Nevada County Transportation Commission meeting – May 17, 2023

Regional Transportation Mitigation Fee Program Update
Presentation by Don Hubbard and Rosanna Southern from GHD Inc.

Aaron Hoyt:

Thank you Chair and Commissioners. We will be introducing Don Hubbard and Rosanna Southern from the firm GHD Inc. Rosanna will be giving a short presentation on the update of the Western Nevada County Regional Transportation Mitigation Fee Program. They've been helping NCTC, Nevada County, and the cities of Grass Valley and Nevada City on this update that is done approximately every five years.

Their presentation will build upon the staff memo that you have in your packet that talks about the brief history of the program, the state requirements to update a mitigation fee program such as this, some new state legislation that will change this program in terms of just the nexus study of how it looked compared to the prior updates, and then go through those steps to calculate this regional fee program. And ultimately, what are the resulting fees? The regional fee program really is a mechanism that allows the planned and forecasted future development to help with their fair share towards improvements on the regional transportation system.

Those projects are predominantly located along the state highway system, State Route 20, State Route 49, and serve as the greater Western Nevada County region. At the end of the presentation, we'll be asking for comments, if any, on really the suitability of the fee update. And then we look to come back to the commission in July, looking to adopt the fee program at that point in time and the work with the local agency to get that implemented thereafter. I'll be back if you have any questions after the presentation.

Don Hubbard:

I'll start this presentation by going over the background to the program and then I'll briefly discuss some recent legislation that introduced some new requirements into all fee programs statewide, that's AB 602 and SB 13. After that, my colleague Rosanna will discuss the Nexus study that we've just completed to fulfill the legal requirements and the draft results, including recommended changes to the fees. Then we'll close by answering any questions you may have about this material.

Let's start by discussing what the program is and why it's being updated. The RTMF program was established in the year 2000, more than 20 years ago. It covers the western part of the county, including the cities of Grass Valley and Nevada City. The eastern part of the county has its own program, and the two cities each have their own programs as well. Those fund different sets of roadway improvements than the RTMF. The RTMF is more targeted towards the regional facilities. The programs brought in more than $8 million over the years and has helped fund improvements that you've probably seen in the last several years. Like any fee program, this one requires a Nexus study, which we'll describe in a few moments. The original Nexus study for this program was done in the year 2000, and it was updated in 2008 and again in 2016.

So why do we update these fees? This will be the third update. The simple answer is that state law requires it. The reason is that conditions change over time, including traffic levels, expectations about development, construction costs and so on. All those things are constantly evolving. Some projects get built and then we don't need to collect money for them anymore, while other projects may be added to the list in accordance with changing priorities. The goal of these updates is to maintain fairness for everyone. Development is asked to pay its fair share for needed developments, but no more than their fair share. So, the purpose of a Nexus study is to analyze that nexus between new development and the need for roadway improvements.

The state legislature recently had its eye on fee programs primarily because of complaints that impact fees were affecting housing affordability. In the last couple years they passed a number of new laws that affect the RTMF, but also affect other fee programs across the state and in the county.

The most important of these new laws is AB 602, which went into effect last year and was intended to clean up the opaque and informal way that many programs were operated, and also to introduce some uniformity to the process. Its underlying goal was to reduce the fee burden on small affordable units. Most of the provisions were to enforce best practices that not everybody was following. The RTMF was already doing most of those things, so that doesn't have much effect on your program. That's just everybody else catching up to what you've always been doing.

The biggest change, and one that does affect the RTMF, is that fees on residential development must now be based on the floor area of the dwelling unit. Just like fees have always been for office buildings in retail based on floor area, and again, this is the state trying to reduce the burden on smaller units by shifting more of the burden onto the larger houses that tend to generate more traffic.

So instead of charging a flat fee for single family housing and then a different flat fee for apartments and a third flat fee for senior housing, we now have to have separate categories for small, medium, and large units within each of those housing types. And again, the whole point of this is you differentiate by size, you charge a lower fee on the small units and a larger fee on the large units.

The legislature's other focus has been on accessory dwelling units, which are separate additional dwellings built on a lot that already has a house. These used to be charged impact fees just like any other new house and ADU was essentially just another single-family dwelling, but SB 13 has created a completely new system for assessing fees on those.

To start with, any ADU that is smaller than 750 square feet is exempt from fees completely. If the unit is larger than 750 square feet, then the fee is proportional to the size of the ADU compared to the size of the primary unit. So, if an ADU is half the size of the primary unit, that ADU is going to be charged half of what the primary unit would be charged if the primary unit was new. And again, the whole point of this is, it's in the hope that it will aid in the creation of small affordable housing by reducing the fees on ADUs. So that's the background to our current work to update the program's Nexus study. Now Rosanne will tell you what we did and what the results were.

Rosanna Southern:

Good morning, everyone. My name is Rosanna Southern with GHD, and I'll be discussing the process that we went through, as Don has mentioned, going through each step.

The first step as part of the Nexus study update is to update all of the inputs that are considered when we calculate the fee, housing and economy and demographics. Those are all considered, including Covid. We were coming out of the great recession, were on the rise and then Covid and then the second recovery. So, housing market changes, growth changes, those land use forecasts have changed. We also consider projects that have been constructed of course, and updated trip generation rates. Another important aspect is the cost, construction prices have increased about 30%.

So those land use inputs and demographic inputs are put into a travel demand forecasting model that covers the Western Nevada County area. We use those traffic forecasts to determine where growth and development has impacts and what projects are associated with that. There are nine projects that were identified through that process. Some of the projects have remained in the fee program and some of them have been removed due to the traffic forecast and the anticipated growth no longer having a future deficiency. And there are the State Route 49 widening projects, which I'll discuss a little bit later on when we talk about cost.

The next step, once we figure out the needs for the projects, is the percent attributable to do development. The reason why we do that is because we are not legally allowed to charge the entire project to new development. We have to determine the percentage that is attributable to new development. For example, if there's no deficiency even with new development, then you cannot charge a fee. The second example, second case, is if the development causes a deficiency. If there's no deficiency today, but in the future, there is a deficiency, then that would be one hundred percent eligible for the fee program. The third case is if there is an existing deficiency, you are not allowed to charge all of that to new development. You have to determine the fair share of the future deficiency.

The next step is to determine the cost associated with that and apply that percent of the new development that is attributable. We updated the cost estimates based on current costs available and escalation factors for Caltrans or other things, so about $63 million in total project costs. That was without the State Route 49 projects. The State Route 49 widening projects were over $200 million, so that was determined to be very expensive. In discussion with NCTC staff, it was determined to remove those projects because of the cost. Otherwise, if we kept those in, the fees would be very high and we'd have to determine outside funding sources for existing deficiencies as part for some of those as well.

Aaron Hoyt:

In regards to the State Route 49 improvements, we looked at those as part of the update of the fee program. And for the regional mitigation fee, there needs to be a reasonable expectation that you will be able to fund those projects with the price tag of more than $200 million and our, call it small rural regional improvement program formula share. And then changing state policies and viewpoints towards projects that are viewed as capacity increasing, that makes it harder for us to obtain outside state and federal grant funding. So based on that, we decided it wouldn't be appropriate to leave those projects in because we don't have the reasonable expectation that we can fund those two constructions.

So those projects were removed. The one project that we did keep in for State Route 49 is the State Route 49 Corridor Improvement Project between McKnight Way and La Barr Meadows, the southbound improvements that we have funded through right of way, and we're just seeking the construction funding of that. We estimated out our regional improvement program formula shares, and then the balance remaining was about $2 million and that was attributable to development.

Question: Where do we draw the line as what is new development? Is there anything moving forward that's brand new?

Don Hubbard:

It would be anything requiring a new permit that would be subject to the fee. So, any existing building is not subject to the fee, but if you were going to build an ADU or someone was going to build development of 10 houses going forward, those would be subject to the fee and would be considered new development.

Rosanna Southern:

In order to determine a fee, the next step is to determine the split between residential and non-residential trips. To assign the cost for that goes into the fee program to those two categories. The fee is determined then by the cost divided by the number of trips. And without getting into a whole bunch of numbers in this presentation, generally we just want to present a general overview of what our findings were from the growth and the traffic model run.

About 86% of the growth in traffic is expected to come from residential development. That means 86% of the fees will be associated or anticipated to be allocated to the residential portion of the fee, based on that calculation of the residential fee per EDU, which is equivalent dwelling unit, for residential. The proposed residential fee per EDU is about 3.8% increase from the current fee based on everything that was previously discussed. And the non-residential fee is much lower than the current fee because of everything we discussed, the change in projects and the cost and change in development growth. Any questions on that? We'll also have time for Q&A after as well.

So next steps, staff is requesting comments on the proposed fees today and then the next steps are to accept the Nexus study report in the July meeting and adopt the findings required by state law and then also coordinate with jurisdictions to adopt the fee. Okay. Thank you all.

Aaron Hoyt:

Our hope really today is to try to answer any questions you have about this program, whether it's the history or whether it's how we've gone through the updates. And it may be just on the suitability of the fees and we can talk through that. Take direction from you, comments, maybe you want us to look at something else. We'll go back to our desks with the consultants and work through it. I will say through this update process, staff from each of the jurisdictions have been involved through our Project Advisory Committee meetings, so they're in a lockstep with us in terms of understanding what's happened. But that is a little bit different from kind of a role of an elected official and moving forward and potentially accepting and adopting a fee to be implemented in the future. We're here to answer questions and try to help clear up any questions you have.

Don Hubbard:

And I would just add that also on the Project Advisory Committee, we've worked closely with the Nevada County Contractors Association throughout the process, when we do these fee updates, we really want to make sure that what we're coming up with to the extent possible is feasible. That the fee, we're not creating an exorbitant fee amount. Also want to make sure that our fee program and the Nexus are legally defensible.

Working through that process, kind of the ultimate outcome of this, complying with the new legislative requirements in AB 602, switching the residential fee to square footage, the end result you'll see is for single family and as well for multifamily, the smaller units are paying a little bit less than the current fee that was just a flat rate based on trip rates. The medium size pays a little bit more and then the larger size takes a bigger burden of the fee amount, as intended with the legislation, the decrease on the commercial fee really just has to do with the changes in the forecasted growth assumptions and land use assumptions within the model. And then when you run the model, essentially the trips that are associated with commercial development have gone down a little bit. And then with the cost, the total cost of the fee program going down, the fee burden for the commercial has gone down. So, the commercial fee has a reduction. Hopefully that makes sense.

Aaron Hoyt:

We’ll bring this back to the commission in July for adoption of the Nexus study and the fee. With that action, you then give direction to staff to forward the recommended adoption of the fee to each of the jurisdictions, then bring it to their bodies for formal adoption and implement the ordinances to move the program forward.

Alfred Knotts:

I've been involved in the housing wars for about 30 years now as a planning commissioner, as a lawyer and it sounds... We know that there's a terrible housing shortage, especially for low- and moderate-income folks, for workforce housing. That our teachers and our policemen, our firemen can’t live in the community which they serve is really throughout California and it's a broad problem.

And now construction costs are up 30% which seems a moderate estimate. I hear some contractors complaining about more. And I just wonder as a broader social question, we need more housing and yet more housing becomes more expensive in terms of the fees we're charging. And I'm concerned about the coordination of the effort because it seems like here in California especially, we're going in two different directions at the same time. And I hear contractors complain about how much it costs to just do a project. I assume that according to these, if you're building a multifamily unit, you're paying per unit. So, if I'm putting in six or eight units so that the firemen can live there, that's going to be six or eight times, then each one's a thousand feet, then that's going to be 10 times, it's $40,000 added on to my cost in addition to all of the other fees that are opposed by the various jurisdictions on that construction. And I'm just wondering, is there a way to really mitigate this substantially? I lose the translation in my head from building an apartment to the traffic on the road. So just, yeah, the connection is not completely obvious. I'm putting money into public transportation, et cetera. How do you wrestle with that? You coordinate with the planning commissions with the Grass Valley staff and Nevada City staff about the people who want to seek more housing construction in their communities.

Mike Woodman:

We do coordinate with all of the jurisdictions in terms of forecasted growth, residential housing needs, trying to address their needs for their housing goals. And then it is a balance because in order to have the new development, we need to fund certain transportation improvements. So having them attribute to their fair share of those improvements does help facilitate us in funding to construct what is needed. Don Hubbard, I think can address a little bit more of the philosophical side of it.

Don Hubbard:

Yeah, thanks Mike and Rosanna. Seeing the comparison with peer counties, everybody is in agreement that the impact fees are a burden. One of the problems we've got is that it's very hard for people to figure out how much of a burden it is, they're hearing from different parties. Anecdotally that it's a lot, but it's hard to say how much. And so, one of the provisions of AB 602 is to try to be very transparent about what the totality of fees that developers are paying, not just the traffic fee but their water fee and their school fees and library fees, fire department fees, all those things.

One of the provisions is that each of the agencies, each of the jurisdictions is supposed to ask developers for a full accounting of all of the fees that they pay on each of their units and then to post those on the agency's website so that people get some idea of just how large a component of the total price of a house is going into these fees. The other thing is that there is a suspicion among the developers of the smaller units that they are paying more than their fair share. As soon as this information gets out there, hopefully if that's true, it'll come to light. If it isn't true, then maybe that quarter will be a little quieter. The other thing is it will allow people to say, how come we're paying this much in this jurisdiction and only half that much in the neighboring jurisdiction?

The idea from the state legislature is there simply isn't enough information about this and that the more transparent people are and the more information they have, it will empower them to have some reforms and hopefully bring down the total cost of these fees. As you can see that for a residential fee, the RTMF as it is being proposed is not high. It is low compared to other foothill counties, the non-residential fee is very low compared to your peer counties. And I think that having a low non-residential fee is a good thing. You've got a jobs to housing imbalance, you don't want to do anything that is going to disincentivize people from creating jobs in Nevada County when you're exporting workers.

So overall your fees are not high compared to some of the ones nearby. But everybody is in agreement that the first thing to figure out is to get more information about how big the problem is and which types of fees are really adding to the costs. And then once that information's available, then I think you're likely to see legislative action to reduce them.

For the non-residential fee per trips, there are surveys done around the country by the Institute for Transportation Engineers, ITE, and they do driveway surveys and they count for a shopping center of a certain size, how many trips are coming and going from that shopping center over the course of the day. And during the peak hour they do the same thing for office buildings, for industrial, for apartment buildings, for housing developments and other things. And over the years they've built up just an enormous amount of data that allows us to estimate pretty accurately how much traffic is going to be generated by each type of new development depending on the size. So, if you've got one office building that's got a hundred thousand square feet and the other's a million, the one that's 10 times as large is going to generate approximately 10 times as much traffic, then we use a traffic model.

So that says what's coming and going from the site. The other question is how far away does the trip go once it leaves the site? If you've got, for example, an office, you know how many people are driving into the parking lot, but where are they coming from? And so, there's a distance component involved that's coming out of the traffic model. So periodically there is a traffic model update, basically every time you do one of these Nexus studies. And that's where we figure out what the origins and destinations are from different trips. That's again done from survey data and the model is checked against traffic counts and things like that to prove that it's accurate.

One of the issues that was surprising to the people that are pushing for this is they had hoped that the trips being generated by new development, that residential development would be like it is for office buildings and industrial and retail that it is proportionate to the size of the dwelling unit. Turns out that is not the case. When the state legislature passed this, they assumed that the data would be ready. They assume that you could just say, okay, we're going to do it by square feet and the engineers would all be ready to do this. Turns out no, nobody had been collecting data on that. They had been collecting, like I said, driveway counts. How many vehicles are coming in and out of an apartment dwelling that's got 20 units. Nobody was looking at the size of the units, but there was something called the American Housing Survey. For different sizes of single-family dwellings, what percentage had one person living in them or two people living all the way to seven or more people living in them.

And you can see there are some differences, but they're not as big as you would think. In the case of the small units, 39% have one person living in it. Medium size it is 20%, but even the largest units still have 12% of the case of one person living in it. We had that information and then we had a different set of information that said depending on the number of people, how many vehicle trips that household was generating. So, we've got something that says number of people depending on the size of the house. Then we said the number of trips depending on the number of people. And from those we were able to combine those to get an estimate of the number of trips by the size of the house.

But as you can see here, the smallest units, so if the typical house is an average, that's 100% of the average. The larger units are generating 11% more than the average. The smaller ones 17% less, not 50% less or 80% less. It is just a little bit less because Americans don't buy houses depending on the size of the household, they buy houses depending on their income. So, what the state legislature was trying to do just doesn't work out in practice as well as they'd hoped.

The Mitigation Fee Act is based on a lot of case law and things, but this is what the new law actually says. It says Nexus study adopted after July 1st. This Nexus study, because it's after that date, shall calculate the fee proportionate to the square footage. And if you do that, then you shall be deemed to have used a valid method. They're giving you defensibility if you say we're going to have a fee of $5 per square foot and you multiply it by the size of the unit, you're done. But you don't have to do it that way. If you make a finding that says you've looked at it and decided square footage is not appropriate, and you have some other way of doing it that bears a reasonable relationship between the fee charged and the impact and that you've got policies that make sure smaller units are not charged disproportionately.

From that you get several different options. You could just have a flat rate for everything. All housing is going to get charged $5 a square foot, whatever it is. And because they've said you will be deemed to have operated appropriately, that's rock solid in defense and legal defense ability. But that doesn't correspond to the field data. In fact, a house that's twice as big doesn't generate twice as much traffic. And plus, it takes away the advantages that multifamily and senior housing had because typically they generate less traffic. So, we don't recommend doing that, which is the way the law is actually written. Might be good for library fees or something else, but not for traffic.

The second option is you could use a different square foot rate, for different housing types. You could do $5 a square foot for single family, $4 for multifamily, $3 for senior or whatever it is that it's also rock solid, legally defensible and to preserve some link to the actual trip generation rates. But again, it's when you compare the actual impact to what it is you're charging, they're not really proportionate to each other.

In terms of small housing being built more affordably, what we are presenting is the maximum fee that's allowable by law. You don't have to charge the maximum. You could charge something less if you have some other funding source to backfill so that the project can be fully funded. And I think that what was shown was that there is some grant funding that's being used to do that and to reduce the fee. So, there is that mechanism, you don't have to charge the maximum if you have some other way of funding it, from the general fund or something else, if you can find that other source, you can pursue other policy options. ADUs smaller than 750 square feet are exempt from fees, 750 to 1500 square feet is small. And you can slice it into more categories than three. We've used three because generally speaking it's the easiest to administer that still is compliant with the law. Some jurisdictions are trying to split it into 10 different things or something else. It gets messy, the more tiers you have.

Question: Could a jurisdiction exempt everything under 1500 square feet if it wanted to?

Don Hubbard:

The answer is yes. The impact fees are not mandatory. There is a ceiling for what you can charge. There is no floor. The only issue that you've got, and it was raised by Mike previously with regard to some of the SR 49 projects, is if you exempt some units and as a result your fee program is not generating as much revenue as it would, how do you make up those funds? If you've got a mechanism for doing that, then yeah, it gives you room to make those sorts of choices, but you can't leave a gap. You have to show that if you're collecting fees for this list of projects, that you have a reasonable expectation that you'll be able to fully fund those projects. Can't leave an unidentified funding gap.

Mike Woodman:

And I think that's where the jurisdictions are maybe in a different position to do that approach. Then for the Regional Mitigation Fee Program, because our additional funds are kind of grant and formula funds, we don't have an additional sort of piggy bank to a general fund to dip into per se. There's a little bit of difference between the local fee programs and the regional fee program in that aspect.

Question: How much funding do we generate in Western Nevada County year over year and how consistent is it?

Mike Woodman:

Not a lot. And it's probably been consistently low for the last at least five years.

Rosanna Southern:

$100,000 to $200,000 a year. It varies drastically.

Mike Woodman:

And the downturn in the economy and Covid didn’t help the situation. But hopefully as we rebound, we'll see development come back.

Aaron Hoyt:

We're looking for your direction today to set up the next sequence of events. So, there's a lot of commentary that's provided today on the suitability of applying fees to smaller size residential units. That's probably the biggest takeaway. And the question is what do we do with them? How do we move forward before we come back to you with the product. Tentatively the product would be bringing back the Nexus study, which is going to go through all these wonderful calculations you saw today in a written manner, lots more tables. And that's what we would then accept as a commission.

So, the option is to proceed with the Nexus Study report, or alternative B might be staff go back and do some more homework, go through some other calculation, come back to us, and then we could decide at that point in time, move forward with path A on that schedule or path B. But ultimately once we accept the Nexus Study, we would then set up agreements and go back to each of the jurisdictions who are participating in this program in Western Nevada County and ask them to adopt the fees and proceed then with the implementation of those with building permits as they come in.

Question: If you exempted a collection of fees for projects that were 1500 square feet per unit and less, then what highway projects or transportation projects would we not be able to fund?

Aaron Hoyt:

Don, would the option be if we still keep our project lists the way they are and there's determined there's still a need and the desire for those projects, where do those fees that are exempted get placed? Does that mean that a single-family residential unit, instead of being, I forget the number, we'll say $4,500 per equivalent dwelling unit, does that go from $4,500 to $5,000 for the largest of the single-family units?

Don Hubbard:

Well, that's an excellent question and the answer is you can't shift it. As I said, this sets a ceiling, it doesn't set a floor. So, if you decide to charge less for smaller units, you can't therefore charge the larger units more. There's a reason why I have that detailed calculation because legally you're required to do it. As you can see in this table here, 45% of the units that have been built in the last five years, this shows the percentage of all units by size and type that have been built in the last five years. This is information from the member agencies. 45% are below 1500 square feet and another 2% were ADUs below 750. So almost half of the units would fall within that small category. And so, if you reduce the fee program, take away almost half the units, it is definitely going to impact the fee program's ability to fund projects.

Question: The Contractors Association, right? Do they have any big red flags or do they think this is fairly reasonable?

Mike Woodman:

In meeting with Barbara Bashall, I think she thinks the increase is reasonable at 4%. Of course, they are concerned with this fee and then the layers of other fees adding to the cost. She does acknowledge that she just doesn't like fees in general and it adds up to a large amount and it makes their projects a little harder to fund. But in terms of the fee program, we met with her on Monday. This is a follow-up to our last technical or Project Advisory Committee meeting to make sure there was no other issues based on any further discussions she's had with the group. It seemed that they were at a place of supporting the fee and felt that the recommendation or the increase was reasonable and that in complying with AB 602, the way we've structured the fee makes the most sense. As Don alluded to the way the legislation is initially, how they recommend it doesn't really work if you just apply the square footage per fee. It actually creates these weird nuances where senior families are paying more than they should. And so, the approach that we took married square footage with the information based on trip rates and housing to come up with something that actually calculates a more reasonable estimation of what those different sizes should pay. And it actually does work out where the smaller units tend to be paying less in most of the categories.

Aaron Hoyt:

We'll be asking for approval of the Nexus study at the July meeting. So, if there's direction from the commission to go back and do something to respond in terms of certain questions that came up today, we can do that and present that at our next meeting.

Mike Woodman:

And I think you'll see when the Grass Valley Traffic Impact Fee Update comes forward to the council as well as the county's local traffic mitigation fee program, those proposed fee increases, I want to say are falling right in that 4% range. So, less than inflation.

Question: And I'd also like to make the point that I'm not arguing the fact that we need money to do what's needed in our communities and that this isn't good work and you're not directing the source of good work. It's just that we're trying to wrestle with how to fund these projects with a crisis that's ripping our community apart. And for some reason no young people choose to live where they grew up, right? So, I'm just hoping to start the conversation how do we think outside the box to create a funding mechanism that continues this work and does it differently?

Question: Well, it's all interconnected. It's an ecosystem. So, I think it's really important.

Chair: All right, so we're saying we don't need a motion today?

Mike Woodman:

No, we just wanted to provide the information.