

November 21, 2014

Via E-mail: ([CEQA.Guidelines@ceres.ca.gov](mailto:CEQA.Guidelines@ceres.ca.gov))

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Re: Comments on Preliminary Discussion Draft of Updates to the CEQA Guidelines Implementing Senate Bill 743 (September 2014)

Dear Mr. Calfee:

The organizations noted at the bottom of this letter (hereinafter, the "Coalition") thank you for the opportunity to submit comments and suggestions on the Governor's Office of Planning and Research (OPR)'s *Preliminary Discussion Draft of Updates to the CEQA Guidelines Implementing Senate Bill 743*, dated September 6, 2014 (*PDD*).

The Coalition supports the goals of (1) streamlining the CEQA process for infill development as a means to encourage smart growth and achieve AB 32's greenhouse gas emissions reduction targets and (2) restore the original intent of CEQA by curbing litigation abuse and reducing uncertainty. We are mindful that OPR is engaged in a significant and complicated regulatory undertaking because it must weigh these two goals and also ensure that the final language is consistent with the statutory mandates contained in SB 743. Unfortunately, the *PDD* as drafted falls short of both goals.

The *PDD* does not effectively streamline infill development because it does not curb the increasing litigation targeting such developments. Indeed, contrary to popular belief, over the past two decades the vast majority of CEQA litigation has been filed not against greenfield or industrial projects, but rather against the very projects the *PDD* is supposed to protect: infill projects. The *PDD*, in an apparent attempt to stem this tide, states that certain infill developments "generally may" be considered to have a less than significant impact on vehicle miles traveled (VMT). But, while certainly true, this direction will do little to stem the increasing tide of infill CEQA litigation. Though well-intentioned, neither this nor any other provision of the *PDD* will thwart would be petitioners who need only satisfy the low-threshold "fair argument" test to advance an infill challenge. Some may argue that such is the litigation climate today for infill projects using LOS so, at worst; the *PDD* replaces existing level of service (LOS) litigation with VMT litigation which is arguably easier to dispense with. This analysis fails though because as a practical matter, VMT is not replacing LOS. LOS analysis and mitigation will still be an obligation of infill projects -- albeit not within CEQA. As a result, the *PDD* requires individual infill projects analyze and mitigate impacts to a new CEQA resource area—VMT—with new corresponding litigation, while continuing to have to analyze and mitigate LOS. As a result, the benefits of taking LOS out of CEQA are outweighed by the obligations of complying with new VMT obligations while continuing to comply with LOS obligations and the litigation entailed by both mandates.

In addition to the burdens placed on infill developments, the *PDD* would dramatically increase the CEQA burden on projects outside transit priority areas. Specifically:

- Adding redundancy to CEQA by requiring an analysis of non-environmental impacts such as VMT as a duplicative analysis of impacts already considered under CEQA (air quality, GHG, safety, noise);
- Using VMT, the impact of which is to increase delay and congestion which *increases* GHG emissions and air quality impacts, and;
- Undermining the implementation of SB 375 and AB 1358 the *California Complete Streets Act of 2008*.

These and other adverse impacts are more fully discussed in Part I of this comment letter.

The significant challenges the PDD places on other critical development across California exacerbate an already uneven CEQA playing field providing interests with agendas unrelated to the environment a new set of tools to hold up key projects ranging from transportation infrastructure and health care facilities to low income housing and schools and university construction.

To achieve the Administration’s goal of facilitating infill development, we believe the more promising and workable approach—and one that OPR itself has previously identified in its December 30, 2013 *Preliminary Evaluation of Alternative Methods of Transportation Analysis (Preliminary Evaluation)*—is for the SB 743 Guidelines to establish a qualitative, location-based exemption from analyzing transportation impacts (other than for air quality, noise, and safety as prescribed in SB 743) for infill projects in “transportation-beneficial development areas.” This approach would preclude petitioners from challenging certain infill development projects on transportation grounds (but would nonetheless allow them to challenge the project on other grounds) and provides a simple and viable alternative to the use of congestion/delay in transportation analyses under CEQA. As discussed below, this approach would effectively address the legitimate concerns raised by critics of the use of congestion/delay and LOS in CEQA, *i.e.*, the undesirable burden it imposes on infill development and the counterproductive determinations of significant impacts and resulting mitigation requirements it causes for multimodal transportation projects such as transit, bicycle, and pedestrian improvements.<sup>1</sup> It also avoids the significant adverse consequences of the current proposal.

With this introduction in mind, this letter proceeds in two parts. The first part explains why the PDD as currently drafted creates new hurdles to infill development. The second part proposes new language for OPR’s consideration.

## **Part I: Analysis of PDD**

### **I. Land Use Projects**

#### **A. Substituting VMT for LOS (Congestion/Delay) Improperly Replaces One Non-environmental CEQA Metric With Another.**

The PDD proposes to replace a non-CEQA metric (LOS)—which OPR has expressly acknowledged is inappropriate because it does not measure a physical impact on the environment—with yet another non-CEQA metric (VMT). Like traffic congestion, VMT by itself is not an environmental impact. Rather

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<sup>1</sup> See, e.g., “Replacing LOS: Experts Debate How CA Should Measure Transportation Impacts,” *Streetsblog LA*, Nov. 7, 2014 (<http://la.streetsblog.org/2014/11/07/replacing-los-experts-debate-how-ca-should-measure-transpo-impacts/>) (“Michael Schwartz, senior planner at the San Francisco County Transportation Authority and a participant in the university panel, stated LOS was ‘the only reason [San Francisco] had to complete an environmental impact report for the Van Ness Bus Rapid Transit project. By no other measure would the project have impacted the environment negatively.’”)

it is a metric that can be used as a proxy for evaluating other environmental impacts. Importantly the environmental impacts for which VMT acts as a proxy are already required to be analyzed and mitigated under separate stand-alone CEQA resource areas such as air quality and greenhouse gas (GHG). The result of the *PDD* is the addition of a new and redundant non-environmental CEQA resource area. If there is concern about the independent mitigation requirements under California law for existing CEQA resource areas, then a legitimate policy discussion and ensuing legislation or regulation may be appropriate. But to ratchet down existing mitigation requirements by shrouding them in a new non-environmental set of CEQA obligations occasions new mitigation obligations (the propriety of which is open to debate) as well as the inherent uncertainty about the extent of those obligations and the corresponding CEQA litigation—often for reasons wholly unrelated to the environment—that is inherent in inserting them within CEQA.

A significant (and potentially promising) outcome of the SB 743 adoption and implementation process thus far has been the apparent emergence of a consensus among disparate groups that automobile delay and congestion are not, *per se*, environmental impacts when viewed properly under CEQA. The regulated community has long held this view, reading *Goleta Union High District v. Regents*, 36 Cal. App. 4<sup>th</sup> 1121 (1995) (school overcrowding, *per se*, not a CEQA environmental impact) as providing clear authority for the proposition that automobile delay/congestion itself is not a CEQA environmental impact, and that delay becomes a CEQA environmental impact only if it directly or indirectly results in a recognized physical environmental impact such as increased air pollution, noise, or safety.<sup>2</sup>

In the *Preliminary Evaluation*, OPR agreed, finding that:

[T]he focus of environmental review must be on physical changes in the environment. Generally, social and economic impacts are not considered as part of a CEQA analysis. (CEQA Guidelines, §15131.)... **As a measurement of delay, LOS measures motorist convenience, but not a physical impact to the environment.** Other portions of an environmental analysis will account for vehicular emissions, noise, and safety impacts. (*Preliminary Evaluation* at 2-3) (Original emphasis)

The *PDD* reiterates this position: “[A]s a measure of delay, congestion measures more of [a] social, rather than an environmental impact.” (*PDD* at 23). The Natural Resources Defense Council (NRDC) has also adopted this position: “Most importantly, from an environmental perspective, is the observation that LOS is, in fact, not a measure of an impact on the environment, but, rather, a measure of how much time motorists may typically expect to wait at a particular stretch of roadway.” (NRDC Comment Letter, Feb. 13, 2014)

These same considerations apply equally to VMT: absent a connection to a recognized physical environmental impact—such as increased GHG or other air pollution emissions, noise, or safety—the distance that a vehicle travels is no more of an environmental impact under CEQA than the time it (or its occupant) spends on a roadway. Only when the distance or time on the roadway directly or indirectly leads to a recognized environmental impact is either appropriately considered under CEQA. It is therefore significant but not surprising that neither the *PDD* nor the proponents of using VMT as a transportation impact metric under CEQA have been able to demonstrate how a VMT, in and of itself, constitutes an environmental impact. Instead VMT merely serves as a metric to measure corollary impacts related to transportation -- such as air quality, noise, and safety. Not only are these impacts

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<sup>2</sup> See also Appendix G, Section XIV. Public Services: “Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities...the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios...” (emphases added)

already covered under CEQA, but SB 743 expressly provides that whatever metric replaces congestion/delay, CEQA will still require analysis of these environmental impacts.

With respect to developing an alternative transportation-related metric pursuant to SB 743, OPR has recognized the fundamental importance of identifying actual CEQA environmental impacts other than those that CEQA already captures. In the *Preliminary Evaluation*, OPR described its task under SB 743 as follows: “As required by statute, the Governor’s Office of Planning and Research is developing a new way to measure environmental impacts related to transportation.” (*Preliminary Evaluation* at 1) (Emphasis added); and at the conclusion of the *Preliminary Evaluation*, OPR identified among the “many open questions [that] remain at this point”:

- a) Are there environmental impacts related to transportation other than air quality (including GHG), noise and safety? If so, what is the best measurement of such impacts that is not tied to capacity?
- b) Are there transportation-related air quality, noise and safety effects that would not already be addressed in other sections of an environmental analysis (i.e., the air quality or noise section of an initial study or EIR)? If so, what is the best measurement of such impacts that is not tied to capacity? (*Preliminary Evaluation* at 12)<sup>3</sup>

Public comments also highlighted the importance of this issue. In a comment letter on the *Preliminary Evaluation* dated June 10, 2014, OPR was specifically requested to respond to key unanswered questions in the next iteration of its proposal:<sup>4</sup>

A lead agency requiring mitigation for the ‘impacts’ of VMT will be required to demonstrate, based upon substantial evidence, that the project’s vehicle miles traveled will in fact have a significant adverse direct or indirect effect on the environment. It is unclear what ‘impacts’ VMT will measure other than those already measured under CEQA. To the extent that the proposed Guidelines include the application of VMT anywhere, OPR should clearly indicate what adverse environmental impacts are being measured by VMT.

Despite the emphasis on this issue throughout the SB 743 implementation process, the *PDD* does not identify a single adverse environmental impact that would be measured by VMT other than those already measured by CEQA or identified for exclusion by SB 743. This suggests it is impossible to do so. According to the *PDD*:

Subdivision (a) sets forth the purpose of the entire new section 15064.3. First the subdivision clarifies that the primary consideration, in an environmental analysis,

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<sup>3</sup>Earlier in the *Preliminary Evaluation* (footnote 5, p. 8) it is suggested that “for additional information about VMT and its relationship to environmental impacts, see U.S. Environmental Protection Agency, ‘Our Built and Natural Environments: A Technical Review of the Interactions Between Land Use, Transportation, and Environmental Quality (2<sup>nd</sup> Edition),’ June 2013.” That document, however, does not identify any additional transportation-related environmental impacts from VMT for CEQA purposes. The fact that the “open questions” remain asked by OPR at the conclusion of the document appears to confirm the EPA document does not answer the questions.

<sup>4</sup> June 10, 2014 letter to Ken Alex, Director OPR from the League of California Cities, California State Association of Counties, Regional Council of Rural Counties, California Chamber of Commerce, California Manufactures & Technology Association, Associated General Contractors, California Association of REALTORS, California Business Properties Association, California Building Industry Association, California Apartment Association, Western Electrical Contractors Association.

regarding transportation is the amount and distance that a project might cause people to drive. This captures two measures of transportation impacts: auto trips generated and trip distance. These factors are important in an environmental analysis for the reasons set forth in the background materials supporting vehicle miles traveled as transportation metric. (PDD at 7)

This language does not identify any previously undisclosed VMT-related environmental impact. As discussed above, neither auto trips nor trip distance are *per se* environmental impacts any more than is congestion or delay. Furthermore, the appeal to “reasons set forth in the background materials supporting vehicle miles traveled as transportation metric” is unavailing because it is both vague and circular.<sup>5</sup>

One of SB 743’s principal purposes is to streamline CEQA for infill projects. Replacing one non-environmental impact with another does nothing to streamline CEQA for infill projects. While SB 743 identifies VMT as among the *possible* replacement metrics for congestion/delay, the administrative process demonstrates that VMT is an inappropriate replacement.

B. *The PDD’s VMT Proposal Adopts Policy Expressly Rejected by the Legislature and the Governor in SB 375 and AB 1358 The California Complete Streets Act of 2008 and reinforced by reference in SB 743’s Legislative Intent Sections.*

The legislative history of SB 743 reflects the Legislature’s intent to reinforce the GHG reduction policy established by SB 375 and AB 1358. These statutes provide for regional plans and transportation policies that reduce GHG and promote multi-modal transit development. Nothing in the SB 743 statute or history that suggests that the Legislature or Governor Brown intended to undermine the hard-won policy frameworks reflected in these prior statutes. Despite this, the text of the PDD relating to the impacts of transportation projects and induced demand, the accompanying background narrative and the statements of proponents strongly suggest an attempt to use the proposed SB 743 guidelines to expand CEQA practice administratively and enforce substantive land use and transportation policies ( that were not include in SB 375 and AB 1358). As a prominent supporter of the VMT proposal noted, it is designed to “punish sprawl projects,”<sup>6</sup> and “the real action will be to slow or stop sprawl projects under CEQA, using the new VMT provision.”<sup>7</sup> While this rhetoric may sound good, the practical impact of this approach is to penalize development that is specifically planned for a region’s Sustainable Communities Strategy to assist the region in achieving its state-mandated GHG reduction targets. The unintended consequences of this approach reinforce a pernicious dynamic SB 743 is designed to alleviate by creating more hurdles for projects in infill locations and other areas designated specifically for smart growth while displacing development to other areas not identified for growth but where the

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<sup>5</sup> Even the most ardent proponents of using VMT have been unable to identify environmental impacts related to VMT that would not already be captured elsewhere under CEQA: “VMT is an accurate measure of the environmental impact of transportation. Unlike LOS, VMT can be directly translated into impacts on the environment. By multiplying VMT by the fuel economy of a vehicle (or the average fuel economy of the vehicle fleet) it is reasonably straightforward to determine greenhouse gas, NOx, VOC and other emissions that result from fossil fuel combustion.” (NRDC, Comment Letter dated Feb. 13, 2014). This comment letter was submitted *after* OPR asked the public to identify environmental impacts other than air quality, noise, and safety, but fails to do so citing environmental impacts that are already required to be analyzed and mitigated under CEQA.

<sup>6</sup> (<http://legal-planet.org/2014/08/28/misleading-attacks-on-californias-new-transportation-analysis-under-ceqa/>)

<sup>7</sup> (<http://legal-planet.org/2014/08/14/transit-oriented-projects-in-california-wont-be-penalized-for-traffic-impacts-anymore/>)

practical and CEQA impediments are fewer. This is exactly the opposite of what SB 743 was intended to do.

1. *The PDD undermines the policy framework established by SB 375*

In enacting SB 375, the Legislature considered *and rejected* language that would have adopted statewide land use and transportation planning policies that this VMT proposal seeks to enforce indirectly through CEQA. The initial substantive (non-spot bill) versions of SB 375 included a requirement for each region to include a “preferred growth scenario” in its regional transportation plan. The preferred growth scenario represented a statewide growth management regime based on *de facto* urban growth boundaries. The principle behind the preferred growth scenario became known as “concentric circles,” in reference to the fact that local governments would need to demonstrate that housing and transportation development could not be accommodated first in the innermost urban core before being approved outside that area. Only if development could not be accommodated in the innermost urban core could the local government realistically consider the next outward circle for growth, etc. The preferred growth scenario versions of SB 375 relied on a top-down state-imposed vision of local and regional development patterns, and did not include language assuring that local government land use policies and regulations, including general plans, would not be required to be consistent with the preferred growth strategy. Subsequent early versions of SB 375 based regional planning targets expressly on the VMT metric. These initial versions also required the California Transportation Commission (CTC) to adopt guidelines requiring travel demand models to evaluate “induced travel demand and induced land development resulting from highway or passenger rail expansion” as “policy choices.”<sup>8</sup> In all, the initial versions of SB 375 reflected intent to mandate a specific uniform vision of growth patterns throughout California—one based exclusively on infill development and public transit, to be achieved by amending state land planning and transportation laws to erect obstacles to housing, job, and transportation projects that did not reflect this vision.

Tellingly, the initial visions of SB 375 did not garner legislative support and did not become law. The key policy provisions intended to implement this vision were either deleted or modified substantially in the enacted version of SB 375. Specifically, the preferred growth scenario requirement and its imposition of *de facto* state-defined urban growth boundaries was jettisoned and replaced with “bottom-up” sustainable communities strategies in which local governments acting at the regional level are given the flexibility to develop regional land use and transportation plans based on local conditions with the requirement that the plans meet CARB-established GHG reduction targets “if feasible.” The enacted version also contained language clearly providing that local government land use policies and regulations, including general plans, are not required to be consistent with adopted sustainable communities’ strategies. Furthermore, the VMT metric was *deleted and replaced* with a per-capita GHG emissions reduction metric to serve as a focus of regional planning efforts. Finally, the enacted version of SB 375 substantially modified the requirements related to the CTC guidelines by eliminating references to “induced travel” and “induced land development.”<sup>9</sup>

2. *AB 1358 (The California Complete Streets Act of 2008)*

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<sup>8</sup> See, e.g., [http://www.leginfo.ca.gov/pub/07-08/bill/sen/sb\\_0351-0400/sb\\_375\\_bill\\_20070417\\_amended\\_sen\\_v98.html](http://www.leginfo.ca.gov/pub/07-08/bill/sen/sb_0351-0400/sb_375_bill_20070417_amended_sen_v98.html)

<sup>9</sup> [http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab\\_1351-1400/ab\\_1358\\_bill\\_20080930\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab_1351-1400/ab_1358_bill_20080930_chaptered.pdf)

AB 1358 requires the circulation element of the general plan to: “plan for a balanced, multimodal transportation network that meets the needs of all users of streets, roads, and highways for safe and convenient travel in a manner that is suitable to the rural, suburban, or urban context of the general plan.” By its own account, the *PDD* does not seek to advance a balanced statewide transportation network. Rather the intent is to increase the CEQA burden for any transportation project that may “add physical roadway capacity for automobiles.” The motivation behind this intent appears to be the belief that: “While the health benefits of walking, bicycling and transit use are becoming more well-known, planning has literally pushed those other modes aside.” (*PDD* at 5).

This assertion is starkly inaccurate and simply not in accordance with the facts. Over the past decades, tens of billions of federal, state, and local transportation dollars have been devoted to these “other” transportation modes in California. Likewise, hundreds of millions of dollars of state planning money has been devoted to preparing sustainable communities strategies at the regional level by MPOs. In fact, even the most cursory review of the overall and relative percentage expenditures on transit, pedestrian, and bicycle expenditures in the state’s regional transportation plans shows a massive commitment to these “other” transportation modes.

In any event, whether or not one can credibly contend that “planning has literally pushed those other modes aside,” SB 743 does not provide authority to adopt a proposal aimed at increasing the CEQA regulatory burden on roadway, bridge, and highway projects. The statute calls for OPR to promote the intent of the Complete Streets Act, which, as noted, calls for a robust, effective, safe and convenient transportation network comprising all transportation modes expressly including highways and local roads.

While neither the Legislature nor Governor Brown intended SB 743 to undermine the hard-won policy frameworks reflected in SB 375 and AB 1358, the fact is the *PDD* would do just that. Warping SB 743 implementation in a manner that expands CEQA practice administratively to enforce substantive land use and transportation policies goes against clear legislative intent is inappropriate and should not be countenanced.

C. *The PDD Severely Understates the Cost, Confusion, and Adverse Consequences Associated With Implementing the Proposed VMT Threshold.*

The *PDD* will increase, not decrease, CEQA uncertainty, costs and delay. As noted by many transportation experts, the *PDD* overstates the cost and complexity of LOS thresholds while severely understating the challenges of developing and implementing the new VMT threshold. Among the problems associated with using VMT (especially in combination with the “transportation project/induced demand” component of the proposal) are the following:

- The proposal unreasonably assumes that all VMTs are equal. According to experts in transportation and air quality, however, “CO2 emissions, and the fuel consumption that causes them, are very sensitive to several factors. These factors include individual driving behavior, vehicle and roadway types, and traffic conditions. *Because of these factors, a table that estimates CO2 emissions based only on a single variable, such as trip distance, cannot*

*provide an accurate estimate.”<sup>10</sup> These unsupported assumptions about VMT will only increase in significance in the near future. As Governor Brown has recognized, we are in*

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<sup>10</sup> (Barth and Boriboonsomsin, *Traffic Congestion and Greenhouse Gases*, UC Riverside Center for Environmental Research, ACCESS Journal Number 35 (Fall 2009) (<http://www.uctc.net/access/35/access35.pdf>) (p.3) (emphasis added). See also, US Federal

the midst of a technological watershed with respect to the automobile that will have profound implications for the environmental, economic, and health impacts associated with automobile travel:

Autonomous vehicles are another example of how California's technological leadership is turning today's science fiction into tomorrow's reality. This law [SB 1228] will allow California's pioneering engineers to safely test and implement this amazing new technology.<sup>11</sup>

I just hope they can make the batteries come down 30 percent, because the only way we can really meet our electric car goals (is) if the batteries are made cheaper. So whether they're made in Reno or wherever, the real challenge is the investment capital and the technological prowess to get our batteries cheaper so ordinary people can buy electric cars.... Nevada's tax breaks are California's benefits if we can get to our million electric cars.<sup>12</sup>

- VMT will count vehicle trips against project developers even if those trips emit absolutely no GHG emissions. Rapid advancement in zero-emissions cars and autonomous (driverless) vehicle technology will fundamentally transform automobile travel and the car's role in the transportation network both in and outside urban centers. As discussed, VMT does not measure any environmental impact not already captured under CEQA. Moreover, in the near future, zero-emission vehicles may render VMT unable to measure reliably **any** emissions-related environmental impact. Similarly, widespread penetration of autonomous vehicles will profoundly change VMT's relationship to safety, noise, and even the socioeconomic aspects of driving often raised by VMT-metric advocates.<sup>13</sup> For example, this proposal would require the same VMT mitigation from a housing project where every unit comes with an electric vehicle or requires their use through CCRs as for a project with no such requirements or EV access. Since CEQA is a statute about environmental impacts, this approach makes no sense.
- SB 743 expressly preserved CEQA's requirement to study air quality impacts associated with traffic. Traffic delay and LOS levels are required to evaluate carbon monoxide emissions and other pollutant levels. Pollution loads are higher on congested streets with cars waiting for

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Highway Administration ("FHWA") analysis of USEPA data finding that emissions rates vary based on the speed a vehicle is traveling and that for VOC and CO, emissions rates typically drop as speed increases, and NOx increases only as congestion is reduced such that speeds increase to above 55 mph.

<sup>11</sup> Audi gets first permit to test self-driving cars on California roads," *Los Angeles Times*, Sept. 14, 2014. (<http://www.latimes.com/business/autos/la-fi-hy-autos-audi-california-autonomous-20140916-story.html>).

<sup>12</sup> "Jerry Brown calls Nevada's tax breaks 'California benefit,'" *Sacramento Bee*, Sept. 15, 2004. ([http://www.sacbee.com/news/politics-government/capitol-alert/article2609545.html#mi\\_rss=Capitol%20Alert](http://www.sacbee.com/news/politics-government/capitol-alert/article2609545.html#mi_rss=Capitol%20Alert)).

<sup>13</sup> "Disruptions: How Driverless Cars Could Reshape Cities," *New York Times*, July 7, 2013 ([http://bits.blogs.nytimes.com/2013/07/07/disruptions-how-driverless-cars-could-reshape-cities/?\\_r=0](http://bits.blogs.nytimes.com/2013/07/07/disruptions-how-driverless-cars-could-reshape-cities/?_r=0)).

multiple light cycles. In its present form, CEQA requires an evaluation of congestion for air quality impacts, hence requiring VMT as a transportation metric is additive and expands rather than streamlines CEQA.

- The VMT modeling tools that are readily available (e.g., CalEEMod) were not intended, and do not, address transportation impacts.
- According to transportation experts, there are few, if any, models that purport to be able to characterize accurately VMT at a project-specific level for infill projects. The absence of such models will lead to increased study costs (at a minimum) and litigation/enforcement uncertainty as “NIMBY” opponents will have a new tool to use in CEQA lawsuits aimed at stopping or delaying infill projects.
- More particularly with respect to the proposed “regional average VMT” threshold, transportation experts report that this metric is not currently generated by Metropolitan Planning Organizations (MPOs) and would be difficult even to estimate with existing MPO models. An “average” requires there to be a sample and the sample size must be large enough to draw statistically valid conclusions. Since most MPOs do not use “land use type” for purposes of trip generation or as a variable for which VMT can be accurately estimated, existing models are not a viable option.
- LOS is well-established, and is currently used in major bodies of land use law independent of CEQA. For instance, pursuant to Congestion Management Program (CMP) law (Gov. Code §§ 65088-65089.10), LOS is a threshold that defines a deficiency on the congestion management program highway and roadway system which requires the preparation of a deficiency plan. Gov. Code § 65088.1(g); see also, Gov. Code § 65089(b)(1)(A) (requiring traffic level of service standards established for a system of highways and roadways designated by the agency as a required element of a congestion management program). Likewise, California planning law (Gov. Code §§ 65300-65404) requires a circulation element. Gov. Code § 65302(b)(1). OPR’s *General Plan Guidelines* includes discussion of LOS and even includes “[LOS] standards for transportation routes, intersections, and transit” and “[s]eparate level-of-service standards for bicycle and pedestrian traffic or integrated level-of-service standards that consider multiple modes” as ideas for development policies. See, e.g., *State of California General Plan Guidelines* (2003) at p. 60. While SB 743 precludes application of CMP traffic delay standards to certain kinds of projects in certain limited locations, CMP laws—and general plans—remain legally binding throughout California. Since these other laws independently require compliance with LOS standards, OPR’s VMT proposal simply adds a costly and uncertain new layer of transportation analytical mandates to these LOS mandates.
- An LOS analysis may be needed under CEQA despite the fact that the proposed guideline revision to Section 15125(d)—which is not amended under the current proposal—requires that an EIR or other CEQA document analyze “any inconsistencies between the proposed project and applicable general plans” and other regional plans. Thus, if a city or county general plan contains a reference to LOS standards, or contains a “correlated” circulation element, it is difficult to understand how the CEQA document for a project can determine if a project is “consistent” with the general plan if there is no traffic study performed to examine how the project’s traffic will impact any LOS standards in the general plan, and any efforts to “correlate” the circulation element with the General Plan. Under this CEQA guideline 15125(d), the inconsistency must arguably be identified and disclosed in a CEQA document, even if the agency proposes to amend the General Plan to resolve the inconsistency. The land use plan

inconsistency must also be identified and disclosed even if the agency determines that there is no significant adverse traffic impact, and even if SB 743 can be interpreted to allow an agency to use solely VMT to determine traffic impacts. Section 15125(d) deals with the required description of the environmental setting, and does not set forth requirements for determining the impacts of a project. Thus, it is quite possible that a court would hold that Section 15125(d) requires that information on the environmental setting be provided, including whether or not the proposed project is consistent with the LOS or intersection performance requirements or goals in the adopted general plan, and that an EIR is defective unless this information on the environmental setting is provided, even if the agency uses the SB 743 Guideline Revision Proposal to only use VMTs to determine the project's impacts on transportation and traffic. Cities and counties also use LOS in their traffic impact studies to satisfy the Mitigation Fee Act (Gov. Code §§ 66000-66011) and to create the constitutionally-required nexus they need to charge traffic impact fees. As a leading practice guide notes:

A sufficient traffic fee study, for example, will anticipate development that is designated in the city's general plan, and estimate future traffic based upon that level of development. A strong study also will use established trip generation rates, or explain the rationale for deviating from those rates. A typical study then will project needed facilities based upon acceptable traffic levels and public transportation criteria set forth in the general plan, estimate the cost and schedule for building those facilities, and then allocate the cost of constructing those facilities to new and existing development on a proportional basis. (Barclay and Gray, *Curtin's California Land Use & Planning Law* (Solano Press Books 2013) at 330-33)

- Caltrans, as well as local lead agencies, have long required LOS-based traffic studies to develop mitigation fee programs, and to develop project-level traffic mitigation fee mandates (e.g., "fair share" contributions toward larger roadway improvement projects). Virtually none of these agencies is ready to abandon their LOS-based transportation fee programs. As with the problems noted above for CMP and state planning law compliance, attempting to substitute VMT for LOS in CEQA is counterproductive given these LOS-based transportation mitigation programs.

Compelling evidence that the PDD is confusing, ambiguous and will increase the CEQA burden on projects—including precisely the infill and transit projects SB 743 was intended to promote—comes from two of the most ardent promoters of the proposal who have taken public and diametrically opposed positions on its real world effects on infill projects. To wit:

According to Ethan Elkind ... [T]he new proposed transportation metric, vehicle miles traveled (VMT), will inherently benefit infill projects...because infill by its nature decreases VMT.... The guidelines essentially exempt any project within a half-mile of transit — or in areas that are below the regional average VMT levels — from any transportation analysis under CEQA. And lest you think that's a small area, keep in mind that almost the entirety of urban Los Angeles is within a half-mile of a high quality transit stop, due to the extensive bus network.... Most infill projects won't even need a transportation analysis under CEQA anymore, eliminating expensive and contentious

traffic studies. <sup>14</sup> The statute—and OPR—is basically trying to give infill projects a pass on transportation impacts under CEQA.<sup>15</sup>

In contrast, NRDC’s advocate on this issue is quoted as having a very different view. According to Amanda Eaken ... opinions diverged on the types of projects that Subdivision (b)(1) “generally may be considered to lack significant impact ... projects within half a mile of good transit, or projects expected to reduce local VMT overall.” Eaken noted that a project near transit could still be high-VMT so such projects should be reviewed for impacts. Eaken went on to say that unless it was “crystal clear” that a project wouldn’t raise VMT, as with a bike lane, projects should still be analyzed. For example, a new carpool lane might add capacity to a road, hence couldn’t be presumed to lack impact.<sup>16</sup>

“We’re uncomfortable that, by virtue of a single factor, we would presume a less than significant impact.” “At a minimum, you would want to add in an examination of the amount of parking provided at a project. And, ideally, you also include density, diversity, and some measure of job access.” <sup>17</sup>

The differing views noted above, when applied to a non-environmental impact like VMT -- for which a threshold of significance is fundamentally a policy choice rather than a dictate of science — means certain CEQA litigation for infill projects facing increasing opposition as urban areas are proposed for densification. There is certainly a legitimate policy debate to be had regarding the level of air, noise and GHG mitigation that individual projects should be required to undertake. But that debate should be had expressly—both within CEQA and in other contexts—and not shrouded in a CEQA proxy like VMT, an approach for which the transaction costs are both substantial and unnecessary.

***Recommendation: For the foregoing reasons, OPR should not use VMT as a replacement metric in implementing SB 743. The text of proposed 15064.3(a), (b), (b)(1), and (b)(4) should be withdrawn.***

As will be discuss in Part II, the intent of SB 743 would be better served by OPR developing a qualitative, location-based exemption from analyzing transportation impacts for infill projects in “transportation-beneficial development areas” to satisfy its mandate under SB 743.

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<sup>14</sup> (<http://legal-planet.org/2014/08/28/misleading-attacks-on-californias-new-transportation-analysis-under-ceqa/>) (original emphasis)

<sup>15</sup> (<http://legal-planet.org/2014/08/14/transit-oriented-projects-in-california-wont-be-penalized-for-traffic-impacts-anymore/>)

<sup>16</sup> “LOS to VMT: the arguments have begun,” *California Planning & Development Report*, Aug. 27, 2014 (<http://www.cp-dr.com/node/3560>)

<sup>17</sup> “Replacing LOS: Experts Debate How CA Should Measure Transportation Impacts,” *Streetsblog LA*, Nov. 7, 2014 (<http://la.streetsblog.org/2014/11/07/replacing-los-experts-debate-how-ca-should-measure-transpo-impacts/>)

## II. Transportation Projects

### A. Creating a New Category of CEQA Analysis for Transportation Projects and Creating a New Requirement for all Projects to Analyze the Impacts of “Induced Demand” on VMT Under CEQA.

Another problematic aspect of the PDD is that the adoption of a VMT metric will make it more difficult to undertake critical transportation improvement projects throughout the state. This is not only bad policy, but it was not contemplated or authorized by SB 743. SB 743 expressly addresses the “Modernization of Transportation Analysis for Transit-Oriented Infill Projects.” Nowhere does the statute reference that the adopted guidelines should apply to transportation projects themselves. Nonetheless, the PDD is described as establishing “criteria for determining the significance of growth-inducing impacts related to transportation projects.” In our view, this is beyond SB 743’s statutory authorization. More importantly, the adoption of an induced demand model (e.g., one which assumes that the alleviation of congestion by any means causes additional VMT) creates a significant hurdle to a variety of critical transportation infrastructure projects across the state. While counterintuitive, applying this induced demand approach will mean that the construction of public transportation, additional bike paths and other worthy projects (including High Speed Rail) designed to get people out of their cars and alleviate traffic congestion is to be viewed as inducing new demand as drivers once unwilling to drive (because of traffic concerns) will now take to the roadways. The practical result is the creation of a substantially new VMT analysis and mitigation burden under CEQA that give opponents of these projects a substantial tool to thwart their progress.

### B. These Proposals Could Negatively Impact Transit Projects

The PDD acknowledges that the theory of “induced demand” underlying the proposal would necessarily ensnare transit and other multimodal transportation projects. The fundamental problem is that the theory of induced demand posits a roadway network that cannot be expanded, and an infinite supply of people will be “induced” to replace any driver that, for whatever reason, decides not to drive. The conclusion of this theory is that no project or program that prompts a person to leave the roadway network can legitimately claim to reduce VMT, congestion, or “take vehicles off the road.” In Appendix E of the PDD, the PDD concedes that under this theory: “transit lanes, which are designated for transit vehicles only... attract... transit vehicles from general purpose lanes, freeing up capacity in those lanes, and as a result can induce private passenger vehicle travel.

While proponents of the induced demand theory view it as a means to attack road, highway, and bridge improvements, it cannot be limited to these projects as OPR recognizes. Applied fairly and evenly, the PDD’s implementation of induced demand undermines the fundamental tenets of smart growth, transit-oriented development, and multimodal transportation planning, and should be rejected.

### C. These Proposals Would Create Obstacles to Reducing Congestion and Adversely Affect Air Quality and Public Safety.

As previously noted, reducing congestion is an important component of reducing air pollution emissions and promoting public safety. These proposals create counterproductive obstacles to achieving effective

congestion reduction and therefore amplify rather than reduce adverse emissions and safety conditions. As a recent academic paper argues:

There are many reasons to fight traffic congestion. Congestion wastes time and money, and it increases the risks of accidents and localized pollutants like particulate matter. But potentially the most serious, if also the least immediate, consequence of traffic congestion is increased emissions of greenhouse gases. *Although many people understand that driving contributes to greenhouse gas emission, the measurement of this phenomenon has been surprisingly crude, often associating carbon emissions only with trip distance, without accounting for how carbon emissions change with vehicle speed...*<sup>18</sup>

The study identifies “an emissions-speed curve” that “has a distinct parabolic shape, with high emissions rates on both ends and low emission rates at moderate speeds of around 40 to 60 mph. If congestion reduces average vehicle speed below 45 mph for a freeway, CO<sub>2</sub> emissions increase.” (*Id.* at 6). Congestion reduction is an essential factor in reducing GHG and other air pollution emissions and is also a fundamental premise of the federal Congestion Mitigation and Air Quality Improvement (CMAQ) program -- one of the two principal federal transportation programs through which federal transportation funding flows to MPOs for programming in regional transportation plans. According to FHWA:<sup>19</sup>

The purpose of the CMAQ program is to fund transportation projects or programs that will contribute to attainment or maintenance of the National Ambient Air Quality Standards (NAAQS) for ozone, carbon monoxide (CO), and particulate matter (both PM<sub>10</sub> and PM<sub>2.5</sub>). The CMAQ program supports two important goals of the U.S. Department of Transportation: improving air quality and relieving congestion.

Many transportation projects included in California’s regional transportation plans as part of strategies for reducing congestion and GHG emissions—including projects funded under the CMAQ program—would be subject to increased CEQA burdens and litigation risk under the PDD. And, although not specifically eligible under the CMAQ program, new general purpose lanes can effectively reduce congestion and decrease emissions by beneficially impacting the “speed-emissions curve.” Such projects are eligible for funding through the other major federal funding program (the Surface Transportation Program) and in some instances are included in federally-approved regional transportation plans in California as important strategies to comply with federal air quality conformity requirements.

In addition to creating obstacles to beneficial congestion relief programs and improvements, the PDD creates barriers to important safety enhancement projects. According to the recent report *California Transportation By the Numbers: Meeting the State’s Need for Safe and Efficient Mobility*, TRIP (September 2014), roadway features are a contributing factor in about one-third of all fatal and serious traffic crashes. Roadway features that impact safety include the number of lanes, land widths, shoulders, and median barriers. The report concludes that: “Where appropriate, highway improvements can reduce traffic fatalities and crashes while improving traffic flows to help relieve congestion. Such improvements

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<sup>18</sup> Barth and Boriboonsomsin, *Traffic Congestion and Greenhouse Gases*, UC Riverside Center for Environmental Research, ACCESS Journal Number 35 (Fall 2009) (<http://www.uctc.net/access/35/access35.pdf>) (p.9) (emphasis added)

<sup>19</sup>The Congestion Mitigation and Air Quality (CMAQ) Improvement Program Under the Moving Ahead for Progress in the 21<sup>st</sup> Century Act: Interim Program Guidance (Nov. 13, 2013) ([http://www.fhwa.dot.gov/ENVIRONMENT/air\\_quality/cmaq/policy\\_and\\_guidance/2013\\_guidance/index.cfm](http://www.fhwa.dot.gov/ENVIRONMENT/air_quality/cmaq/policy_and_guidance/2013_guidance/index.cfm))

include removing or shielding obstacles; adding or improving medians; improved lighting; adding rumble strips; wider lanes; wider and paved shoulders; upgrading roads from two lanes to four lanes; and better road markings and traffic signals.” The PDD would increase the uncertainty and litigation risk associated with these types of important safety enhancing projects.

D. The Proposals Risk Eroding Public Support for State and Local Transportation Funding Measures.

The proposals will have the effect of creating additional CEQA regulatory obstacles for non-transit transportation projects. However, transit projects are arguably beginning to receive a share of transportation dollars significantly disproportionate to the use of those projects by the voters that approve state and local transportation funding measures. A groundbreaking new analysis of transportation funding ballot measures, transportation voters, and transportation users in California strongly suggests that if the funding pendulum swings too far away from addressing the actual transportation improvements used by transit measure voters, i.e., the road network, the broader social and environmental considerations that “induce” these voters to support transportation measures will not be enough to ensure future support at the ballot box.

The study -- *Manville & Cummins, “Why do voters support public transportation? Public choices and private behavior,” Transportation* (Sept. 13, 2014) -- examines voter behavior in California using transportation survey data provided by NRDC, Reason, and PPIC. Its conclusions warrant careful consideration:

Many people who support transportation sales taxes do not prioritize additional transit spending, and many people who want more transit spending do not want higher sales taxes to finance it. Together these facts could help explain why many ballot referenda—which often allocate funds to both transit and roads—can succeed politically without yielding new transit ridership. (p.4)

Support for transit spending is strongly associated with transit’s anticipated social, rather than private benefits. Transit support is correlated with broad concerns about congestion and the environment, but not with private desires to use transit more or drive less. (p.4)

Thus, many supporters of these measures may want more funding for roads. For example, when the Los Angeles MTA polled voters about using Measure R’s revenue, over 75% called rail a ‘high priority.’ But over 90% called highway spending a ‘high priority.’ (p.5)

The regressions also suggest that support for transit is more strongly associated with belief in its collective benefits than with statements or preferences about private travel behavior. Support for transit spending has no statistically significant relationship with wanting to drive less; with respondents’ belief that they would use transit more if it were more convenient; with respondents’ belief that they have little choice about how much they drive; or with people stating that they would drive less to avoid congestion or gas prices (p.16)

Nationwide, and especially in California and Los Angeles County, transit voters differ starkly from regular transit riders. Compared to transit riders, transit voters are richer, better-educated, more likely to be white, more likely to be native-born, and more likely to live in and own detached single-family homes. (p.27)

Put simply, Americans are more likely to see transit as a way to solve social problems than as a way to get around. (p.29)

These conclusions militate against using CEQA regulatory barriers to leave California's roadway network to wither on the vine.

E. OPR Should not Use SB 743 Implementation to "Piggyback" These Proposals Into the Guidelines.

In addition to the substantive problems with the PDD, it is procedurally inappropriate to attempt a broader CEQA Guidelines revision under the guise of implementing SB 743. In December 2013, OPR published the *List of Possible Topics to Be Addressed in the 2014 Guidelines Update*. One of the most significant—and controversial—proposals OPR identified was to add “roadway widening...as [an] example of [a] project [] that may achieve short-term environmental goals (congestion relief) to the disadvantage of long-term environmental goals (reducing greenhouse gas emissions).” As noted in the comment letter referenced earlier in footnote 4 of this letter:

Both CEQA and the CEQA Guidelines require preparation of an EIR when a proposed project may result in certain impacts. Pub. Res. Code § 21083(b); 14 Cal. Code Regs. § 15065(a). If a lead agency finds that the conditions in these sections exist, the proposed project's impacts are assumed to be ‘significant’ as a matter of law, requiring preparation of an EIR. Section 15065 identifies conditions that trigger an EIR. This proposed amendment implies that ‘roadway widening’ which may actually be a mandate under applicable General Plan or Congestion Management Plan law, would trigger the preparation of an EIR, which is not currently the case.

***Recommendation: For the foregoing reasons, OPR's final action should not include the proposed new CEQA requirements related to transportation projects and induced demand. The text of proposed 15064.3 (b)(2) should be withdrawn.***

### III. Safety

A. Creating “Localized Effects of Project-Related Transportation on Safety” as a New CEQA Impact. (15064.3(b)(3))

CEQA already adequately covers the safety impacts related to projects—including transportation projects. In addition, SB 743 expressly prohibits OPR from eliminating any “environmental” impact relating to safety from consideration under CEQA as part of its proposal. The PDD's safety proposal, like its proposed VMT metric, represents something *other than* an actual environmental impact under CEQA.

***Recommendation: For the foregoing reasons, OPR's final action should not include the proposed new CEQA requirements related to localized effects of transportation on safety. The text of proposed 15064.3 (b)(3) should be withdrawn.***

## IV. Alternatives and Mitigation

### A. Adding New Mitigation and Alternatives Related to VMT and Induced Demand to CEQA

The proposal would add new mitigation measures and alternatives and as such would exceed the scope of CEQA and dramatically increase the burden on infill projects. This aspect of the proposal would require a VMT transportation study, with suggested mitigation measures and alternatives. These provisions are problematic and should be deleted for several important reasons.

First, the suggested mitigation measures represent social/economic and land use policy prescriptions that extend far beyond CEQA's statutory scope (e.g., "increasing access to common goods and services," "incorporating affordable housing into the project," and "improving the jobs/housing fit of a community").

Second, by including this menu of mitigation measures in the Guidelines, the proposal would increase the CEQA burden on some infill projects in transit priority areas.

Third, the alternatives requirements are particularly burdensome for infill projects that are already least able to deal with the ostensibly "feasible" alternative sites and project configuration demands that NIMBY's and others raise.

Planning limitations common to most infill projects such as parcel assemblage, physical site constraints, and the loss of redevelopment agencies already make CEQA's mitigation and alternatives analyses difficult enough propositions. SB 743 does not require this.<sup>20</sup>

***Recommendation: OPR's final action should not include the proposed mitigation measures and alternatives. The text of proposed 15064.3(c) referencing mitigation measures and alternatives, and the text proposed for addition to Guidelines Appendix F, should be removed. Instead OPR could include these measures and alternatives in a non-mandatory technical analysis produced separately from this rulemaking effort.***

## **Part II: Proposed Solution**

The Coalition urges OPR to pursue a fundamentally different approach to implementing SB 743. Fortunately, there is a promising alternative approach—one that OPR itself has identified: a qualitative, location-based exemption from analyzing transportation impacts (other than for air quality, noise, and safety as prescribed in SB 743) for infill projects in "transportation-beneficial development areas." This approach, identified in OPR's December 30, 2013 *Preliminary Evaluation of Alternative Methods of Transportation Analysis (Preliminary Evaluation)* represents a simple and viable alternative to the use of congestion/delay in transportation analyses under CEQA.

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<sup>20</sup> These elements of the proposal even appear to claw back the streamlining provided by the regulations implementing SB 226. Guidelines Section 15183.3 (e) provides that the contents of an infill EIR "need not address alternative locations, densities, or building intensities. An infill EIR need not analyze growth inducing impacts." The PDD's mitigation and alternatives proposals flatly contradict these exemptions.

**Coalition Alternative Proposal:**

**Text of Proposed New Section 15064.3**

*Proposed New Section 15064.3. Determining the Significance of Transportation Impacts for Infill Projects in Transit Priority Areas; Transportation-Beneficial Development Areas; Prohibiting a Project's Impact on Automobile Delay/Congestion from Constituting an Environmental Impact under CEQA.*

*(a) Purpose.*

*The purpose of this section is to streamline the environmental review process with respect to the analysis of potential transportation impacts of projects in transit priority areas so that infill projects within a half-mile of transit are exempted from any transportation analysis under CEQA, except for transportation impacts related to air quality, noise, or safety.*

*(b) Criteria for Analyzing Transportation Impacts.*

*Section 15064 contains general rules governing the analysis, and the determination of significance, of environmental effects. Specific considerations involving transportation impacts are described in this section.*

*(1) "Transportation-Beneficial Development Area." For purposes of this section, a transportation-beneficial development area means an area within one-half mile of a major transit stop that is existing or planned<sup>21</sup>, if the planned stop is scheduled to be completed within the planning horizon included in a Transportation Improvement Program adopted pursuant to Section 450.216 or 450.322 of Title 23 of the Code of Federal Regulations.*

*(2) "Infill Project." For purposes of this section, "infill project"<sup>22</sup> includes the whole of an action consisting of residential, commercial, retail, transit station, school, multi-modal enhancing improvements such as pedestrian and bicycle improvements and traffic calming design changes that support pedestrian and bicycle access, or public office building uses, or any combination of such uses. For retail and commercial projects, no more than one half of the project area may be used for parking. "Transit station" means a rail or light-rail station, ferry terminal, bus hub, bus transfer station, or bus stop.*

*(3) For an infill project in a transportation-beneficial development area, the project's potential transportation impacts, including vehicle miles traveled and automobile delay/congestion, shall not be considered under CEQA, except as a metric for determining environmental impacts related to air quality and greenhouse gas emissions, noise, safety.*

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<sup>21</sup> We note that whatever form and substance the next iteration of OPR's proposal takes, language relating to project proximity to transit should reflect SB 743's statutory definition that includes not just existing transit stops, but certain **planned** transit stops too. PRC §21099(a)(7) defines "Transit priority area" as "an area within one-half mile of a major transit stop that is existing or planned, if the planned stop, if the planned stop is scheduled to be completed within the planning horizon included in a Transportation Improvement Program adopted pursuant to [federal law]." In contrast, proposed Section 15064.3(b)(1) limits its location-based presumption component to an "existing" transit stop or transit corridor.

<sup>22</sup> Similarly, language describing the approvals/activities that are eligible for beneficial consideration (whether in the form of an exemption or favorable presumption) should refer consistently to "project" or "projects" rather than referencing a term like "land use plans." Consistent with the well-settled CEQA principle that in this context "project" includes the adoption of plans as well as approvals tied to a specific development, SB 743 consistently uses the term "projects" or "project" (e.g., "Chapter 2.7. Modernization of Transportation Analysis for Transit-Oriented Infill **Projects**"; "impacts of **projects** within transit priority areas"). In contrast, proposed Section 15064.3(b)(1) refers to "land use plans" that are consistent with a sustainable communities strategy.

(c) “Shall not be considered under CEQA” includes reference, describe, or discuss consistency with any applicable plan, including a general plan or Congestion Management Plan.

(d) *Applicability.*

*The provisions of this section shall apply prospectively as described in section 15007.*

With respect to the PDD’s proposed changes to Section XVI of Appendix G—some changes are compatible with CBIA’s alternative proposal and could be appropriately retained, while others are tied to the VMT proposal and should be deleted:

- The change to the title of the heading of Section XVI is appropriate.
- The changes proposed in (a) are appropriate.
- The proposed additions to (b) should be deleted; the proposed strikeouts are appropriate.
- The proposed changes to (c) are appropriate
- The proposed additions to (d) should be deleted; the proposed strikeouts are appropriate
- The proposed deletion of (f) is appropriate

**Conclusion.**

For the forgoing reasons, the Coalition urges OPR to follow the recommendations made herein.

Respectfully submitted by:



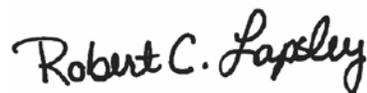
Richard Lyon, Senior VP of Policy  
CA Building Industry Association



Anthony Samson, Policy Advocate  
California Chamber of Commerce



Rex Hime, President & CEO  
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