



THE PUBLIC INTEREST LAW OFFICE OF THE LOS ANGELES COUNTY AND BEVERLY HILLS BAR ASSOCIATIONS
The Southern California Affiliate of The Lawyers' Committee for Civil Rights Under Law

November 21, 2014

Via Email and U.S. Mail

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Re: Public Counsel's Comments on CEQA Guidelines Proposed Text for New Section 15064.3

Dear Mr. Calfee:

Thank you for the opportunity to comment on the proposed new section 15064.3 of Article 5 - Preliminary Review of Projects and Conduct of Initial Study of the California Environmental Quality Act Guidelines ("Draft Guidelines"). These Draft Guidelines respond to SB 743's mandate requiring the Governor's Office of Planning and Research ("OPR") to recommend alternative methods to Level of Service ("LOS") when evaluating transportation impacts in transit priority areas to accomplish a reduction of greenhouse gas ("GHG") emissions.

Founded in 1970, Public Counsel is the public interest law firm of the Los Angeles County and Beverly Hills Bar Associations and the Southern California affiliate of the Lawyers' Committee for Civil Rights under Law. For 30 years, our Community Development Project has worked to confront a wide range of economic, social and environmental challenges faced by low-income communities in Los Angeles County. As part of our work, we represent and partner with nonprofit developers of affordable housing to provide housing equity and prevent homelessness. At the same time, the communities we serve routinely bear the brunt of environmental burdens and have the greatest need for robust environmental review. As such, our work frequently balances the need to streamline affordable housing development and the need to ensure meaningful environmental review and community engagement.

Several of our partner organizations throughout California have submitted comments on the Draft Guidelines. We support many of their recommendations. Given Public Counsel's unique vantage point, however, we submit these comments separately to underscore what we see

as several material oversights in the Draft Guidelines and make recommendations on how best to address them in the revision process.

Clearly, OPR is to be commended on its considerable efforts in preparing the Draft Guidelines. However, the Draft Guidelines, while attempting to satisfy the mandate of SB 743, undermine key aspects of the California Environmental Quality Act (“CEQA”) review and introduce a host of presumptions that run counter to well-established facts governing transportation oriented development (“TOD”) and public transit usage.

I. Background

Recognizing the reduction of GHG emissions as a statewide environmental priority, the legislature passed SB 743 to build on the environmental planning commenced with SB 375, which acknowledged the relationship between land use planning and GHG emissions from transportation. SB 375 links regional planning for housing and transportation with GHG reductions goals outlined in AB 32. SB 375 envisions reducing GHG emissions by, in part, locating housing closer to jobs, retail, and transit. Under the law, Metropolitan Planning Organizations are required to adopt a sustainable community strategy to move away from sprawling car-centric development paradigms and promote sustainable, transit-oriented, walkable, lower-impact communities.

SB 375 introduced CEQA exemptions and streamlining for certain residential, mixed-use and transit oriented projects. Acknowledging the essential role of affordable housing in reducing GHG emissions, SB 375 also reduced certain zoning barriers for builders of 49% affordable developments. Building on SB 375’s push for reducing GHG emissions with sustainable community strategies, SB 743 amended CEQA to eliminate automobile delays as an environmental impact to be considered pursuant to CEQA review. As such, lead agencies must no longer recommend mitigation measures to alleviate project induced automobile delays, such as widening streets and adding additional turn lanes. SB 743 also instructed OPR to prepare, develop, and transmit to the Secretary of the Natural Resources Agency for certification and adoption, proposed revisions to the guidelines adopted pursuant to section 21083 establishing criteria for determining the significance of transportation impacts of projects within transit priority areas.

II. The Proposed Guidelines Fail to Protect Against Environmental Impacts Associated with Additional Vehicles on the Road.

As advocates for sustainable, transit-oriented communities, we agree that mitigating against traffic delays to aid the flow of cars is a model long outdated and counterproductive to our State’s GHG emission and sustainable communities goals. However, the proposed substitution of LOS with vehicles miles travel (“VMT”) and the myriad transportation presumptions within the Draft Guidelines raise concerns as to whether adequate environmental review will be conducted with respect to the unavoidable impacts associated with a project adding more cars to the road, regardless of whether the addition is equal to or less than regional averages or located within one-half mile of public transit.

Below we address the sections we find deficient and make revision recommendations.

a. Section 15064.3(a) Purpose.

The Draft Guidelines propose a three-tiered ranking system for evaluating transportation impacts. Ranked first are “the amount and distance of automobile travel associated with a project”. The Draft Guidelines rank second the project’s effect on transit and non-motorized travel and the safety of all travelers. The Draft Guidelines demote as tertiary air quality, noise and other automobile generated impacts, describing them as “indirect effects” to be lumped in with the “stationary source” portions of the environment review document. This ranking conflicts with the clear language of SB 743 that states:

This subdivision does not relieve a public agency of the requirement to analyze a project’s potentially significant transportation impacts related to air quality, noise, safety, or any other impact associated with transportation. The methodology established by these guidelines shall not create a presumption that a project will not result in significant impacts related to air quality, noise, safety, or any other impact associated with transportation.

We recommend that OPR revise section 15064.3(a) to reflect SB 743’s clear instruction that other environmental analyses with respect to transportation related impacts remain unchanged and must still be performed. Also, the suggestion that transportation related impacts on air quality and noise “may be analyzed with stationary sources in other portions of the environmental document” is confusing and inappropriate. Transportation impacts on air quality, safety, noise and other transportation impacts are sufficiently different from those impacts when generated by stationary sources and, as such, should be evaluated in separate portions of the environmental review document.

b. 15064.3(b)(1) Criteria for Analyzing Transportation Impacts; Vehicle Miles Traveled and Land Use Projects.

Using VMT and transit proximity metrics, this section designates the four following types of projects for which a presumption of non-significance for transportation impacts would apply:

- (1) Projects that result in vehicles miles traveled that are equal to or less than the regional average for the land use type (e.g., residential, employment, commercial);
- (2) Projects located within one-half mile of either an existing or major transit stop or a stop along an existing high quality transit corridor;
- (3) Projects that result in net decreases in vehicles miles traveled, compared to existing conditions; or
- (4) Land use plans that are either consistent with a sustainable community strategy, or that achieve at least an equivalent reduction in vehicle miles traveled as projects to result from implementation of a sustainable communities strategy.

When evaluating these categories, one must first acknowledge that CEQA seeks to protect humans from environmental hazards and to provide impacted communities the opportunity to participate in the review of a project's potentially significant environment effects¹. Out of step with CEQA's mandate, several of the proposed categories are overly broad and will inappropriately diminish vital environmental review of transportation impacts. The VMT metric might be a better way to assess a project's GHG emissions than LOS, but the Draft Guidelines fail to properly account for the environmental impacts experienced by the communities absorbing the additional vehicles. Two of the categories are likely to exempt from a transportation analysis myriad projects that would add a very significant numbers of motor vehicles to already congested streets. This undermines CEQA's mandate to study significant impacts on both the environment and humans.

Despite its faults, LOS may be a better metric than VMT for understanding how a project's vehicles will impact a local community. The problem with LOS, from a GHG emissions standpoint, is its mitigation response aimed at conveniencing single occupant vehicles rather than those outside the delayed or slowed vehicles, such as pedestrians, bicyclist, and public transit users.

1. Category 1

With respect to category number 1, we fail to see how this category should be presumed not to have a significant environmental impact. First, measuring impacts against regional averages is a mistake. Regional averages, even in TOD areas, may be well in excess of what could be reasonably considered an insignificant impact. Minimally, OPR should revise this section to require a project to result in *below* regional averages before it can benefit from a non-significant impact presumption.

2. Category 2

a. The False Presumptions of Category 2 Can be Corrected With Affordable Housing Prerequisites.

With respect to category number 2, this section potentially exempts projects from a transportation impact analysis where the project is located within one-half mile of either an existing major transit stop or a stop along an existing high quality transit corridor. Although we support facilitating infill development close to public transit, the Draft Guidelines presume too much when creating this exemption given that it is entirely possible that such projects will have a very significant transportation impact even under the VMT model.

Studies show that there are two key facts that impact VMT – proximity to transit-rich areas *and* household incomes.² In this equation, the biggest single determinant of VMT and

¹ CEQA, Public Resources Code § 21083(b)(3).

² Center for Neighborhood Technology's 2013 study of Caltrans' California Household Travel Survey as cited in *Why Creating and Preserving Affordable Homes Near Transit is A Highly Effective Climate Protection Strategy*, p. 7, California Housing Partnership Corporation and TranForm, 2014.

therefore GHG emissions is ownership of a private vehicle.³ Extremely low-income households own only .7 vehicles per household, less than half the number of cars higher income households own. Moreover, 90% of transit commuters earn less than \$50,000 and 70% earn under \$25,000 annually.⁴

Additionally, research shows that extremely low, very low and low income residents living within HCD's definition of TOD areas (1/4 mile) accounted for less than half the VMT as compared with higher income residents in the same TOD area. Where the same population is located within one-half mile of transit, again lower income residents produce nearly half the number of VMTs compared to higher income residents.⁵

Accordingly, giving a blanket presumption of "less than significant impact" to projects within one-half mile of transit ignores the reality that market-rate tenants continue to drive their cars in "transit rich" localities. Moreover, in many urban or semi-urban settings, nearly all projects will fall within one-half miles of public transit, and yet, the research shows that public transit use does not so neatly correlate to proximity - particularly for market rate commuters. To ensure the legitimacy of the insignificant impact finding with respect to category 2, the Guidelines should require, as a prerequisite to benefitting from the presumption, that residential projects (1) offer at least 49% affordable units geared toward lower income residents and (2) not result in a net loss of affordable units as outlined in AB 2222.

b. Category 2 Promotes the Displacement of Low Income Residents, further undermining GHG Emission Reduction Opportunities.

To be sure, we support encouraging infill and development in "transit rich" areas. Such development promotes sustainable, livable communities and offers great potential for reductions in GHG emissions. However, displacement of lower-income residents from these development areas due to higher housing costs is a serious problem.⁶ Researchers agree that a lack of affordable housing is largely responsible for our State's staggering homeless rates, with more than 500,000 homeless children.

³ *Id.*, at 9.

⁴ California Community Foundation, *The Los Angeles Equity Atlas*, p. 1 (2014).

⁵ *Why Creating and Preserving Affordable Homes Near Transit is A Highly Effective Climate Protection Strategy*, pp. 7-10.

⁶ See Wardrip, Public Transit's Impact on Housing Costs; PolicyLink, *Equitable Development Toolkit* (Properties within a five- to ten-minute walk to a transit stations already sell for 20 to 25 percent more than comparable properties farther away.); see also Ryan Sherriff, An Affordable Beltline?, *Shelterforce*, Winter 2010, available at http://www.shelterforce.org/article/2101/an_affordable_beltline/ (reporting that city and school property taxes on homes within an eighth-mile of the Atlanta Beltline light rail project's Tax Allocation District increased 68% after the announcement of the project.)

Legislative measures were recently taken to partially address displacement of low-income residents. Enacted on September 27, 2014, AB 2222 requires developers to replace affordable units to qualify for a density bonus – meaning new developments benefiting from an affordable housing density bonus cannot result in a net loss of affordable units. However, much more must be done to confront the environmental impacts associated with development.⁷

While facilitating TOD and infill development, the Draft Guidelines would not only exempt from review many projects likely to have significant transportation impacts, they may also usher in more displacement of low-income residents, an outcome CEQA is supposed to prevent, not accelerate.⁸

Beyond the tragic human toll that displacement exacts, facilitating such displacement undermines, in at least three ways, the GHG emission reduction goals these Draft Guidelines seek to promote. First, market rate development fails to cater to the population proven to most frequently use transit within one-half mile of their homes and work. This is a major flaw in the Draft Guidelines. Second, we know from our extensive work with communities facing gentrification, displaced families, in search of lower rents, frequently have no choice but to move to remote inland communities with minimal access to quality public transit.⁹ Thus, not only are the former transit users transformed by necessity into drivers, we know that many displaced residents continue to return to their former communities for work and healthcare. Third, the frequent transit users are replaced with higher income tenants much less likely to use transit despite its proximity.

The Draft Guidelines risk worsening the toxic triplets of displacement and, accordingly, OPR should revise this section to require residential projects to contain at least 49% affordable units and be consistent with the no net loss provisions of AB 2222, as a condition to qualify for this proposed non-significant presumption.

Last, we note that under the current language of the Draft Guidelines, a lead agency could deem transportation impacts non-significant for projects located within one-half mile of high

⁷ CEQA is designed to protect against such development impacts on humans and their environment. In this regard, CEQA provides “that an agency is required to find that a project may have a ‘significant effect on the environment’” if, among other things, “[t]he environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly[.]” Pub. Res. Code, § 21083, subd. (b)(3). Moreover, “[M]ajor consideration [must be] given to preventing environmental damage, while providing a decent home and satisfying living environmental for every Californian.” *Id.* at (g).

⁸ According to a recent study by the Dukakis Center for Urban and Regional Policy, new transit stations can set in motion a cycle of unintended consequences in which core transit users are priced out in favor of higher-income, car-owning residents who are less likely to use public transit for commuting. Pollack, Bluestone, and Billingham, *Maintaining Diversity in America’s Transit-Rich Neighborhoods*, 1, 22-26, 27.

⁹ Our experience is echoed by a 2012 report by the Federal Reserve Bank of San Francisco, *Suburbanization of Poverty in the Bay Area*, available at : <http://www.frbsf.org/community-development/files/Suburbanization-of-Poverty-in-the-Bay-Area2.pdf>

quality transit even when the project would produce more than regional average VMTs. This cannot be the intended meaning and clarification is necessary.

3. Category 4

Concerning category 4, again the scenario described is entirely too vague to warrant such a sweeping exemption to land use plans.

c. 15064.3(b)(3) Local Safety

This section seems misplaced. SB 743 makes clear that the need to perform air quality, noise, safety and other transportation impact analyses remain unchanged by SB 743. Also, section 15064.3(a) acknowledges as much with respect to safety (although inadequately addresses air quality, noise and other transportation impacts – see recommendations above). Moreover the proposed language fails to track the language of CEQA for evaluating impacts – namely whether the project has the potential of resulting in significant environmental effects. This section should be reworded to read:

~~In addition to a project’s effect on vehicle miles traveled, a lead agency may also localized effects of project related transportation on safety. Examples of objective factors that may be relevant may include~~ must consider whether the project-related transportation will have significant effects on local safety. Examples of significant effects include:

- (A) Increase exposure of bicyclists ~~and~~ or pedestrians in vehicle conflict areas (i.e., remove pedestrian ~~and~~ or bicycle facilities, increase roadway crossing times or distances, etc.).
- (B) Contribute to queuing on freeway off-ramps where queues extend onto the mainline.
- (C) Contribute to speed differentials of greater than 15 miles per hour between adjacent travel lanes.
- (D) Increase motor vehicle speeds.
- (E) Increase distance between pedestrian or bicycle crossings.

II. Appendix F’s Proposed Mitigation Measures To Reduce VMT Are Misplaced.

a. EIR Contents (D) Mitigation Measures – General Comments.

As a general matter, we find the language of item 6 and the list of potential “measures to reduce vehicle miles traveled” too imprecise to be useful. For example, with respect to item (a)(improving or increasing access to transit), how does a project “improve or increase access to transit”? Does this mean if a developer pays for a bench at a nearby bus stop, it has improved access to transit? Moreover, the measures need to be sufficiently linked to known decreases in GHG emissions. Improving stops may make the wait more pleasant, but it does not necessarily equate to a reduction in VMTs or GHG emissions.

Additionally, how does a private developer “increase access” to transit? If the developer is able to install an additional transit stop at or close to the development, this would be an increase. But short of that, it is unclear how a private developer could “increase access.” If this item is referring to transportation projects, such projects are already addressed in the Draft Guidelines section 15064.3(b)(2). As such, we recommend that more time and consideration be paid to the proposed scenarios and articulate them with sufficient specificity to assist developers and community members.

b. Specific Recommendations for the Enumerated Measures under Item 6.

Concerning the individual measures, we offer the following recommendations:

(b) Revise this subsection as follows: “Increasing access to ~~common~~ essential goods and services, such as groceries, schools, ~~and~~ daycare, healthcare and wellness facilities.”

(c) Incorporating affordable housing into the project.

We are pleased that OPR acknowledges the positive impact affordable housing has on the reduction of GHG emissions and VMTs. However, it is essential that the Draft Guidelines do more to promote affordable housing if SB 743’s GHG emission reduction goals are to be achieved. Under the Draft Guidelines, a project with ZERO affordable units that is located within one-half mile of transit is presumed not to have significant transportation impacts. Yet we know that market rate tenants continue to drive even when situated close to public transit (see above). The opposite is true for lower-income tenants. Therefore, as noted above, incorporating affordable housing should be a prerequisite for residential projects seeking to benefit from any presumption of less than significant impact when situated within a half-mile of public transit.

With respect to affordable housing as a mitigation measure for projects ineligible for the “non-significant” presumption, the percentage of affordable housing must be enough to impact VMT outcomes and, thus qualify as a mitigation measure. Affordable housing percentages linked to density bonus incentives range from 5-11% of the project’s total units – a small fraction of a project’s housing capacity. Research shows that the balance of the units’ occupants will continue to use single occupancy vehicles even when located close to high quality transit. To achieve SB 743’s GHG emission goals, the OPR should revise the affordable housing mitigation measure to (1) require that residential projects offer a minimum of 20% affordable units¹⁰ and (2) ensure that the mitigation is available only where there is no net loss of affordable units, as outlined in AB 2222, as a result of the project.¹¹

¹⁰ This 20% affordable unit threshold is consistent with the general minimum requirements to be eligible for tax-exempt bonds in California.

¹¹ Please note that our recommendations made in section II.B.2 above with respect to a 40% affordable housing prerequisite speak to a lead agency’s ability to deem transportation impacts insignificant due to the project’s proximity to public transit. Our recommendations here relate to

(d) Improving the jobs/housing fit of a community.

We strongly support using a “jobs/housing fit” as a mitigation measure when done under the right circumstances. If, however, the development causes displacement, it cannot be seen as improving the jobs/housing fit. Therefore, we urge OPR to adopt more precise language setting forth the parameters of this “mitigation measure.”

(i) Providing Bike parking

While bike parking should be a required development component, OPR errs in equating bike parking with measureable increases in ridership. As a cyclist who rides to work, I can speak with some level of authority on what gets and keeps people riding bikes, and more bike parking is not one of them. To give an on-point example, our office recently put in bike racks, and the same three cyclists who rode to work before the installation continue to be the only cyclists who ride to work. Not one new person has joined our ranks, despite the new ease of bike parking. The only way to increase bike ridership is to make biking safe for cyclists, ideally with protected bike lanes. Adequate parking fails to help potential riders overcome the myriad reasons not to ride in urban centers without protected bike lanes and, as such, fails as a mitigation measure with respect to GHG emissions.

(o) Providing transit passes.

This item should be revised to read: “Providing transit passes in exchange for car usage.” It is not enough to just distribute passes – although we support the idea.

III. The Proposed Amendments to Appendix G With Respect To Safety Undermine Fundamental CEQA Protections.

XVI. Transportation

Sub-question (c) reads: Would the project:

Result in substantially unsafe conditions for pedestrians, bicyclists, transit users, motorists or other users of public rights of way by, among other things, increasing speeds, increasing exposure of bicyclists and pedestrians in vehicle conflict areas, etc.? ~~a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?~~

This question reflects the vestiges of the single occupant vehicle-centric thinking that SB 743 directs municipalities and planners to reject. Why must a project result in *substantially unsafe* conditions for pedestrians, bicyclists, or transit users to be a significant impact? Unsafe conditions, not substantially unsafe, conditions should be the threshold for significance and this question should be revised accordingly.

mitigation measures for projects that would not qualify for the transit proximity non-significant presumption due to being located more than one-half mile from transit.

IV. Conclusion

Again, we thank the OPR staff for the many hours they have dedicated to preparing the Draft Guidelines. We also applaud OPR for the robust efforts it has made to encourage and facilitate public participation in the review process. We believe our recommendations will help advance the revision process and assist with crafting guidelines that achieve SB 743's goal to reduce GHG emissions and foster sustainable, thriving communities throughout the State.

If you should have any questions, please do not hesitate to contact me.

Very truly yours,

PUBLIC COUNSEL

/s/ Christina Giorgio

Staff Attorney

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