

## Lockey, Heather@CNRA

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**From:** Katsuki, Karisa <kkatsuki@calstate.edu>  
**Sent:** Tuesday, March 13, 2018 3:09 PM  
**To:** CEQA Guidelines@CNRA  
**Cc:** Lohr, Steve  
**Subject:** CEQA Guidelines - CSU Written Comments  
**Attachments:** CEQA Guideline CSU Comments\_03.13.18.pdf

Mr. Calfee,

Please find the CSU's comments to the Amendments and Additions to the State CEQA Guidelines.

Please do not hesitate to contact me with any questions or concerns.

Thank you,

***Karisa Katsuki***

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March 13, 2018

*Via Electronic Mail*

Mr. Christopher Calfee  
Deputy Secretary and General Counsel  
California Natural Resources Agency  
1416 Ninth Street, Suite 1311  
Sacramento, CA 95814

Transmitted to: [CEQA.Guidelines@resources.ca.gov](mailto:CEQA.Guidelines@resources.ca.gov)

Dear Mr. Calfee:

The California State University (CSU) appreciates the opportunity to provide comments on the proposed amendments and revisions to the CEQA Guidelines. Based upon information within the documents provided in support of the proposed rulemaking dated January 26, 2018 and authored by the California Natural Resources Agency, the CSU hereby provides the following comments and recommendations.

- Section 15064.3, Subpart (b)(1)-Criteria for Analyzing Transportation Impacts. This Subpart addresses the criteria for analyzing transportation impacts and includes the following sentence: "Projects that decrease vehicle miles traveled in the project area compared to existing conditions may be considered to have a less than significant transportation impact." In order to decrease VMT in the project area as compared to existing conditions, a new project would not only need to add zero VMT, it would also need to remove existing VMT from the roads in order to actually decrease VMT in the project area compared to existing conditions. This is a policy goal, which is beyond the primary purpose of CEQA to provide meaningful public disclosure of the potential significant effects on the environment. Furthermore, this provision would result in the identification of significant impacts associated with a multitude of projects, despite the fact that such projects would not result in increased VMT. For these reasons, it is recommended that the above referenced sentence be deleted.

- Section 15064.3, Subpart (b)(1)-Criteria for Analyzing Transportation Impacts. This subpart addresses the criteria for analyzing transportation impacts and relates to proposed projects to be located in proximity to transit facilities. It is recommended that the second sentence be revised to include "planned" stops and corridors (in addition to "existing" major transit stops and high quality transit corridors) in order to encourage development where transit not only exists, but also is planned. Additionally, it is recommended that the modifier "generally" be deleted from the presumption of a less than significant impact as it is duplicative of the very nature of a "presumption" and, therefore, unnecessary as it does not facilitate clarity.
- Section 15064.3, Subpart (b)(3)-Qualitative Analysis. This subpart addresses the analysis of construction traffic and states that "For many projects, a qualitative analysis of construction traffic may be appropriate." This statement implies that a *quantitative* analysis of construction traffic is appropriate for all other projects. Preliminarily, this is the only reference to the analysis of construction-related VMT in the proposed guideline or the *Technical Advisory on Evaluating Transportation Impacts in CEQA* (November 2017). As such, no further guidance on the subject is provided. Moreover, the requirement to include *any* VMT analysis of construction traffic beyond that analysis already required in connection with air quality and greenhouse gas emissions does not further SB 743, which required the Resources Agency to develop a different way to measure transportation impacts that would lead to fewer GHG emissions, more transportation alternatives, facilitate infill development, and result in a new method of transportation analysis that is simpler and less costly to perform.<sup>1</sup> As noted, construction traffic GHG emissions are already considered in separate analyses, and, unlike the vehicle trips generated by land use projects, analysis of VMT associated with construction traffic would not lead to more transportation alternatives, would not facilitate infill development, and would not be simpler and less costly to perform. For these reasons, CSU recommends that the sentence be deleted. Alternatively, it is recommended that it be revised as follows: "For all ~~many~~ projects, a qualitative analysis of construction traffic shall ~~may~~ be appropriate."
- Section 15064.3, Subpart (c)-Applicability. This Subpart indicates that the use of vehicle miles traveled for evaluating a project's transportation impacts will be applied statewide on July 1, 2019. In contrast, written correspondence from the Office of Planning and Research (such as the November 2017 Proposed Updates to the CEQA Guidelines) convey that the new methodology will be applied on January 1, 2020. The later date for the implementation of this new methodology is critical since public agencies will need substantial time for its implementation. It is thus recommended that the date be revised in the proposed amendments to the Guidelines to January 1, 2020, as recommended by OPR, or later.

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<sup>1</sup> Notice of Proposed Rulemaking, California Natural Resources Agency, January 26, 2018, p. 8.

- Section 15064.7, Subpart (d)-Thresholds of Significance. This subpart addresses the use of environmental standards as thresholds of significance. The proposed revision applies the same standards that agencies must meet when they *adopt* thresholds to the subsequent *use* of those thresholds. However, there is no reason to require agencies to re-do their process and evaluation each time a threshold is used; that is contrary to the purpose of thresholds. Therefore, it is recommended that the references in section 15064.7 to making these standards apply when an agency is “using” a threshold be deleted. Specifically, it is recommended the deletion of the phrase “or using” in the third sentence of subsection (d).
- Section 15126.4, Subpart (a)(1)(B)-Deferral of Mitigation Details. This subpart provides the circumstances under which a lead agency may defer formulation of the specific details of a mitigation measure. The proposed text would permit such deferral when the agency commits itself to the mitigation, adopts specific performance standards, *and* lists the potential actions to be considered, analyzed and potentially incorporated in the mitigation measure. However, this three-part test conflicts with the Notice of Proposed Rulemaking-Amendments and Additions to the State CEQA Guidelines, which states that the Resources Agency “proposes to clarify that when deferring the specifics of mitigation, the lead agency should *either* provide a list of possible mitigation measures, or adopt specific performance standards.” (Notice of Proposed Rulemaking-Amendments and Additions to the State CEQA Guidelines, p. 16, *emphasis added*.) Therefore, it is recommended that the second sentence of Subpart (a)(1)(B) be revised as follows: “The specific details of a mitigation measure, however, may be deferred when it is impractical or infeasible to include those details during the project’s environmental review and the agency (1) commits itself to the mitigation, and either (2) adopts specific performance standards the mitigation will achieve, or ~~and~~ (3) lists the potential actions to be considered, analyzed, and potentially incorporated in the mitigation measures.”
- Section 15234, Subpart (a)-Remand. This Subpart addresses the scope of a writ of mandate following a determination by a court that an environmental analysis prepared pursuant to CEQA is inadequate. Subpart (a)(1) authorizes the court to direct the agency to “void the project approval, in whole or in part.” Consistent with Public Resources Code section 21168.9, the court may also direct the agency to de-certify the CEQA document in whole or in part. Therefore, it is recommended that a new subpart (2) be added, which states: “(2) de-certify the CEQA analysis, in whole or in part;” and that existing subparts (2) and (3) be re-numbered (3) and (4) accordingly.
- Section 15234, Subpart (c)-Remand. This Subpart addresses those project activities that may proceed during a remand period “because the environment will be given a greater level of protection if the project is allowed to remain operative than if it were inoperative during that period.” While the new text

seeks to incorporate the unique circumstances of *Poet, LLC v. State Air Resources Board* (2013), the subdivision could be read to limit the court's discretion to permit activities to proceed to *only* those activities where the environment will be given a greater level of protection if the project remains operative. If given such a reading, this revision would far exceed the scope of Public Resources Code section 21168.9. Therefore, it is recommended that subsection (c) be revised to read: "An agency may also proceed with a project, or individual project activities, during the remand period where the court has exercised its equitable discretion to leave project approvals in place or in practical effect during the period ~~because the environment will be given a greater level of protection if the project is allowed to remain operative than if it were inoperative during that period.~~"

- Environmental Checklist Form (Appendix G) of the CEQA Guidelines, Section XVII (a), Transportation, and Section XI (b), Land Use and Planning. An Initial Study is a preliminary analysis used to determine if the project may have a significant effect upon the environment. The Environmental Checklist Form is used to assist in this effort. One of the questions included in the existing Environmental Checklist in the Transportation/Traffic Section is: "Would the project conflict with an *applicable* plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system. . ." The proposed amendment to the CEQA Guidelines on page 69 would change Appendix G to delete the modifier "applicable" from the above question. However, to remove "applicable" from the sentence would require analysis of *all* plans, ordinances, or policies without regard for legal or geographic limitation rather than only those relevant to the lead agency. This revision conflicts with Guidelines section 15125, subpart (d), which provides that "the EIR shall discuss any inconsistencies between the proposed project and *applicable* general plans, specific plans, and regional plans (*emphasis added*)." Moreover, under certain circumstances, local planning laws do not apply to state agencies, although deletion of the word "applicable" would arguably require that a state project conduct an analysis relative to local planning documents that have no authority over the state. Accordingly, CSU recommends that the word *applicable* not be deleted from the referenced Appendix G text. Since the Resources Agency proposes the same revision for the Land Use and Planning section at page 66, CSU equally recommends that the word *applicable* not be deleted from that text as well.
- Environmental Checklist Form (Appendix G) of the CEQA Guidelines, Section IX, Hazards/Hazardous Materials. One of the questions included in the existing Environmental Checklist in the Hazards/Hazardous Materials Section is: "Would the project expose people or structures to a significant risk of loss, injury or death involving wildland fires. . ." The proposed amendment to the CEQA Guidelines on page 64 would change Appendix G to the following: "Would the project expose people or structures, *either directly or indirectly*, to a significant risk of loss, injury or death involving wildland fires. . ." It is recommended that

the work "indirectly" be deleted from the referenced Appendix G text since the vagueness of the term will make it difficult to address within CEQA documentation for specific projects.

CSU appreciates the opportunity to provide these comments on the proposed amendments and revisions to the CEQA Guidelines. We believe that each comment and requested revision is well reasoned, and that implementation of the requested revisions would improve the document and its usefulness. If you would like to discuss our comments, or have any questions, please contact Dr. Steven Lohr, Chief of Land Use Planning and Environmental Review at (562) 951-4120, slohr@calstate.edu.

Sincerely,



Elvyra F. San Juan  
Assistant Vice Chancellor

ESJ:SL:kk

**Distribution:**

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