



METROPOLITAN
TRANSPORTATION
COMMISSION

Agenda Item 4

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Memorandum

TO: Legislation Committee

DATE: November 7, 2014

FR: Deputy Executive Director, Policy

W.I. 1131

RE: Proposed Comments to OPR on Revisions to the California Environmental Quality Act (CEQA) Guidelines Pursuant to SB 743

Background

MTC has long championed CEQA reform as part of its legislative agenda in order to reduce the extent to which worthy transportation projects and transit-oriented infill development projects are delayed or blocked by litigation. In 2013, MTC worked in collaboration with the Silicon Valley Leadership Group and others in pursuit of comprehensive CEQA reform. While efforts at broad reform were unsuccessful, in the final days of the legislative session one CEQA bill made its way to the finish line and was ultimately signed by the Governor — Senate Bill 743 (Steinberg).

As noted in our October 2013 legislative scorecard, SB 743 set in motion changes to the way transportation impacts are analyzed under CEQA, a change with potentially profound effects. The goal of the changes is to reduce the extent to which CEQA analysis identifies impacts based solely on local traffic delay, resulting in costly and lengthy review and often triggering roadway capacity-increasing mitigation that undermines key statewide, regional and/or local planning goals, such as reducing greenhouse gas emissions, encouraging infill development and increasing reliance on non-auto modes.

While the bill made clear that a business-as-usual approach to measuring transportation impacts using vehicle delay (as measured by an engineering concept known as “level of service” or LOS) will no longer be acceptable in “transit priority areas” (TPAs), it delegated to the Governor’s Office of Planning & Research (OPR) the task of selecting a new measure.¹ The new measure must “promote the reduction of greenhouse gas emissions, the development of multimodal transportation networks, and a diversity of land uses.”

The bill also gave OPR the option to apply the alternate approach to measuring transportation impacts beyond TPAs. Specifically, the law notes that upon certification of the guidelines by the Secretary of the Natural Resources Agency, auto delay shall not be considered a significant impact on the environment, except in locations specifically called out in the guidelines “if any.”

¹ A transit priority area (TPA) is defined as an area that is within one-half mile of a major transit stop that is existing or planned, if the project is scheduled to be completed within the planning horizon included in an adopted federal Transportation Improvement Program (Public Resources Code 21099 (a)(7)).

In August 2014, OPR released a preliminary discussion draft of its update to the CEQA Guidelines to implement SB 743. Comments were originally due on October 10 but were postponed to November 21. This memo summarizes staff's proposed comments and seeks your approval to send a comment letter to that effect.

Recommendation: Support Sending a Comment Letter to OPR

Overview of OPR Proposed Revisions to the CEQA Guidelines

OPR's proposal would add a new section to the CEQA Guidelines specific to analyzing transportation impacts. Under the proposed language, a project that results in vehicle miles traveled (VMT) per capita greater than the regional average may indicate a significant impact. On the other hand, projects that are within a TPA "generally may be considered to have a less than significant impact." Given that each project is unique, the guidelines allow for exceptions in both of these cases (i.e. a TPA project may have significant transportation impacts, and a project with above average VMT may be found not to have significant transportation impacts). The guidelines also propose using VMT as the new metric for assessing transportation impacts, regardless of where a project is located.

Staff supports the general approach outlined in the guidelines and seeks your approval to send a letter to that effect that also includes the following key points:

1. Given the significant changes proposed in the guidelines, we believe the first few years of the new guidelines should be viewed as an interim "study period," after which further adjustments to the guidelines will likely be needed. OPR can help assuage fears about the risks associated with the proposed changes by sending a clear signal that it understands refinements to the guidelines will likely be needed within a couple of years after agencies have experience with the new approach.
2. Recommend the guidelines clarify that negative impacts on transit service or non-motorized travel should only be considered significant if they are anticipated to result in a shift from either of those modes to driving. For instance, improvements to a bicycle network that may attract cyclists who would otherwise be expected to take transit should not be considered a significant environmental impact and vice versa.
3. Recommend the guidelines explicitly state that eliminating LOS from CEQA does not mean that local transportation planners cannot continue to include LOS in other planning documents, including general plans, specific plans or other transportation-related plans.
4. Recommend that guidelines affirm that aesthetic and parking impacts of a residential, mixed-use residential or employment center project on an infill site within a TPA shall not be considered significant, so that lead agencies will have clear guidance and be reminded of this change made by SB 743.

5. Recommend the guidelines include a provision to help lead agencies determine whether a project meets the CEQA exemption criteria listed in Public Resources Code 21155.4 and clarify that challenges to a finding of “exempt” are subject to the substantial evidence standard, rather than the fair argument standard.
6. Under “Local Safety,” recommend the guidelines remove the sample list of objective factors to consider, consistent with CEQA’s standard deference to lead agencies with respect to methodology.
7. Recommend removing from the proposed revisions to Appendix F of the Guidelines the list of potential mitigation measures (D)(6)(a-o) and project alternatives (E) on page 18 to avoid the potential that such lists will be treated by project opponents as mandatory components of environmental review, rather than a list of potential approaches to consider. If deemed necessary, OPR could publish the lists as part of a stand-alone document outside the formal CEQA Guidelines.

While nothing related to CEQA is ever simple, staff believes the proposed SB 743 guidelines help align the environmental review process with the goals of Plan Bay Area and would be strengthened by our input.


Alix Bockelman

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