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November 10, 2014

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

Dear Mr. Calfee:

This letter is submitted in response to the Preliminary Discussion Draft of Updates to CEQA Guidelines Implementing Senate Bill 743 (Steinberg) dated August 6, 2014. Thank you for your diligence in preparing this Draft and your thoughtful consideration of these comments that are submitted on behalf of the League of California Cities.

We have divided our comments into two categories. The goal of Category One comments is to identify those portions of the Draft that we believe either (1) conflict with Public Resources Code 21099; or (2) require that lead agencies implement the law without sufficient evidence or information. The goal of Category Two comments is to identify those portions of the Draft that we believe could be strengthened by clarifying edits.

### **Category One**

**1.** Section 15064.3(a): "A project's effect on automobile delay does not constitute a significant environmental impact."

We believe that this sentence in the Draft conflicts with Section 21099(b)(2) which states: "Upon certification of the guidelines...automobile delay, as described solely by level of service or similar measures of vehicular capacity or traffic congestion shall not be considered a significant impact on the environment...."

This section of the Guidelines impermissibly varies from Section 21099(b)(2). SB 743's language is qualified by the phrase "as described solely by level of service or similar measures of vehicular capacity or traffic congestion."

**CHANGE REQUESTED:** Delete the sentence from the Guidelines.

**2.** Section 15064.3(b)(1): "A development project that is not exempt and that results in vehicle miles traveled greater than regional average for the land use type (e.g. residential, employment, commercial) may indicate a significant impact" (emphasis added).

Regional average VMT calculated for each land use type is not currently available in all metropolitan planning regions. This means that a lead agency will not have access to the data necessary to evaluate the significant impact of a project on transportation pursuant to this metric.

**CHANGE REQUESTED:** Delay implementation of the Guidelines until data becomes available.

3. Section 15064.3(c): “Previously adopted measures to mitigate congestion impacts may continue to be enforced, or modified, at the discretion of the lead agency” (emphasis added).

The “Explanation of Proposed New Section 15064.3” explains this provision as follows:

Similarly, with regard to projects that have already undergone environmental review, subdivision (c) clarifies that nothing in these proposed rules would prevent a lead agency from enforcing previously adopted mitigation measures. In fact, within the bounds of other laws, including adopted general plans, lead agencies have discretion to apply or modify previously adopted mitigation measures. (*Napa Citizens for Honest Government v. Napa County Bd. of Sup.* (2001) 91 Cal. App. 4th 342, 358 (because “mistakes can be made and must be rectified, and ... the vision of a region’s citizens or its governing body may evolve over time... there are times when mitigation measures, once adopted, can be deleted”).) Notably, deletion of measures imposed solely to address automobile delay should not require any additional environmental review because section 21099 of the Public Resources Code states that automobile delay is not a significant impact under CEQA.

A careful look at the *Napa County* case reveals that (a) the EIR in question was for a general plan (not a development project); and (b) the mitigation measure was proposed for deletion, not modification. This part of the Draft Guideline conflicts with Section 15097 and goes beyond the holding in the *Napa County* case. In order to be consistent with Section 15097 (which does not include a process for “modifying” a mitigation measure), the Explanation of Proposed New Section 15064.3, and the *Napa County* case, we would like to suggest the following change to the language:

The Draft Guideline should not suggest to a lead agency that it has the authority to modify a previously-adopted mitigation measure for a specific development project based upon a VMT analysis of the transportation impacts of the project. The Draft Guideline should make it clear that the conditions identified in Section 15162 must be present before additional environmental analysis can be undertaken which may lead to the modification of previously adopted mitigation measures.

**CHANGE REQUESTED:** “Previously adopted measures to mitigate congestion impacts of may continue to be enforced, or may be modified pursuant to Section 15162, at the discretion of the lead agency.”

4. Section 15064.3: “Neither this section nor Appendix F limits the exercise of any public agency’s discretion provided by other laws, including but not limited to, the authority of cities and counties to condition project approvals pursuant to general plans and zoning codes.”

This language varies from and is inconsistent with Section 21099(b)(4) which states: “This subdivision does not preclude the application of local general plan policies, zoning codes, conditions of approval, thresholds, or any other planning requirements pursuant to the police power or any other authority.”

**CHANGE REQUESTED:** Delete this sentence from Section 15064.3 in its entirety. There is no need for implementation or interpretation of this sentence except as we suggest in #5 below. As drafted, it impermissibly conflicts with Section 21099(b)(4).

5. Section 15064.3: “Neither this section nor Appendix F limits the exercise of any public agency’s discretion provided by other laws, including but not limited to, the authority of cities and counties to condition project approvals pursuant to general plans and zoning codes.”

This language was included in SB 743 in part to reassure local agencies that LOS standards could continue to be enforced through general plan, zoning, conditions of approval, thresholds or other

planning requirements. It would be very helpful to lead agencies if the Guidelines could make this intent explicit with the following language:

**CHANGE REQUESTED:** Add the following language: “A lead agency, as part of the review of a project pursuant to State or local law other than the California Environmental Quality Act, may implement and enforce level of service or similar measures of vehicular capacity or traffic congestion pursuant to the police power or any other authority as part of the review of the project.”

6. Section 15064.3(d): “After January 1, 2016, the provisions of this section shall apply statewide.”

SB 743 proposes a significant change to the evaluation of transportation impacts. The purpose of the change is to promote the reduction of greenhouse gas emissions, the development of multimodal transportation networks, and a diversity of land uses (Section 21099(b)(1)). The Guidelines should identify two areas: (1) areas within one-half mile of either an existing major transit stop or a stop along an existing high quality transit corridor; and (2) “transit priority areas” (as defined by PRC 21099(a)(7)). We will not know whether VMT as a metric for evaluating transportation impacts will achieve these three goals within these two areas for several years. VMT should be studied to determine whether it is a viable alternative to LOS analysis in areas of the state outside these two areas.

**CHANGE REQUESTED:** Require VMT metric in Area #1 on the effective date of the Guidelines. Require VMT metric in Area #2 one year after the effective date of the Guidelines. Do not require VMT metric outside Transit Priority Areas until study confirms the metric is a viable alternative which will promote the reduction of greenhouse gas emissions, the development of multimodal transportation networks, and a diversity of land uses as required by PRC 21099(b)(1).

## Category Two

1. *Section 15064.3(b)(1)*: This paragraph states: “Similarly, development projects that result in net decreases in vehicle miles traveled, compared to existing conditions, may be considered to have a less than significant transportation impact.”

The phrase “compared to existing conditions” is not clear because it includes neither a reference to time or space. We offer the following for your consideration:

**CHANGE REQUESTED:** “Similarly, development projects that result in net decreases in vehicle miles traveled, compared to ~~existing conditions~~ the circumstances under which the project is undertaken, may be considered to have a less than significant transportation impact.”

[Language is taken from Section 15162(a)(2)].

2. *Section 15064.3(b)(1)*: This paragraph states: “Land use plans that are either consistent with a sustainable communities strategy or that achieve at least an equivalent reduction in vehicle miles traveled as projected to result from implementation of a sustainable communities strategy, generally may be considered to have a less than significant impact.”

(1) Further definition is needed for the phrase “consistent with a sustainable communities strategy to make sure that the Draft is consistent with SB 375; and (2) clarification is needed regarding what is meant by “reduction in vehicle miles traveled as projected to result from implementation of a sustainable communities strategy.”

**CHANGE REQUESTED:** “Land use plans that are either consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in a sustainable communities strategy or that achieve at least an equivalent reduction in vehicle miles traveled as

projected to result from implementation of a sustainable communities strategy for the project area, generally may be considered to have a less than significant impact.”

[Language is taken from Section 21155(a)].

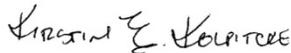
**3. Section 15064.3(b)(4):** This paragraph states that “The lead agency’s evaluation of the vehicle miles traveled associated with a project is subject to a rule of reason; however, a lead agency generally should not confine its evaluation to its own political boundary. A lead agency may use models to estimate a project’s vehicle miles traveled, and may revise those estimates to reflect professional judgment based on substantial evidence. Any assumptions used to estimate vehicle miles traveled and any revisions to model outputs should be documented and explained in the environmental document prepared for the project.”

We would like to suggest that the Draft explain the purpose as it applies to this section of the Guidelines. As you know, reference to the “rule of reason” is found in Section 15126.6(f) [*“The range of alternatives required in an EIR is governed by a “rule of reason” that requires the EIR to set forth only those alternatives necessary to permit a reasoned choice”*]. In Section 15126.6(f) the purpose of the “rule of reason” is explained [*“...to permit a reasoned choice”*].

**CHANGE REQUESTED:** “The lead agency’s evaluation of the vehicle miles traveled associated with a project is subject to a rule of reason that does not require tracing every possible trip associated with the project; however, a lead agency generally should not confine its evaluation to its own political boundary. A lead agency may use models to estimate a project’s vehicle miles traveled, and may revise those estimates to reflect professional judgment based on substantial evidence. Any assumptions used to estimate vehicle miles traveled and any revisions to model outputs should be documented and explained in the environmental document prepared for the project.”

Thank you very much for your consideration.

Sincerely,



Kirstin Kolpitcke  
Legislative Representative