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LAWYERS

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By E-Mail

Christopher Calfee, Senior Counsel
Governor's Office of Planning and Research
1400 Tenth Street
Sacramento, CA 95814
CEQA.Guidelines@ceres.ca.gov – LOS Alternatives

Re: Comments – Preliminary Evaluation of Alternative Methods of Transportation Analysis

Mr. Calfee:

I am writing to comment on the *Preliminary Evaluation of Alternative Methods of Transportation Analysis* ("Preliminary Evaluation"), issued December 30, 2013 by the Office of Planning and Research ("OPR"). I am an attorney practicing in Carlsbad, California. I represent both private and public sector clients in connection with California Environmental Quality Act ("CEQA") compliance, and have developed considerable expertise on transportation-related issues over the last 20 years. I am a former member of the Executive Committee of the State Bar of California Environmental Law Section, and I regularly work with several prominent transportation engineering firms throughout the state as part of my practice.

My overarching comment is a concern with the direction in which the proposed CEQA Guidelines revisions appear to be headed. Based on the Preliminary Evaluation, it appears that OPR's ultimate goal is to effect project design and locational changes, rather than providing guidance on a more effective method of assessing transportation impacts relative to greenhouse gasses ("GHG"). Moreover, by proposing to potentially mandate metrics other than level of service ("LOS") for application beyond transit priority areas on a statewide basis, OPR would remove from local lead agencies the authority to utilize LOS metrics where such metrics may better assess transportation impacts within areas of their respective jurisdictions.

Preliminary Evaluation

As explained in the Preliminary Evaluation, OPR's proposal springs from SB 743, which was signed into law last year; the relevant provisions are codified at Public Resources Code section 21099, Chapter 2.7, entitled *Modernization of Transportation Analysis for Transit-Oriented Infill Projects*. SB 743 generally requires OPR to develop guidelines establishing significance criteria "for transportation impacts of projects within transit priority areas." (Pub. Resources Code, §21099(b)(1).) "Transit priority areas" are areas "within one-half mile of a major transit stop that is existing or planned" for completion within a near-term planning horizon. (§21099, subsection (a)(7).)

2762 Gateway Road
Carlsbad, California 92009
T 760.431.9501
F 760.431.9512
gdandb.com

SB 743 also authorizes, but does not require, the development of similar criteria for "impacts outside transit priority areas." (§21099, subsection (c)(1).) According to the Preliminary Evaluation, OPR "intends to investigate metrics and criteria that will apply statewide" (i.e., criteria not limited to transit priority area projects). (PE, p. 6.)

The criteria to be considered are a departure from the current level of service (LOS) metric, and include Vehicle Miles Traveled, Automobile Trips Generated, Multi-Modal Level of Service, Fuel Use, and Motor Vehicle Hours Traveled.

Statewide Application

As noted above, the Preliminary Evaluation states: "Given the statement of legislative intent that new transportation metrics are needed to better promote the state's goals, OPR intends to investigate metrics that will apply statewide."

Based on this statement, OPR has pre-determined to investigate application of the alternative metrics both beyond transit priority areas and throughout the state. While it is correct that SB 743 authorizes OPR to look beyond transit priority areas, SB 743 also expressly states that "the alternative metrics may include the retention of traffic levels of service, where appropriate and as determined by the office." (§21099, subsection (c)(1).)

Therefore, OPR needs to give thoughtful consideration to all metrics and not reject application of the LOS standard out of hand as this standard remains an accurate indicator of roadway capacity-related impacts, and lead agencies should retain the discretion to apply the metric as they deem appropriate.

Mitigation Measures

Preliminary Evaluation Section VII addresses potential alternative metrics, and also identifies mitigation measures that "might flow from use of each candidate metric." (PE, p. 8.) Relative to the VMT metric, the referenced mitigation includes:

> "designing projects within a mix of uses, ..., locating the project in neighborhoods that have transit or active mode transportation opportunities, or contributing to the creation of such opportunities. Since VMT is sensitive to regional location, it can also be mitigated by choosing a more central location for the project." (PE, p. 9.)

Similar "mitigation" is provided under the Automobile Trips Generated metric ["mitigation for ATG can include locating a project in an area that facilitates transit or active mode transportation, such as an infill or transit oriented location]; Fuel Use metric ["Mitigation for Fuel Use can include…locating the project in neighborhoods that supply transit or active mode transportation

opportunities…[and] choosing a more central location for the project"]; and, Motor Vehicle Hours Traveled metric ["Mitigation for VHT can include…locating the project in neighborhoods that supply transit, or active mode transportation opportunities, ... [and] choosing a more central location for the project."]. (PE, pp. 9, 11.)

These purported "mitigation" measures are not mitigation at all, but rather requirements that would result in either a re-design or a re-location of a project. Consideration of such matters is already properly addressed as part of the EIR Alternatives analysis and any attempt to incorporate such measures as "mitigation" for transportation-related impacts represents a broad overreach into the discretion of the lead agency. As such, I am opposed to the current representative examples of "mitigation" and request that OPR alter the current approach and seek to incorporate into the process true mitigation measures, such as transportation demand management programs, which it does properly identify.

Thank you for the opportunity to comment on the Preliminary Evaluation. I look forward to continued participation in the process as it moves forward.

Very truly yours,

Michael S. Haberkorn
of
Gatzke Dillon & Ballance LLP

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