



Riverside County Transportation Commission

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November 20, 2014

Mr. Christopher Calfee, Senior Counsel
Governor's Office of Planning and Research
1400 Tenth Street
Sacramento, CA 95814

Subject: The Riverside County Transportation Commission's Input In Response to "Updating Transportation Impacts Analysis in the California Environmental Quality (CEQA) Act Guidelines: Preliminary Discussion Draft of Updates to the CEQA Guidelines Implementing Senate Bill 743," Dated August 6, 2014

Dear Mr. Calfee:

The Riverside County Transportation Commission (Commission) appreciates the opportunity to comment on the Office of Planning and Research's "Updating Transportation Impacts Analysis in the CEQA Guidelines: Preliminary Discussion Draft of Updates to the CEQA Guidelines Implementing Senate Bill 743" (Guidelines Update), dated August 6, 2014.

As the regional transportation planning agency for Riverside County, the Commission serves as both lead agency and responsible agency for many CEQA documents each year, often in coordination and consultation with the California Department of Transportation, and in partnership with federal transportation agencies for joint CEQA/NEPA documents. As a result of the increased demands placed on infrastructure in Riverside County due to population growth and urbanization, the Commission served as lead or responsible agency for transportation projects involving billions of dollars in investments, which will help to alleviate congested traffic conditions and reduce vehicle miles traveled on several of the region's main transportation corridors.

In its role as the regional transportation planning agency for a county populated by over 2.3 million people, the Commission monitored the Office of Planning and Research's (OPR) efforts to comply with the provisions of SB 743 regarding the evaluation of transportation impacts. In fact, in a letter dated January 29, 2014, the Commission submitted comments to OPR on its "Possible Topics to be Addressed in the 2014 CEQA Guidelines Update" in which the Commission raised several concerns about the proposed revisions to the Guidelines. However, a few of the issues raised in the Commission's comment letter do not appear to have been addressed in this Guidelines Update, and it is unclear whether OPR intends to respond to the Commission's previous comments (or the previous comments of other commenters) as part of any final proposed regulatory package. Additionally, the Commission has other concerns regarding the Guidelines Update and the practical problems that may result from its implementation.

Comments on the Guidelines Update

Application of New Guidelines to Entire State in 2016

The Commission understands the Guidelines Update would first apply only to Transit Priority Areas (TPAs) and would not apply to the remainder of the state until January 1, 2016. (Proposed State CEQA Guidelines, § 15064.3(d).) However, Public Resources Code, § 21099(b)(1) (SB 743) is focused only on adopting an alternative traffic metric for TPAs and the issues unique to these often dense urban areas. Specifically, that section provides the new metric “shall promote the reduction of greenhouse gas (GHG) emissions, the development of multimodal transportation networks, and a diversity of land uses.” To promote these goals, OPR is to “recommend potential metrics to measure transportation impacts that may include, but are not limited to, vehicle miles traveled, vehicle miles traveled (VMT) per capita, automobile trip generation rates, or automobile trips generated.” Nowhere does SB 743 mandate that OPR adopt VMT, or any single metric, to be applied across the entire state without regard to the density of, or uses located in, an area or region. And yet OPR does not explain in any detail why all other metrics were rejected or why no other metric could accomplish the goals set forth by SB 743.

To that end, the Commission respectfully requests a more rigorous discussion of the criteria used to select VMT over other metrics be provided as part of any proposed regulatory proposal package. The Commission also respectfully requests any data and informational studies relied upon to support OPR's choice of VMT over other metrics, to support OPR's conclusion that local agencies already analyze VMT as part of their CEQA documents, and to support OPR's conclusion that analyzing VMT is relatively easy be published in full on OPR's website or at another accessible electronic location so the public may better understand whether those conclusions apply to projects within all sectors and to projects within all areas of the state.

Given the direction contained in SB 743 and the general uncertainty as to the technical feasibility of the VMT metric and its success in achieving the stated goals of SB 743, the Commission requests if OPR insists on using only VMT, it revise the Guidelines Update to apply only to TPAs. This would allow OPR to verify whether the new metric is effective and can actually achieve the goals set forth by SB 743 before instituting a rulemaking procedure that would permanently apply the metric to the remainder of the state.

To the extent OPR insists on applying VMT statewide (and not solely to Transit Priority Areas), the Commission proposes OPR delay implementation of VMT statewide beyond January 1, 2016. Such a delay is necessary to allow local public agencies time to evaluate how to implement the Guidelines in practice as to their land use, transportation, and other projects. Additionally, the Commission urges OPR to include a sunset date (or other time-limitation) on the application of the VMT metric to non-Transit Priority Areas, so the effectiveness of VMT in evaluating transportation impacts may be verified under “real-world” conditions before permanently applying the VMT metric statewide over the long-term.

Language Regarding Increase In Roadway Capacity

Proposed Section 15064.3(b)(2) provides “[t]o the extent that a transportation project increases physical roadway capacity for automobiles in a congested area, or adds a new roadway to the network, the transportation analysis should analyze whether the project will induce additional automobile travel compared to existing conditions. The addition of general purpose highway or arterial lanes may indicate a significant impact” This language appears to create a rebuttable presumption, namely every project that increases roadway capacity necessarily has a significant impact. Such a result would depart from CEQA’s long-standing rules that the lead agency is responsible for determining whether an adverse environmental effect is “significant” or “less than significant,” and an inflexible definition of a significant effect is not possible and varies based on the project setting. (State CEQA Guidelines, § 15064(b).) Additionally, the language of the Guidelines Update seems to conflict with other provisions of CEQA, which exempt restriping projects (many of which may result in minor increases in roadway capacity) from environmental review. (Pub. Resources Code, § 21080.19.)

Further, language suggesting that roadway projects that increase capacity result in significant impacts is inappropriate from a factual perspective as well. In many instances, new roadways or highway/roadway segments connect otherwise distant locations in a way that actually *reduces* the VMT that drivers must otherwise traverse. Thus, a project that adds a new connection or a new roadway to an existing network may actually further the goals of SB 743 by reducing VMT and associated air quality and GHG emissions.

To avoid the appearance of any presumed impact, the Commission requests OPR revise this portion of its Guidelines Update to state only “increases in roadway capacity should be considered as part of the evaluation of potential transportation impacts under CEQA.”

Appendix F Mitigation Measures and Alternatives

The additions to Appendix F of the Guidelines Update would require, for transportation impacts as determined by VMT, agencies consider mitigation measures and project alternatives that would reduce energy consumption. These measures and alternatives primarily focus on transit-oriented and higher density development. However, for rural and low-density areas where there is little or no existing mass transit infrastructure, such as large portions of Riverside County, the majority of the measures and alternatives would be infeasible. For example, it is likely a relatively small, mixed-use development in a rural community could not feasibly increase access to transit because doing so would require the project applicant to include the construction of major, new transit infrastructure as part of an otherwise small-scale project.

The Commission requests OPR consider and revise Appendix F to include measures that may be potentially feasible for rural or low-density communities so they, too, can work towards mitigating or avoiding potential VMT-related transportation impacts.

Resulting Need for Agencies to Conduct Both VMT and Level of Service (LOS) Traffic Analyses

Proposed Section 15064.3 would require agencies to look at VMT rather than LOS to assess transportation impacts. However, the Guidelines Update would not limit an agency's ability to continue the use of LOS to analyze non-traffic impacts (such as land use patterns or circulation issues under an applicable General Plan). (Proposed State CEQA Guidelines, § 15064.3(c).) In practice, this seems to require that agencies now conduct two entirely separate traffic studies – one that looks at VMT per the Guidelines Update for purposes of analyzing traffic impacts, and a second that analyzes LOS consistent with local land use policies and other state/federal guidance. The Commission is concerned this will not only result in significant additional delay and expense for important public projects, but may also result in perceived inconsistencies between the analyses contained in a CEQA document. The Commission requests OPR revise the Guidelines to make clear conclusions reached using the VMT methodology for transportation impacts are not *per se* inconsistent with those reached for other impact areas using the LOS methodology and that a CEQA violation, therefore, does not automatically result.

Further, to the extent that OPR's reasoning for mandating the use of VMT relies on the fact that agencies already use VMT to analyze other types of impacts (such as energy consumption or GHG emissions), this weighs in favor of foregoing a duplicative mandate to use VMT in areas outside of Transit Priority Areas (TPAs.)

Agency's Deletion of Measures Imposed to Address Automobile Delay

The statement of reasons supporting OPR's Guidelines Update states an agency's removal of mitigation measures tied solely to LOS would not trigger the need for CEQA review because LOS will no longer be considered a significant impact. (Guidelines Update, page 11.) The Commission requests OPR specifically incorporate into the actual Guidelines Update a statement reflecting this conclusion, as the Guidelines themselves do not make this evident. The Commission further requests OPR include a categorical exemption to aid agencies in bringing their planning documents into conformance with the new VMT standard. Such a categorical exemption seems appropriate given the clear statutory language found in SB 743, which confirms automobile delay shall no longer be treated as a significant environmental impact. Absent clear, legal guidance on this topic, local agencies may feel compelled by litigation pressure and potential ambiguity in CEQA to undertake a CEQA process for actions that remove mitigation measures tied solely to LOS.

Measurement of Regional Average VMT

Proposed Section 15064.3(b)(1) of the Guidelines Update specifies that a project resulting in VMT greater than the regional average for the land use type may have a significant transportation impact. However, the section does not specify whether measurements of regional average are to be conducted as part of, or incorporated into, regional transportation plans and, if so, by what date.

Furthermore, the assessment of averages across an entire metropolitan planning area, particularly in Riverside County and similar communities, may skew the average towards urban centers with shorter commute trips.

This will have a disproportionate effect on communities with non-urban centers, whose projects will be more likely to exceed the "average" and be pushed into an environmental impact report (EIR) process – even for small infill projects that would otherwise have insignificant impacts.

The Commission requests OPR consider the practical difficulties that face rural communities in being subject to a "regional average," and include clarifying information concerning how the regional average VMT is to be measured and incorporated into planning documents. Further, the Commission requests OPR incorporate a means of measuring these averages that accounts for the differing development densities across a region so rural development is not unfairly and disproportionately affected by a nearly automatic presumption of significant transportation impacts due to higher than (urban) average VMT.

Projects Considered to Generally Have Less Than Significant Transportation Impacts

Proposed Sections 15064.3(b)(1) and (b)(2) list projects and project characteristics that, according to the Guidelines Sections, are generally indicative of a less than significant impact to transportation. These projects and characteristics include (1) location within one-half mile of a major transit stop or stop along a high quality transit corridor; (2) a resulting decrease in VMT; (3) consistency with a sustainable communities strategy; or (4) projects intended to improve roadway safety or operations, or for maintenance or rehabilitation work. The Commission's concern is this list may be read to be exhaustive and therefore, any projects that do not possess these characteristics might be presumed to result in a potentially significant impact to transportation. This would be particularly problematic where a project would otherwise be categorically exempt but for its lack of these project characteristics.

The Commission requests the section be revised to explicitly state the list is not exhaustive and the absence of these characteristics does not necessarily mean a project will significantly impact transportation.

Additional Comments

Threat to Voter-Approved Transportation Tax Measures Authorized by State Laws

OPR publicly affirmed the Guidelines Update is responsive to state law, Senate Bill 743, which is an expression of the public's will. Acknowledging this fact also requires OPR to recognize the existence of state law which authorizes and encourages voter-approved transportation sales tax measures. These measures, such as Measure A in Riverside County, contain expenditure plans of specific voter-approved projects that are implemented via a local ordinance. Public Utilities Code §240001(c) states, "It is in the public interest to allow the voters of Riverside County to adopt a specific revenue source and to authorize new duties for the Riverside County Transportation Commission so that local decisions can be implemented in a timely manner to provide improvements to the transportation system." PUC §240301 authorizes the Commission to levy a retail and transaction use tax upon a two-thirds vote of the electorate. Further, PUC §240302 requires the tax to be implemented via an ordinance with specified conditions, including "the purposes for which the revenue derived from the tax will be used" and:

“an expenditure plan, which shall include the allocation of revenues for the purposes authorized by this section and shall include, at a minimum, the following provisions:

- (1) The proportional distribution of the revenues among various purposes.
- (2) The specific projects to be funded under the state highway and freeway portion.
- (3) The formula for distribution of the city and county portion, which may be amended by voter approval.”

Ordinance No. 02-001 (Measure A) was adopted by the Commission in 2002 and subsequently approved by the county's electorate pursuant to the aforementioned PUC statutes. Twenty counties in California adopted similar ordinances pursuant to similar state statutes, representing 20 distinct *direct* legal commitments to the public to expend their funds in a specified manner. In many cases, significant portions of voter-approved expenditure plans are premised on the idea roadways will be expanded to reduce vehicle delay. For instance, Measure A specifically provides a portion of the funding will be allocated for freeway and regional arterial widening projects to reduce delay. OPR's proposed approach of applying VMT even in non-TPAs sets-up the potential for conflict with promises made directly to, and approved by, voters regarding reducing traffic delay. OPR cannot ignore legal obligations of state-chartered agencies such as the Commission to expand roadways pursuant to state laws and local ordinances. These laws, and the motivations behind them, need not be mutually exclusive. Rather, the draft guidelines should pursue an approach that satisfies the legislative intent of SB 743 to address transportation impacts in transit-priority areas without adding barriers to state-authorized sales-tax administering agencies to implement their contract with voters, even if it does involve the addition of roadway capacity.

Exclusive Use of VMT to Promote Infill Development May Actually Limit Housing Opportunities for More Economically Disadvantaged People

At public information sessions on the Guidelines Update, OPR representatives suggested the use of VMT will promote infill development, thus making more housing available at urban center and providing an advantage to economically disadvantaged individuals who may not have access to a personal vehicle. However, such assumptions ignore the fact housing in densely populated urban centers is among the most expensive on the market. Accordingly, encouraging the development of such additional housing (while presumably resulting in a decrease of more competitively-priced housing elsewhere) will not provide the economically disadvantaged with any kind of benefit. In fact, by limiting the ability of rural communities to developing housing without first enduring an EIR process could actually further limit affordable housing options for the underprivileged.

Exemption or Partial Exemption for Transportation Projects that Reduce Regional VMT

In its January 29, 2014 letter, the Commission requested OPR consider updating the Guidelines to add a categorical exemption for transportation projects that would reduce vehicle miles traveled on a regional basis. Alternatively, the Commission suggested a partial exemption that allows such projects to forego air quality/GHG analyses would be appropriate. Such an exemption would encourage projects that reduce regional VMT, which is critical for meeting the State's GHG reduction targets under AB 32 and SB 375.

Christopher Calfee, Senior Counsel
Governor's Office of Planning and Research
Page 7
November 20, 2014

The Commission notes its suggestion has not been incorporated into the Guidelines Update. As such, the Commission would, once again, encourage OPR to consider this exemption as it furthers the same energy-conservation goals set forth in the Guidelines Update, and also promotes reliance on the use of VMT to measure transportation impacts.

Thank you for the opportunity to provide comments on the Guidelines Update. The Commission looks forward to a continued dialogue with the OPR as the 2014 Update to the State CEQA Guidelines is prepared.

Sincerely,



Anne Mayer
Executive Director

Via email CEQA.Guidelines@ceres.ca.gov