



September 8, 2014

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

**Re: Opposition to the Office of Planning and Research SB 743 Draft Guidelines**

Dear Mr. Calfee,

Established in 1924, the Central City Association is L.A.'s premier business advocacy association whose 450 members employ over 350,000 people throughout Los Angeles. As the voice of business and the primary architects behind Downtown's Renaissance, CCA understands the critical role of the building and development industry in supporting California's job base and providing sufficient housing for our growing population. We also understand the need to balance development with policies that promote smart, sustainable growth and reduce greenhouse gas emissions. CCA offers the following comments on the recently released Office of Planning and Research (OPR) proposed draft guidelines (the Proposal).

**OPR Proposal Severely Departs From SB 743's Stated Policy Goals**

The Proposal inexplicably fails to incorporate the parts of SB 743 that are designed to streamline CEQA for some infill projects in some locations (e.g., eliminating aesthetics, parking, and auto mobile delay as CEQA impacts for such projects). Even more inexplicable, given the Governor's repeated support for efforts to reform and streamline CEQA, OPR actually proposes to dramatically expand CEQA by mandating evaluation and mitigation of "vehicle miles traveled" (VMT) as a new CEQA impact - and single out certain infill projects as the first category of projects that must comply with this new VMT regime before it becomes mandatory for all projects in 2016. OPR's VMT proposal goes far beyond CEQA's statutory scope by recommending mitigation measures that delve into socioeconomic issues, undermine regional and local greenhouse gas reduction plans, attempt to erode local agency constitutional land use policy authority, and increase the cost, complexity and litigation uncertainty already inherent in CEQA. Therefore, we believe that OPR's proposal is counterproductive to SB 743's stated goal of streamlining CEQA for infill projects, and is a clear departure from the Governor's support for CEQA streamlining.

**OPR Proposal Will Seriously Hamper Infill Development Throughout The State And Particularly In Southern California**

California's CEQA regulations are regularly hijacked for non-environmental reasons, and these abuses have seriously hampered infill development throughout the state. Without reform and infill streamlining, CEQA will continue to serve as a lightning rod for those merely opposing development - rather than seeking environmental protection. As Governor Brown succinctly put it, "CEQA reform is the Lord's work."

For these reasons, CCA strongly opposes the Proposal, and we offer the following comments and alternative approaches.

- **There Is A Complete Absence Of Cost-Effective Vehicle Miles Traveled Models**  
The Proposal provides that a "development project that results in [VMT] greater than the regional average for the land use type may indicate a significant impact." Despite the fact that VMT would play a significant role in the CEQA process for infill development, there are few, if any, models that

purport to be able to accurately characterize VMT at a project-specific level for infill projects. The absence of such models will lead to increased study costs and litigation uncertainty as development opponents will have a new tool to use in CEQA lawsuits aimed at stopping or delaying a project.

***Alternative Approach:*** OPR should partner with regional and local entities to develop VMT models that are effective at a project-level basis. This should occur prior to instituting the new mandates – to prevent an increase in study costs and litigation due to uncertainty.

- **There Is No Level Of Service Relief**

SB 743 eliminates automobile delay – most commonly measured through levels of service (LOS) – as a CEQA significant impact for projects located in transit priority areas. However, SB 743 does not eliminate the need to evaluate and mitigate for LOS impacts under CEQA – and the Proposal does not purport to substitute VMT for LOS. Without this substitution, infill developments will remain beholden to LOS, in addition to the new VMT requirements.

***Alternative Approach:*** OPR should remove mandates for LOS analysis in areas where VMT is in use. This will ensure that projects do not have to engage in both a LOS and VMT analysis, which merely increases CEQA regulations rather than streamlining the process for infill development.

- **Neither LOS Nor VMT Should Be Applicable To Infill Projects In Transit Priority Areas**

By its very nature, infill development in Transit Priority Areas is unique – and different than development in suburban contexts – in that it increases density and thus reduces distances between locations. These types of projects should trigger a presumption of reduced: number of trips, trip lengths, and miles traveled. Because neither LOS nor VMT properly compare infill developments in Transit Priority Areas to similar developments in suburban contexts, they are unable to recognize this key distinction.

***Alternative Approach:*** For infill projects in Transit Priority Areas, establish a non-rebuttable presumption in and of itself that trips, trip lengths, miles traveled, etc., would be reduced. Thus, eliminate the requirement for automobile traffic analysis entirely. Alternatively, develop a methodology that estimates business-as-usual trip generation characteristics of a project, then reduces these numbers based on internal trip capture, pass-by, transit, walking, biking, proximity to nearby uses, etc. that occurs due to the infill. If this reduction does not meet a particular threshold – say a 40% reduction – than traditional mitigation measures, such as bike parking, bike infrastructure, and car sharing can come into play.

- **The Proposal Undermines And Usurps The Authority Of Local Land Use Controls**

The Proposal effectively converts project-level CEQA review into a regional land use planning process. It undermines the SB 375 planning framework with a VMT regime that has planning implications that go far beyond CEQA's existing framework. The Proposal's mitigation mechanisms include: "increasing access to common goods and services, such as groceries, schools, and daycare," "incorporating affordable housing into the project," and "improving the jobs/housing fit of a community." This regime would apply on a project-level basis, regardless of the regional planning decision made in the overall SB 375 or local general plan framework. Decisions these planning priorities should reside at the local level, to ensure that residents have the opportunity to effectively define their own communities.

***Alternative Approach:*** OPR should not seek to identify local priorities on important land use and planning issues. Instead, projects should be judged on their consistency with SB 375. This approach is not only more pragmatic than utilizing the Proposals mitigation mechanisms, but also will reduce litigation and streamline infill development.

- **No Ease In CEQA's Litigation Uncertainty**

Despite the Governor's direction, the Proposal does not address key litigation issues – rather it provides the specter of additional CEQA lawsuits. As an example: when evaluating the VMT impact that is required to be mitigated to a level below some VMT regional norm, what should a project-level VMT model assume by way of employment over time for future residential unit occupants? How should a developer attempt to address future market conditions and evolving life cycle conditions? A brief analysis of these questions quickly leads to sheer speculation. CEQA currently requires that projects estimate transportation trip rates, done through estimating greenhouse gas emissions by layering on further guesses – destinations, and destination length, by transit mode. Instead of reducing the need for guesswork, the Proposals merely add another layer of speculation to EIRs, which will naturally lead to additional litigation by those opposed to infill development.

***Alternative Approach:** California should ban litigation based on VMT until and after VMT models, metrics and mitigation measures have been developed and pilot tested. Additionally, following VMT model testing, OPR should then develop an update to the Proposal that provides practical, pragmatic, and litigation-ready standards for stakeholders.*

CCA thanks the Office of Planning and Research for their work on the Proposal, and recognizes its goal to remove unnecessary and cumbersome roadblocks to development. Despite OPR's effort, however, the Proposal will not advance this goal. For these reasons, CCA strongly opposes the Proposal, offers the above suggestions and recommends that California develop new guidelines based upon three pillars.

First, CEQA should complement – not completely replace – existing laws. Second, CEQA should not require analysis of projects that already comply with approved plans for which EIR has already been completed. Third, reform should prevent lawsuits from being filed for failure to comply with CEQA's procedural requirements. In all cases, local governments and other lead agencies would continue to retain full authority to reject projects or to condition project approvals and impose additional mitigation measures, consistent with their full authority under law other than CEQA.

Unless the Proposal is re-drafted, the changes will lead to more confusion, increasing litigation risk for infill development.

Regards,



Carol E. Schatz  
President & CEO