



September 5, 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,

On behalf of the Los Angeles Area Chamber of Commerce, which represents more than 1,600 businesses and their 650,000 employees, I am requesting that the Office of Planning and Research (OPR) give serious consideration to the unintended consequences that would result from OPR's proposed Level of Service (LOS) mitigation changes to the California Environmental Quality Act (CEQA). We understand the need to balance development with policies that promote smart, sustainable growth and reduce greenhouse gas emissions, however we also understand the critical role of the building and development industry in growing California's job and tax base and providing affordable housing for our growing population. Therefore, we submit the following comments on OPR's proposed rule changes:

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

The proposed changes fail to incorporate the CEQA streamlining elements from SB 743 that promote infill projects in some locations (e.g., eliminating aesthetics, parking, and auto mobile delay as CEQA impacts for such projects). The loss of these CEQA changes are unfortunate given Governor Brown's repeated support for efforts to reform and streamline CEQA. Instead, the changes proposed by OPR actually dramatically expand CEQA by mandating evaluation and mitigation of "vehicle miles traveled" (VMT) as a new CEQA impact. They also single out certain infill projects as the first category of projects that must comply with the new VMT requirements 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, erode local agency land use authority, and increases the cost, complexity and litigation uncertainty that plagues development and job creation that currently exists under 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 reform.

**OPR Proposal Will Seriously Hamper Infill Development in California**

Los Angeles is entirely dependent on infill development to grow its economy and provide housing. California's CEQA regulations are regularly evoked 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 opposing development – rather than seeking environmental protection.

For these reasons, we strongly oppose the draft Level of Service changes, and we offer the following comments and alternative approaches.

- **There Is A Complete Absence Of Cost-Effective Vehicle Miles Traveled Models**

The draft rule changes provide 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 are 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 LOS Relief**

SB 743 eliminates automobile delay – most commonly measured LOS – as a CEQA significant impact for infill 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 draft rule changes do not 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.*

- **The Draft Rule Changes Undermine And Usurps The Authority Of Local Land Use Controls**

The draft 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 draft 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 draft rule changes do not address key litigation issues – rather they set the stage for 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 draft rules 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 rules that provide practical, pragmatic, and litigation-ready standards for stakeholders.

The Los Angeles Area Chamber of Commerce and its membership thank the Office of Planning and Research for their work on the draft LOS rules, and recognize its goal to remove unnecessary and cumbersome roadblocks to development. Despite OPR's effort, however, these changes to CEQA will not advance this goal. For these reasons, we strongly oppose the draft changes, offer the above suggestions and recommends that California develop new guidelines that will encourage housing development, job creation, and much needed redevelopment of urban centers. As the trend of millennials migrating to urban centers to live and work continues, we must promote policies that make it easier, not harder, to provide for the infill development to meet their needs and continue the reinvestment into our urban core.

CEQA should complement – not completely replace – existing environmental laws. CEQA should not require analysis of projects that already comply with approved plans for which an EIR has already been completed. Finally, 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 reconsidered, the proposed changes will lead to more confusion, increasing litigation risk for infill development, and harm efforts to build the developments that will rebuild our cities, build the homes our citizens need, and create the good paying jobs our citizens need.

Sincerely,



Gary Toebben  
President & CEO