

Facilities, Construction and Property Practice Group

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AALRR Alert



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California Moves Closer to Eliminating Automobile Delay as a Significant CEQA Impact

On January 20, 2016, the Governor's Office of Planning and Research ("OPR") released a revised draft proposal for implementing Senate Bill 743 (Steinberg 2013) ("SB 743"), which will require traffic analysis under the California Environmental Quality Act ("CEQA") to be based on vehicle miles traveled ("VMT") rather than auto delay, commonly measured by Level of Service ("LOS"). The proposal is an update to an earlier draft released in August 2014. OPR will accept public comments until February 29, 2016, before finalizing the proposal for formal rulemaking by the Natural Resources Agency.

Background

Signed into law in 2013, SB 743 received press attention chiefly due to its provisions allowing expedited judicial review for CEQA litigation brought to challenge projects associated with the "Kings Arena," a proposed \$448 million sports complex in downtown Sacramento. Less widely reported were a number of substantive changes SB 743 made to provisions of CEQA governing the scope of environmental review for urban infill and transportation-

oriented development. Specifically, SB 743 added a new CEQA chapter 2.7 ("Modernization of Transportation Analysis for Transit-Oriented Infill Projects") with several new substantive requirements. (Pub. Resources Code, § 21099.)

The law directs OPR to update the CEQA Guidelines by establishing new criteria for determining the significance of transportation-related impacts within "transit priority areas." These new criteria are intended to "promote the reduction of greenhouse gas emissions, the development of multimodal transportation networks, and a diversity of land uses." To that end, in 2014 OPR released proposed amendments to the CEQA Guidelines that replace auto delay with VMT as the primary metric for analyzing transportation impacts for qualifying infill projects. This included proposed additions to Appendix F of the Guidelines (Energy Impacts) to provide examples of potential mitigation measures and alternatives to reduce VMT for projects, including measures aimed at improving access to transit, goods and services and the jobs/

housing fit of a community, and to Appendix G (the Environmental Checklist Form) to revise the model transportation impact criteria.

Current Proposal

In the current proposal, OPR continues to recommend adding Section 15064.3 to the CEQA Guidelines, which replaces auto delay with VMT as the primary metric for analyzing a project's transportation impacts. The section contains provisions similar to those proposed in the August 2014 draft, including requirements that projects near transit should be presumed to cause a less than significant transportation impact and that transportation projects which add lane miles may result in reduced vehicle travel. The proposal also amends Appendix G to revise the model transportation impact criteria in the Guidelines.

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Perhaps the biggest change in the new proposal involves moving much of the technical content from the CEQA Guidelines and into a new and separate technical advisory. The technical advisory is not regulatory, so it does not carry the force of law, and should be considered advisory only. It does, however, provide a starting point for consideration of potential VMT analysis methods, thresholds, safety analysis, and mitigation approaches.

The revised draft proposal is available for review, [here](#). Comments to the new draft should be submitted to OPR by February 29, 2016 at 5:00 p.m. It remains to be seen whether there will be additional revisions following the close of the public comment period and prior to the draft's submission to the Natural Resources Agency for rulemaking.

What is clear from this revised draft proposal, however, is that the enactment and implementation of SB 743 has caused transportation/traffic impact analysis under CEQA to undergo rapid and fundamental changes. Driven by policies to reduce greenhouse gas emissions and to promote dense, transit-oriented in-fill development, the definition of adverse traffic impacts appears to have permanently shifted from a focus on congestion management to VMT reduction.