

**Lockey, Heather@CNRA**

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**From:** Renata Winter <rwinter@cityofmissionviejo.org>  
**Sent:** Thursday, March 15, 2018 12:45 PM  
**To:** CEQA Guidelines@CNRA  
**Cc:** Gail Shiimoto-Lohr  
**Subject:** City of Mission Viejo Comments: Proposed Regulatory Text to the California Code of Regulations  
Updating the State CEQA Guidelines  
**Attachments:** City of Mission Viejo SB 743 CEQA Guidelines Comment Letter\_03-13-2018.PDF

Hello ~ please find attached letter regarding the City's comments on the California Natural Resources Agency Proposed Rulemaking on the 2018 Amendments and Additions to the State CEQA Guidelines on Evaluating Transportation Impacts. The original letter shall be mailed out today.

Thank you.

*Renata Winter*

Executive Administrator  
City Manager and City Council's Office  
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# City of Mission Viejo

Office of the City Manager

**Edward Sachs**  
*Mayor*

**Greg Rath**  
*Mayor Pro Tem*

**Wendy Bucknum**  
*Council Member*

**Brian Goodell**  
*Council Member*

**Trish Kelley**  
*Council Member*

Sent Via Email: [CEQA.Guidelines@resources.ca.gov](mailto:CEQA.Guidelines@resources.ca.gov)

March 13, 2018

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

Dear Mr. Calfee:

**Subject:** City of Mission Viejo Comments: California Natural Resources Agency Proposed Rulemaking on the 2018 Amendments and Additions to the State CEQA Guidelines on Evaluating Transportation Impacts

The City of Mission Viejo extends its appreciation for the opportunity to review and comment on the California Natural Resources Agency's proposed regulatory text on amendments and additions to the State CEQA Guidelines in the California Code of Regulations.

The City of Mission Viejo's comments pertain specifically to proposed new section 15064.3: Determining the Significance of Transportation Impacts, which sets forth significant and fundamental changes to the manner in which transportation impacts would be analyzed in environmental documents for land use projects. New Section 15064.3 of the proposed CEQA Guidelines update would require that Lead Agencies no longer utilize Levels of Service (LOS) criteria in determining and mitigating significant transportation impacts under CEQA. Instead, Lead Agencies would be required to use the new criterion of Vehicle Miles Traveled, pursuant to the State Legislature's 2013 adoption of SB 743 (Steinberg).

The City's comments on proposed new Section 15064.3 are presented in Attachment 1. In summary, the City's two key recommendations are as follows:

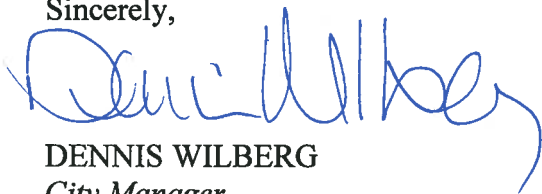
- 1) That the effective date of requiring VMT analyses on land use projects be extended from the proposed date of July 1, 2019, to two years from the effective date of rulemaking, to provide lead agencies with necessary and sufficient time to transition effectively from the traditional Levels of Service analysis to the new VMT analysis requirement; and,



- 2) That the new VMT analysis requirement be applied to land use projects in Transit Priority Areas (TPAs) only (areas located within ½ mile of major transit stops and high quality transit corridors), as authorized under SB 743 legislation. Outside of Transit Priority Areas, any application of VMT analysis should be at the election of the Lead Agency, versus a statewide mandate as currently proposed.

The City of Mission Viejo respectfully requests the Natural Resources Agency's thoughtful consideration of the detailed comments as presented in Attachment 1, and looks forward to the Agency's responses to these comments. The City of Mission Viejo has actively participated in the Southern California Stakeholders Working Group discussions on SB 743 implementation since 2014, and envisions that frequent and active continuation of a working partnership between local jurisdictions, transportation agencies, metropolitan planning organizations, and the State Office of Planning and Research are both necessary and vital in the years to come, to enable an effective transition to VMT analysis.

Sincerely,



DENNIS WILBERG  
*City Manager*

Attachment 1: City of Mission Viejo Comments: Proposed Regulatory Text to the California Code of Regulations Updating the State CEQA Guidelines

- c: City Council  
Planning and Transportation Commission  
William Curley, City Attorney  
Elaine Lister, Director of Community Development  
Larry Longenecker, Planning Manager  
Mark Chagnon, Public Works Director  
Rich Schlesinger, City Engineer  
Joe Ames, Assistant City Engineer  
Philip Nitollama, City Traffic Engineer  
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## ATTACHMENT 1

### City of Mission Viejo Comments: Proposed Regulatory Text to the California Code of Regulations Updating the State CEQA Guidelines

1) **Extend the Effective Date for Requiring VMT Analysis on Land Use Projects from July 1, 2019 to Two years from the Effective Date of Rulemaking**

The proposed CEQA Guidelines amendments [Section 15064.3(c) Applicability] include a significant change in how Lead Agencies would conduct transportation analyses for land use projects, eliminating the use of Levels of Service (LOS) which measures congestion, and instead replacing said metric with Vehicle Miles Traveled (VMT) which measures the distance of automobile travel generated by a proposed project.

The proposed regulatory text states that Lead Agencies can elect to implement the VMT analysis requirement immediately -- upon state adoption of the CEQA Guidelines amendments -- but that all Lead Agencies must implement the new VMT requirement in CEQA transportation analyses for land use projects no later than July 1, 2019.

The City of Mission Viejo opposes the July 1, 2019 deadline for mandatory statewide implementation of VMT analyses for land use projects. The City of Mission Viejo recommends, instead, that the grace period for VMT analysis implementation be at least two years from the effective date of the final rulemaking.

The justification and rationale for the two-year grace period include the following:

a) **The two-year grace period is both necessary and critical to allow local jurisdictions the ability to transition effectively to the new VMT analysis requirement.**

Discussions with former staff from the City of Pasadena and a review of articles on local jurisdictions that have already implemented VMT analyses for CEQA purposes, reveal that a two-year timeframe is necessary to holistically transition from LOS to VMT. The requested two-year grace period allows for the Lead Agencies to conduct significant preparatory activities, such as planning time to conduct public outreach, revise traffic study requirements, develop any new local transportation models capable of analyzing VMT at a project level, conduct any overarching General Plan amendments to support the new VMT thresholds, and conduct studies to adopt citywide strategies to VMT mitigation, such as fee programs to support alternative transportation modes. The July 1, 2019 effective date does not provide adequate lead time to conduct such activities.

While it has been argued that SB 743 implementation has been under discussion since 2014, and that local jurisdictions should have begun the work to transition to VMT analyses, the City of Mission Viejo would counter that the discussion of SB 743 implementation has and continues to be a considerable work in progress, with



many approaches discussed, presented and modified over the years, as a result of State Office of Planning and Research (OPR) and stakeholder discussions. Thus, any planning work conducted early on, in advance of the final rulemaking, would have been compromised with shifts in methodology and approach that have evolved in SB 743 implementation (e.g., the applicability of, and methodology for VMT assessment and selection of highway capacity projects).

The City of Mission Viejo has also welcomed State OPR's development of a companion SB 743 Technical Advisory, which has been prepared to assist Lead Agencies on how to analyze transportation impacts under CEQA. However, upon inquiry at a January 31, 2018 SB 743 Stakeholders Working Group meeting, State OPR staff advised that a necessary update and revision to the Technical Advisory would not be completed and available by the time of final rulemaking which is anticipated by January 2019.

As discussed in Comments 2 and 3 herein, the Technical Advisory is in need of significant revision to include case studies examples and additional technical information as requested from stakeholders. The Technical Advisory needs to be updated and made available in a revised edition, before any mandatory VMT analysis is imposed upon Lead Agencies. A two-year grace period will afford State OPR staff with the necessary time to complete an update of the Technical Advisory.

- b) The two-year grace period is recognized in the 1/26/2018 "Notice of Proposed Rulemaking" for the CEQA Guidelines amendment, which states on Page 8 that "Agencies will be able to begin using the new methods as soon as the CEQA Guidelines are adopted, but the CEQA Guidelines provides a two-year grace period for those agencies that need time to update their own procedures." (emphasis noted).

As noted above, stakeholders have been meeting with State OPR staff to tackle the issue of how to effectively implement the transition from LOS to VMT analysis at the project level. Throughout these discussions, stakeholders have identified outstanding data needs and methodological questions that Lead Agencies would face with immediate implementation of a VMT analysis at a project-level geography. The two-year grace period was recognized by State OPR staff in the many meetings on SB 743 implementation with Southern California stakeholders, in addition to being recognized in the CEQA Amendments "Notice of Proposed Rulemaking.

In contrast, the July 1, 2019 effective date for statewide implementation of the VMT analysis, as currently established in the draft regulatory text, does not provide agencies with the above-identified two-year grace period, and should be revised accordingly. The City of Mission Viejo maintains that the two-year grace period should continue to be honored.



**City of Mission Viejo Recommendation:**  
Amend New Section 15064.3(c) as follows:

(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. ~~Beginning on July 1, 2019,~~ The provisions of this section shall apply statewide two years from the effective date of the final rulemaking.

2) **Apply VMT Analysis in Transit Priority Areas Only, With An Elective Opportunity Outside Transit Priority Areas**

The 2013 adoption of SB 743 (Steinberg) established that Levels of Service (LOS) analysis be eliminated as a threshold of significance for transportation analysis under CEQA, for projects located within Transit Priority Areas, and that a new criteria be established to encourage projects within walking distance of mass transit facilities, downtowns and town centers.

The new metric, as proposed in the CEQA Guidelines Amendment, is Vehicle Miles Traveled (VMT). Further, the proposed regulatory text would require that VMT analysis be applied to all development projects, regardless if said projects are located within, or outside, a Transit Priority Area.

The City of Mission Viejo continues to maintain that the mandatory use of VMT analysis in CEQA documents should be applied only to land use projects located within Transit Priority Areas. Outside of Transit Priority Areas, any application of VMT analysis should be at the election of the Lead Agency, versus a statewide mandate as currently proposed.

The City of Mission Viejo expresses concern that in many communities, new land use projects that are located outside of Transit Priority Areas would not have access to supportive transit infrastructure and services that would allow a new land use project to effectively reduce its VMT to below existing conditions. The City of Mission Viejo is further concerned that the lack of effective VMT reduction mitigation measures that would realistically be effective and available to land use projects outside of Transit Priority Areas to reduce project VMT, would increase project costs and increase processing time, and result in an overabundance of Environmental Impact Reports, compromised with Statements of Overriding Considerations.

The City's recommended approach – requiring that VMT analysis be applied only to projects located in Transit Priority Areas – allows resources to be expended where there is an immediate benefit to using VMT analysis: in areas that are already positioned and planned with alternate transportation options or committed programs to reduce or maintain VMT. In many cases, land use projects located in areas outside of Transit Priority Areas will be hard-pressed to deliver a platform of effective mitigation measures capable of achieving identified VMT thresholds.



The City of Mission Viejo appreciates that the companion “Technical Advisory on Evaluating Transportation Impacts Under CEQA” strives to provide guidance on how land use projects can be mitigated to reduce VMT. However, the City of Mission Viejo expresses concern that the November 2017 version of the Technical Advisory has eliminated the case study examples for land use projects that were included in the January 2016 draft, which were to provide sample applications on how to apply, and most importantly, how to mitigate, project-level generated VMT.

The omission of case study examples between the January 2016 and the November 2017 draft of the Technical Advisory, continues to generate concern on the efficacy of requiring VMT analyses for land use projects located outside of Transit Priority Areas.

As an example, the City of Mission Viejo Case Study that was included in the January 2016 version of the Technical Advisory [Office Project: Mission Viejo Medical Center, page 53] is located outside of a Transit Priority Area. To reduce project-level VMT, the Case Study analysis proposed mitigation that includes the medical office project providing a transit subsidy to all employees, which would provide 50% of the needed reduction in project VMT. However, this area (South Orange County) is faced with continued reduction or elimination in bus transit service and routes, due to declining transit ridership. Thus, a mitigation measure that requires the employers to provide a transit subsidy to employees, achieves little VMT benefit if there are no existing or planned transit opportunities for the employees to use. Further, in reviewing the referenced, CAPCOA strategies to reduce VMT, there are no applicable, alternate options available in the CAPCOA suite to make up for this degree of difference in VMT reduction.

Further, the recommended use of CAPCOA measure TRT-6: Encourage Telecommuting and Alternate Work Schedules, may work for a traditional office setting where an employer can stagger the working hours of its employees, but this strategy is likely not feasible in the Mission Viejo Case Study project, where the office building will house multiple tenant doctor offices that will have scheduling needs of patients that are not conducive to imposing alternate work week schedules of its employees.

Had this case study project been required to conduct a VMT analysis based on the thresholds and applications as currently proposed in the Technical Advisory, the City of Mission Viejo would have had to adopt a Statement of Overriding Considerations on transportation impacts, as there would not have been a suite of realistic and effective strategies to reduce VMT to below the recommended thresholds.

The City of Mission Viejo is concerned that this outcome will be shared by many Lead Agencies, resulting in an overabundance of EIRs compromised with Statements of Overriding Considerations, if the VMT CEQA analysis is imposed statewide upon all Lead Agencies.



For this reason, the City of Mission Viejo respectfully recommends that the CEQA Guidelines eliminate the statewide mandate for VMT analysis, and instead allow for: (1) the VMT analysis to be required in Transit Priority Areas only; and, (2) for all other locales, be subject to the elective decision of the Lead Agency, taking into consideration realistic opportunities and constraints specific to each jurisdiction.

**City of Mission Viejo Recommendation:**

Amend new Section 15064.3(c) as follows, which also incorporates the recommended revision to the effective date of the VMT analysis, pursuant to Comment 1 above.

(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. ~~Beginning on July 1, 2019,~~ The provisions of this section shall apply statewide to projects located within Transit Priority Areas, two years from the effective date of the final rulemaking. Lead agencies may also elect to apply the provisions of this section to areas outside of Transit Priority Areas.

3) **Recognize that Extensive Technical Work Continues to Need to be Conducted By OPR and MPO's, to Enable Lead Agencies to Successfully Implement SB 743**

The City of Mission Viejo appreciates the significant investment in staff time and funding that State OPR and a consortium of major Metropolitan Planning Organizations have dedicated towards addressing SB 743 implementation, and the stewardship that the Southern California Association of Governments has provided to Southern California Stakeholders by convening working group meetings since 2014 between State OPR and representatives of government, transportation agencies, developers, environmental and transportation attorneys and consultants, and the business communities, to tackle SB 743 implementation.

The City of Mission Viejo has been an active participant in these working group meetings. We have found these meetings to be an excellent forum for stakeholders to conduct a one-on-one dialogue with State OPR staff, and for all the attendees to share their perspectives, approaches and recommendations on how best to implement the new requirements for VMT analysis. As part of these discussions, stakeholders have identified missing gaps in information and methodology that need to be addressed and reconciled, in order to allow for a seamless transition from LOS to VMT analyses for CEQA purposes. One specific recommendation that was raised early on, was the request to include specific case studies in the companion Technical Advisory to illustrate how a VMT analysis and mitigation could be applied to actual projects.

As noted above in Comment 2, the November 2017 edition of the companion Technical Advisory document has omitted the three case study examples of how a VMT analysis could be conducted for land use and transportation projects. This is a significant and serious omission.





Further, SCAG and State OPR staff previously identified that a consortium of State MPOS would help fund additional case studies from the three that were presented in the January 2016 edition of the Technical Advisory, to better illustrate how VMT analysis could be conducted for more types of projects than the residential, office and highway capacity projects presented. The Southern California stakeholders supported and appreciated this expansion of case study applications.

The City of Mission Viejo expresses concern that the Technical Advisory will now be void of any case study applications at the time when the CEQA Guidelines are adopted through the formal rulemaking process. Such an omission devalues the objective of the Technical Study to provide nuts-and-bolts guidance to Lead Agencies on SB 743 implementation.

The Technical Advisory must be updated with case study examples, before the VMT analysis requirement is mandated. The City of Mission Viejo recommendation to amend the CEQA Guidelines with a two-year grace period, will allow both State OPR, the State MPOs, and Lead Agencies the needed additional time to discuss and address missing gaps in the Technical Advisory.

The City of Mission Viejo also emphasizes there are additional missing gaps in the Technical Advisory that warrant additional research and recommendations and which should be incorporated into the Technical Advisory, before any required VMT analysis implementation is imposed. These areas of new or additional analysis, which have been raised in the City's prior comment letters, include the following:

a) Determine How to Compile Current VMT Data that Lead Agencies Will Need to Conduct VMT Analyses:

Major Metropolitan Planning Organizations such as the Southern California Association of Governments, will need to ascertain staffing and resource needs to compile current, updated VMT data from its Regional Model to calculate VMT information not only at the SCAG region geography, but also for each of the six counties in the SCAG region, as well as for each of the individual 191 cities located in the SCAG region. And this VMT data capture must be multiplied by all the factors currently proposed in the CEQA Guidelines (VMT per capita, VMT per household, VMT per employee, and Total VMT). Further, the City of Mission Viejo has already discussed with SCAG the need to identify other variables that may be available from the Regional Model and which may need to be culled, to be able to perform VMT analyses for projects that are not discussed in the CEQA Guidelines, such as higher education colleges and universities (student VMT data). All the VMT data that is needed to conduct VMT analyses for CEQA transportation analyses, should be completed and available to Lead Agencies, before any required implementation timeframe is established.



b) Establish VMT Thresholds and VMT Metrics for Key Land Uses Not Covered in the Technical Advisory:

The Technical Advisory addresses VMT thresholds and metrics for office, retail, and residential land uses. For all other remaining land uses, the Technical Advisory (page 14: Other Project Type) states the Lead Agencies could, using more location-specific information, develop the metrics and thresholds for land use types not addressed in the Technical Advisory.

The City of Mission Viejo does not agree with this approach. VMT metrics and thresholds for other key land uses not covered in the Technical Advisory should be discussed, considered and developed in a more comprehensive and holistic approach by state agencies, MPOs and Lead Agencies, to maintain a presence of some degree of statewide consistency in approach and application. Saddling local jurisdictions and other Lead Agencies such as educational institutions with this requirement, would impose a significant budgetary and resource impact and also effectively halt development processing opportunities while such thresholds are under research and consideration by Lead Agencies.

The City of Mission Viejo thus recommends that State OPR consider the expansion of the Technical Advisory to address VMT thresholds and metrics for key land uses not currently addressed in the Technical Advisory. These land uses could include, but not be limited to:

- Educational Facilities, including Public and Private Schools (K-12) separate from Public and Private Colleges and Universities;
- Industrial Land Uses;
- Medical Offices and Health Care Facilities; and,
- Special Land Uses such as Theme Parks, Airports, Stadiums

**City of Mission Viejo Recommendation:**

For the reasons noted above, the City of Mission Viejo recommends that new Section 15064.3(c) be amended to provide a two-year grace period for mandatory application of VMT analyses statewide, as recommended in Comments #1 and 2 above.

