

Memorandum

TO: Governor's Office of Planning and Research

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DATE: November 14, 2014

SUBJECT: *Updating Transportation Impacts Analysis in the CEQA Guidelines - Preliminary Discussion Draft of Updates to the CEQA Guidelines Implementing Senate Bill 743 (Steinberg, 2013)*
Review/Feedback Comments

This memorandum was prepared to summarize and submit my personal professional review/feedback comments on, and as solicited in, the State of California Governor's Office of Planning and Research (OPR) document entitled *Updating Transportation Impacts Analysis in the CEQA Guidelines - Preliminary Discussion Draft of Updates to the CEQA Guidelines Implementing Senate Bill 743 (Steinberg, 2013)* (the "OPR document") released for public review on August 6, 2014 (comment period ending October 10, 2014 subsequently extended to November 21, 2014). The following is a listing of my general observations and key comments for OPR consideration:

- The OPR document unequivocally declares that "... *automobile delay will no longer be considered an environmental impact under CEQA.*" Therefore going forward the use of VMT methods for CEQA analysis of project impacts is mandated in lieu of, and not supplementary to, traditional LOS methods. While this VMT-based mandate is commendable from the standpoint of larger Climate Action goals it strives to achieve, its practical ramifications are bound to be far-reaching throughout our industry and day-to-day CEQA practice, potentially including in ways that cannot be fully predicted/foreseen at this time by perhaps any entity. The point to note here is that the OPR direction clearly comes from a legislative/executive action of the State but the view/interpretation of the judiciary on this statute update will only be known as CEQA case-law history evolves further in the next few years in the wake of SB 743 adoption.
- The motivation for SB 743's advocacy of VMT over LOS as the preferred metric of project impacts appears to be really two-fold. The first criterion (the problem side) is the set of known weaknesses in relying on and even perpetuating traditional LOS-based impact mitigations, that are now known to be actually detrimental to achieving the State's modern goals of reducing greenhouse gases and energy consumption. The second criterion (the solution side) is the set of strengths/merits associated with use of VMT as a quantifiable metric that directly correlates to vehicular tailpipe emissions, which in turn directly correlates to greenhouse gas impacts. While the problem side is well-documented, the solution side still needs improvement in the sense that over-reliance on VMT as the *sole* performance measure may create new issues that did not hitherto exist. For example, legitimately required system capacity/operational improvements that only a LOS/delay computation would help determine, may essentially go undetected if VMT is used as the sole measure of project impacts under CEQA.
- The OPR memo indicates that existing fee programs that are capacity based will remain in effect, and that agencies would maintain their ability to retain and enact fee programs that are based on LOS. While it is clear that capacity improvements will no longer be considered CEQA mitigation for project impacts, it is unclear when, if at any time, agencies should consider capacity-increasing transportation improvements outside of the CEQA process going forward. If LOS analysis is to be altogether eliminated from CEQA analysis, then it must be explicitly acknowledged whether or not it really is the intent of SB 743 to create some type of a moratorium on traffic capacity improvements.
- The OPR memo indicates that "induced travel" will be considered a CEQA impact. This raises the question as to how supporting CEQA traffic studies need to be conducted for capacity-increasing projects (such as roadway/bridge widening, interchange improvements, etc.) that are inevitably creators of "induced travel". Again, it is not clear if one of the intents of SB 743 is to produce a *de facto* moratorium on capacity-increasing projects.

- After vetting a number of alternative performance measures, the OPR directive propounds use of VMT as the recommended/preferred alternative performance metric for quantifying project impacts under CEQA. However, not all VMTs are created equal, and there is no recognition of this fact in the OPR document. Note that the fundamental premise behind use of VMT as the performance metric is that VMT is directly proportional to greenhouse gas impacts, but that is not always or exactly true for the following reasons:
 - The California automobile fleet is extremely diverse and getting increasingly so, with typical automobile gas mileage/economies ranging anywhere from 15 miles per gallon (mpg) to upwards of 50 mpg. Therefore, there needs to be some type of adjustment factor applied to reasonably reflect fleet composition. Note that the gallon measure here refers only to gasoline and other types of fossil fuels that are known to produce greenhouse gases when burnt. On an emissions-per-VMT basis, more fuel-efficient automobiles are not as impactful on the environment as less fuel-efficient automobiles. Note also that the ITE trip generation rates use trip data sources from varied periods including those from the 1960's and 1970's when average fuel efficiency was way lower than what it is today.
 - Depending on speed profiles of the moving vehicle fleet, not all vehicles (of the same fuel type) would produce equal emissions on a per VMT basis. Vehicles cruising long distances at a certain constant rate of speed (an example would be inter-regional freeway driving) will produce less emissions per VMT than vehicles that constantly need to alter their speeds under stop-and-go conditions (an example would be inner City driving). An adjustment factor for speeds is therefore necessary.
 - The percentage of low/zero-emission automobiles (including hybrid, all-electric and alternative fuel vehicles) in the fleet is increasing at an exponential rate with every passing year. Although the new guidelines support considering a project's use of electric cars as a possible "mitigation" strategy to reduce VMT impacts, note that increased use of electric cars will not necessarily reduce VMT, but only reduce emissions per VMT and energy consumption per VMT. The real question then becomes this – Are VMT impacts acceptable if all of our vehicles run clean? A society where all 100% vehicles are zero-emitting, but per-capita VMT is greater than what it is today is still not desirable. In this sense, SB 743's goal of reducing VMT should not appear to be solely driven by the need for greenhouse gas reduction. A holistic goal that includes social objectives such as increasing urban densities to improve inter-personal interaction, build tighter communities, and individual health promoted by use of active transportation modes (i.e. biking and walking) must be acknowledged.
 - It is noted that fuel consumption as a performance metric may have found limited support as an independent measure in itself, however, some type of consideration of fuel consumption as a denominator below VMT is recommended. "VMT per gallon of fossil fuel consumed" may be a reasonable measure.
- VMT quantification tools and methods continue to remain relatively under-developed and not as widely used in the industry as LOS methods are. Although the OPR document lists a number of VMT tools/methods that are available at this time, VMT and induced travel will continue to remain relatively technically less-defensible (and more open to challenge) items to quantify compared to traditional LOS. In this sense, at least in the interim, SB 743 is bound to produce a regressive effect in the quality/standard of technical care used in CEQA evaluation of transportation impacts. The use of regional travel demand models to quantify VMT will be a dicey proposition because the models are not always necessarily calibrated at a VMT level in the first place. Until robust, widely accepted technical methods to quantify VMT are available through mainstream industry resources such as ITE and TRB's HCM, OPR should encourage lead agencies to continue to support simplistic/qualitative, good-faith methods and estimates of project-level as well as regional VMT. Else CEQA documents would continue the risk of increased CEQA litigation exposure because of alleged technical inadequacy in VMT computations.
- Note that traditional transportation fee programs maintained by public agencies are either based on LOS/capacity impacts (such as developer impact fees) or to gasoline consumption (such as gasoline sales tax, and excise tax). These programs will perhaps need to be revised to perhaps be tied to VMT

or some other type of roadway usage fee as agencies move away from LOS/delay mitigation and into VMT mitigation. While pre-existing impact fee programs may continue to be applicable for a period of time, new technical methods will need to be used to derive appropriate AB-1600 nexus between VMT and developer impact fees. It will be difficult, if not impossible, to derive cause-effect relationships between land use and transportation infrastructure needs and to defend or justify development nexus to capacity-based traffic impact mitigation fees, when capacity impacts are no longer considered a project's environmental impact.

- SB 743's proposal for elimination of LOS as a CEQA impact, by consequence, appears to totally absolve project responsibility towards capacity improvements. This will create a situation wherein an agency can no longer hold a project developer accountable for payment towards off-site capacity improvements (roadway widening, traffic signals, etc.) that may be legitimately required, especially in a suburban context wherein there is limited pre-existing transportation capacity. Therefore, CEQA traffic studies may no longer be usable by agencies to write capacity-related conditions of approval on a development project. This may be beneficial to infill/redevelopment projects, but may be damaging to the lead agencies when approving a suburban/greenfield development project. Any agency-imposed condition of project approval that is capacity-related can no longer be upheld or enforced under CEQA, and will become entirely a matter of negotiation between the lead agency and the developer, a matter that may at best be handled through a development agreement outside of CEQA. In this sense, it must be noted that SB 743 appears to weaken the lead agency's ability to implement legitimately needed capacity improvements, especially in a suburban situation. While the SB 743's intent to streamline or encourage infill development is well understood and acknowledged, the fact that SB 743 causes capacity-based mitigation to be altogether overlooked may increase risk of misuse/abuse of this new CEQA mandate by suburban development.