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Submitted Electronically

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

Re: *Revised Proposal on Updates to the CEQA Guidelines on Evaluating Transportation Impacts in CEQA (Implementing Senate Bill 743 (Steinberg, 2013) January 20, 2016*

Dear Mr. Calfee:

We have reviewed OPR's "Revised Proposal on Updates to the CEQA Guidelines on Evaluating Transportation Impacts in CEQA (Implementing Senate Bill 643 (Steinberg, 2013) dated January 20, 2016. We recognize and appreciate your thoughtful consideration of the comments about earlier drafts, your commitment to the public process, and your efforts to explain the basis for this current draft.

Thank you in advance for your consideration of the following comments and suggestions:

### **Three Serious Concerns**

We begin with three serious concerns:

1. SB 743 (Steinberg) requires that the new criteria for determining the significance of transportation impacts promote the reduction of GHGs, the development of multimodal transportation networks, and a diversity of land uses. Within a Transit Priority Area, VMT may comply with this goal. We respectfully suggest that outside a TPA, VMT is not an appropriate criteria.
2. We question the feasibility of implementing the project alternatives and potential measures to mitigate increased VMT drawn from the CAPCOA guide. Infeasibility will lead to more EIRs and Statements of Overriding Considerations.
3. SB 375 (Steinberg) did not require a city's or county's land use planning to be consistent with regional sustainable communities strategies. This was a key component in the League of California Cities' support of SB 375 (Steinberg). We respectfully suggest that the statements about consistency between local land use plans and the SCS found in the Technical Advisory are contrary to the existing law and are an unlawful administrative amendment to that law.

### **Proposed Changes to Section 15064.3**

Proposed New Section 15064.3. Determining the Significance of Transportation Impacts

(a) Purpose.

Section 15064 contains general rules governing the analysis, and the determination of significance of, environmental effects. Specific considerations involving transportation impacts are described in this section. ~~Generally, Vehicle miles traveled is the most appropriate measure of a project's potential transportation impacts. For the purposes of this section, "vehicle miles traveled" refers to the amount and distance of automobile travel attributable to a project. Other relevant considerations may include the effects of the project on transit and non-motorized travel and the safety of all travelers. A project's effect on automobile delay does not constitute a significant environmental impact. 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.~~

(b) Criteria for Analyzing Transportation Impacts.

Lead agencies may use thresholds of significance for vehicle miles traveled recommended by other public agencies or experts provided the threshold is supported by substantial evidence.

(1) Vehicle Miles Traveled and Land Use Projects. A development project that results in vehicle miles traveled exceeding an applicable threshold of significance may indicate a significant impact. Generally, development projects that locate within one-half mile of either an existing major transit stop as defined in Section 21064.3 or a stop along an existing high quality transit corridor included in a regional transportation plan may be presumed to cause a less than significant transportation impact. Similarly, development projects that ~~decrease~~ do not increase vehicle miles traveled in the project area compared to existing conditions may be considered to have a less than significant transportation impact.

(2) Induced Vehicle Travel and Transportation Projects. Additional lane miles may induce ~~automobile travel, and~~ vehicle miles traveled, compared to existing conditions. Transportation projects that reduce, or have no impact on, vehicle miles traveled may be presumed to cause a less than significant transportation impact. To the extent that the potential for induced travel has already been adequately analyzed at a programmatic level, a lead agency may incorporate that analysis by reference.

(3) Qualitative Analysis. If existing models or methods are not available to estimate the vehicle miles traveled for the particular project being considered, a lead agency may analyze the project's vehicle miles traveled qualitatively. Such a qualitative analysis would evaluate factors such as the availability of transit, proximity to other destinations (such as homes, employment and services), area demographics, etc. ~~For many projects, a qualitative analysis of construction traffic may be appropriate.~~

(4) Methodology. The lead agency's evaluation of the vehicle miles traveled associated with a project is subject to a rule of reason. A lead agency 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.

(c) Applicability.

The provisions of this section shall apply prospectively as described in section 15007. A lead agency may elect to be governed by the provisions of this section immediately to evaluate transportation impacts of projects within a transit priority area, as defined by paragraph (7) of subdivision (a) of Section 21099, provided that it updates its own procedures pursuant to section 15022 to conform to the provisions of this section. After [two years from expected adoption date], the provisions of this section shall apply statewide.

## **Explanation of Proposed Changes to Section 15064.3**

### *Section 15064.3(a)*

1. The third sentence of subdivision (a) states: “Generally, vehicle miles traveled is the most appropriate measure of a project’s potential transportation impacts.” We are proposing deletion of “generally” since it does not seem to add meaning to the sentence and seems to imply that there might be a different (but appropriate) measure of a project’s potential transportation impacts.
2. We propose the change to the last sentence to conform the section to Section 21099(b)(2).

### *Section 15064.3(b)(1)*

1. We propose an amendment to clarify the definition of “major transit stop” and to ensure a common understanding of this phrase.
2. Similarly, we suggest a reference to Section 21155 to clarify the meaning of the phrase “existing high quality transit corridor.”
3. The first sentence of paragraph (1) states that a development project that results in VMT exceeding an applicable threshold of significance “may indicate” a significant impact. The last sentence of paragraph (1) states that development projects that decrease VMT in the project area “may be considered” to have a less than significant transportation impact.

What is the difference, if any, between “may indicate” and “may be considered?” If there is no difference, we would suggest using the same phrase in both sentences.

4. We don’t believe it is appropriate to require a project to decrease the existing conditions VMT. The inquiry for purposes of CEQA would be whether the project does not increase the existing conditions VMT rather than whether it decreases it.

### *Section 15064.3(b)(2)*

1. Paragraph (2) states that additional lane miles “may induce automobile travel, and vehicle miles traveled,” compared to existing conditions.

Use of both phrases – “automobile travel” and “vehicles miles traveled” – implies that these are two different categories to evaluate. Is this the intent of the language? If so, what is the difference between the two categories? If not, we would suggest eliminating the phrase “automobile travel.”

2. The technical advisory states: “Induced VMT occurs where roadway capacity is expanded in a congested area, leading to an initial appreciable reduction in travel time. “ We suggest that you add a short (two sentence?) description of “induced vehicle travel” to paragraph 2 based upon the information at page 28 of the document. In particular, we think it is important for paragraph 2 to distinguish between induced vehicle travel and safety concerns.

### *Section 15064.3(b)(3)*

1. We have proposed deleting the last sentence regarding construction traffic since we don’t think it’s necessary to call out construction traffic in particular since it is short-term in duration.

### *Section 15064.3(c)*

1. Many lead agencies have used level of service or similar measures of vehicular capacity or traffic congestion to evaluate transportation impacts of projects. According to Section 21099(b)(2), lead agencies may no longer use such measures after certification of the guidelines by the Secretary of the Natural Resources Agency. Proposed subdivision (c) allows a lead agency to delay using VMT to evaluate transportation impacts for two years. We respectfully suggest that allowing for this voluntary delay will create unnecessary confusion and chaos in the local lead agency community.

2. We repeat our concern about requiring VMT analysis outside transit priority areas. SB 743 anticipated that the metric used outside a TPA might be different than the metric used inside a TPA (Section 21099(c)(1)). We strongly encourage OPR to establish “alternative metrics to the metrics used for traffic levels of service for transportation impacts outside transit priority areas” as envisioned by Section 21099(c)(1). We respectfully suggest that before VMT is required outside a TPA, information must be developed to demonstrate how VMT promotes “reduction of greenhouse gas emissions, the development of multimodal transportation networks, and a diversity of land uses” outside TPAs.

### **Exhibit G**

1. Subdivision (a): We suggest retaining the phrase “an applicable” in order to preclude the argument that a lead agency should analysis the consistency between the project and a plan that does not apply to the project.

2. Subdivision (b): We suggest changing the word “substantial” to “significant” to allow for a connection between Appendix G and an adopted/incorporated threshold of significance.

3. Subdivision (c): We suggest changing the word “substantially” to “significantly.”

4. We suggest adding back in consideration of “safety” (removed by removal of subdivision (f)).

### **Technical Advisory**

1. Page 25 (Recommendations Regarding Land Use Plans), the Technical Advisory states:

“A land use plan may have a significant impact on transportation if it is not consistent with the relevant RTP/SCS. For this purpose, consistency with the SCS means all of the following must be true:

- Development specified in the plan is also specified in the SCS (i.e. the plan does not specify developing in outlying area specified as open space in the SCS); and
- Taken as a whole, development specified in the plan leads to VMT that is equal to or less than the VMT per capita and VMT per employee specified in the SCS.”

We strongly object to this language and suggest that it amends the existing law without Legislative approval in that:

- Local land use plans are not required to be consistent with the relevant RTP/SCS;
- The determination of consistency is a legislative decision within the sole discretion of the lead agency legislative body; and
- PRC § 21155 establishes the consequences under CEQA for consistency between a project, a land use plan, and an SCS. The language at page 25 goes beyond Section 21155.

2. Page 26 (Recommendations for Considering Transportation Project VMT Effects) of the Technical Advisory states the “Addition of through lanes on existing or new highways, including general purpose lanes, HOV lanes, peak period lanes, auxiliary lanes, and lanes through grade-separated interchanges” are projects that would likely lead to an increase in VMT and should undergo analysis.

We suggest that this conclusion and the application of VMT outside TPAs means most, if not all, transportation projects outside TPAs will require an EIR adopted with a Statement of Overriding Considerations since public transit is not generally available nor is funding for transit available.

3. Page 45 (Alternatives and Mitigation Measures): Including alternatives and mitigation measures in the Technical Advisory will be helpful to local lead agencies. Unfortunately, the following potential measures to reduce VMT are infeasible for a large portion of the State (particularly that portion outside TPAs) and, therefore, will not be available to mitigate increased VMT:

- Improve or increasing access to transit;
- Implement or provide access to a commute reduction program;
- Provide car-sharing, bike sharing, and ride-sharing programs; and
- Provide transit passes.

In addition, we are interested in understanding whether substantial evidence can be mustered to support that any of the potential measures will mitigate the impact of increased VMT.

We are puzzled by the suggestion that incorporating affordable housing into the project will reduce VMT since it seems to assume that people who live in affordable housing do not own vehicles. Again we ask for the substantial evidence that supports affordable housing will reduce VMT.

Similarly we are puzzled by the list of project alternatives that may reduce VMT which are not within the control of the lead agency:

- Locate the project in an area of the region that already exhibits low VMT; and
- Locate the project near transit.

Finally, we do not understand how an increase in project density mitigates for an increase in VMT since more units mean more people and more trips.

Thank you for your consideration of our comments. If you have any questions, please let me know.

Sincerely,



Jason Rhine  
Legislative Representative