

Lockey, Heather@CNRA

From: Cynthia Kellman <cpk@cbcearthlaw.com>
Sent: Thursday, March 15, 2018 4:54 PM
To: CEQA Guidelines@CNRA
Subject: Proposed CEQA Guidelines
Attachments: Proposed CEQA Guidelines.pdf

Dear Mr. Calfee,

Please disregard my previous email. Attached is the full letter with attachments from Douglas Carstens.

Again, please feel free to contact me with any questions or concerns.

Thank you,

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March 15, 2018

Christopher Calfee, Deputy Secretary and General Counsel
California Natural Resources Agency
1416 Ninth Street, Suite 1311
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By email: CEQA.Guidelines@resources.ca.gov

Re: Proposed CEQA Guidelines

Dear Mr. Calfee:

We appreciate the opportunity to submit comments on the Proposed CEQA Guidelines. As an initial matter, CEQA must be interpreted to provide the fullest possible protection to the environment consistent with statutory mandates. (*Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259.) The Guidelines should promote public involvement in the environmental review process and ensure the protection of California's precious environment.

We are concerned that many Guidelines proposals are setting a low bar or the lowest common denominator as the minimum requirements of CEQA rather than encouraging public agencies to provide more public involvement and greater environmental protections as they implement CEQA. On October 12, 2015, we sent a letter to the Office of Planning and Research on behalf of the Planning and Conservation League (2015 PCL Letter). (Enclosure 1.) A copy of that letter is attached because responses to many of the comments are not reflected in the proposed guidelines.

The following are our comments on specific proposals:

15004- This proposal still suffers from the defects we identified in the attached 2015 PCL Letter. **We urge that further revisions be made as identified in the attached 2015 PCL Letter.**

15124 – Project Description: the proposal would include alleged benefits of the project so that decision makers could “balance, if needed, a project’s benefits against its

environmental cost.” This is problematic since it could bleed into limiting project objectives and restraining the range of alternatives analyzed. The purpose of the project description is to provide factual information necessary to analyze potential impacts, not an advocacy statement of alleged benefits. Therefore, **the amendment to add project benefits to Section 15124(b) should be deleted.**

15125 – Environmental Setting: this section suffers the same defects we identified in the attached 2015 PCL Letter. **Illegal and unpermitted activities should be accounted for and excluded from a baseline as suggested in the 2015 PCL Letter.**

15126.4 – Consideration and Discussion of Mitigation Measures Proposed to Minimize Significant Effects: we concerned about provisions allowing deferral of mitigation. The proposed amendment to Section 15126.4 allows the lead agency to defer formulation of mitigation measures when it is “impractical or infeasible” to include details during the project’s environmental review. The various provisions appear to significantly weaken any assurance that mitigation measures will be known, effective, and enforceable. Therefore, **Section 15126.4 should be amended to delete the phrase “impractical or”.**

15269 – Emergency Projects: the proposal expands the exemption to include emergency repairs that require some planning. These would not really be emergencies for purposes of CEQA. Similarly, preventative work would not be an emergency condition. **We suggested an alternative version in the attached 2015 PCL Letter.**

15357- still problematic as identified in the attached 2015 PCL Letter.

Appendix G- Many of our comments in the attached 2015 PCL Letter still apply and we reaffirm those.

Furthermore, encouraging infill rather than greenfield development is superior for the environment generally in terms of greenhouse gas generation and other environmental impacts. We urge you to consider the information at the following links:

--- “Why Creating and Preserving Affordable Homes Near Transit is a Highly Effective Climate Protection Strategy”
(<http://www.transformca.org/sites/default/files/CHPC%20TF%20Affordable%20TOD%20Climate%20Strategy%20BOOKLET%20FORMAT.pdf>)

---CAPCOA’s “Quantifying Greenhouse Gas Mitigation Measures”
(<http://www.capcoa.org/wp-content/uploads/2010/11/CAPCOA-Quantification-Report-9-14-Final.pdf>)

Infill appears to be taking off in our major cities (see e.g., <https://www.curbed.com/2017/12/5/16738120/google-san-jose-campus-silicon-valley>.)

Chris Calfee
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Therefore, approaches which encourage infill that is sensitive to the urban environment and promotes the health and welfare of existing communities should be promoted.

Thank you for your consideration of these comments, and those that are attached. We urge you to make necessary revisions to provide that the Guidelines, like CEQA, afford the fullest possible protection to the environment within statutory mandates.

Sincerely,



Douglas P. Carstens

Enclosures

1. October 12, 2015 Letter of Planning and Conservation League to Christopher Calfee
2. "Why Creating and Preserving Affordable Homes Near Transit is a Highly Effective Climate Protection Strategy"
3. CAPCOA's "Quantifying Greenhouse Gas Mitigation Measures" (Contents and Summary)
4. "Google's transit village in San Jose could be tech's most important corporate HQ"

ENCLOSURE 1



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October 12, 2015

Christopher Calfee, Senior Counsel
Governor's Office of Planning and Research
1400 Tenth Street
Sacramento, CA 95814

Dear Mr. Calfee:

On behalf of Planning & Conservation League, whose mission is to protect California's environment and its people¹, we thank you for the opportunity to comment on revisions to the California Environmental Quality Act (CEQA) Guidelines and submit the following comments.

There are many areas in which the proposed amendments to the guidelines would improve the clarity of their guidance, promote public involvement in the environmental review process, and help lead to the fullest possible protection of the environment within the statutory mandates, as the Supreme Court has directed must be done in *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259 and other cases. However, there a few areas where the opposite is true, and we attempt to identify these, as well as the potentially beneficial changes, below.

- **GENERAL COMMENTS ON DISCUSSION DRAFT OF GUIDELINE AMENDMENTS**

The Proposed Guidelines ask a number of questions for reviewers. (Proposal, p. 44.) Among other responses, we identify below how we support the use of internet links and electronic access. To the extent we have answers to the below questions, we provide them below:

¹ Among other activities related to CEQA, PCL has published "Everyday Heroes Protect the Air We Breathe, the Water We Drink, and the Natural Areas We Prize" at <http://www.pcl.org/projects/everydayheroes.html>

1. **Do any of the proposed revisions conflict with CEQA or cases interpreting CEQA?** For the most part, the proposed changes are consistent with CEQA cases. However, there are a few areas in which the proposal is only consistent with one line of CEQA cases on contentious issues, but fails to incorporate guidance from a separate but equally valid line. For example, with regard to section 15004, it is true that some courts have advised public agencies to avoid making a irreversible commitment to a certain course of action prior to environmental review. But it is also true that courts of have advised agencies not to approve an “essential step” prior to performing environmental review. (*Fullerton Joint Union High School Dist. v. State Bd. of Education* (1982) 32 Cal.3d 779, 797.) Therefore, in order to promote balance and seek to ensure protection of the environment to the fullest possible extent, we suggest some areas where additional clarity is necessary.
2. **Will any of the proposed revisions raise any concerns about practical application?** Yes, particularly with regard to the proposed changes on remand. Also, it is not appropriate for OPR to make a decision that the aesthetic impacts discussed in *Bowman v. City of Berkeley* (2006) 122 Cal.App.4th 572 (Proposal, p. 40) are more appropriately addressed by a design review board rather than under CEQA. Furthermore, some of the changes to Appendix G, while meant to streamline and consolidate, will likely prove less helpful to agencies and the public.
3. **Are there revisions (that are consistent with CEQA and the cases interpreting it) that you think would lead to a more efficient process? Or better substantive outcomes?** Better substantive decisions could be achieved by requiring the use of the most protective regulation for a threshold of significance; assuring that any illegal acts by the applicant cannot be used to create an easier baseline to show compliance; and preventing pre-commitment that is disguised as an open process by simply stating that an EIR will be required in the future.
4. **Could the format of Appendix G be improved to be more user-friendly (i.e., by adding internet links to data resources)?** YES. This will reduce costs to agencies and provide easier access to the public to valuable information.

- **SPECIFIC COMMENTS**

Please note that there are a number of sections that we do not comment upon because we have no objections to the proposed changes but also do not feel that they warrant being called out for the positive contribution they make.

- **Regulatory standards.**

The Proposal amends 15064 to add (b)(2) and a new (d) in 15064.7 re use of thresholds of significance. (Proposal, pp. 15 and 18.) We commend the manner in which these proposed additions are very specific in terms of being standards adopted through a public process for purposes of environmental protection and clearly state that the fair argument test will still apply.

To make the proposals even better, we suggest the addition of guidance that addresses a situation where there are two or more regulatory standards available. At the end of 15064.7 (d), prior to the phrase “For the purposes of this subdivision. . . .,” we suggest the following addition:

“Where two or more environmental standards have been adopted by different public agencies, these should be identified and the standard which is more protective of the environment should be identified as the environmentally superior standard. If the environmentally superior standard is not adopted, the reasons for the use of an alternative standard should be explained.”

The proposal for Program EIRs, Guidelines section 15168 (c)(1) (Proposal, p. 23) makes it clear that if a project is not within the scope of a program EIR a public agency may still tier off the EIR. This change is fine. Proposed section (c)(2) makes it clear that whether a project is within the scope is a factual question based upon substantial evidence. Action on this section should not be taken at this time because the issue is currently before the California Supreme Court in the *San Mateo College* case. Further, the San Diego Climate Action Plan case (*Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152) is a good example of where the agency found the project within the scope of the original EIR and the Court of Appeal (and trial court) disagreed. The proposed language might inappropriately induce agencies to feel they have rather unlimited discretion, when in fact they do not.

- **Proposed Guidelines section 15182 TOD exemptions.**

The proposed language extends complete exemption (not just from preparing an EIR) when consistent with Specific Plan to include commercial and mixed use in addition to residential, claiming that it implements SB 743. One addition that is not based upon SB 743 is that (b)(1)(A) exempts projects when *planned* transit is within the planning horizon of the Regional Transportation Plan. “Planned” transit is too vague a term to allow exemption.

- **Proposed Guidelines section 15301 amendment.**

This proposal would switch a baseline for “existing” uses to no expansion of use beyond “historic” use at the time of lead agency's determination. We believe this is inconsistent with applicable caselaw- specifically *CBE v. SCAQMD* and *Neighbors for Smart Rail (cites)*, and would fail to provide the fullest possible protection to the environment within the statutory mandates. For example, one problem with addressing the “historic” use of a building is that it may be vacant for a long time prior to a public agency’s determination rather than briefly. Similarly, an area used for mining in the 19th century might be regarded as a “historic” mining area but if it has been idle for the past 50-100 years, the existing use would clearly be the relevant baseline. Defining what an "historic use" rather than an “existing use” would be difficult. This proposed change of “historic” instead of “existing” use could lead to confusion and could be inconsistent with caselaw.

Proposed Appendix G Changes.

- **Appendix G- Aesthetics.**

The aesthetic impact change (Proposal, p. 50) restricts the analysis to impacts reflected in zoning or regulations related to visual impacts, saying that aesthetic issues should be covered by design review and not CEQA. (Proposal, p. 41.) However, it is not the purview of OPR to make these kinds of judgments. Public Resources Code section 21001 (b) specifically calls out protection of “aesthetic. . . environmental qualities” as within the purview and policies of CEQA protection. Clearly, aesthetic impacts are environmental impacts and unless the Legislature determines that it wishes to legislatively restrict the analysis of such impacts, it cannot be done by regulation. Further, not all jurisdictions have design review procedures. This change would shut the public out of the review process compared to the current provisions of CEQA. The type of development proposed and its compatibility with other developments in an area is important to the quality of people’s lives, especially in highly developed areas. If there are adverse impacts, a public agency may consider if they should be overridden based upon other benefits. However, consideration of adverse aesthetic impacts outside of the context of compatibility with zoning or regulations related to visual impacts should not be eliminated.

We also question why aesthetic impacts would be limited to designated scenic highways and only public views (Proposal, p. 51). Many areas of the state have visual character worthy of protection, and the CEQA statute does not limit consideration to whether views are public or private.

The emphasis on "public views" on visual impacts and the addition of "substantially" is inappropriate. The question is whether there may be a significant impact. It would be better to make a determination based upon a substantial number of persons being affected, even if the viewsite is not "public."

- **Appendix G- Geology and Soils.** (Proposal, p. 55).

We do not understand why all checklist questions relating to exposure of persons or structures to loss, injury, or death from earthquake faults, seismic shaking, liquefaction, or landslides would be eliminated. This would be contrary to CEQA's intention to protect human beings as well as the natural environment. This also would be inconsistent with Guidelines section 15126 (a), which gives placement of structures on earthquake faults as an example of a potentially significant impact, and rightfully so. Especially because the Supreme Court is currently considering a case regarding whether impacts from the environment to those who may live or work at a proposed project, we do not believe it is advisable to propose eliminating consideration of geological, landslide, or liquefaction impacts on project siting decisions reviewed under CEQA. Perhaps OPR believes that the issues will be considered elsewhere, but this is an example of where specificity is particularly helpful to agencies.

- **Appendix G- Surface and Groundwater.** (Proposal, p. 68-69.)

The additions re impervious surfaces and groundwater promote clarity and environmental protection.

- **Appendix G- Utilities and Service System-**

The proposal includes good additions about adequate service in dry and multiple dry years. (Proposal p. 69.)

- **Appendix G- Water Supply.**

The change regarding water supply consideration is also desirable. (Proposal p. 69.)

- **Appendix G-Wildfires.** (Proposal, p. 69.)

The changes regarding wildfires are helpful in reminding agencies to address an important potential impact. However, the examination should not be limited to addressing wildfire only "If located in or near state responsibility areas or lands

classified as very highfire hazard severity zones.” Wildfire hazards should be considered whether or not lands are located near SRAs or lands “classified” as VHHSZs.

These issues should be covered regardless of whose responsibility the nearby area is, or whether an area is classified or not.

The potential aesthetic impacts of a project requiring a new fire-roads or breaks should be made clearer in subdivision (c).

- **Appendix G-Energy Efficiency.** (Proposal, p. 56-57.)

The proposed consideration of energy efficiency strategies are positive changes that should be made to the guidelines. These changes would be helpful in addressing the modern environmental challenge of greenhouse gas generation and reduction.

- **Appendix G-Recreation Impacts** (Proposal, p. 66.)

We do not understand, and are opposed to, the deletion of recreation impacts from the checklist. This proposed change would be contrary to the intent of CEQA to provide the fullest possible protection within statutory mandates.

While we approve of the additional of consideration of recreation to the “Open Space” section (Proposal, p. 64), not all recreational opportunities occur in “open space.” For example, forests would not likely be considered open space. It is good to note the possible impact of increasing demand to a degree that substantial physical deterioration would occur but the part about whether it would be accelerated should not be deleted. Further, the part about whether the project would require the construction or expansion of recreational facilities that might have an adverse effect should not be deleted.

- **Appendix G- Elimination of Agriculture and Forest Resources from Checklist.** (Proposal, pp. 51-52.)

The impacts on prime, unique, or important farmland should not be eliminated from consideration.

The impacts on forests are diminished by lumping them in with “Open Space, Managed Resources and Working Landscapes.”

- **Appendix G- Air Quality.** (Proposal, p. 52-53.)

Undefined terms such as “frequent and substantial” are used in discussing odor, dust or haze impacts on p. 53. With regard to diesel impacts, acute adverse health effects may be suffered from exposure within a matter of hours or days.

- **Appendix G- Biological Resources.** (Proposal, p. 54.)

Including state as well as federal wetlands in item (c) is a good addition.

- **Appendix G- Cultural Resources.** (Proposal, p. 55.)

The new sections to comply with recently passed cultural resource bills are positive additions that will aid in achieving CEQA’s mandates.

- **Appendix G- Land use-** (Proposal, p. 61.)

The changes to this section would limit the description of causing a significant environmental impact due to a conflict with a land use plan, policy or regulation to those “adopted for the purpose of avoiding or mitigating an environmental effect.” It should not be so limited because determining what the purposes of adoption was is overly difficult and complicated, and there would no doubt be other, likely primary, purposes.

There is an emphasis in land use impacts that the focus should be on impacts rather than conflicts with plans but it should explicitly require identification of *potential* conflicts with plans.

The Guidelines require determination of whether impacts are from planned growth rather than population growth. But population projections and plans for an increased number of housing units often are not sufficiently specific to determine what the impacts will be of growth in a particular area.

- **Appendix G- Noise-** (Proposal pp. 61-62.)

If the violation of a standard is established, the public should not also have to show that it is a “substantial temporary or permanent increase in ambient noise in the vicinity of the project.”

Furthermore, noise impacts can be severe even without established standards. Items (c) and (d) should not be deleted because they address noise changes above the existing environment, even where no standards have been set.

- **Appendix G- Managed Resources and Working Landscapes-** (Proposal pp. 62-65.)

Forests should not be viewed as landscapes or open space. There should be a separate section on forests, especially because of their importance for Greenhouse Gas sequestration and water supply and quality. For example, the headwaters of various rivers in the Sierra Nevada Mountains account for over 60% of California's water supply. Converting forest land to non-forest uses is certainly an adverse impact as noted, but there are adverse impacts to forests even without total conversion. Such impactful uses include resource extraction or rezoning that allows non-forest use. Also, while it is a positive change to spell out conversion of oak woodlands, there are other types of woodlands that also should be protected by CEQA.

- **Jobs/Housing Balance-** (Proposal p. 65.)

We are concerned that agencies may too often inappropriately determine that there is a "fit" between jobs and housing even where housing is located far from jobs, and encourage development that will generate long term jobs without sufficiently ensuring there is affordable housing available nearby. More specificity should be provided in this section.

- **Transportation-** (Proposal, p. 67). We support the addition of bikes and pedestrian paths when considering transportation impacts. We note the addition of vehicles miles traveled (VMT) and the deletion of Levels of Service (LOS) consideration despite the fact that OPR has not yet adopted its transportation guideline amendments. We suggest that some consideration be made for where local jurisdictions or transportation authorities have incorporated LOS in their general plans or regional congestion management plans. Furthermore, we believe public safety considerations are paramount and must specifically be considered.

- **Mandatory Findings of Significance.** (Proposal p. 70.) The addition of the word "substantially" throughout would be contrary to the environmental protection purposes of CEQA for at least two reasons. First, this examination of significant impacts would be conducted at a time when an initial study (IS) is being prepared and public agency staff is first deciding whether the issue should be studied. At such a time, if there are any potential impacts, a study should be conducted. Furthermore, by adding "substantially" as a modifier before the phrase "reduce the

number or restrict the range of rare or endangered plant or animal. . . “ the guideline would improperly introduce an element of gradations of reductions in rare or endangered plants or animals that would be deemed acceptable. The Endangered Species Act at state and federal levels has already determined all endangered plants and animals should be protected. CEQA should not be watered down to provide less protection.

- **Proposed New Section Addressing Remand- Section 15234.** (Proposal, pp. 73-74.)

The text proposing the addition of a new section 15234 is extremely problematic for both CEQA’s purpose of environmental protection and public involvement, and is in our view, the most serious flaw in the Discussion Draft. The emphasis of the new section is contrary to CEQA’s spirit, starting with the pronouncement that not every violation of CEQA will require rescission of project approval. Instead, where CEQA’s mandates are violated, the violations are presumptively prejudicial to public involvement. (*Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1215, 1236.) Courts must scrupulously enforce CEQA’s mandates in order to ensure its purposes of environmental protection and public involvement in the decisionmaking process are fulfilled.

This section should start by stating that project approval normally must be set aside when the violation of CEQA deprived decision makers and the public of information necessary for reasoned decision making. There are certain limited special cases, such as where the underlying project promotes environmental protection, where courts have allowed less than an entire project approval to be set aside. This is addressed in (c). But this limited exception should not be presented as if it were a universal principle.

Also, the (d) needs to be modified so that if there is new information or a change of circumstances, the agency needs to address that even if it is not in the court’s original order. Under Public Resources Code section 21092.1, recirculation is required when new information becomes available before certification.

Furthermore, section 15088.5 should not imply that the public is limited to submitting comments on only the recirculated sections of a draft EIR. The public is entitled to submit comments on any sections of an EIR that are of concern. We have known public agencies that discourage or refuse to accept public comments on matters of concern on the theory that they were addressed prior to recirculation. However, with recirculation, the public agency must address the impacts of a project as a whole, not just certain limited impact areas.

We propose that section 15234 be amended as follows:

New Section 15234. Remand

(a) If a court determines that a public agency has not complied with CEQA, absent extraordinary circumstances that noncompliance shall be deemed a prejudicial abuse of discretion, and the court shall render judgment and issue a peremptory writ of mandate requiring the agency to:

(1) void the project approval: in whole, or in extraordinary circumstances in part;

(2) except as provided in subparagraph (b) suspend any project activities; and

(3) take specific action necessary to bring the agency's consideration of the project into compliance with CEQA.

(b) In extraordinary circumstances courts may fashion equitable relief under CEQA. Following a determination described in subdivision (a), an agency may proceed with those portions of the challenged determinations, findings, or decisions for the project or those project activities that the court finds:

(1) are severable;

(2) will not prejudice the agency's compliance with CEQA as described in the court's peremptory writ of mandate;

(3) will not foreclose the consideration of alternatives to the proposed project;

(4) will not adversely affect the environment; and

(5) otherwise comply with CEQA.

(c) An agency may also proceed with a project, or individual project activities, during the remand period where the court has exercised its equitable discretion in extraordinary circumstances where the environment will be given a greater level of protection if the project is allowed to remain operative than if it were inoperative during that period.

AUTHORITY:

Note: Authority cited: Section 21083, Public Resources Code.

Reference: Sections 21005, 21168.9; *Neighbors for Smart Rail v.*

***Exposition Metro Line Construction Authority* (2013) 57 Cal. 4th 439;**

***Laurel Heights Improvement Ass'n v. Regents* (1988) 47 Cal.3d 376;**

***Preserve Wild Santee v. City of Santee* (2012) 210 Cal. App. 4th 260;**

***Golden Gate Land Holdings, LLC v. East Bay Regional Park Dist.* (2013)**

215 Cal. App. 4th 353; *POET, LLC v. State Air Resources Board* (2013)

218 Cal. App. 4th 681; *Silverado Modjeska Recreation and Parks Dist. v.*

County of Orange* (2011) 197 Cal. App. 4th 282; *County of Inyo v. City

***of Los Angeles* (1976) 61 Cal.App.3d 91.**

In general, only this formulation honors separation of powers and ensures jurisdictional boundaries remain clear. A court must issue a writ of mandate to the agency to return jurisdiction to the agency, and cannot do that without a judgment ordering (or in the case of return to a writ, sustaining) a writ of mandate. That also protects the agency and real party in interest, as well as the petitioner, so that if any party does not agree with the issuance of the writ, it has the power of appeal.

- **Energy, proposed changes to section 15126.2.** (Proposal, pp. 78-79.)

The Guidelines should define “wasteful, inefficient, and unnecessary consumption of energy”. A definition of such terms should be developed, such as requiring a comparison to best management practices, or best available technologies. To ease the burden on individual agencies, OPR or another state office should maintain list of such practices and update it periodically.

- **Guidelines section 15125 Changes-Baseline.** (Proposal, p. 94.)

The baseline discussion is very good and specifically prohibits the use of hypothetical conditions.

The one thing that it does not address that should be added is what happens when an applicant has illegally modified the conditions earlier. Because courts presume public agencies, and the public, will follow legal requirements, and should have been following them in the past, it is bad public policy to condone a situation where violation of laws is not accounted for. Even if CEQA does not require the remedying of prior existing violations because some courts considering this question have assumed other statutory schemes would remedy the violations, CEQA requires the full disclosure of existing conditions, including illegally-created baselines. It should also require how the conditions came to be, and how they will be fixed. We propose the following be added to 15125 (a):

- **“(4) The lead agency should account for existing conditions that have been created illegally or without a required permit. The lead agency should explain what the illegal or unpermitted activity was; what the environmental setting would be if the illegal activity had not occurred; and provide a comparison of the project’s proposed impacts to a legally compliant baseline. The public agency should explain what steps are being taken to remedy the illegal conditions, who is responsible for ensuring they are remedied, and when they are expected to be resolved.”**

- **Notice.** (Proposal, p. 131.)

In order to promote public participation, it would be desirable to encourage use of all three forms of notice--publication, posting, and mailing to those nearby. This change should be made with regard not only the notice of preparation of an EIR (section 15082), but also the notice of its availability, and the public agency's notice of determination. We have many times not been provided with notice of a notice of determination even though we have asked for such notice pursuant to Public Resources Code section 21092.2.

There should be a requirement for electronic notice on the agency's existing website under a section clearly identified as CEQA Notices in addition to notice by one of the other forms. Alternatively, we would suggest the OPR provide a clearinghouse for notices for all projects, not just those of regional or statewide significance, as electronic posting of notices with modern technology is not difficult. This would be superior to relying on posting with county clerks, as counties often post such notices on clipboards or other devices that do not reflect modern technology.

- **Changes to Guidelines section 15004, "Time of Preparation," or Pre-Commitment.** (Proposal, p. 111.)

This proposed addition is not a minor change, despite it being described as a "Minor Technical Improvement." We represented successful petitioner Save Tara in the seminal case on this issue of *Save Tara v. City of West Hollywood*, so we have a very detailed experience working with this section.

The proposed change deletes the following language in the prohibition on pre-commitment, which is good: "except that agencies may designate a preferred site for CEQA review and may enter into land acquisition agreements when the agency has conditioned the agency's future use of the site on CEQA compliance." This is fine.

However, there is a proposal to add a new subsection:

(4) While mere interest in, or inclination to support, a project does not constitute approval, a public agency entering into preliminary agreements regarding a project prior to approval shall not, as a practical matter, commit the agency to the project. For example, it shall not grant any vested rights prior to compliance with CEQA. Further, any such agreement should:

- (A) Condition the agreement on compliance with CEQA;

- (B) Not bind any party, or commit to any definite course of action, prior to CEQA compliance; and
- (C) Not restrict the lead agency from considering any feasible mitigation measures and alternatives, including the “no project” alternative. This seems consistent with existing law. However, we note that this is only one aspect of public agency avoidance of improper precommitment to approval of a project prior to conducting environmental review.

This proposed new addition provides incomplete guidance and must be clarified. In *Fullerton Joint Union High School Dist. v. State Bd. of Education* (1982) 32 Cal.3d 779, 797, the Supreme Court stated public agencies must avoid approving an “essential step” for a project prior to conducting environmental review. This “essential step” language is not apparent in the *Save Tara* decision. However, as a Supreme Court decision, *Fullerton* remains controlling law. Furthermore, *Save Tara* provided strong cautions against public agencies creating bureaucratic and financial momentum for projects before approval. Therefore, the proposed addition to guidelines section 15004 should also caution public agencies as follows. We suggest the following additions to the currently proposed section 15004 (b):

- (5) **A public agency shall not approve an essential step necessary for project approval prior to compliance with CEQA.**
- (6) **A public agency must avoid creating bureaucratic and financial momentum for a Project prior to CEQA compliance.**
- (7) **A public agency should avoid providing substantial financial assistance to a project prior to CEQA compliance.**

***Authority: Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 130. *Fullerton Joint Union High School Dist. v. State Bd. of Education* (1982) 32 Cal.3d 779, 797**

- **Incorporation by reference. Section 15072** (Proposal, pp. 125-126 and 129.)

The requirement to provide access to documents referenced by an ND or MND now would only apply to documents “incorporated by reference” instead of just referenced. That change would reduce the public’s ability to participate in environmental review. If access is not provided to a document, it should not be relied upon by a public agency as substantial evidence or in support of its decision. The same principle applies to an EIR in section 15087.

- **Emergency repairs. 15269.** (Proposal, pp. 140-141.)
This change would add that emergency repairs include those that require a reasonable amount of planning. If there is planning it appears to us that environmental review could be conducted. On the exemption, the new language would add the underlined language: (c) Specific actions necessary to prevent or mitigate an emergency. This does not include long-term projects undertaken for the purpose of preventing or mitigating a situation that has a low probability of occurrence in the short-term, but this exclusion does not apply (i) if the anticipated period of time to conduct an environmental review of such a long-term project would create a risk to public health, safety or welfare, or (ii) if activities (such as fire or catastrophic risk mitigation or modifications to improve facility integrity) are proposed for existing facilities in response to an emergency at a similar existing facility. On 1), it should be limited to a significant risk, because there is always some risk; and 2) seems to give the agency way to much latitude. The proposal should at least be limited to where there is a serious risk of the emergency occurring at the facility at issue. Otherwise, one real emergency could justify repairs at numerous facilities around the state whether there was a serious threat or not.
- **Discretionary Project, section 15357.** (Proposal, p. 142-143.)
This changes adds to the list of statutes and ordinance or regulations where determining conformity that are ministerial acts “other fixed standards.” It is unclear what is intended but this is a problematic change. If there is not an ordinance, statute or regulation, then a public agency would have overly broad discretion as to whether it will require compliance with applicable rules. We object to this change because it is vague.
- **Conservation Easements as Mitigation, Changes to section 15370.** (Proposal, p. 144.) We support this positive addition.

Thank you for consideration of the Planning and Conservation League’s comments. We look forward to seeing a revised proposal.

Very truly yours,

Jan Chatten-Brown
Douglas P. Carstens

ENCLOSURE 2

WHY CREATING AND PRESERVING AFFORDABLE
HOMES NEAR TRANSIT IS A HIGHLY EFFECTIVE
CLIMATE PROTECTION STRATEGY



TransForm
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**California
Housing
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Corporation**
California's Experts on Affordable
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THE STATE CREATED THE CALIFORNIA HOUSING PARTNERSHIP CORPORATION 25 YEARS AGO AS A PRIVATE NONPROFIT ORGANIZATION WITH A PUBLIC MISSION: TO MONITOR, PROTECT, AND AUGMENT THE SUPPLY OF HOMES AFFORDABLE TO LOWER-INCOME CALIFORNIANS AND TO PROVIDE LEADERSHIP ON AFFORDABLE HOUSING FINANCE AND POLICY. SINCE 1988, THE CALIFORNIA HOUSING PARTNERSHIP HAS ASSISTED MORE THAN 200 NONPROFIT AND LOCAL GOVERNMENT HOUSING ORGANIZATIONS TO LEVERAGE MORE THAN \$5 BILLION IN PRIVATE AND PUBLIC FINANCING TO CREATE AND PRESERVE 20,000 AFFORDABLE HOMES.

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ABOUT TRANSFORM

TRANSFORM PROMOTES WALKABLE COMMUNITIES WITH EXCELLENT TRANSPORTATION CHOICES TO CONNECT PEOPLE OF ALL INCOMES TO OPPORTUNITY, KEEP CALIFORNIA AFFORDABLE AND HELP SOLVE OUR CLIMATE CRISIS. WITH DIVERSE PARTNERS WE ENGAGE COMMUNITIES IN PLANNING, RUN INNOVATIVE PROGRAMS AND WIN POLICY CHANGE AT THE LOCAL, REGIONAL AND STATE LEVELS.

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Support for this research was provided by the Ford Foundation

Executive Summary

California is currently debating how to invest greenhouse gas (GHG) cap-and-trade auction proceeds so that they result in real, quantifiable and verifiable greenhouse gas reductions.

A new analysis of data from Caltrans' California Household Travel Survey (CHTS) completed in February 2013 shows that a well-designed program to put **more affordable homes near transit** would not just meet the requirements set by the California Air Resources Board (ARB), but **would be a powerful and durable GHG reduction strategy** – directly reducing driving while creating a host of economic and social benefits.

Conducted by the nationally recognized Center for Neighborhood Technology (CNT), the analysis identified 36,000-plus surveyed households that had provided all relevant demographic and travel data and divided them into five income groups, living in three types of locations based on their proximity to public transportation:

- **Transit-Oriented Development (TOD) as defined by the California Department of Housing & Community Development (HCD)** requires homes be built within a 1/4 mile radius of a qualifying rail or ferry station or bus stop with frequent service.
- **TOD as defined by the Sustainable Communities and Climate Protection Act of 2008 (SB 375)** requires housing to be built within a 1/2 mile radius of a rail or ferry station, or a bus stop but with lesser frequencies than HCD's definition.
- **Non-TOD areas** that do not meet either of these definitions.

Here are two key findings:

- Lower Income households drive 25-30% fewer miles when living within 1/2 mile of transit than those living in non-TOD areas. When living within HCD's 1/4 mile of frequent transit they drove nearly 50% less.
- Higher Income households drive more than twice as many miles and own more than twice as many vehicles as Extremely Low-Income households living within 1/4 mile of frequent transit. This underscores why it is critical to ensure that low-income families can afford to live in these areas.

In response to soaring demand from Higher Income households for condos and luxury apartment developments near public transit, there has been a surge of new development. The CNT report shows the tremendous greenhouse gas reductions the state can achieve by ensuring that more low-income households can also live in these areas through investment of cap-and-trade auction proceeds.

DESIGNING A CAP-AND-TRADE INVESTMENT PROGRAM THAT MAXIMIZES GHG REDUCTIONS

The CNT analysis provides robust evidence that an investment by the state in the creation and preservation of affordable housing located within 1/4 mile of frequent transit can dramatically reduce GHGs.

Using conservative assumptions, TransForm and the California Housing Partnership calculated that investing 10% of cap and trade proceeds in HCD's TOD Housing program for the three years of FY 2015/16 through FY 2017/18 would result in 15,000 units that would remove **105,000,000 miles of vehicle travel per year** from our roads.

Over the 55-year estimated life of these buildings, this equates to eliminating **5.7 billion miles of driving off of California roads. That equates to over 1.58 million metric tons of GHG reductions, even with cleaner cars and fuels anticipated.**

What's more, the State can significantly increase these GHG reductions. The savings in miles driven described above is based solely on location and income, but HCD has a variety of ways their program could further reduce GHGs such as giving priority to developers who provide free transit passes for residents, adjacent carsharing pods, and bicycle amenities.

Finally, TransForm and CHPC offer a methodology for verifying and reporting the reductions.

Introduction

California has been a leader on climate change since passing AB 32, the California Global Warming Solutions Act in 2006.

Recognizing that transportation-related GHGs accounted for 37% of California's total GHGs, the legislature also passed SB 375 in 2008. The primary aim of this law is to reduce the amount people drive and associated GHGs by requiring the coordination of transportation, housing, and land use planning at a regional scale.

Ensuring that households of all incomes, and especially lower-income households who use transit most, are able to live near transit and jobs is crucial to the GHG reduction framework set up by SB 375. Yet the law does not provide any new financial resources to make the production and preservation of affordable homes near transit feasible.

AB 32 enabled the California Air Resources Board (ARB) to use market mechanisms to support reductions in GHGs. With the auction of greenhouse gas pollution allowances now taking place every quarter, state leaders are debating how to invest greenhouse gas cap-and-trade auction proceeds so that they result in real, quantifiable and verifiable greenhouse gas reductions.

In May 2013, ARB released its Cap-and-Trade Auction Proceeds Investment Plan, which identified "priority State investments to achieve GHG reduction goals and produce valuable co-benefits." ARB recommended that Sustainable Communities and Clean transportation receive the largest investment amount.

Importantly, ARB also recognized that the creation and preservation of affordable homes near transit should be part of this investment strategy, specifically naming the Department of Housing and Community Development's Transit-Oriented Development Housing program (HCD TOD) as an existing program that would be able to carry out a GHG reduction program relatively quickly and efficiently.

This report begins with CNT's analysis demonstrating for the first time the interrelationship between income and living in close proximity to transit, as defined by the HCD TOD criteria as well as by the SB 375 criteria.

The report then uses this information to calculate the GHG savings that would result from investing a portion of the cap-and-trade auction proceeds in affordable TOD homes over the next three years.

The key to CNT's ability to analyze these critical relationships is excellent, recent, statewide data made available by the California Household Travel Survey (CHTS) in 2013. The CHTS data, the collection of which was coordinated by Caltrans with support from a host of state and regional agencies, consists of one day travel surveys from over 40,000 households from all 58 counties in California and was collected from February 2012 through January 2013. CNT identified 36,197 household surveys from the CHTS that contained all relevant household demographic, location, and travel information needed for this analysis. A final report from CNT with additional data is anticipated in June 2014.

DEFINING TRANSIT-RICH AREAS AND STUDY METHODOLOGY

To determine accepted definitions of transit-rich areas, CNT worked with CHPC, TransForm and other experts to review California law and programs. Two well-used definitions were identified. The first is used by the California Department of Housing and Community Development (HCD) in its Transit-Oriented Development (TOD) Housing Program and the second is from the language of SB 375 defining High-Quality Transit Areas (HQTAs).

- HCD TOD Areas - HCD's TOD Housing Program Guidelines define TOD areas as being within 1/4 mile of a qualifying rail or ferry station or a bus stop with ten minute headways during the peak period defined as 7am to 10pm and 3pm to 7pm on weekdays. For any transit stop to qualify, it must offer hourly service on weekday evenings from 7pm to 10pm and have at least ten trips on both Saturday and Sunday. (TOD Housing Program: Third Round Guidelines, 2013.)
- High Quality Transit Areas (HQTAs) - SB 375 defines HQTAs as the area within 1/2 a mile of a rail or ferry station, regardless of service frequency at that station, as well as all bus stops with at least 15-minute headways during the peak period, as defined above.

CNT identified these geographies using its proprietary AllTransit™ database, which is based on the general transit feed specification (GTFS). AllTransit™ is the most comprehensive repository of GTFS data because CNT compiles publicly available feeds, acquires feeds that exist but are not publicly available, and codes its own feeds where none exist or are available. Areas that do not meet either of these definitions are defined as "non-TOD".

INCOME CATEGORIES

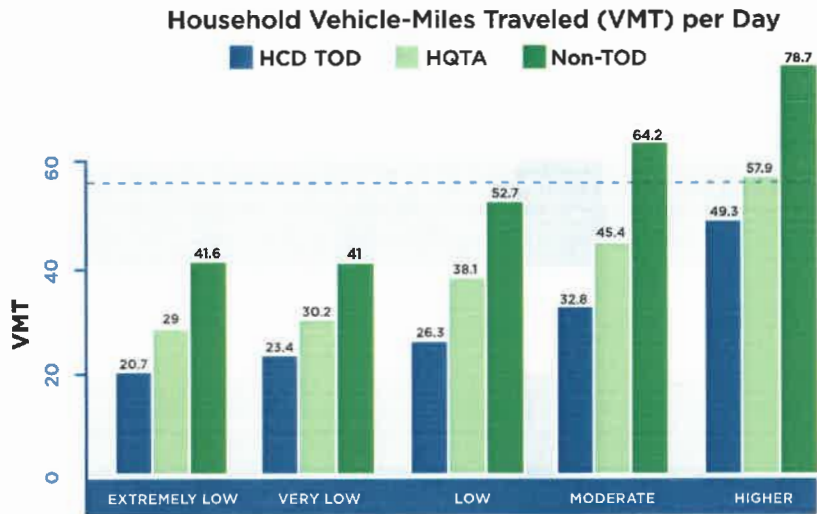
CNT categorized surveyed households using U.S. Department of Housing and Urban Development (HUD) income categories in order to compare households across all of California, which has wide variation in local incomes and housing costs. HUD publishes an annual listing of income thresholds based on the area Median Family Income (MFI) for each county by metropolitan area and includes adjustments for household size. HUD includes three lower income categories in this annual spreadsheet and CNT added two additional categories for moderate and higher income households based on the same assumptions used to calculate the lower income categories:

- Extremely Low-Income (ELI) – Households earning 30% or less of MFI
- Very Low-Income (VLI) – Households earning 50% or less of MFI
- Low-Income (LI) – Households earning 80% or less of MFI
- Moderate Income – Households earning between 80% and 120% of MFI
- Higher Income – Households earning more than 120% of MFI

INITIAL RESULTS

Preliminary findings from CNT's analysis of the CHTS reveal that living in proximity to transit-rich areas and household income are two major factors that impact the number of household trips as well as household vehicle miles traveled (VMT).

FIGURE 1. Household VMT per Day



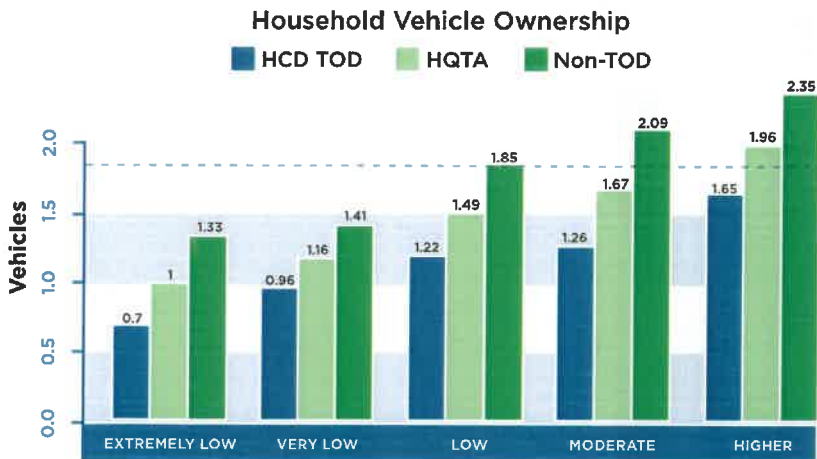
HUD Income Threshold

VEHICLE MILES TRAVELED (VMT)

The report data clearly shows that all income groups experience significant differences in average daily VMT depending on where they live. The difference in VMT for households living in HCD TOD areas compared to those in non-TOD areas range from 50% fewer VMT for Extremely Low-income (ELI) to 37% fewer for Higher income households. All income groups living in HQTAs have 25-30% lower VMT than similar-income households living in non-TOD.

Extremely Low-Income households living in HCD-TOD areas have by far the lowest VMT of any household group, logging only 20.7 VMT per day on average, almost 60% less than the 49.3 average VMT of Higher income households also residing in HCD TOD areas.

FIGURE 2. Household Vehicle Ownership



HUD Income Threshold

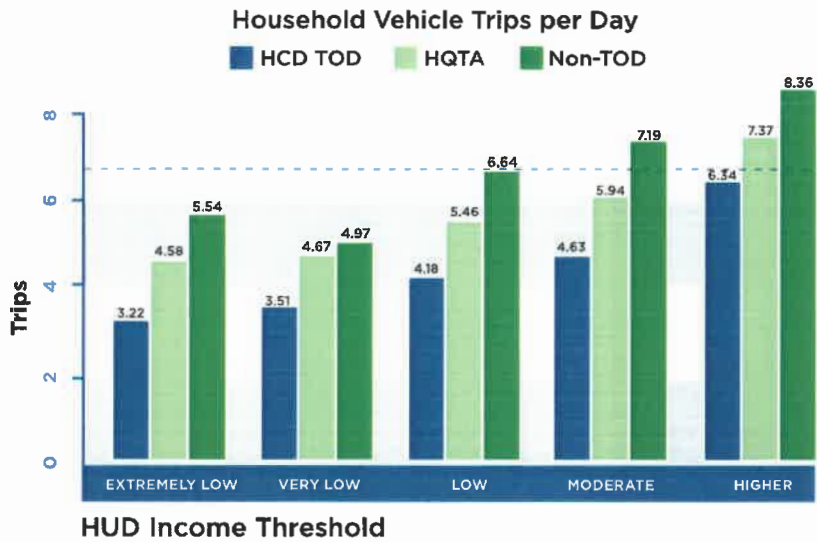
VEHICLE OWNERSHIP

The biggest single determinant of VMT—and therefore GHG emissions—is ownership of a private vehicle. Within the HCD TOD areas, all income groups own cars at a rate that is at least 30% lower than non-TOD areas. However, Extremely Low-income households particularly economize on vehicle ownership when living in TOD. On average, these households own only 0.70 vehicles per household – less than half the number of cars owned by Higher Income households (1.65 vehicles per household).

The chart below demonstrates that, contrary to popular perception, lower income households have relatively high car ownership when they lack access to transit. This finding is significant because it indicates the large financial savings that lower income households can accrue by being able to avoid vehicle ownership by living near transit.¹ Transportation costs, primarily those associated with vehicle purchase, maintenance and operations, are the second highest household cost after housing.² In other words, providing affordable TOD homes not only lowers GHGs but also reduces both transportation and housing costs while providing strong access to services and employment opportunities.

There are other benefits of low-vehicle ownership rates. For example, vehicles take up significant space in the form of parking and street space. Locating affordable homes near transit allows communities to maximize the beneficial uses of these areas as shown in graphic on page 13.

FIGURE 3. Household Vehicle Trips per Day

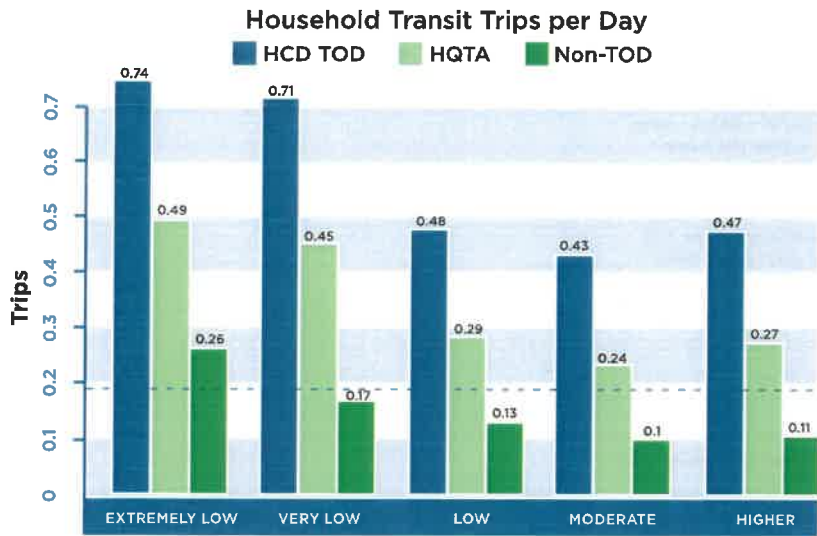


VEHICLE TRIPS

Income and location also have a significant correlation with the number of vehicle trips that are made. Figure 4, below, shows that households of all incomes make fewer vehicle trips when they live in HCD TOD areas compared to non-TOD locations. On average, Extremely Low Income households make only 3.22 vehicle trips per day - roughly half the number of trips made by Higher Income households (6.34 trips) in HCD TOD areas.

Fewer vehicle trips means not only fewer vehicle miles traveled but also less congestion and fewer vehicles idling in stop-and-go traffic. Congested driving conditions due to more vehicles on the road result in higher GHG emissions and criteria air pollutants. Reducing the number of trips in highly populated areas also has beneficial air quality impacts and can improve bicycle and pedestrian safety.³

FIGURE 4. Household Transit Trips per Day



HUD Income Threshold

TRANSIT TRIP FINDINGS

From a transportation investment policy and planning perspective, it is important to know that households in transit-rich areas not only drive less, but also use transit more. In this regard the findings on differences based on both location and income are profound:

Households living in HCD TOD areas use transit at rates that are triple or quadruple the rates of households living in non-TOD areas. The transit trip bonus is much higher, however, for the groups making less than 50% of median income. Extremely Low Income and Very Low Income households living in a HCD TOD take transit 50% more than their neighbors from higher income brackets.

Designing a Cap-and-Trade Investment Program that Maximizes GHG Reductions

The California Department of Housing and Community Development (HCD) developed a program for funding affordable homes near transit, with the first rounds of funding. Initially funded by the passage of Proposition 1C in 2006 this Transit-Oriented Development Housing Program (TOD) is now depleted.

The TOD Housing program was designed with the specific goals of increasing public transit ridership, minimizing automobile trips, and promoting GHG reductions. This report demonstrates that HCD's TOD program is an excellent starting point for an affordable housing program that is focused on maximizing GHG reductions.

Some strong key attributes of the existing HCD TOD program include:

- location within 1/4 mile of frequent transit;
- strong access to services and job centers;
- serving households at lower income levels;
- offering additional points for:
 - free or discounted transit passes to residents;
 - innovative parking, including allowing shared parking between different; uses and
 - offering dedicated spaces for carsharing vehicles.

CREATING AN EVEN MORE TRANSFORMATIVE AFFORDABLE TOD HOME PROGRAM

If funding for HCD's TOD program is to be focused on further increasing GHG benefits, both for residents and for the surrounding community, the program could consider potential changes that include providing additional incentives to developers who are proposing to include more GHG-reducing measures. These measures can include:

Focus on housing more ELI and VLI households. The HCD TOD program currently sets a minimum of 15% of all units be made affordable to low income households with maximum points awarded for applicants increasing this level to 25%. However, there are no requirements to serve ELI or VLI households, per se. Now that we have new data showing the GHG associated with housing these income groups, we propose that the HCD TOD program provide incentives to developers to provide at least 10% of the homes affordable to ELI households and provide maximum points for developers willing to go above the current 25% maximum. In recognition of the greater costs involved in producing housing affordable to these lower income households, HCD TOD should consider increasing loan and grant amounts accordingly.

Free transit passes. Studies have shown that free transit passes lead to much higher transit ridership and lower GHGs. For example, a survey of 1,500 low income renters found that 64% use a transit pass more than four times per week, and 22% said their passes reduce the number of cars owned in their household.⁵



A family at First Community Housing's Fourth St. Apartments shows off their free VTA transit passes. These passes would typically cost \$770 per year for adults and \$495 for children.

Car share vehicles on site, with free membership for residents. Car sharing dramatically reduces vehicle ownership and trips, especially in areas with strong access to transit.⁶ Yet there have been few models of long-term agreements to provide on-site carsharing. TransForm's GreenTRIP program has worked with City CarShare, Zipcar and affordable housing developers to arrange for long-term agreements for pods in or adjacent to new developments. To maximize GHG benefits and get additional points, developers could be encouraged to have electric vehicles, or at least high mileage hybrid cars, carshare pods.

Create space for bike sharing. By 2015 there will be bike sharing programs in the four major regions of California. The evidence of bike sharing's benefits and what it takes to do it well (especially the need for a larger scale) is growing by the month.⁷ Creating the space for bike share pods adjacent to new developments is critical.

Other innovative trip reduction strategies. Providing amenities like bicycle-fixing stations, pedestrian trunks to support walking to shopping, and travel kiosks that have real-time travel information will also help reduce VMT.

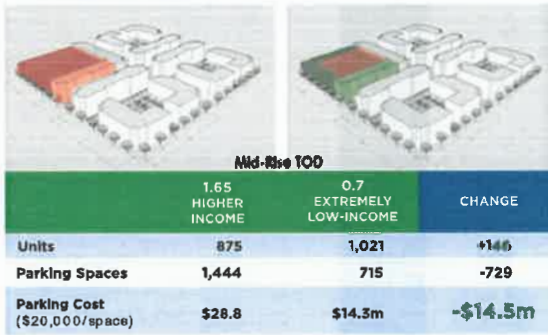
Less Parking: An example of the additional benefits of affordable homes near transit.

CNT's analysis shows that Higher Income households living in HCD TOD areas have vehicle ownership rates of 1.65 vehicles/household. In comparison, extremely low income households only own on average 0.7 vehicles/household. While there are several benefits of lower vehicle ownership, the reduced need for parking is a significant one. We have developed a graphic representation showing the reduced parking needed for a hypothetical development near transit and the increase in the number of homes that can be provided.

By designating 100% of the homes as "affordable" for Extremely Low-Income households, in a prototypical eight-acre development site with an initial plan of 875 units in six-story buildings and 1.65 parking spaces per unit (parking in red), the parking can be reduced to 0.7 spaces/unit. Within the exact same building envelope the developer can add 146 units to the same building envelope (seen as green). The number of spaces can be further reduced by adding the trip reduction strategies mentioned above.

1.65 PARKING SPACES PER UNIT

vs. 0.7



Estimating the future GHG reduction benefits of building affordable transit-oriented development

For this analysis, we assume that a new affordable unit will be occupied by a household moving from a location less accessible by transit. While it can not be guaranteed that new units will be occupied by a mover of this type, each new unit represents an addition to the total supply of housing near transit and an additional household living near transit that otherwise would not be able to afford to do so.

We focus our calculations on Extremely Low-Income and Very Low-Income households because public investment is most essential to building and preserving homes for these income groups. We assume that homes in affordable TOD would serve 50% ELI households and 50% VLI households.

We also assume that public investment in affordable TOD would be focused in areas meeting HCD's TOD program criteria.

The average difference in daily VMT for ELI and VLI households living in HCD TOD areas vs. non-TOD is **-19.25 VMT per day**. The annual difference is **-19.25 VMT x 365 = -7,026.3 VMT**.

If 10% of cap-and-trade funds are invested in affordable TOD as currently proposed, an average of \$250 million per year will be invested in each of the three fiscal years running from 2015/2016 through 2017/2018. (This assumes total cap-and-trade allocation of \$2 billion the first year, rising by \$500 million per year)

Using HCD's current TOD program guidelines, we assume that each building would get the maximum of \$50,000 per unit from these cap-and-trade funds. In the past, each affordable unit receiving funding has been required to remain affordable for 55 years, so we keep that timeframe as the durability of the program.

Using these conservative assumptions, investing 10% of cap-and-trade proceeds in HCD's TOD program would result in 15,000 transit-connected homes that would remove **105,000,000 miles of vehicle travel per year** from our roads.

Over the 55-year estimated life of these buildings, this equates to eliminating **5.7 billion miles of driving off of California roads. That equates to over 1.58 million metric tons of GHG reductions, even with cleaner cars and fuels anticipated⁹.**

WHY THIS GHG CALCULATION IS CONSERVATIVE

The GHG benefits stated above are conservative in several ways. Most importantly, the estimate only includes direct GHG reductions from the difference in location, when in reality it will be possible to estimate additional benefits due to these factors:

- On-site trip reductions strategies that are part of HCD's TOD program.
- Access to new carshare, or through new local services (if applicable).
- Low-income households, on average, own less efficient vehicles that generate more GHGs⁹. As new vehicles quickly increase their efficiency, especially the more expensive hybrids and electric vehicles, that differential is likely to increase.
- Homes for low-income families are more compact, meaning a greater density of homes and a better use of these limited areas¹⁰.

HOW TO BEST VERIFY ACTUAL GHG REDUCTIONS?

To analyze actual reductions of vehicle miles travelled and GHGs we recommend that HCD and ARB design a monitoring program that could include travel diary surveys, or sample trip generation studies (using black pneumatic tubes). While HCD would need to ensure proper design and implementation of these methods, they all are feasible to get a good estimate of VMT.

Finally, we suggest that firm commitments for on-site trip reduction strategies be developed. Transform's GreenTRIP program now works to get these commitments written into the conditions of approval for the project, for example.

CONCLUSIONS

The findings of this report make clear the powerful way in which living close to transit and household income affect household travel behaviors. Increasing the amount of housing in transit-rich areas for households of all income levels can help reduce the state's GHG emissions. While private equity markets are actively investing in transit-oriented residential development for Higher Income households, there is next to no private capital to meet the need to preserve and create homes in transit-rich areas that are affordable to Low Income households.

Investing cap-and-trade funds in affordable TOD will ensure that the state captures the full GHG reduction benefits possible from the integration of land use, housing, and transportation planning. These benefits include:

- Reducing VMT for low income households by nearly 50% from non-TOD locations and achieving levels of VMT 60% below those of higher income households also living in TOD.
- Reducing car ownership by .63 vehicles per household, or more than one car for every two low income households, and freeing up land used for parking to create housing and public space.
- Decreasing vehicle trips and increasing transit trips, helping to ease congestion and increase transit ridership by at least 50% more than the ridership achieved by Higher Income households.
- Lowering household transportation costs and providing improved access to jobs and services.

Furthermore, affordable housing developers have a proven track record of implementing transportation demand management strategies like those structured into the HCD TOD program including: reduced parking, free transit passes for residents, and bike and car share on site. With these policies in place, the production and preservation of affordable TOD homes funded through cap-and-trade will reduce VMT by millions of miles per year, offering an important tool in California's efforts to reduce GHG emissions.

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9. "In sum, poor households that own vehicles own dirtier vehicles than wealthy vehicle owners." Sara West, "Equity Implications of Vehicle Emissions Taxes", Journal of Transport Economics and Policy, Volume 39, Part 1, January 2005, pp. 1-24. S <http://www.maclesteredu/~wests/westjetp1910.pdf>
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ENCLOSURE 3



Quantifying Greenhouse Gas Mitigation Measures

A Resource for Local Government
to Assess Emission Reductions from
Greenhouse Gas Mitigation Measures

August, 2010



Quantifying Greenhouse Gas Mitigation Measures

**A Resource for Local Government to Assess
Emission Reductions from Greenhouse Gas
Mitigation Measures**

August, 2010

California Air Pollution Control Officers
Association

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Coordinated Air Use Management

National Association of
Clean Air Agencies

Environ

Fehr & Peers

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Disclaimer

The California Air Pollution Control Officers Association (CAPCOA) has prepared this report on quantifying greenhouse gas emissions from select mitigation strategies to provide a common platform of information and tools to support local governments.

This paper is intended as a resource, not a guidance document. It is not intended, and should not be interpreted, to dictate the manner in which a city or county chooses to address greenhouse gas emissions in the context of projects it reviews, or in the preparation of its General Plan.

This paper has been prepared at a time when California law and regulation, as well as accepted practice regarding how climate change should be addressed in government programs, is undergoing change. There is pending litigation that may have bearing on these decisions, as well as active legislation at the federal level. In the face of this uncertainty, local governments are working to understand the new expectations, and how best to meet them. This paper is provided as a resource to local policy and decision makers to enable them to make the best decisions they can during this period of uncertainty.

Finally, in order to provide context for the quantification methodologies it describes, this report reviews requirements, discusses policy options, and highlights methods, tools, and resources available; these reviews and discussions are not intended to provide legal advice and should not be construed as such. Questions of legal interpretation, or requests for legal advice, should be directed to the jurisdiction's counsel.

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This report on *Quantifying Greenhouse Gas Mitigation Measures: A Resource for Local Government to Assess Emission Reductions from Greenhouse Gas Mitigation Measures* was prepared by the California Air Pollution Control Officers Association with the Northeast States for Coordinated Air Use Management and the National Association of Clean Air Agencies, and with technical support from Environ and Fehr & Peers. It is primarily focused on the quantification of project-level mitigation of greenhouse gas emissions associated with land use, transportation, energy use, and other related project areas. The mitigation measures quantified in the Report generally correspond to measures previously discussed in CAPCOA's earlier reports: *CEQA and Climate Change*; and *Model Policies for Greenhouse Gases in General Plans*. The Report does not provide policy guidance or advocate any policy position related to greenhouse gas emission reduction.

The Report provides a discussion of background information on programs and other circumstances in which quantification of greenhouse gas emissions is important. This includes voluntary emission reduction efforts, project-level emission reduction efforts, reductions for regulatory compliance, and reductions for some form of credit. The information provided covers basic terms and concepts and again, does not endorse or provide guidance on any policy position.

Certain key concepts for quantification are covered in greater depth. These include baseline, business-as-usual, types of emission reductions, project scope, lifecycle analysis, accuracy and reliability, additionality, and verification.

In order to provide transparency and to enhance the understanding of underlying strengths and weaknesses, the Report includes a detailed explanation of the approaches and methods used in developing the quantification of the mitigation measures. There is a summary of baseline methods (which are discussed in greater detail in Appendix B) as well as a discussion of methods for the measures. This includes the selection process for the measures, the development of the quantification approaches, and limitations in the data used to derive the quantification.

The mitigation measures were broken into categories, and an overview is provided for each category. The overview discusses specific considerations in quantifying emissions for measures in the category, as well as project-specific data the user will need to provide. Where appropriate and where data are readily available, the user is directed to relevant data sources. In addition, some tables and other information are included in the appendices.

The mitigation measures are presented in Fact Sheets. An overview of the Fact Sheets is provided which outlines their organization and describes the layout of information. The Report also includes a step-by-step guide to using a Fact Sheet to quantify a project, and discusses the use of Fact Sheets outside of California. The Report also discusses the grouping of the measures, and outlines procedures and limitations for

quantifying projects where measures are combined either within or across categories. These limitations are critical to ensure that emission reductions are appropriately quantified and are not double counted. As a general guide, approximate ranges of effectiveness are provided for each of the measures, and this is presented in tables at the end of Chapter 6. These ranges are for reference only and should not be used in lieu of the actual Fact Sheets; they do not provide accurate quantification on a project-specific basis.

The Fact Sheets themselves are presented in Chapter 7, which includes an index of the Fact Sheets and cross references each measure to measures described in CAPCOA's earlier reports: *CEQA and Climate Change*; and *Model Policies for Greenhouse Gases in General Plans*. Each Fact Sheet includes a description of the measure, assumptions and limitations in the quantification, a baseline methodology, and the quantification of the measure itself. There is also a sample project calculation, and a discussion of the data and studies used in the development of the quantification.

In the Appendices, there is a glossary of terms. The baseline methodology is fully explained, and there is additional supporting information for the transportation methods and the non-transportation methods. Finally, the Report includes select reference tables that the user may consult for select project-specific factors that are called for in some of the Fact Sheets.

Background

The California Air Pollution Control Officers Association (CAPCOA) prepared the report, *Quantifying Greenhouse Gas Mitigation Measures: A Resource for Local Government to Assess Emission Reductions from Greenhouse Gas Mitigation Measures* (Quantification Report, or Report), in collaboration with the Northeast States for Coordinated Air Use Management (NESCAUM) and the National Association of Clean Air Agencies (NACAA), and with contract support from Environ, and Fehr & Peers, who performed the technical analysis. The Report provides methods for quantifying emission reductions from a specified list of mitigation measures, primarily focused on project-level mitigation. The emissions calculations include greenhouse gases (GHGs), particulate matter (PM), carbon monoxide (CO), oxides of nitrogen (NOx), sulfur dioxide (SO₂), and reactive organic gases (ROG), as well as toxic air pollutants, where information is available.

The measures included in this Report were selected because they are frequently considered as mitigation for GHG impacts, and standardized methods for quantifying emissions from these projects were not previously available. Measures were screened on the basis of the feasibility of quantifying the emissions, the availability of robust and meaningful data upon which to base the quantification, and whether the measures (alone or in combination with other measures) would result in appreciable reductions in GHG emissions. CAPCOA does not mean to suggest that other measures should not be considered, or that they might not be effective or quantifiable; on the contrary, there are many options and approaches to mitigate emissions of GHGs. CAPCOA sought to provide a high quality quantification tool to local governments with the broadest applicability possible, given the resource limitations for the project. CAPCOA encourages local governments to be bold and creative as they approach the challenge of climate change, and does not intend this Report to limit the scope of measures considered for mitigation.

The majority of the measures in the Report have been discussed in CAPCOA's previous resource documents: *CEQA and Climate Change*, and *Model Policies for Greenhouse Gases in General Plans*. The measures in this Report are cross-referenced to those prior reports. The quantification methods provided here are largely project-level in nature; they can certainly inform planning decisions, however a complete planning-level analysis of mitigation strategies will entail additional quantification.

In developing the quantification methods, CAPCOA and its contractors conducted an extensive literature review. The goal of the Report was to provide accurate and reliable quantification methods that can be used throughout California and adapted for use outside of the state as well.

ENCLOSURE 4

Google's transit village in San Jose could be tech's most important corporate HQ

Patrick Sisson

Few building types have become as mythologized, meaningful, and, occasionally, mocked by the general public as corporate headquarters. Whether they're anodyne rows of identical offices, glistening corporate campuses, or high-tech hubs for startups, the most famous become not just architecture, but narratives conveying corporate values.

That's why many were disappointed to learn [Apple's new office](#) in Cupertino, California, has more [parking space than office space](#): It's a disconnect from the company's sleek, progressive (and curated) persona.

In Silicon Valley, it's tempting to treat these physical representations of economic might as symbols of innovation and character (does the [Amazon HQ2 race](#), pitting cities against each other, showcase the retail giant's cold, calculating efficiency?). These headquarters are supposed to be glimpses of the future.

This hunger for something new explains why a collection of land and former industrial lots in downtown San Jose, just 10 miles east of Apple's glittering new campus, has attracted so much attention. Google, the new owner, has plans for something transformative.

The tech giant's desire to continue its [aggressive expansion in the area](#) and build a new corporate village adjacent to Diridon Station, a decades-old rail station, isn't important because of cutting-edge design: groundbreaking for the project won't happen for years, and there are no renderings of futuristic, spaceship-like structures. Nor is it necessarily about size, though it may end up stretching over 50 acres and being twice as large as Apple's new HQ, accommodating 15,000 to 20,000 employees.

Rather, its location is what's important: the developing urban core of the largest city in Silicon Valley, a region stuck in a mostly suburban mindset, adjacent to what will be the confluence of seven different rail and bus lines.

Google's plans may turn Diridon Station—an expanding transit hub with a [high-speed rail stop](#) in the works—into the Grand Central of the west. The move could catalyze an even more urbanized San Jose, and signal that density transit-oriented development is part of the Valley's future.

In a region with seemingly exponential jumps in real estate prices—home prices [rose 11 percent](#) last year—where engineers with six-figure salaries ride company buses to suburban offices every day, Google and Diridon represent a big shift (and an accelerant for the affordability crisis).

"This is a chance to do something world-class," says Benjamin Grant, a Bay Area urban planner and designer with [SPUR](#), a regional civic planning nonprofit. "We need to think Hamburg, Tokyo, and Copenhagen, not Palo Alto, Mountain View, or Sunnyvale."



People play in a fountain outside of the Fairmont Hotel August 29, 2007, in downtown San Jose, California.

Justin Sullivan/Getty Images

Silicon Valley's backward-looking take on urbanism

San Jose Mayor Sam Liccardo sees his city in the middle of a civic effort to recast itself as one built for people, not cars. While San Jose was one of the fastest-growing cities in the U.S.—in the automobile age of the '50s, '60s, and '70s—its downtown was ignored, homes and offices went to the suburbs, and it developed like a donut.

"There are too many two-story campuses surrounded by a sea of parking," Liccardo says. "It's environmentally unsustainable and culturally deadening."

Most office space in San Jose and the Valley is built on the assumption that the future is car-centric, says Allison Arieff, *New York Times* columnist and editorial director at the nonprofit San Francisco Bay Area Planning and Urban Research Association (SPUR). Consider Google's facility in Mountain View, a collection of disparate structures and parking lots, remnants of an old way of thinking about workplace design, for an age when everyone went out to lunch. We have increasing amounts of data about the benefits of connected workspaces, those that bring workers together, and those linked to transit and walkable communities. Why not create something better?

"The default is, 'Where are people going to park?'" says Arieff. "If you can get past that and embrace all this information—and Google, if anything, is about information—you can bring a whole new level of vitality to a city that should have it."

Why hasn't a similar urbanized campus appeared in a region that constantly complains about [congestion and traffic problems](#)? Grant says it's part of the growing pains endemic in areas trying to make a suburban-to-urban transition. Residents can be timid about going vertical. Developers have trouble getting financing for unfamiliar developments. It's assumed commuters want more parking. And in a community like San Jose that's [housing rich and job poor](#), the tendency is to be less restrictive on desperately needed commercial development.

The result—spread-out housing, bland office parks, low-rise offices, and crowded roadways—isn't just an inconvenience. It's shaping the Valley's competitiveness and future prospects. A recent SPUR study, [Rethinking the Corporate Campus](#), interviewed dozens of corporate leaders in Silicon Valley and found that housing and transportation are becoming significant employment issues.

The cost of living in the Valley impacts the cost of labor, leading many firms to bring only their most premium, important workers to the Bay Area and open branch offices in other cities to handle expansion and overflow (A \$150,000-a-year engineer, for example, can buy a home in Nashville, or live with five roommates in San Jose). And getting those workers in the Bay to corporate campuses in Silicon Valley often means hour-plus trips on infamous tech shuttles, ferrying younger workers from the San Francisco neighborhoods they prefer.

"Car dependency hasn't killed the golden goose yet, but the transportation system here is not functioning," says Grant. "We should be thinking seriously about what that means for our growth engine, if that engine is predicated on a car-oriented urban pattern. There are only so many buses you can run on a congested freeway."



Google's proposed downtown San Jose campus, located near the city's airport, may eventually lead to conflicts with the FAA, if the city and company seek

upzoning to build taller, more dense buildings.
SOM, Courtesy of SPUR

Diridon's potential

Google's potential arrival at Diridon would attempt to address both the transportation and housing issues; additional rail connections to San Francisco and the region would reduce strain on already crowded streets and freeways, while the more dense, urban village expected to spring up around the campus would bring in thousands more housing units.

No Google representative was willing to go on the record to discuss the project. While the company is expanding in the Bay Area and elsewhere, and sees potential in a transit-friendly, walkable, urban campus, it's still early days. Some of the final plots of land need to be purchased from the city and Santa Clara county, a proposed series of community engagement and dialogue sessions wouldn't start until next year, and completion of Diridon's rail upgrades is still years away.

The entire project is a unique and major construction challenge. High-speed rail and [Bay Area Rapid Transit \(BART\)](#) connections are under development and Google would likely ask for upzoning and the ability to construct taller buildings, observers predict (a request complicated by the flight paths of planes landing at nearby Mineta San Jose International Airport, meaning the FAA needs to get involved). A new home for Google likely won't break ground until at least 2025.

But the size and scope of the project, and the complexities of transportation planning and funding, have created a hurry-up-and-wait situation, where adjacent real estate is already exploding in value due to the [Google effect](#), and local leaders are moving ahead despite significant challenges to threading the needle on transportation and land-use issues.



Google's rendering for [Charleston East](#), a planned expansion of its Mountain View campus that aims to be more integrated into the surrounding area.
Google

Mayor Liccardo jokingly views it as a Moses-like situation; he likely won't be in office when the station and campus open, so he can only push everyone toward the promised land. Currently, rail is the big question mark. The city and county have already put in billions to fund various rail projects—the county just voted for another [\\$1.5 billion for BART expansion](#) in November—and California has chipped in hundreds of millions for Caltrain electrification. But the federal funding, a not-insignificant [\\$1.5 billion](#), hasn't come yet (Liccardo says the application process begins in March), and the lengthy environmental review for rail extensions also lies ahead.

While there are real obstacles, the city, and many investors, are already focused on what could be. Nanci Klein, the city's deputy director of economic development, believes Diridon can be transformative. With the Google campus coming, San Jose can build bigger and denser, eventually taking much of the city to a comfortable four to six stories and adding additional amenities and parks for an influx of downtown residents.

"I don't think this is so far off," says Robert Staedler, an urban planner and principal at the local firm [Silicon Valley Synergy](#). "People say that to take the pressure off community expectations and stop speculation. It's a clever ruse."





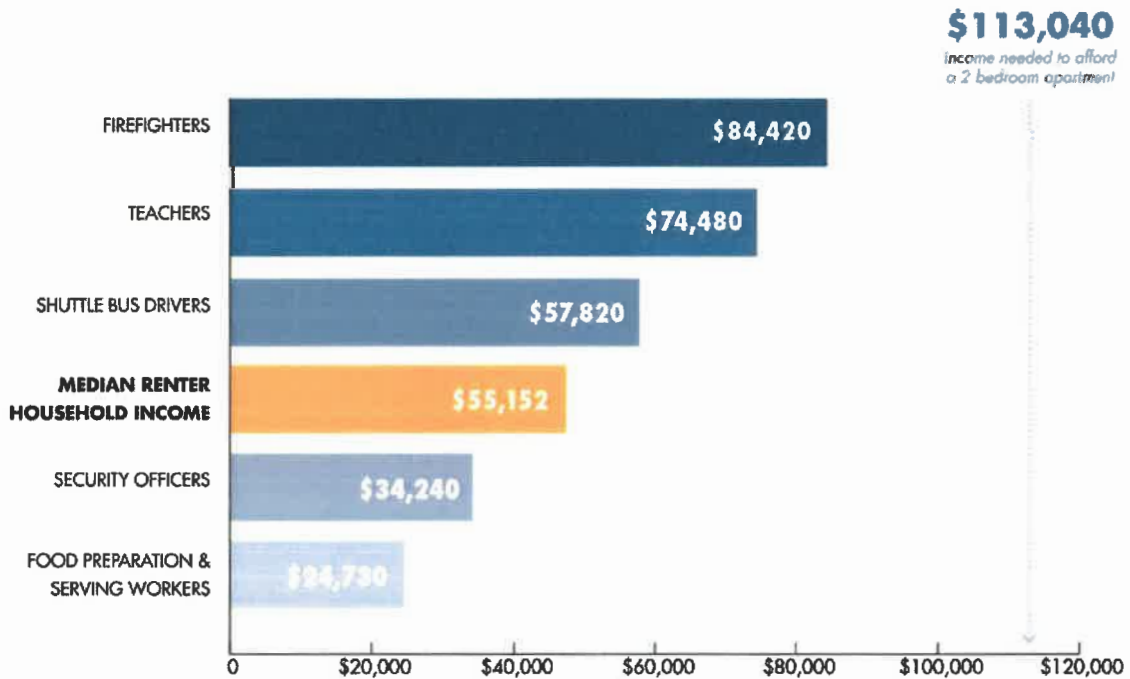
Caltrain bike car at Diridon Railway Station in San Jose, California.
Moment Editorial/Getty Images

The downsides to having Google next door

Getting tech and government, not known to work at the same speeds, to collaborate on something this complicated certainly isn't helped by public fears of the proposed project's real estate ripple effect.

Jeffrey Buchanan, policy director at Working Partnerships USA, works with [Silicon Valley Rising](#), a local coalition of community and labor organizations. The group, which is pushing for Diridon to be a [model of responsible community development](#), has held a series of town halls across the city since the campus was announced earlier this summer, and found many community groups and residents fear rising rents and displacement.

"Residents across the city are concerned that there's already an affordability crisis, and adding 20,000 tech workers downtown is only going to make it worse," he says. "The fear is, San Jose can expect a San Francisco-style price boom when Google moves in. For working-class people who have seen their income after rent actually decrease over time, that's a huge deal."



INCOME PER YEAR

Wages for most working-class families in San Jose haven't kept up with fast-rising real estate prices. (Sources: Bureau of Labor Statistics, May 2016 Occupational Employment and Wage Estimates; realAnswers Third Quarter, Average Rents, 2016; City of San Jose, Housing Market Update Q3 2016; US Census Bureau, American Community Survey, 2011-2015 Five Year Estimates)

Silicon Valley Rising

San Jose, like the rest of the Valley, already has an [affordability crisis](#). The cost of the average two-bedroom apartment is more than \$3,000 a month higher than the [median renter household income in San Jose](#). And, just six months in, some of the worst fears of gentrification in downtown San Jose seem to be coming true. Land near the edges of the Google campus, in neighborhoods such as Delmas Park, are already going for [double their assessed values](#) or more.

"Even if Google never steps foot into San Jose, we need to build 25,000 housing units," says Mayor Liccardo. "We have a housing crisis."

Buchanan already sees a future where an increasing number of the region's service workers have to move farther away from job centers, to areas like Hollister or Los Banos, two or more hours away from work. It's a domino effect: gentrification, affordability issues, displacement, and then additional traffic and transportation issues.

It doesn't help perceptions that if all the proposed land sales go through, Google will own the choicest land near the valuable transit hub and rail lines—paid for with billions in public investments over decades—and likely request upzoning that will add millions to the value of the company's initial investment.

Many just want to make sure San Jose is both demanding and supportive, and gets public value from the vast public investment in the land.

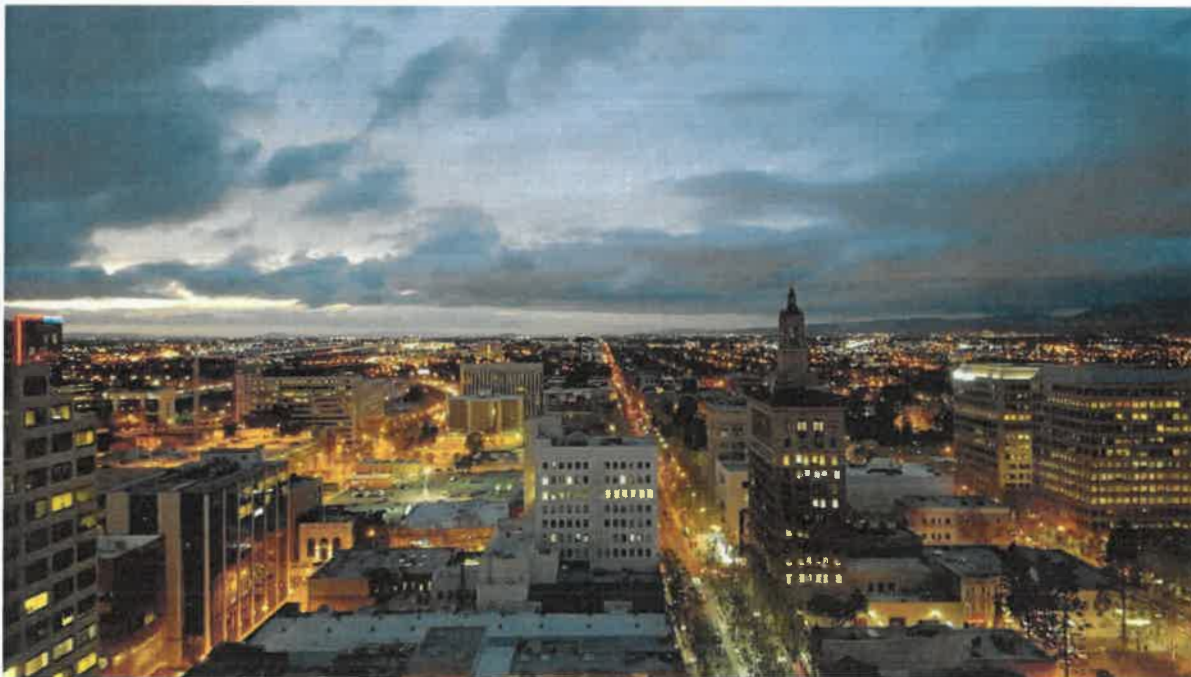
"This is a once-in-a-century opportunity," says Grant. "We need to make sure we get an outcome worthy of the public's investment in this place."

Silicon Valley Rising would like to see a scenario where Google invests in its campus, as well as affordable housing in the region. A [2014 Diridon Station Area Plan](#) suggested a combination of impact fees, development agreements, tax-increment financing, and the development of affordable housing on public land, among other tools, as a means to achieve affordable-housing goals.

It's great that transit-oriented developments like Diridon get cars off the road, says Buchanan, but high-tech developments like this often lead to significant displacement.

"Can Google build all the housing that's needed?" asks Arieff. "No, but I feel they could do something. We can't ask them to do everything, but we can ask them to help with the intractable problems of housing and congestion. Companies are starting to understand that if they don't help with these problems, they eventually won't be able to hire anybody to work here anymore."

Currently, Google is in talks with the city and county to purchase 16 remaining parcels of land (much of the proposed Diridon campus was part of a failed plan to bring a baseball stadium to San Jose). The focus will be on community meetings this year, and the status of any community development agreements that may come with future zoning agreements with Google.



San Jose, Silicon Valley view from downtown to the north and San Jose International Airport at sunset.

Shutterstock

What's at stake

Staedler says comparing Diridon to the "Grand Central of the West," as some boosters have, misses the point. This really should be the Google Station of the West; let tech help San Jose with what cities don't do well, and make them a true partner in building a new 21st-century model multimodal transportation center (as [plans for Toronto](#) from Sidewalks Labs show, they're not averse to municipal partnerships).

The uniqueness of the Diridon rail investment, and the potential size of Google's new campus, make this entire development a game-changer for the region. It's a chance to reshape downtown San Jose, a unique opportunity to create a different kind of public and private partnership, as long as it's done in a way that doesn't lead to extreme disruption and displacement. It's an opportunity for a region known for innovation to embrace urbanism that isn't stuck in the 20th century.

"It won't be a gated community of a corporate campus," says Liccardo. "It's about transit and urban design and the space between buildings. We have to get the paseos, parks, and plazas right. That's how the city will be judged."