

Major Changes Coming to How CEQA Transportation Impacts are Analyzed

OPR Releases Draft CEQA Guidelines Update

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The Governor's Office of Planning and Research (OPR) has released its long-awaited draft update to the CEQA Guidelines regarding transportation impacts analysis (Draft Guidelines) mandated last year by SB 743. Under the Draft Guidelines, CEQA no longer cares how long you sit in traffic and instead now cares how far you drive. The Draft Guidelines, if adopted, will create substantial uncertainty that will increase risk of successful CEQA challenges, making it even more important than ever that project teams include an experienced CEQA practitioner.

Among other things, SB 743 established that automobile delay, which is most typically measured by Level of Service (LOS), is no longer considered a significant impact under CEQA in transit priority areas and required OPR to adopt new criteria for determining the significance of transportation impacts in these areas that promote mixed-use infill development and transit usage and the reduction of greenhouse gas emissions and energy usage. The Draft Guidelines go further than required by SB 743 and apply this new criteria statewide.

Under the Draft Guidelines, the "best" criteria for analyzing a project's transportation impacts "generally" will be based on "vehicle miles traveled" (VMT), which is the distance of automobile travel associated with the project. Effects on transit, non-motorized travel and traveler safety also will be relevant to the impact analysis.

SB 743 and the Draft Guidelines do not preclude jurisdictions from continuing to use LOS and automobile delay as a regulatory tool in their general plans and zoning codes. As a consequence, projects could still be subject to an LOS analysis and infrastructure improvement requirements, in addition to a VMT analysis and related mitigation measures.

Once adopted by OPR, these revised guidelines would apply immediately to projects located within one-half mile of major transit stops or stops along high quality transit corridors. Outside of those areas, a lead agency may elect to be governed by the new guidelines. After January 1, 2016, the updated guidelines would apply statewide.

The Draft Guidelines identify potential mitigation measures focused on promotion of transit, bicycle and pedestrian facilities, but also including the incorporation of affordable housing into residential projects. In addition, the Draft Guidelines set forth potential project alternatives to reduce vehicle miles traveled, including locating projects near transit, increasing the mix of uses within the project and increasing project density.

While the Draft Guidelines answer many questions regarding the likely direction of CEQA transportation impact analyses going forward, they also raise many questions and potential concerns.

As noted in the OPR report, many key terms are not yet defined. It is expected that proposed definitions will arise as a result of the public input process. In addition to the above-noted potential for the continued use of LOS analysis by jurisdictions in their permitting processes, there also will be questions regarding an applicant's responsibility to mitigate for any induced additional automobile travel that would result from a lead agency's imposition of roadway improvements for a project. Thorny new questions also would abound regarding how the new criteria impact the appropriate CEQA baseline and cumulative impact analysis in transportation impact studies.

With the new focus on VMT, projects intending to have regional draws, ranging from nonprofit museums to regional shopping centers, could trigger significant transportation impacts under the new criteria, even if the surrounding road network is adequate to accommodate these projects. Residential project proponents could be required to show why incorporation of an affordable component either will not reduce VMT or is infeasible.

At the same time, the Draft Guidelines, if adopted, could create opportunities. For example, they provide that previously adopted measures to mitigate congestion impacts could be modified at the discretion of the lead agency. While political and community considerations may limit the value of this provision in many cases, it nonetheless may create an opening for the removal of costly infrastructure improvements in some cases that have no benefit toward the reduction of VMT.

Comments on the Draft Guidelines must be submitted to OPR by October 10, 2014. Comments may be submitted by email to CEQA.Guidelines@ceres.ca.gov or mailed to:

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If you have questions regarding the Draft Guidelines or would like assistance in preparing comments for submittal to OPR, please contact David Goldberg at david@agd-landuse.com or at (310) 209-8800.

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