

California Development: Proposed Amendments to CEQA Guidelines Significantly Change Transportation Analyses

Developers of infill projects could face additional uncertainty and legal vulnerability under new requirements to analyze impacts on transportation.

On August 6, the Governor's Office of Planning and Research (OPR) released a preliminary discussion draft of proposed amendments to the California Environmental Quality Act (CEQA) Guidelines. The proposed updates are intended to address changes made to CEQA by Senate Bill (SB) 743. That bill directs OPR to update transportation metrics used to analyze impacts of projects within transit priority areas, and eliminates parking as a significant impact for urban infill projects. The draft amendments are being circulated for public review prior to OPR's issuance of a Notice of Proposed Action to amend portions of the CEQA Guidelines, which will begin the formal amendment process. Public comment on the preliminary discussion draft will be available through October 10, 2014.

Overview of Proposed Amendments

The proposed amendments primarily aim to replace vehicular delay, commonly measured by Level of Service (LOS), with vehicle miles traveled (VMT) as the primary metric for analyzing qualifying infill projects' transportation impacts. VMT measures miles traveled by cars from new project development, rather than measuring traffic congestion or throughput on roadways and intersections. The new amendments would remove vehicular delay as a basis for finding that a qualifying infill project's impacts on transportation are significant. Appendix F (Energy Conservation) is expanded to provide examples of potential mitigation measures and alternatives to reduce VMTs for projects. Appendix G (the Environmental Checklist Form) is amended to revise the model transportation impact criteria.

The new proposed amendments also suggest that a project which increases physical roadway capacity in congested areas or adds new roadways, may be growth-inducing and potentially generate significant impacts. Additionally, the amendments allow lead agencies to consider the localized safety effects of a project on transportation, including impacts to bicyclists and pedestrians, in determining significant impacts. OPR did not provide guidance regarding SB 743's determination that qualifying infill projects should no longer be analyzed for significant parking impacts.

OPR's amendments to the CEQA Guidelines would apply to qualifying infill projects, once the amendments become effective. However, local agencies could apply the new transportation standards more broadly at their discretion. The new rules would apply statewide after January 1, 2016.

Background

The CEQA Guidelines

The CEQA Guidelines are regulations OPR prepares that explain and interpret CEQA for the general public and lead agencies. Public Resources Code Section 21083 requires OPR and the Natural Resources Agency to update the CEQA Guidelines periodically, in order to address both annual statutory changes to CEQA and evolving case law. Last year, OPR and the Natural Resources Agency began a comprehensive review of the CEQA Guidelines. During the summer of 2013, OPR solicited comments from the public on potential updates to the CEQA Guidelines, and in December 2013, OPR published a preliminary evaluation of potential alternative transportation metrics. The current draft amendments to the CEQA Guidelines reflect the information and research contained in OPR's preliminary evaluation, public comments submitted on that evaluation and informal consultation with stakeholder groups across the state.

SB 743

On September 27, 2013, Governor Brown signed SB 743 into law, which makes several important changes to CEQA for residential, mixed-use, and employment center projects located in infill areas served by transit, as those terms are defined within the law.

Recognizing the need to prioritize infill housing and mixed-use developments served by mass transit, SB 743 directs OPR to develop updated guidelines establishing new criteria for determining the significance of transportation impacts for projects within transit priority areas. The new criteria are intended to promote reduced greenhouse gas emissions, multimodal transportation network development, and diverse land uses. SB 743 also provides that the new transportation methodologies may be based on, but are not limited to, vehicle miles traveled (VMT), automobile trips generated or other similar performance measures. SB 743 does not prevent a city or county from continuing to analyze LOS as part of its consistency analysis with general plans or other planning requirements, but these metrics may no longer constitute the sole basis for determining transportation impacts under CEQA for projects within transit priority areas.

Once the new transportation guidelines are certified, SB 743 provides that automobile delay, as described solely by Level of Service (LOS) or similar measures of roadway capacity or traffic congestion, shall no longer be considered a significant environmental impact in transit priority areas and infill opportunity zones, as those areas are designated by cities and counties.

SB 743 also provides that parking impacts for qualifying infill projects are not considered significant impacts on the environment under CEQA. This provision of SB 743 is not addressed in OPR's proposed amendments.

Proposed Amendments to the CEQA Guidelines

OPR's proposed amendments include:

- A new Section 15064.3 of the CEQA Guidelines (Section 15064 contains general rules for determining the significance of environmental impacts)
- Amendments to the transportation section of Appendix G, the Environmental Checklist Form, which provides model impact criteria for lead agencies
- Amendments to Appendix F, Energy Impacts, to describe possible mitigation measures and alternatives in light of the new transportation metrics

New Transportation Metric: Vehicle Miles Traveled

The proposed new Section 15064.3 states that, “Generally, transportation impacts of a project can be best measured using vehicle miles traveled.” The proposed amendments then suggest criteria which indicate when a project may have a significant, or less than significant, transportation impact on the environment. For instance, a project that results in VMTs greater than the regional average for the land use type (e.g. residential, employment, commercial) may indicate a significant impact. Alternatively, a project may have a less than significant impact if it is located within one-half mile of an existing major transit stop, or results in a net decrease in VMTs compared to existing conditions. The new language also states that a lead agency should not confine its evaluation of transportation impacts to its own political boundary.

While the new language focuses on VMTs, OPR’s preliminary comments to the proposed amendments explain that “in appropriate circumstances,” a lead agency may tailor its analysis of transportation impacts to include other measures. A lead agency also would not be prevented from applying a more stringent significant impact threshold.

LOS would not be eliminated entirely as a metric for evaluating a project's significant impacts. Lead agencies would still be able to condition a project pursuant to other laws, and accordingly agencies may still require projects to achieve LOS designated in general plans or zoning codes. This means that wherever land use plans, such as state Congestion Management Plans or local General Plans, include standards based on LOS, projects would still be required to show conformity with such plans including their LOS criteria. As a result infill projects would continue to be required both to analyze LOS and demonstrate consistency with required thresholds as contained in land use plans, as well as to analyze traffic impacts based on a separate metric of VMTs.

Induced Vehicle Travel: Increasing Roadway Capacity May Trigger a Significant Impact

Section 15064.3 also suggests that “transportation projects” which increase roadway capacity in congested areas or add a new roadway should undergo additional analysis to determine if the project will induce additional vehicle travel compared to existing conditions. “Transportation projects” is not a defined term. The proposed amendments also provide that transportation projects designed to improve safety or operations, or pedestrian, bicycle and transit projects — including those that require reallocation or removal of motor vehicle lanes — would not be expected to generate additional VMTs and “generally” would not result in a significant transportation impact.

Local Safety Concerns Should be Considered in Analysis

In addition to a project’s effect on VMT, a lead agency may also consider whether a project will cause unsafe conditions for various roadway users. This determination may be based on a suggested list of “objective” factors, including:

- Increased exposure to bicyclists and pedestrians in “vehicle conflict areas”
- Greater queuing on freeway off-ramps, where queues extend onto the mainline
- Greater speed differentials between lanes
- Increased motor vehicle speeds
- Increased distance between pedestrian or bicycle crossings

Amended Appendix F: New Potential Mitigation and Alternatives for Transportation Projects

Several potential mitigation measures and alternatives to reduce a project’s VMTs are identified in proposed amendments to Appendix F, which addresses Energy Conservation analyses. Potential measures to reduce VMTs include:

- Improving or increasing access to transit
- Increasing access to goods and services (e.g., groceries, schools and daycare)
- Incorporating affordable housing into a project
- Improving the jobs/housing fit of a community
- Traffic calming
- Providing bicycle parking
- Limiting parking supply and unbundling parking costs
- Providing car-sharing and transit passes

Potential alternatives proposed to reduce VMTs include:

- Locating the project in an area of the region that already exhibits below average vehicle miles traveled
- Locating the project near transit
- Increasing project density
- Increasing the mix of uses within the project
- Increasing connectivity and/or intersection density on the project site

Amended Appendix G: Changes to Transportation Impact Criteria

OPR proposes the following modifications to the significant impact criteria for Transportation impacts listed in Appendix G:

Proposed Amendments to Appendix G: Transportation Criteria		
	Existing Criteria	OPR Proposed Criteria
Measures of Effectiveness	a) Conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit?	a) Conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the <u>addressing the safety or performance of</u> the circulation system, <u>including transit, roadways, bicycle lanes and pedestrian paths?</u> taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit?
Deletion of LOS; Addition of VMT	b) Conflict with an applicable congestion management program, including, but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways?	b) Cause vehicle miles traveled (per capita, per service population, or other appropriate measure) that exceeds the regional average for that land use? Conflict with an applicable congestion management program, including, but not limited to level of service standards and

Proposed Amendments to Appendix G: Transportation Criteria		
	Existing Criteria	OPR Proposed Criteria
		travel demand measures, or other standards established by the county congestion management agency for designated roads or highways?
Local Safety	c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?	c) Result in <u>substantially unsafe conditions for pedestrians, bicyclists, transit users, motorists or other users of public rights of way by, among other things, increasing speeds, increasing exposure of bicyclists and pedestrians in vehicle conflict areas, etc.?</u> a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?
Expansion of Roadway Capacity	d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	d) Substantially <u>induce additional automobile travel by increasing physical roadway capacity in congested areas (i.e., by adding new mixed-flow lanes) or by adding new roadways to the network?</u> increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?
Emergency Access	e) Result in inadequate emergency access?	e) Result in inadequate emergency access?
Multi-Modal Transportation Facilities	f) Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities?	f) Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities?

Applicability of the New Guidelines to Future and Current Projects

OPR proposes a phased approach to implementation of the revised Guidelines. Once the proposed amendments are officially adopted, they would apply to projects located within one-half mile of a major transit stop or high quality transit corridor. Major transit stop is defined in Public Resources Code Section

21064.3, and high quality transit corridor is defined in SB 743 as “a corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours.” Lead agencies may also opt in and apply these new standards more broadly to other types of projects. After January 1, 2016, the new rules would apply statewide to all projects.

The amendments are intended to apply prospectively, consistent with Section 15007 of the CEQA Guidelines, which provides that new amendments apply only to projects which have not yet circulated an environmental document for public review.

Parking Impacts for Infill Projects Not Addressed

The proposed amendments include one notable omission. SB 743 eliminated parking as a significant impact under CEQA for qualifying infill projects. However, the proposed amendments fail to reflect this change, either in the CEQA Guidelines or in Appendix G, which contain model significance criteria for lead agencies.

Implications

SB 743 and the use of VMTs are intended to facilitate the development of infill projects, where housing and jobs are located in closer proximity to each other and presumably result in shorter vehicular trips. However, infill projects will face the most uncertainty and legal vulnerability, while the State, lead agencies and the courts grapple with the application of the proposed new guidance.

VMT models have not been widely used to analyze impacts under CEQA, and are still in the initial stages of development in many parts of the state. The methodology, application and results of these new VMT models will be controversial, offering project opponents yet one more opportunity for litigation. As a result, the infill projects required to use these models first will face the greatest litigation risk. The first projects subject to these rules will also face delay and uncertainty while lead agencies develop and adopt new significance thresholds consistent with OPR’s guidance.

OPR’s proposal also increases the burden for infill projects by expanding the environmental review required. Infill projects will continue to be required to analyze vehicular delay if local and land use plans require LOS analysis. As a result, many projects will be required to prepare twice the transportation analyses previously required, using both LOS and VMT metrics.

Many projects will also face inherent conflicts between the requirement to meet LOS and physical improvement standards under adopted land use plans on the one hand, and the new amendments which identify increased roadway capacity as a potential significant impact on the other hand. For instance, a project may be required to mitigate any significant impacts as measured by LOS if required by a local land use plan. Feasible mitigation could include the addition of turn-lanes, or roadway widening. However the same mitigation required under CEQA to mitigate LOS impacts could be treated as inducing growth and causing significant impacts under the amendment language. Developers are also frequently required by local land use and transportation plans to widen roads in connection with new development. Those same required improvements could trigger significant impacts, unless or until the local plans are amended to catch up to the new VMT methodology.

Local agencies will also retain a great deal of discretion when applying the amendments to new development projects. While the proposed language provides that the amendments would apply automatically to qualifying infill projects, local agencies could exercise discretion to apply the new requirements to all projects within their jurisdiction. Furthermore, while the amendments apply to projects located within one-half mile of a high quality transit corridor, as currently defined, that term could be

interpreted broadly to apply to a project even if no bus actually stops within one-half mile of the proposed project. And even if a local agency does not interpret the amendment language in this way, project opponents may argue for such an expansive interpretation.

Finally, while the overall goal of SB 743 and the proposed amendments is to reduce greenhouse gas emissions generally correlated with vehicular miles traveled, the amendments fail to allow any quantitative comparison or analysis of the cleanest modes of travel, which could include cars. Rather, OPR's proposal assumes that mass transit is better for the environment than vehicular travel, without considering whether the cars used are electric or low emission, or transport people more efficiently and with less emissions per person and per mile than existing public transit.

OPR is circulating the proposed amendments for public comment until October 10, 2014. It is expected that OPR will further revise the proposed updates on the basis of public comments prior to its final transmittal to the Natural Resources agency.

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