

STAFF REPORT

SUBJECT: Unmet Transit Needs Definitions

MEETING DATE: January 19, 2006

AGENDA ITEM: 9

STAFF CONTACT: Michael Powers, Sarkes Khachek

RECOMMENDATION:

Adopt a resolution approving recommended changes to definitions of “unmet transit need” and “reasonable to meet” as provided in Attachment 1. (Changes to Definitions of “unmet transit need and “reasonable to meet”)

SUMMARY:

SBCAG periodically reviews the definitions of the terms and criteria it uses to make its annual findings regarding the existence of unmet transit needs. At its December meeting the board reviewed proposed changes in the definitions recommended by the Santa Barbara County Transit Advisory Council (SBCTAC) and by staff and held a noticed public hearing on the proposed revisions. The board referred the matter to the SBCAG Executive Committee. At its January 6 meeting, the Executive Committee reviewed the definitions and recommended approval of the definitions recommended by staff (shown on the following page) except that the committee added one qualifying phrase to criteria six (highlighted).

The proposed revisions to the board’s unmet transit needs definitions have received extensive review and input through SBCTAC, TTAC and the Executive Committee in addition to public input at the board hearing. The changes recommended by SBCTAC and members of the public are outlined in the discussion section of the staff report. Upon adoption by the board, the revised definitions will be used in the upcoming FY 2006-07 unmet transit needs process.

Recommended Changes to Definitions of “unmet transit need” and “reasonable to meet” (Adopted by SBCAG Executive Committee 1/6/06)

Definition of an Unmet Transit Need

An unmet transit need is the expressed or identified need of ~~a significant segment of~~ the community for additional public transportation services to meet existing basic mobility needs which are not currently being met through the existing system of public transit services or private transportation services. Included, at a minimum, are those public transportation or specialized services that are identified in the Regional Transportation Plan, short-range transit plan, and/or transit development plan that have not been implemented or funded.

If an expressed or identified need is determined by SBCAG to be an “operational issue,” it shall not be considered to be an unmet transit need. Requests that do not require an identifiable additional increment of service will generally be considered operational. Issues such as, but not limited to, the adequacy or location of bus stops, minor route improvements, marketing, and service reliability will generally be considered operational.

The identified needs must be for the system of general public transit services. ~~The transportation needs of a limited set of individuals or of the clients of agencies shall not, in and of themselves, be sufficient to justify a finding of unmet transit needs.~~ All eligible users of a given service should have equivalent access or opportunity to use the service.

Definition of Reasonable to Meet

An identified unmet transit need shall be determined to be “reasonable to meet” if SBCAG determines that the transit service will be in general compliance with the following criteria:

1. Can be implemented consistent with the transportation improvement priorities, policies and performance standards contained in the Regional Transportation Plan, the transit development plan, or the short-range transit plan for the area.
2. Can be implemented safely and in accordance with local, state and Federal laws and regulations.
3. **Excluding the first three years of operation**, the additional transit service shall not cause the system of which it is a part of, to fail to meet system wide performance standards including:
 - A. The operator’s ability to maintain the required fare to operating cost ratio;
 - B. The estimated number of passengers carried per service hour for proposed service shall be in the range of other similar services provided; and
 - C. The estimated subsidy per passenger shall be equivalent to other parts of the transit system.
4. When the additional transit service is considered separately, both the fare to operating cost ratio and the estimated subsidy per passenger shall not vary by more than 20% from the average for the type of service provided by the operator.
5. The proposed service would not cause claimant to incur expenses in excess of the maximum allocation of TDA funds.
6. **The proposed service is projected to reach a 20% fare box recovery within 3 years, 10% in non-urbanized areas providing rural services, and projected to show continuous progress toward meeting the fare box recovery ratio during the 3 year period.**

DISCUSSION:

At the conclusion of last years annual transit needs assessment process the SBCAG Board directed that staff revisit the definitions of unmet transit need and reasonable to meet. This is a regular occurrence since the SBCAG board has reviewed these definitions every three to five years. These definitions are used to identify and assess public requests for new or expanded transit services during the annual unmet transit needs assessment. SBCAG is permitted to allocate state Transportation Development Act (TDA) funds for streets and roads purposes only if the board makes a finding that there are no unmet transit needs that are reasonable to meet. Staff indicated that this review of the definitions would be accomplished prior to the end of this calendar year so that they can be used in evaluating requests for the upcoming FY 2006-07 TDA cycle.

The Transportation Development Act speaks to the definition of “unmet need” and “reasonable to meet” in §99401.5 (c), stating in part, “The definition adopted by the transportation planning agency for the term “unmet transit needs” and “reasonable to meet” shall be documented by resolution or in the minutes of the agency.” The statute does not specify guidelines for the development of the definition used by the RTPA's (Regional Transportation Planning Agencies such as SBCAG) with the exception of, “The fact that an identified transit need cannot be fully met based on available resources shall not be the sole reason for finding that a transit need is not reasonable to meet. An agency’s determination of needs that are reasonable to meet shall not be made by comparing unmet transit needs with the need for streets and roads.” Therefore, each RTPA within the state has different definitions for “unmet need” and “reasonable to meet”. The purpose of allowing each RTPA to develop its own definition was to allow each jurisdiction to respond to the unique circumstances of their areas. In fact no two definitions from any of the more than forty separate definitions used by the various agencies are exactly the same

Review of definitions by the Santa Barbara County Transit Advisory Committee (SBCTAC)

The Santa Barbara County Transit Advisory Committee has been examining this issue since they have specific responsibilities under the state statute. A definitions subcommittee was formed to examine this issue and recommend a course of action. Members of the definitions subcommittee were: Chair Petra Lowen, Dean Palius, Barry Stotts, Matt Dobberteen, Julie Kahn, Ed Zoost, and Polly Bleavins. The committee received an inventory of all the different definitions used by regional agencies like SBCAG in the State of California.

The committee reviewed current concerns with the existing definitions based on testimony from the last unmet transit needs cycles and committee comments.

- The terms ‘significant segment’ and ‘limited set of individuals’ are too vague
- Large groups of people who are in need of transit services may not be addressed
- The terms are not objective or quantitative measures of transit users
- The issue may not be the definitions but their misinterpretation
- Some terms, e.g., operational issues are not clear to the public

The committee deliberated on this issue and recommended a change to the definition of “unmet transit need” that was accepted by the full SBCTAC on October 11. The changes remove some phrases such as ‘significant segment’ and ‘limited set of individuals’ that were seen as vague.

The subcommittee and the full SBCTAC also reviewed the definition of “reasonable to meet” at its meeting on November 8 and considered some changes. The discussion centered on the following issues:

- Fare box recovery should be explicitly addressed in the criteria since it is an important issue in the law
- Fare box recovery standards for rural areas should be less than urban areas due to longer travel distances, fewer people, and, less concentrated populations
- New services should be given an opportunity to prove that they are viable but there must be a recognition that these new services may need to be terminated if they are not performing adequately after a three year period.

The proposed changes explicitly account for the consideration of impact to fare box recovery of any service changes and also provides for a differential standard for fare box recovery between rural and urban areas. SBCAG is permitted by TDA statute to approve a fare box recovery standard below 20%; this standard may be as low as 10% for non-urbanized areas.

Discussion of Definitions by TTAC

At their December 1 meeting, the TTAC reviewed the recommended changes by SBCTAC along with comments received by COAST. TTAC discussed the recommended changes, however did not adopt any recommendations regarding the proposed changes.

Public comments on proposed changes

Mr. Alex Pujo, representing COAST, submitted a comment on the recommended changes regarding the Reasonable to Meet definition. (See Attachment 3: Comments from COAST) Mr. Pujo suggested that Criteria #6 be modified to read as the following:

“6. **The proposed service is projected to** reach a 20% fare box recovery within 3 years, 10% in non-urbanized areas providing rural services, and **projected to show** continuous progress within 3 years.”

These changes are acceptable to staff.

SBCTAC met a few days before the December board meeting and the committee reviewed proposed changes requested by Mr. Chytilo (see Attachment 4). These same proposed changes were brought before the board at the December meeting.

First, Mr. Chytilo proposed elimination of the first sentence of the third paragraph as shaded below:

~~The identified needs must be for the system of general public transit services. The transportation needs of a limited set of individuals or of the clients of agencies shall not, in and of themselves, be sufficient to justify a finding of unmet transit needs.~~ All eligible users of a given service should have equivalent access or opportunity to use the service.

The intent of Mr. Chytilo is to open up our unmet transit needs assessment to include transportation needs and not just public transit needs. SBCTAC supported this proposal. Staff

disagrees, the unmet transit needs evaluation is focused on public transit services as identified in the Statute. Staff does not support this proposed change

Mr. Chytilo also requested the addition of a phrase in criteria 5 as shaded below:

5. The proposed service would not cause claimant to incur expenses in excess of the maximum allocation of TDA funds unless other transit funds are reasonably available, in which case they may be considered.

The intent is to recognize the availability of other sources of funding that may be available to transit operators. SBCTAC supported this proposal. Staff disagrees since it does not want local agencies to be compelled to use local funds, apart from TDA funds, to finance new services if SBCAG makes a finding that an unmet transit need is reasonable to meet. Staff does not support this proposed change.

Public Hearing Notice

As you may recall, staff produced a ten-day public notice (Attachment 2: Public Hearing Notice on Changes to Unmet Transit Needs Definitions) published in the Santa Barbara News Press announcing an opportunity for any comments on the recommended changes to Unmet Transit Needs definitions. The public hearing for this item was held on December 15, 2005.

Referral to SBCAG Executive Committee

At the December meeting the board reviewed the staff report, received public comment and referred the matter to the Executive Committee. The Executive Committee reviewed the definitions at its January 6, 2006 meeting and adopted a motion recommending approval of the staff recommendations, but added one qualifying phrase to criteria six (highlighted). The motion was approved on a 3-1-1 vote with Supervisor Carbajal voting no and Councilmember Jordan abstaining. The recommended final proposed language is provided following the summary at the beginning of the staff report with bold strikeout format used to highlight the changes.

RECOMMENDATION:

Staff recommends that the board adopt the proposed changes identified in Attachment 1. This recommendation is consistent with the recommendations adopted by the SBCAG Executive Committee at its January 6, 2005 meeting.

Attachments

1. Resolution No 06-01: Definition of Terms "Unmet Transit Need" and "Reasonable to Meet"
2. Public Hearing Notice on Proposed Changes to Unmet Transit Needs Definitions
3. Letter from Alex Pujo, COAST
4. Letter from Marc Chytilo

Attachment 1 - Resolution

RESOLUTION OF THE SANTA BARBARA
COUNTY ASSOCIATION OF GOVERNMENTS

DEFINITION OF TERMS “UNMET TRANSIT)
NEEDS” AND “REASONABLE TO MEET”)
_____)

RESOLUTION NO. 06-01

WHEREAS, the Santa Barbara County Association of Governments (SBCAG) as the regional transportation planning agency for Santa Barbara County is responsible for the allocation to claimants of funds from the Transportation Development Act (P.U.C. 99200 et seq.); and

WHEREAS, Transportation Development Act funds can be allocated to eligible claimants for support of public transportation systems and for streets and roads; and

WHEREAS, before SBCAG can allocate funds for street and road purposes it must first find that there are no unmet transit needs within the jurisdiction of the claimant which can reasonably be met by establishing or contracting for public transportation or specialized transportation services or by expanding existing services; and

WHEREAS, state regulations require that each transportation planning agency adopt definitions for the terms “unmet transit needs” and “reasonable to meet”; and

WHEREAS, SBCAG regularly revisits and occasionally revises the definitions of these terms; and,

WHEREAS, SBCTAC considered issues with the prior definitions, proposed changes, and provided recommendations to the SBCAG board; and,

WHEREAS, SBCAG conducted a noticed public hearing to receive public comments on the proposed changes;

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT the Santa Barbara County Association of Governments adopts the definition of the term “unmet transit needs” as shown in Exhibit A and the term “reasonable to meet” as shown in Exhibit B, both exhibits being attached and made a part hereto.

PASSED AND ADOPTED this 19th day of January 2006 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Jim Kemp
Executive Director
Santa Barbara County
Association of Governments

Joe Centeno
Chair
Santa Barbara County
Association of Governments

APPROVED AS TO FORM:

Kevin E. Ready, Sr.
Deputy County Counsel

EXHIBIT A

UNMET TRANSIT NEEDS DEFINITION

An unmet transit need is the expressed or identified need of the community for additional public transportation services to meet existing basic mobility needs which are not currently being met through the existing system of public transit services or private transportation services. Included, at a minimum, are those public transportation or specialized services which are identified in the Regional Transportation Plan, short-range transit plan, and/or transit development plan, that have not been implemented or funded.

If an expressed or identified need is determined by SBCAG to be an “operational issue”, it shall not be considered to be an unmet transit need. Requests that do not require an identifiable additional increment of service will generally be considered operational. Issues such as, but not limited to, the adequacy of location of bus stops, minor route improvements, marketing, and service reliability will generally be considered operational.

The identified needs must be for the system of general public transit services. All eligible users of a given service should have equivalent access or opportunity to use the service.

EXHIBIT B

REASONABLE TO MEET CRITERIA

An identified unmet transit need shall be determined to be “reasonable to meet” if SBCAG determines that the transit service will be in general compliance with the following criteria:

1. Can be implemented consistent with the transportation improvement priorities, policies and performance standards contained in the Regional Transportation Plan, the transit development plan, or the short-range transit plan for the area.
2. Can be implemented safely and in accordance with local, state, and federal laws and regulations.
3. Excluding the first three years of operation, the additional transit service shall not cause the system of which it is a part to fail to meet systemwide performance standards including:
 - a. the operator’s ability to maintain the required fare to operating cost ratio;
 - b. the estimated number of passengers carried per service hour for proposed service shall be in the range of other similar services provided; and
 - c. the estimated subsidy per passenger shall be equivalent to other parts of the transit system.
4. When the additional transit service is considered separately, both the fare to operating cost ratio and the estimated subsidy per passenger shall not vary by more than 20% from the average for the type of service provided by the operator.
5. The proposed service would not cause claimant to incur expenses in excess of the maximum allocation of TDA funds.
6. The proposed service is projected to reach a 20% fare box recovery within 3 years, 10% in non-urbanized areas providing rural services, and projected to show continuous progress toward meeting the fare box recovery ratio within 3 years.

Attachment 2 - Public Hearing Notice on Changes to Unmet Transit Needs Definitions



Public Hearing on Changes to Unmet Transit Needs Definitions

The Santa Barbara County Association of Governments (SBCAG) is holding a public hearing to receive public comments on recommended changes to the Definitions of an Unmet Transit Need and Reasonable to Meet. The definitions are used in the annual assessment of new transit service requests presented by the public to SBCAG. SBCAG conducts this assessment before allocation of Transportation Development Act funding to local agencies for transit or non-transit purposes, such as streets and roads projects. The recommended changes can be found online at www.sbcag.org or by calling (805) 961-8900.

The public hearing will be held:

When: Thursday, December 15, 2005 at 8:30 A.M.

Where: Board of Supervisors Hearing Room
105 E. Anapamu St., 4th Floor
Santa Barbara, CA

Remote testimony available at Board of Supervisors Hearing Room, 511 East Lakeside Parkway, Santa Maria, CA.

In compliance with the Americans with Disabilities Act, individuals needing special accommodations to participate in the meeting, or those needing a Spanish-language interpreter, should contact SBCAG at least three working days prior to the meeting at (805) 961-8900.

Favor de contactarse con SBCAG al (805) 961-8919 tres días ante de la reunión si usted necesita traducción en español.

Attachment 3 – Letter from Alex Pujo, COAST

From: Alex Pujo [mailto:alex@pujo.net]
Sent: Tuesday, November 29, 2005 6:57 PM
To: Michael G. Powers
Subject: UTN definitions - TTAC agenda item #4

Dear Mike,

I reviewed the proposed amendment to the "Reasonable to meet" criteria shown in the staff report. Please consider the following language (changes shown in bold):

6. "**The proposed service is projected to reach a 20% fare box recovery within 3 years, 10% in non-urbanized areas providing rural services, and projected to show continuous progress within 3 years.**"

This language is more precise. Please forward this message to all interested parties. Thank You.

Alex Pujo
735 State Street, Suite 207
Santa Barbara, CA 93101
(805) 962-3578
(805) 965-1371 (Fax)

Attachment 4 – Letter from Marc Chytilo

LAW OFFICE OF MARC CHYTILO

ENVIRONMENTAL LAW

December 14, 2005

Chairman Dick DeWees
Santa Barbara County Association of Governments
260 N. San Antonio Road, Suite B
Santa Barbara, California 93110

By Fax: 961-8901 and email

RE: Unmet Transit Need Definitions, Item 8, 12/15/05 SBCAG Hearing

Chair DeWees and members of SBCAG:

This office represents Plaintiffs in *Pierce, et al., v. SBCAG, et al.*, Santa Barbara County Superior Court No. 01157590. as you know, a considerable number of your constituents and community non-governmental organizations have expressed concern over SBCAG's pattern and practice of discrimination in the allocation and distribution of transportation funds, including Transportation Development Act funds allocated under the unmet transit needs provisions of the Public Utilities Code.

In the past, SBCAG has applied its unmet transit need definitions in a way that systematically discriminated against various populations that have been denied basic transportation needs. The process for revising these definitions, required as part of the settlement of *Pierce v. SBCAG*, partially address these issues. While we support the changes proposed by staff in the Staff Report, we believe that three other changes are necessary to overcome defects inherent in the unmet transit need definitions.

We note that the SBCTAC endorsed each of these changes with one exception. That exception was based on a misunderstanding of the effect of proposed language that has been overcome through a revised proposal.

1. DEFINITION OF UNMET TRANSIT NEED

A. We Support the Proposed Changes

The proposed deletion of "a significant segment of the population" and the language "limited set of individuals" is necessary to bring the definition into conformity with the TDA.

MARC CHYTILO
P.O. Box 92233 • Santa Barbara, California 93190
Phone: (805) 682-0585 • Fax: (805) 682-2379
Email: airlaw5@cox.net

B. Other Changes Are Needed

In addition, we request that the sentence in the final paragraph “The identified needs must be for the system of general public transit services” also be stricken from the definition. This language could be used in the future to improperly deny otherwise worthy new service requests. For example, SBCAG has recognized the unmet transportation needs of Santa Barbara County’s agricultural workers. SBCAG and Santa Barbara County have proposed responding to those needs with a vanpool-based agricultural laborer transportation system. This type of system clearly qualifies for TDA funding, were SBCAG to propose to use such funds for this purpose. Since this system could be excluded from TDA funding by this language, and an unmet agricultural laborer transportation need be unfunded while TDA funds are directed to roads, this exclusion is unwarranted. The TDA funds “public transportation systems” (not just transit systems) for the purpose of benefiting “all people of the state, including the elderly, the handicapped, the youth, and citizens of limited means.” Public Utilities Code § 99220(a) & (b).

TDA funds must be used on “public transportation services, specialized transportation services, or facilities for the exclusive use of pedestrians and bicycles.” Public Utilities Code § 99401.5. If TDA funds are not used for these purposes, i.e., for roads, the unmet transit needs findings must be made. The unmet transit needs process and finding is required to “identify the transit needs of the jurisdiction,” (Pub. Util. Code § 99401.5(b)), but there is no requirement that only “general public transit services” may be considered as needs that are unmet. See also Pub. Util. Code § 99220 (b) & (c) (“development of public transportation systems a matter of state concern” and recognizing that each element of a TDA funded transportation system “may not be of primary interest and benefit to each and every taxpayer in a county.” (emphasis added)). This language could and we fear will be employed in the future to continue SBCAG’s (and at least one municipal jurisdiction’s) pattern and practice of discrimination through the denial of community transportation needs to disadvantaged populations and diversion of TDA funds otherwise available to meet community transportation needs to unrestricted Public Works Department uses.

The SBCTAC considered these issues on December 13, 2005 and resolved to recommend that this sentence be stricken in accord with our request herein. The need to have TDA funds available to meet agricultural laborer transportation needs was discussed as one rationale for this change. Your Board has determined that the recognized and legitimate transportation needs of agricultural laborers may not be best served by a regularly scheduled public transit service. With this sentence included in the definition of unmet transit need, SBCAG may be empowered to deny TDA funding to the proposed agricultural laborer van service or other similar creative public transportation service, if it may be excluded as not constituting a “general public transit service.” The Board should not adopt a definition that could be used in the future to deny the use of TDA funds to address such existing recognized and legitimate needs.

2. REASONABLE TO MEET DEFINITION, CRITERIA #3

Criteria # 3 should be amended to include the underlined phrase such that this Criteria reads: “After the three year start-up period, the additional transit service shall not cause the system of which it is a part of, to fail to meet system wide performance standards . . .”

SBCTAC considered this issue, and adopted slightly different language “Excluding the first three years of operation, the additional transit service shall not cause the system of which it is a part of, to fail to meet system wide performance standards . . .” SBCTAC Unanimous Action, December 13, 2005.

This language is necessary to clarify that the 20% farebox recovery ratio standard only applies after the initial 3 year service start-up period. Otherwise, a system that is operating at 20.1% farebox recovery ratio will never be able to attempt a new service to respond to an unmet transit need, since a farebox recovery ratio of less than 20% is typically expected in the first three years as a new, start-up transit service is introduced.

As observed by members of the SBCTAC, this additional language is needed to conform the SBCAG reasonable to meet definition to actual practice – TDA guidelines require exclusion of the multi-year startup period from the service performance criteria.

3. REASONABLE TO MEET DEFINITION, CRITERIA #5

We believe this definition is too narrowly drafted, and prohibits the consideration of other, readily available transportation funding sources in evaluating whether a proposed new service addressing an established unmet transit need is reasonable to meet. As your Board knows well, transportation funding is highly complex, and dozens of different transportation funding streams, including federal, state and local sources, may be available to fund a new transit service in whole or in part. Many new public transportation services involve combining funding sources, beyond just TDA funds. A finding of reasonable to meet should allow consideration of other reasonably available transportation funding sources for a new service.

Thus, we believe this criteria should be expanded to read as follows: “The proposed service would not cause the claimant to incur expenses in excess of the maximum allocation of TDA funds, unless other transportation funds are reasonably available, in which case they may be considered.” (Proposed new text in underline.) Alternatively, this criteria should be deleted in its entirety.

As currently drafted, this criteria imposes an unreasonable and illogical restriction on definitions of reasonable to meet. This restrictive criteria unfairly subjects transportation services that are necessary to meet the needs of economically disadvantaged populations to a higher standard than

that imposed upon a new transit service that is demanded by a politically enfranchised, affluent community.

In the past, SBCAG and its sister jurisdictions have utilized other sources of funding to address legitimate unmet transit needs. The Breeze Bus Service was primarily funded by diverting CMAQ funds. Criteria # 5 is inappropriate, promotes discriminatory treatment of disadvantaged transit dependant communities, and must be modified or stricken.

Thank you for your consideration of our views and concerns in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Marc Chyffo", is written over the word "Sincerely,". The signature is stylized and somewhat cursive.

Marc Chyffo

CC: Michael Powers, SBCAG, by email: mpowers@sbcag.org