



November 21, 2014

Ken Alex, Director  
Office of Planning & Research  
1400 Tenth Street  
Sacramento, CA 95814

**Re: CEQA Guidelines Update to Implement Senate Bill 743**

Dear Director Alex:

Thank you for the opportunity to comment on the Preliminary Discussion Draft of Updates to the CEQA Guidelines Implementing Senate Bill 743 (Steinberg, 2013). As you know, we have been working with city and county managers, and public works and planning directors throughout the Sacramento region to identify a framework for implementing SB 743. Our original comments were included in a May 9, 2014, letter to you. (Copy attached.) As noted at that time, our members' concerns include the following:

- The lack of a standardized approach to, and empirical data on the impacts of, implementing a VMT metric.
- Litigation threats to local plans and fee programs based on consistency requirements.
- The ability of local governments to continue to use LOS to ensure safety.
- The burden of performing both LOS and VMT analyses, particularly on rural and smaller jurisdictions.
- Disruption at the boundaries of local jurisdictions, where local governments must work together to ensure an efficient and effective regional transportation network.

We appreciate that the Discussion Draft responds to some of these concerns, and has incorporated some of the suggestions included in our letter. However, we believe that the Draft Guidelines could go further in addressing these concerns. Therefore, we propose the following.

1. *Consistency with an adopted SCS should be the criteria for determining the significance of transportation impacts of projects within transit priority areas.*

Section 5 of SB 743 (adding Public Resources Code section 21099(b)), provides that level of service or similar measures shall not be considered a significant impact on the environment except where specifically identified in the Guidelines. In transit priority areas, the Bill requires the Office of Planning and Research (OPR) to establish criteria for determining the significance of transportation impacts of projects within transit priority areas. Under Public Resources Code section 21083, "criteria" are intended to provide guidance "for public agencies to follow in determining whether a proposed project may have a 'significant effect on the environment.'"

Auburn  
Citrus Heights  
Colfax  
Davis  
El Dorado County  
Elk Grove  
Folsom  
Galt  
Isleton  
Lincoln  
Live Oak  
Loomis  
Marysville  
Placer County  
Placerville  
Rancho Cordova  
Rocklin  
Roseville  
Sacramento  
Sacramento County  
Sutter County  
West Sacramento  
Wheatland  
Winters  
Woodland  
Yolo County  
Yuba City  
Yuba County

We understand concerns were raised that not requiring any transportation impact analysis in transit priority areas, as suggested in our May letter, would not meet the requirement of SB 743. However, our suggestion was intended to apply only to projects consistent with an adopted SCS. Adopting that criteria—*consistency with an adopted SCS*—would not only meet OPR’s obligations under the statute, but would best align the Guidelines with the express intent of SB 743, the State’s declared priority to promote infill, the existing categorical exemption for infill projects (see CEQA Guidelines section 15332), and with other recent legislative efforts to provide further CEQA streamlining for infill projects, including SB 375 and SB 226.

As you are well aware, since its creation, the Strategic Growth Council (SGC) has identified the mitigation and removal of barriers to infill development as critical to advancing sustainable communities in California. As stated in the SGC’s 2014 Annual Report to the Legislature:

One goal of the Strategic Growth Council, originating in its enabling statute SB 732, is to “recommend policies and investment strategies and priorities to the Governor, the Legislature, and to appropriate state agencies to encourage the development of sustainable communities.” This year, we have realized this goal through our initiatives focused on infill development and next steps to implementing Sustainable Communities Strategies (SCSs).

....

Promoting and enabling sustainable infill development is a principal objective of the SGC because of its consistency with the State Planning Priorities and because infill furthers many of the goals of all of the Council’s member agencies. Focusing growth toward infill areas takes development pressure off conservation lands and working lands; it increases transit ridership and reduces vehicle trips; it requires less per capita energy and water use than less space-efficient development; it improves public health by promoting active transportation and active lifestyles; and it provides a more equitable mix of housing choices, among other benefits. Thus, the SGC has been investigating actions that can be taken to improve the ability of local governments and private developers to successfully plan and build good infill projects. (*Strategic Growth Council 2014 Annual Report to the Legislature*, at pp. 15-17.)

Consistent with this focus, in 2013, the SGC commissioned a report “to identify the challenges of financing infill development and to provide recommendations for State agencies to better coordinate and align existing financing mechanisms and programs, as well as broad policy recommendations to support increased revitalization efforts with regard to affordable housing, transit, and land use policies.” That final report, presented to the SGC in October 2014, supports our proposal here.

Although the report was intended primarily to analyze infill financing options, it concludes that the effectiveness of public funding and financing options largely depends on intergovernmental cooperation at all levels to align their roles and responsibilities to more effectively achieve the commonly shared benefits of infill development. The

State's compelling interest in achieving broad-based infill development can only be met by a coordinated effort commencing with the establishment of:

- Clear mission and public priorities regarding achieving infill development;
- Policy review and alignment processes and regulatory reform; and
- Entitlement streamlining and project funding aligned with public priorities.

And chief among the critical State actions was the need to address regulatory constraints to infill. "It is clear," the report concludes, that the regulatory actions of all State agencies are not aligned with the policy objectives of SB 375. Individual agencies, operating under their respective statutory authorizations, pursue objectives without recognizing the State's intent to promote and expand infill development. Moreover, "[s]pecific State regulations affecting the entitlement and development process remain a substantial barrier to infill development due to the cost and uncertainty involved." And the most notable example is CEQA.

The report observes that "CEQA has transcended its original purpose in a variety of ways and is commonly used as a tool with which local stakeholders stall, diminish, or defeat infill development proposals. Additionally, the complexity and costs of project-by-project full environmental review and the associated risks and consequences of litigation, regardless of a complaint's merit, often present a significant deterrent to private investment. *Ongoing efforts to reform CEQA should be linked to the State's statutory objectives (i.e., AB 32 and SB 375).*" (Emphasis added.) (Economic & Planning Systems, Inc. *California Infill Finance Options Analysis*, at pp. 4-7.)

As the report thus makes clear, implementing SB 743 in a way that requires more and new analysis of transit priority projects already consistent with an adopted SCS will only serve to create more barriers to infill. By requiring new transportation impact analysis for such projects, the Preliminary Discussion Draft would increase the costs of such projects, would create uncertainty, and would effectively put these projects on the leading edge of litigation surely to follow implementation of the Guidelines.

While there could be transportation impacts from transit priority projects consistent with an SCS, they are not impacts of statewide concern under CEQA. They are a local policy concern. The State's express interests are in promoting infill development, reducing greenhouse gas emissions, developing multimodal transportation networks, and promoting diversity of land uses. Such interests would be undermined by imposing further CEQA analysis for transit priority projects already included, and analyzed, in an adopted SCS.

2. *The phased-in approach in the Preliminary Discussion Draft should be more directly linked to a comparative study of moving from LOS analysis to VMT analysis.*

We appreciate that, consistent with our earlier suggestion, the Discussion Draft includes a phased-in approach to implementation of the new Guidelines. However, that phased-in approach

does not clearly link to a comparative study or testing of the impacts of adopting a VMT analysis, or an opportunity to implement changes to the Guidelines based upon the results of that study.

As noted in our earlier letter, a study would determine the typical costs associated with developing a new model in a city or county, what the average time frame would be to conduct a VMT study versus a standard LOS study, impacts resulting from a requirement to mitigate two distinctly different scenarios (VMT vs. LOS), and identification of the types of available mitigation measures. Most importantly, there should be an acknowledgment of the need to learn from this study and to adopt additional changes as may be necessary to implement future transportation analysis consistent with the stated goals and objectives of SB 743.

Finally, we continue to believe that a voluntary opt-in period during study/testing would provide further opportunities to learn how best to apply new metrics and what the impact of new metrics will be on the built environment.

Thank you for your consideration of our comments, and please do not hesitate to contact me if you would like additional information.

Sincerely,



Mike McKeever  
Chief Executive Officer

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cc: Christopher Calfee, Office of Planning & Research  
Chris Ganson, Office of Planning & Research



May 9, 2014

Ken Alex, Director  
Office of Planning & Research  
1400 Tenth Street  
Sacramento, CA 95814

**Subject: Proposed Framework for Implementing SB 743**

Dear Director Alex:

Senior staff at SACOG has been working with city and county managers, and public works and planning directors with a number of our member agencies to identify a framework for implementing SB 743. This letter is a synthesis of the input of the staff from SACOG and our member agencies. We are looking forward to assisting OPR in implementing new CEQA guidelines under SB 743.

As referenced in the SB 743, LOS has had some unintended and sometimes harmful impacts in transit priority areas and we are interested in exploring how best to develop and implement alternative metrics. VMT, in particular, has been discussed as a substitute metric and we would like to make sure OPR is aware of local government concerns about moving too far, too fast. Briefly, these concerns include the following:

- The lack of a standardized approach to, and empirical data on the impacts of, implementing a VMT metric.
- Litigation threats to local plans and fee programs based on consistency requirements.
- The ability of local governments to continue to use LOS to ensure safety.
- The burden of performing both LOS and VMT analyses, particularly on rural and smaller jurisdictions.
- Disruption at the boundaries of local jurisdictions, where local governments must work together to ensure an efficient and effective regional transportation network.

To address these, and other, concerns raised throughout the state, the following framework for implementing SB 743 is proposed.

1. *No transportation impact analysis should be required in “transit priority areas,” as defined by SB 743.* These areas generally are a subset of “infill,” where the state has a priority for development and CEQA has an existing exemption. Transportation impact analysis in these areas should be left to local control.

Auburn  
Citrus Heights  
Colfax  
Davis  
El Dorado County  
Elk Grove  
Folsom  
Galt  
Isleton  
Lincoln  
Live Oak  
Loomis  
Marysville  
Placer County  
Placerville  
Rancho Cordova  
Rocklin  
Roseville  
Sacramento  
Sacramento County  
Sutter County  
West Sacramento  
Wheatland  
Winters  
Woodland  
Yolo County  
Yuba City  
Yuba County

2. *VMT analysis could be utilized in a defined urban area outside of transit priority areas to encourage infill development.* This area should include infill and areas meeting the definition of transit priority areas under SB 375 (i.e., high quality transit corridors).
3. *Outside the foregoing areas, VMT should be studied by SACOG to determine whether it is a viable alternative to LOS analysis.* In this study, we propose VMT be “lab tested” side-by-side with LOS to determine what would have changed with the application of a VMT standard. During this study period (perhaps 6 to 12 months), VMT would not be used formally in the CEQA process, but analysis would be performed and data collected. The study should determine the typical costs associated with developing a new model in a city or county, what the average time frame would be to conduct a VMT study versus a standard LOS study, potential impacts to existing fee programs based on LOS, impacts resulting from a requirement to mitigate two distinctly different scenarios (VMT vs. LOS), and identification of what types of mitigation measures would be available, impacts between adjacent jurisdictions and ability to address regional fee program needs. Public outreach should also be included so that the public and stakeholders are aware of the trade-offs of moving to a VMT metric.
4. If it is determined that a VMT analysis in some form provides a reasonable approach to addressing SB 375 and removes barriers to development in some or all additional geographic areas, we propose a further “live testing” (again, of perhaps 6 to 12 months), in which jurisdictions would be given the option of voluntarily adopting the new metric.

Thank you for your consideration of our proposal. Please do not hesitate to contact me if you would like additional information.

Sincerely,



Mike McKeever  
Chief Executive Officer

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