

Ravi Narayanan, PE, TE - Feedback Comments

on

***Preliminary Evaluation of Alternative Methods of Transportation Analysis
Governor's Office of Planning & Research (OPR), dated December 30, 2013***

- I applaud Senator Steinberg's SB 743 initiative that is aimed at helping the State's larger goals that includes promoting infill development, and the OPR for seeking open feedback from all stakeholders on the associated document entitled "*Preliminary Evaluation of Alternative Methods of Transportation Analysis, Governor's Office of Planning & Research (OPR)*" dated December 30, 2013 ("OPR Memo").
- **General Comment** – I agree with the overall intent and big-picture objectives associated with SB 743 and the OPR Memo, however comprehensive context-setting, technical explanation as well as extensive text/verbiage revisions and clarifications are needed throughout the OPR Memo and its specific recitals in order to render this legislation and its ramifications acceptable to all, and not have this legislation become a part of the problem as opposed to becoming a part of the solution.
- The OPR Memo appears to argue that vehicular delay and traditional Level of Service (LOS) characterizations are only a measure of driver inconvenience and not a *physical* impact *per se* to the environment as CEQA statute appears to limit itself to. This contention may not be exactly true, since LOS does have secondary impacts that are somewhat physical in nature – such as vehicular queuing and gridlock, traffic safety implications of queuing, idling emissions, etc. The utility of wasted travel time for having drivers sit in gridlocked traffic may be deemed a secondary economic impact as well. Furthermore, practitioners would/could argue that CEQA, from a case-law standpoint anyway, is practically all-encompassing and not just limited to a disclosure of physical impacts to the environment. Regardless of these observations, SB 743's general premise that LOS/delay is more of a driver-behavioral and tolerance/perception-driven traffic performance measure and not really a direct and tangible impact on the physical environment (like air quality or noise) is a point that is well-taken. However the real issue here is not that LOS evaluation in itself is bad for projects, but that LOS methods do not capture other beneficial transportation aspects of a project that go way beyond the notion of vehicular delays.
- The OPR Memo claims that social and economic impacts are not considered part of CEQA analysis, however I have seen EIR documents, depending on the type of project that is in question, providing market/economic analysis (blight analysis), and environmental justice discussion (equitableness etc.) in their chapters. Note that CEQA, in its current form, totally allows discretionary approval of a project by the lead agency through adoption of "Statement of Overriding Considerations" should a project be deemed overall beneficial to the agency's jurisdiction, despite findings of significant and unavoidable (i.e. un-mitigable) adverse impacts attributed to the project. Note again, the weakness of CEQA in its current form is not that it does not support an ultimate recourse for projects that do not "fit the bill" to be approved, but that CEQA perpetuates "a one size fits all" review approach for all types of projects.

- As the OPR Memo points out, it is true that the use of traditional LOS methods has not been exactly helpful towards achieving the State's modern goals, such as encouraging emissions reduction, multi-modal transportation and infill development. By the same token, it should also be recognized that traditional LOS methods have not always necessarily been friendly towards suburban development projects either, having been used by lead agencies as reasons to deny/delay "sprawl" development projects also. LOS is, in reality, a double-edge sword that has had a history of resulting in denial of even some of the "good and necessary" projects, regardless of whether a project is infill or sprawl, so the rationale for promoting need for alternative performance measures cannot appear to come from the singular motive of encouraging infill development. It would be more reasonable to describe a holistic context here so that we do not deny good projects ("throwing the baby out with the bathwater") by indiscriminately relying on vehicular LOS as the sole traffic performance measure. Again emphasis should be on the word *sole*.
- The OPR Memo's claim that "LOS is difficult and expensive to calculate" may not sit well with the traffic engineering community, since as an industry we have been performing LOS computations for over 40 years now. Software models and tools/technology are available, that have been continuously improved over the years commensurate with extraordinary improvements in computer technology in this Information Technology-driven age. The purported computational "difficulty" in such LOS calculations is left to the computers to handle and traffic engineers have effectively evolved into, whether we like it or not, just reporting agents of software-based LOS evaluation results. The difficulty or tediousness in LOS calculations is therefore a tenuous and dicey argument to make in defense of alternate measures of performance. The risk with this claim also is the fact that some/several of the alternative performance measures (such as Vehicle-Miles-Traveled) put forth by OPR may also be eventually found to be equally, if not even more, difficult to compute, in an accurate manner anyway. The point here again is that computer technology has simply made all difficulty arguments moot.
- The OPR Memo points out other problems with LOS ("biased against last-in development" and "scale of analysis is too small") that are reasonable points that should be retained, but more explanation from an infill versus suburban context should be provided. LOS is indeed biased against "last-in" development from an infill context where pre-existing infrastructure may be available, but tends to be biased against "first-in" development for suburban projects where there is little infrastructure to begin with. LOS scale of analysis may indeed be "too small" for suburban projects whose vehicular impacts can be more widespread than disclosed, however LOS scale of analysis may be "too big" for infill projects which rely on walkability and alternative modes of travel. Therefore, without proper context, the OPR memo's claims in this regard may be seen as being inconsistent or arbitrary.
- Other points about LOS mitigation being problematic and LOS mischaracterizing alternative modes of transportation as being detrimental to transportation, are also valid points, however the language needs to be carefully reviewed and edited as necessary in order to avoid the tone and tenor that leads a neutral reader to believe that the motivation for such "LOS bashing" is

solely driven by the need to encourage infill development. A more balanced, and perhaps a technical case-study based, illustration as to how exactly LOS is detrimental to infill projects and to alternate modes of transportation may be in order. As available, CEQA case-law history wherein LOS results may have been used by lead agencies to deny “good” projects should be referenced. That the use of LOS implies a “false sense of precision” to the evaluation is also a great point, and perhaps lead agencies should be encouraged to adopt some guidelines that require traffic studies to acknowledge statistical range of errors in LOS determinations.

- A technically accurate, defensible and consistent terminology must be invented to properly refer to all those lands that are variedly referred to as “infill opportunity zones”, “transit priority areas”, “transportation beneficial development areas”, and such. Note that such lands would fall under a broad geographic tier that I would refer to as “Steinberg CEQA” territories and creation of an overarching, consistent term to define and refer to those areas/zones/territories is very important.
- The OPR memo has put forth some commendable goals and objectives to help guide development of alternate performance criteria/metrics. These goals include – environmental protection, economic strengthening, social equity, health benefits, simplicity, consistency with other State policies, and access to destinations. While these goals themselves are appropriate, there has been no recognition for ranking, weighting or prioritization scheme between these goals. More than likely, two or more goals will contradict/conflict one and another and it will become necessary to make tradeoffs, potentially on a project case-by-case basis. For instance, a metric that quantifies “health benefits” of a project may not be very “simple” to calculate or for the public to understand. Furthermore, a project that meets the lead local agency’s goal may not address the State’s goals at all, or *vice-versa*. Therefore goals prioritization is important, and the lead agency must be appropriately empowered to adopt its own set of goals and priorities.
- The OPR memo has identified Vehicle Miles Traveled (VMT), Automobile Trips Generated (ATG), Multi-Modal-LOS, Fuel Use, Motor Vehicle Hours Traveled, Presumption of Less than significant Transportation Impact Based on Location, as new metrics that could be considered in support of SB 743 goals. While all of these proposed alternative measures are reasonable metrics, it will likely take time and resources on the part of lead agencies and practitioners to review/develop and adopt proper technical methods/tools to quantify these new metrics in a manner that withstands CEQA/public scrutiny. In the interim, at least until robust technical quantitative methods and related policy thresholds are established and adopted, qualitative performance metrics should be encouraged. To that end, an SB 743 “points” or scoring system may be recommended to be created, wherein the responsible lead agency is mandated to approve a project if that project scores a certain minimum score of SB 743 points pre-adopted by the agency. For instance, a proposed mixed-use office building project in the downtown core of a large city could get say one point for infill location, one point for promoting alternative modes of travel for its employees, one point for promoting/encouraging alternative types of fuel use among employees, one point for adding mixed-use (self-mitigating) on-site amenities, and one point for travel demand management programs (staggering employee work-hours). If the lead

agency's pre-adopted minimum SB-743 pass-score is say 4, then the project is automatically approved and deemed immune to CEQA challenge.

- **Final Thoughts and Observations:** It appears that SB 743, either by its intent or by inadvertent consequence, creates two separate “tiers” of implementation of CEQA, as we know it. I would refer to those two tiers as “Traditional CEQA” and “Steinberg CEQA” at this time, for lack of a better terminology. I see SB 743 as gaining acceptance in industry practice and general public life if and only if the “territories” of applicability for Traditional CEQA and Steinberg CEQA are clearly pre-demarcated and pre-designated as such, and in an upfront manner by the lead public agency. Such Steinberg CEQA territory would ideally be limited to infill areas, downtown/central business district, redevelopment zones, transit-priority areas and mixed-use-development (MXD) areas, nested within thriving urban communities and mature urban cores. Such land pre-designation and streamlining of local agency zoning policies and codes is necessary in order to pre-empt potential public impression that a project is being deemed to qualify for Steinberg CEQA only “after the fact”. Furthermore, such land pre-designation would put to rest confusion or nervousness on the part of rural jurisdictions and private suburban developers on potential applicability/implications of SB 743 to their geographical areas of interest. Albeit with its share of known faults and weaknesses, I see Traditional CEQA continuing to apply in its current form in those areas that are not designable as “Steinberg CEQA” territories. In that context, my general opinion is that a broad, across-the-board (i.e. single-tier) application of SB 743 may not be feasible or should not be even necessary at this time. Nonetheless, Steinberg's SB 743 is a landmark step in the right direction that helps define proper regulatory context and develop technical methods to minimize potential for CEQA-based delay/denial/abuse of “good” projects.

Comments Submitted by:

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