Unified Port
of San Diego

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October 10, 2014

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

Re: Preliminary Discussion Draft of Updates to CEQA Guidelines Implementing SB 743

Dear Mr. Calfee:

Thank you for the opportunity to provide comments and suggestions regarding your efforts to amend CEQA (California Environmental Quality Act) Guidelines, as required by Senate Bill 743 (SB 743). This letter specifically responds to the report titled "Updating Transportation Impacts Analysis in the CEQA Guidelines" written by the Office of Planning and Research (OPR) dated August 6, 2014 (hereafter referred to as the "Draft Guidelines").

The mission of the San Diego Unified Port District (District) is to protect the Tidelands Trust resources by providing economic vitality and community benefit through a balanced approach to maritime industry, tourism, water and land recreation, environmental stewardship and public safety. The District was created with the San Diego Unified Port District Act (hereafter "Port Act") adopted by the California State Legislature in 1962 and as amended. The Port Act recognizes the Public Trust Doctrine, and states that tidelands and submerged lands are only to be used for statewide purposes. To this end, the District is charged with management of the tidelands and diverse waterfront uses along San Diego Bay that promote commerce, navigation, fisheries, and recreation on granted lands. When issuing discretionary permits and/or project approvals for projects and activities located within tidelands, the District oftentimes serves as the lead agency under CEQA.

Our purpose in writing this letter is to identify some of the District's initial concerns regarding the Preliminary Discussion Draft of Updates to CEQA Guidelines, and to provide recommendations on how to revise CEQA Guidelines to help ensure successful implementation SB 743. Our comments are as follows:

1. **Allow Marine Terminals and other Regional Maritime Distribution Centers to Rely on Specific Performance Standards:** District staff generally supports replacing the level of service (LOS) metric with Vehicle Miles Traveled (VMT), for many of the same reasons identified in the SB 743 legislation. However, greater

clarification is still needed, particularly as it relates to industrial uses involved with national and international distribution of goods. The District's two marine terminals import hundreds of thousands of metric tons of cargo every year, which is then distributed throughout the western United States. As a result, any project located at one of the District's two marine terminals, which requires analysis under CEQA, is likely to result in VMT's substantially higher than the regional average. As a result, non-complex projects may inadvertently require more extensive environmental review.

To ensure projects that are involved with maritime trade and commerce are not adversely impacted by the proposed CEQA Guideline changes, District staff recommends that the Guidelines allow for the use of performance standards or alternative criteria to determine impacts for marine terminals and other regional maritime distribution centers. Examples of possible performance standards could include:

- The terminals' operations are included in and covered by a Metropolitan Planning Organization's (MPO's) Sustainable Communities Strategy (SCS);
- The local agency responsible for overseeing the marine terminal or regional maritime distribution center has a program that actively enforces the California Air Resources Board (ARB) Drayage Truck Regulation, which requires all heavy-duty trucks to register with ARB and comply with air quality emission standards;
- The local agency responsible for overseeing the marine terminal or regional maritime distribution center employs the use of shore power for ocean-going vessels at those facilities;
- The local agency responsible for overseeing the marine terminal or regional maritime distribution center has a vessel speed reduction program for ocean going vessels.

2. **Clarify Whether Previously Certified EIR's and other Environmental Documents Require Updating to Reflect VMT Analysis:** CEQA §15164 allows for an addendum to a previously certified EIR if some changes are necessary, but none of the conditions in section 15162 calling for a preparation of a subsequent EIR have occurred. More specifically, §15162 (b) states:

   If changes to a project or its circumstances occur or new information becomes available after adoption of a negative declaration, the lead agency shall prepare a subsequent EIR if required under subdivision (a). Otherwise, the lead agency shall determine whether to prepare a subsequent negative declaration, an addendum, or no further documentation.

District staff recommends adding clarification to the Guidelines to ensure previously certified EIR's and other environmental documents can continue to be relied on without conducting subsequent traffic analyses utilizing the VMT metric. District staff recommends adding the following clarification statement to §15162:

> *Changes to the CEQA guidelines that were established by SB 743 do not constitute changes to a project, its circumstances or new information. Previously certified EIR's and other environmental documents that relied on level of service standards (LOS) should continue to rely on an addendum, a subsequent negative declaration or find no further documentation is needed, provided that all other tiering criteria can be met.*

3. **Place Transportation-related Mitigation Measures Directly in New Section 15064.3:** District staff recommends placing the mitigation measures directly within the text of the proposed new section 15064.3 because Appendix F has been interpreted to apply only when there is a significant impact identified in an EIR. By placing mitigation measures directly in the new section, it will be clear that the mitigation measures associated with transportation should also be applied to mitigated negative declarations.

4. **Suggest Lead Agencies May Want to Extend the VMT Analysis to their Local Air Basin:** The proposed new Section 15064.3(b)(4) Methodology, acknowledges that "*the lead agency's evaluation of the vehicle miles traveled associated with a project is subject to a rule of reason; however, a lead agency generally should not confine its evaluation to its own political boundary.*" However, the "rule of reason" is frequently debated among industry professionals. To provide clearer guidance to both local governments and industry professionals, as well as to tie the impact directly back to air quality, District staff recommends that the guidelines suggest that the region's local air basin may be used. For the District, the local air basin is regulated by the San Diego Air Pollution Control District, and it makes for a reasonable boundary, in part, because it is conterminous with the County boundary.

Thank you for the opportunity to be involved in this discussion. We look forward to working with you in the months ahead.

Sincerely,

Jason H. Giffen
Director, Environmental and Land Use Management