of the Authority.
- F. Carry out all other duties and responsibilities as authorized by the Board.

Section 2. Contracts.

The Executive Director is authorized to contract and execute on behalf of the Authority and without Board approval, contracts for supplies, equipment and materials, and consultants not to exceed \$100,000.00, provided the contract relates to purposes previously approved and budgeted by the Board.

ARTICLE ~~IX~~
DEBTS, LIABILITIES AND OBLIGATIONS

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As provided by Section 6.2 of the Agreement, the debts, liabilities and obligations of the Authority shall not be debts, liabilities or obligations of the individual Member Agencies.

ARTICLE ~~X~~
AMENDMENTS

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These Bylaws and any amendments may be amended by the Board.