



Metro

PLANNING & PROGRAMMING COMMITTEE

February 20, 2008

SUBJECT: STATUS REPORT ON CONGESTION MITIGATION FEE FEASIBILITY STUDY

ACTION: RECEIVE AND FILE

RECOMMENDATION

Receive and file status report on the Congestion Mitigation Fee Feasibility Study.

ISSUE

Staff is in the process of developing a Congestion Mitigation Fee Feasibility Study Report and a Draft Study Report has been released for review and comment. This report is to brief the Board regarding the status of the Draft Study Report process and the outcome of certain stakeholder input received to date. See Attachment A for a summary of the Draft Study Report.

DISCUSSION

Due to projected growth challenges and on-going transportation funding shortfalls, the Board authorized work on a Congestion Mitigation Fee Feasibility Study to explore the feasibility of implementing a congestion mitigation fee in Los Angeles County. Staff has been meeting with sub-regional Councils of Governments (COGs), local jurisdictions, the private sector, the Congestion Mitigation Fee Policy Advisory Committee (PAC) and other stakeholders to solicit input on whether a Congestion Mitigation Fee program would work in a complex County such as Los Angeles. Staff has concluded that a congestion mitigation fee program in the County is feasible and is described in the Congestion Mitigation Fee Program Summary. (Attachment A)

Since the Congestion Mitigation Fee program is only intended to help mitigate the impacts of future growth, it will not solve all of the County's congestion problems. However, this self-help proposal is one of a several strategies currently being considered for generating new revenue that could be used to build much needed transportation projects in Los Angeles County. The Draft Study Report outlines a program that is straightforward and can be implemented by all local jurisdictions, thereby ensuring local control of the program.

Congestion Mitigation Fee Program Summary

A congestion mitigation fee is a one-time fee applied to all types of new development to

fund transportation projects that will help mitigate the impacts to the regional transportation network resulting from new development. If implemented, a congestion mitigation fee would generate new revenue to build transportation projects that would go towards mitigating the impact of new growth. In addition, the Congestion Management Program (CMP) would be amended to replace the Deficiency Plan debit-credit methodology of addressing system deficiencies with the Congestion Mitigation Fee program. This program would be a local responsibility for meeting State CMP requirements in order for cities to receive \$95 million annually in State gas tax revenue. If adopted in June 2008, this Draft Study Report will establish the program guidelines for the proposed program, and provide the framework for moving forward to the next step towards developing the fee program. See Attachment B for the Work Plan Schedule.

Once authorized by the Board, local jurisdictions would be responsible for adopting the fee program through a local ordinance. Prior to that, jurisdictions would identify projects that help mitigate the impact of new development within their jurisdictions. Eligible projects would consist of local projects with regional benefit, including highway improvements, regional arterials, transit capital projects, and others to be determined on a case-by-case basis. Staff proposes that a countywide minimum fee amount be established. However, the actual fee amount would be recommended at the final step of the Study.

The Congestion Mitigation Fee Program is designed to maximize local control by having jurisdictions review growth forecasts, select transportation projects, collect and retain fee revenue, and confirm the regional arterial network that will be utilized in the nexus analysis. Local jurisdictions are encouraged to consider the benefit of pooling funds for sub-regional or multi-jurisdictional programs or projects. Thus, it is recommended they consult with Caltrans, sub-regional COGs, adjacent jurisdictions, transit operators, and developers in preparing a mitigation fee project list.

Consistent with CMP statute, various categories of development projects will be exempted from the congestion mitigation fee program. They are as follows:

- Low/Very Low Income Housing as defined by California Department of Housing and Community Development;
- High Density Residential within ¼ mile of a fixed rail passenger station;
- Mixed-use development located within ¼ mile of a fixed rail passenger station;
- Projects that are not subject to approval through the local entitlement process;
- Projects reconstructed or replaced due to a natural disaster; and,
- Projects with a development agreement prior to July 10, 1989.

For those jurisdictions with existing local fee programs that fund transportation projects as defined in the Draft Study Report, they would receive dollar-for-dollar credit to avoid double-counting. The congestion mitigation fee program would not require cities to

redirect their local fee program projects or funds in any way. Jurisdictions also may award credit to a developer for developer constructed projects and may combine mitigation fee dollars with other available funding sources to fully fund mitigation program projects.

Staff would annually determine local compliance with Congestion Mitigation Program through existing CMP local conformance process. Cities and county that do not implement minimum fee would not be in compliance with CMP, and would be subject to loss of Section 2105 State Gas Tax revenues, would not be eligible for federal Congestion Mitigation and Air Quality Program (CMAQ) and Surface Transportation Program funds, and could not participate in the Call for Projects process.

Since the inception of the CMP, an Appeals Panel comprised of representatives of jurisdictions and diverse agencies has been utilized to assist staff by providing a forum to resolve CMP related implementation concerns, appeals, and help make policy recommendations as they arise. This same Appeals Panel would be utilized for the Congestion Mitigation Fee Program as it pertains to the initial implementation of the program and ongoing administrative related issues.

Stakeholder Outreach

Staff initiated a stakeholder outreach program that engaged each of the Councils of Governments (COGs), local governments, the building industry, the Congestion Mitigation Fee Feasibility Policy Advisory Committee (PAC) and other stakeholders to seek their input on how to effectively develop a congestion mitigation fee program. The PAC was also established to assist staff during the last year on identifying issues and concerns that should be addressed and reflected in the Draft Study Report. The PAC consists of city representatives from the COGs, developers, environmental groups, labor unions, the county, Caltrans, and others. At the suggestion of the PAC members and others, staff developed a set of Guiding Principles, which the Board adopted in April 2007 to guide the mitigation fee process. The Draft Study Report has been developed consistent with those guiding principles. Staff has responded to stakeholder input by developing program guidelines in the Draft Study Report that lays out how a countywide Congestion Mitigation Fee program would work. See Attachment A.

After conducting periodic meetings with the PAC for more than a year, staff distributed the Draft Study Report to the PAC on October 17, 2007 via e-mail and subsequently met with the PAC to receive their comments on October 30, 2007. At this last meeting, a good deal of discussion took place regarding the Draft Study Report.

The development community focused many of their comments on what happens after a congestion mitigation fee is collected by the local jurisdictions. Specifically, they seek assurances and certainty from jurisdictions that transportation projects will be constructed within a reasonable time period and hope that the mitigation fee to be paid in this program also go towards their regional California Environmental Quality Act

mitigation responsibilities. Developers stated a fee program should have a delineated project list at the sub-regional level instead of the local level and that they should only pay their fair share and not pay for pre-existing conditions. They also stated that it was important to provide flexibility in the fee program such as modifying trip generation rates where there is justification to do so and including freight movement transportation projects as a category of projects funded by the fee program.

Local jurisdictions represented on the PAC also had a number of comments. They stated that to build meaningful projects, jurisdictions would need to have local control of the fee program. They also expressed that individual cities may not generate enough revenue on their own to make the program meaningful. Thus, developing a consensus would be critical to generating a list of multi-jurisdictional projects. Smaller cities stated that since they are already built out, they may not generate as much revenue as those cities projected to have significant growth placing them at a comparative disadvantage if matching funds become available. See Attachment C for a detailed summary of key points expressed by PAC members.

Approximately 700 copies of the Draft Study Report were distributed for review in mid-January 2008 to the 89 jurisdictions through their mayors, city officials, as well as to sub-regional COG Executive Directors, Transit Operators, Congestion Mitigation Fee Policy Advisory Committee, development representatives, and other interested parties.

Work Plan Milestones

Staff is in the process of completing Step 1 of the Work Plan (Attachment B), which is conducting the Feasibility Study, preparing the Draft Study Report, and receiving input from stakeholders through the outreach activities carried out by staff and the contractor. The outcome of this work effort is documented in the Draft Study Report, which has been widely distributed to stakeholders.

During the next several months staff will be conducting additional outreach activities with COGs, jurisdictions, the private sector, environmental groups, and other stakeholders to receive input on the Draft Study Report. After integrating the public input into the Final Study Report, staff will bring a revised Study Report to the Board for approval.

If the Board adopts the Congestion Mitigation Fee Study Report, scheduled for June 2008, then staff would proceed to work on Step 2 of the Work Plan. Step 2 consists of jurisdictions confirming their growth forecasts and identifying local projects with regional benefit that would mitigate the impact of new growth. Staff has prepared a growth forecasting and fee revenue calculation tool to assist jurisdictions and other parties to conduct "what if", or pro-forma, scenarios regarding mitigation fee amounts. This calculation tool estimates the fee amount a jurisdiction would need to have in place to pay for the cost of transportation projects needed to help mitigate the impacts of growth. Step 2 is currently scheduled to occur between July 2008 and January 2009 with

expected Board action in February 2009. If the Board directs staff to proceed to Step 3, then the Nexus Study technical analysis would take place between March and June 2009 with Board action scheduled for July 2009. The final step, or Step 4, of the Work Plan is local program implementation, which consists of jurisdictions adopting ordinances to implement the Congestion Mitigation Fee program at the local level with a project list and a corresponding fee amount. After these steps are completed, then staff would update the CMP and replace the debit-credit methodology of the Deficiency Plan with the new Congestion Mitigation Fee Program.


NEXT STEPS

During the months of January 2008 through April 2008, staff will work with stakeholders to ensure their concerns and comments are reflected in a revised Study Report. Subsequently, staff anticipates presenting the revised Study Report to the Board for action in June 2008. If the Board adopts the Study Report, it will establish the program guidelines for the proposed program and establish the framework for proceeding to work with local jurisdictions to identify projects and review growth forecasts (Step 2 of Work Plan), as well as guide the development of the Nexus Study (Step 3 of Work Plan). Each of these steps requires Board action to proceed to the next step, with final action to implement the congestion mitigation fee scheduled for July 2009.

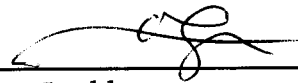
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ATTACHMENTS

- A: The Congestion Mitigation Fee Program Summary
- B: Congestion Mitigation Fee Work Plan
- C: PAC October 30, 2007 Meeting Summary Key Points



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ATTACHMENT A

The Congestion Mitigation Fee Program Summary

Congestion Mitigation Fee Program Summary

- Congestion Mitigation Fee could be authorized by the Board. Board action would make fee a local implementation requirement of the Congestion Management Program.
- Once authorized by the Board, local jurisdictions would be responsible for adopting fee through local ordinance.
- LACMTA will prepare and adopt Program Guidelines for local implementation (Draft Study Report is proposed guidelines document).
- One time fee applied to all types of new development.
- Fee funds local transportation improvements that mitigate the impact of growth on the regional system.
- Eligible projects would include capacity increasing improvements which benefit regional system, including:
 - State highway improvements;
 - Improvements to designated Regional Arterial System;
 - Transit Capital projects; and
 - Others to be determined on a case-by-case basis.
- Mitigation fee program horizon is through FY2030.
- Fee is applied based on ITE trip generation rates for land use categories.
- LACMTA will establish a countywide minimum fee level - the same for all local jurisdictions.
 - Local jurisdictions may choose to exceed minimum.
- Actual fee amount will be determined as part of final Board approval action.
- Program designed to maximize local control (consistent with Guidelines):
 - Population forecast and regional arterial network to be reviewed with local jurisdictions and county;
 - Cities and county adopt local ordinance;
 - Cities and county select projects;
 - Cities and county collect fee at building permit issuance;
 - Cities and county administer fee program and manage fee account; and
 - Cities and county implement project, or designate responsibility to implementing entity (i.e., developer, local, regional, or state transportation implementing agency).
- Cities and county should consider the benefit of pooling funds for sub-regional or multi-jurisdictional programs or projects.

Congestion Mitigation Fee Program Summary (Cont.)

- Cities and county will provide projects lists to staff. LACMTA will incorporate projects in Countywide Nexus Study to meet the requirements of the California Mitigation Fee Act (Government Code Section 66000).
- Cities and county are encouraged to consult with Caltrans, sub-regional COGs, adjacent jurisdictions, transit operators, and developers in preparing mitigation fee project list.
- Projects exempt from mitigation fees include the following:
 - Low/Very Low Income Housing as defined by California Department of Housing and Community Development;
 - High Density Residential within ¼ mile of a fixed rail passenger station;
 - Mixed-use development located within ¼ mile of a fixed rail passenger station;
 - Projects that are not subject to approval through the local entitlement process;
 - Reconstruction or replacement of any residential or non-residential structure which is damaged or destroyed, to the extent of not less than 50% of its reasonable value by fire, flood, earthquake or other similar calamity; and
 - Projects that entered into a development agreement (as specified under Sections 65864 through 65869.5 of the California Government Code) with a local jurisdiction prior to July 10, 1989.
- Cities and county that have existing local fee programs that fund “regionally significant” projects as defined in the Draft Study Report may receive dollar-for-dollar credit to avoid double-counting:
 - Nothing in this program is intended to redirect local fee program projects or funds.
- Cities and county may award credit to a developer for developer constructed transportation improvement projects.
- Cities and county may combine mitigation fee dollars with other available funding sources to fully fund mitigation program projects.
- Once the Board adopts the Nexus Study/Final Draft Study Report, cities and county will initiate local ordinance adoption and fee implementation.
- Local jurisdictions will annually report to staff confirming program implementation.
- LACMTA will annually determine local compliance with Congestion Mitigation Program through existing CMP local conformance process.
- Cities and county that do not implement minimum fee will not be in compliance with the CMP, and will be subject to loss of Section 2105 State Gas Tax revenues, are not eligible for federal CMAQ and STP funds, and are not able to participate in the Call for Projects process.
- CMP Appeals Panel will serve to address local issues regarding mitigation fee compliance, interpretation of program requirements, project eligibility and additions to the fee network.
- Cities and county will annually update their fee schedule to account for inflation per Draft Study Report.
- LACMTA will conduct a comprehensive Congestion Mitigation Fee program update at least once every five years.

ATTACHMENT B

Congestion Mitigation Fee Work Plan

Congestion Mitigation Fee Work Plan

Work Plan Components	Preliminary Schedule	Estimated Dates for Final Board Action
Step 1: Feasibility Study & Program Guidelines <ul style="list-style-type: none"> • Review with PAC, local jurisdictions, COGs, & Others 	Jan. '07-April '08	June '08
Step 2: Local Project Identification <ul style="list-style-type: none"> • Work with local jurisdictions to confirm growth forecasts • Work with local jurisdictions to identify local projects with regional benefits 	July '08-Jan. '08	February'09
Step 3: Nexus Study <ul style="list-style-type: none"> • Technical work effort to determine nexus • Final Board action to authorize program 	March 09-June '09	July '09
Step 4: Local Implementation <ul style="list-style-type: none"> • Work with local jurisdictions to adopt Local Ordinance 	August '09 +	

ATTACHMENT C

Policy Advisory Committee
October 30, 2007 Meeting Summary Key Points

Policy Advisory Committee

October 30, 2007 Meeting Summary Key Points

1. **Congestion Mitigation Fee Program should qualify for regional CEQA mitigation.** The development community strongly urged that the mitigation fee to be paid in this program should also go towards their regional CEQA mitigation responsibilities.
2. **Congestion Mitigation Fee would make housing more expensive.**
3. **Collecting the fee and not building the transportation project it is supposed to build.** One of the pressing concerns expressed by the development community centered on what happens after a congestion mitigation fee is collected by the local jurisdictions. Specifically, they are concerned with the certainty of constructing transportation projects within a reasonable time period whereby cities would collect the fee but transportation projects would not get built.
4. **Collaboration among jurisdictions is important for successful program implementation and meaningful transportation projects to be built.** Generating enough funding from the fee to build transportation projects that will benefit the regional transportation network would require local jurisdictions to collaborate. They acknowledged, however, the challenges involved with multi-jurisdictional collaboration
5. **New funding availability.** Significant additional funding would need to become available to match the fee revenue collected by local jurisdictions.
6. **New development paying its fair share and not for pre-existing conditions.** Developing a project list at the sub-regional level will ensure that new development is only paying its fair share and not paying for pre-existing conditions.
7. **Level playing field.** The Congestion Mitigation Fee program should ensure that it levels the playing field in the manner it is implemented and that it is equitable.
8. **Trip generation rates flexibility.** Provide flexibility in the area of trip generation rates in those cases where there is justification that a different rate should be used in place of the ITE trip generation rates provided in the Study Report.
9. **Local control of the Congestion Mitigation Fee program.** Local control of the Congestion Mitigation Fee program and revenue while still building meaningful transportation projects.
10. **Cities may not generate enough fee revenue on their own.** Individual cities may not generate enough revenue to make the program meaningful, but are not sure how they can reach consensus on a list of multi-jurisdictional projects.
11. **Smaller cities may be at a disadvantage than larger cities.** Smaller cities stated that since they are already built out, they fear they will be at a disadvantage because their cities will generate far less fee revenue than those cities projected

to have significant growth. This would place them at a comparative disadvantage if matching funds become available.

- 12. Freight movement projects should qualify for funding by the fee program.** Transportation projects that mitigate the impact of freight movement should qualify for funding by the fee program given that the freight industry is one of the county's economic drivers.
- 13. Developers should not be charged two congestion mitigation fees.** Credit should be provided in those cities where there is already a congestion mitigation fee in place.