



**SOUTHERN CALIFORNIA
LEADERSHIP COUNCIL**



July 20, 2018

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via electronic mail to: CEQA.Guidelines@resources.ca.gov

Deputy Secretary Calfee, Ladies and Gentlemen:

Over the course of several years, the organizations subscribing to this comment letter have previously commented on the work of both the Governor's Office of Planning and Research ("OPR") and now the Natural Resources Agency's proposals concerning Senate Bill 743 (2013). Our prior comments were specifically aimed at the proposals to label basic individual mobility as measured by vehicle miles traveled ("VMT") an environmental impact under CEQA. We remain disappointed that our comments about potential CEQA mandates concerning VMT per se have thus far resulted in no meaningful changes to your policy proposal. We write today to once again express our grave concern about the overall policy direction that the Agency's staff have been advancing concerning VMT and CEQA (the "Proposal").

Specifically concerning the VMT issue, the July 2018 version of the CEQA Guidelines revisions proposes only one small and unobjectionable change in comparison to the prior version of the Proposal. The change would defer the effectiveness of the new VMT mandate from July 1, 2019 until July 1, 2020. Because the proposed change is both modest and in the right direction, we instead utilize this opportunity to restate here briefly our objection to the Proposal's lack of meaningful changes related to VMT and CEQA. Our concerns fall into four categories, each stated here briefly as follows:

- 1) The Proposal is the overreaching product of a relatively benign delegation of legislative powers by the Legislature. Its delegation to OPR and the Agency was expressly focused on streamlining CEQA approvals in urban transportation priority areas (TPAs). In the hands of OPR and the Agency, however, the legislative delegation has grown into a proposed new, radical, statewide CEQA mandate which –

if implemented – will affect the potential developability of virtually every acre of the entire state – based not on environmental considerations, but instead based on mobility concerns alone. It will especially harm and stultify all budding and still-growing communities and unincorporated townships. As written, the Proposal now has the hallmarks of a violation of the constitutional “non-delegation doctrine,” which operates to preclude the Legislature from delegating with too little direction its power to make major policy shifts. Therefore, rather than take its quasi-legislative powers to such an extreme, the Agency should cut back on the Proposal so that it will affect the CEQA processes applicable only to projects within TPAs – consistent with the Legislature’s direction.

- 2) It is illogical and inconsistent with the history of CEQA to designate VMT occurring anywhere within the state as an “environmental impact” in and of itself. VMT is merely the unit of measure of vehicular *mobility* (whether individual, aggregate and/or per capita); and the exercise of mobility is a purely utilitarian activity in an economic sense. Indeed, mobility – of which VMT is the unit of measurement – is a benefit and a good in its own right, notwithstanding that the various modes of mobility will result in different kinds and degrees of environmental impacts or “externalities” in different surroundings. The Proposal ignores all differences in the externalities associated with different means of individual mobility, especially the major differences being caused by fleet and fuel changes and the accelerating adoption of zero emission vehicles. Simply put, mobility per se is not an environmental impact of the type that CEQA aims to have reduced to insignificance. It is unprecedented and unwise to twist CEQA’s purpose toward reducing any utilitarian activity to insignificance; and this is especially true concerning VMT because of the strong link between mobility and economic vitality.
- 3) If the Proposal were to go into effect, the financial costs of the Proposal would be crushing; and battles over the anecdotal economic infeasibility of this new mandate would arise in an overwhelming number of situations. The Agency has fallen short in terms of providing any practical information concerning the financial costs and implications of the Proposal’s implementation. Our preliminary analysis, however, based on the public presentations that have been made to date, shows that the financial costs are likely astronomical and potentially crushing to the economy statewide.

For example, we analyzed the financial cost of a particular VMT mitigation option which was recommended by Mr. Neil Peacock, a Caltrans Senior Environmental Planner, invited to present at the SB 743 public forum in Los Angeles on June 14, 2018. Specifically, we analyzed Mr. Peacock’s suggestion of an option to mitigate VMT by funding public bicycle rentals. In order to understand the financial implications of mitigation options that Mr. Peacock cited, we built upon the details of his example, and applied them to a hypothetical 240 unit apartment complex located in Orange County. (See Attachment 1 – analysis.)

The analysis estimates that it would require a financial contribution of \$814 per month for each of the 240 apartments unit to mitigate VMT consistent with the Proposal and using the mitigation option presented by Mr. Peacock. Moreover, the analysis shows that pre-funding the same mitigation obligation for the 240-residences project – as CEQA may require – would require an endowment estimated at \$46,896,000 using the mitigation option assumptions presented by Mr. Peacock.

Other possible mitigation options obviously would have a wide range of possible costs; and undoubtedly many would be substantially more affordable. But we can find no mitigation options for which the costs might be reasonable, especially given the fact that mitigation obligations will increase by degree depending on the locations of land developments. Even if mitigation options can be identified which are an order of magnitude more affordable than what results from the analysis of Mr. Peacock's suggestion, the mitigation costs would still be wildly high in most cases and would worsen California's already extreme lack of affordable housing.

The economic consequences of the Proposal are especially harsh given its mandate that all affected development must attempt to mitigate to 15% below the local average VMT. The burdens of the Proposal would not be as disastrous if the Proposal were to instead deem VMT that is above average for the locality or region to be the significance threshold for CEQA purposes. For example, considering the hypothetical 240-unit apartment project that is analyzed in Attachment 1, the per-apartment monthly cost of funding the electric bike sharing mitigation option would fall from \$814 per month down to only one-half that amount, or \$412 per month per apartment unit. (Instead of requiring a VMT reduction of 7.4 miles per day per apartment unit, the higher threshold – average VMT rather than 15% below average VMT – would be satisfied with a reduction of 3.7 miles per day.)

Even if such a favorable adjustment were made in the Proposal, the mitigation costs would still be absurdly high using our example. In our example, the pre-funding such a supposedly relaxed mitigation obligation into perpetuity would require an estimate \$23,448,000 for the entire 240-unit apartment project. This notwithstanding, the presumptive requirement to mitigate down to 15% below local or regional average is a particularly overreaching aspect of the Proposal which should be corrected. At most, the Proposal should indicate that the presumptive threshold of significance should be no lower than the city's or region's average VMT, not 15% below such average.

4) The Proposal constitutes a combination of new, immoderate policy choices laid atop the long-established, highly-evolved land use decision-making processes. It runs counter to long-established constitutional principles concerning individual mobility and prerogatives of local governments to shape communities democratically. The Proposal's application will also violate constitutional takings principles insofar as it would impose arbitrarily disproportionate burdens only on those who will need to utilize newly built housing. Especially, the Proposal's

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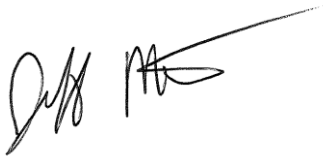
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requirement that all new housing must strive to achieve 15% less than current local averages (in terms in VMT effects) should weigh heavily when determining whether the Proposal is unduly burdensome, unfair and inequitable.

Given the nature and weight of our concerns, we remain extremely worried that the Agency might possibly advance the Proposal to completion without substantial change. We, as entities that are keenly interested in the well-being of our state's economy, know that it cannot withstand new, unbearable burdens being added to the development process. We are particularly concerned about impacts on homebuilding. We will never be able to house California's hard-pressed working families if our policymakers wield their discretion in ways that only make the housing affordability crisis worse. Thank you for giving meaningful consideration to these comments.

Respectfully,



Jeff Montejano
Chief Executive Officer
Building Industry Association of
Southern California



Richard Lambros
Managing Director
Southern California Leadership Council



**SOUTHERN CALIFORNIA
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Michael W. Lewis
Senior Vice President
Construction Industry Air Quality



Wes May
Executive Director
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ATTACHMENT 1

VMT Mitigation Option Example

Funding Electric Bike Sharing as Cited by Mr. Neil Peacock,

Senior Environmental Planner, Caltrans

■ Analysis Expended to Indicate Costs as Applied

to a Hypothetical 240-Unit Apartment Project in Orange County

On June 14, 2018, Neil Peacock, Senior Environmental Planner, Caltrans District 3, made a presentation in Los Angeles in which he espoused the potential to subsidize community bicycle sharing (which he called JUMP bike). His presentation states that JUMP Bike logged 1,800 rides in four days on 300 bikes and that the average distance on a JUMP bike is 2.6 miles. This equates to 3.9 miles per day per electric JUMP bike in utilization.

In his presentation, Mr. Peacock did not identify the costs per JUMP bike of the bicycles cited in his example. However, we identified a recent bid submitted to the City of San Mateo for such bicycles (as Social Bicycles) for 50 bikes for \$104,000 per year, or an annual cost of \$2,080 per bike. Applying the same per-bike costs to Mr. Peacock's example, the JUMP bike VMT mitigation option would cost \$533 per year for each VMT/day utilization. ($\$ 2,080 \text{ per year per bike} / 3.9 \text{ miles per average day bike utilization} = \$ 533 \text{ per year per VMT/day utilization.}$)

Theoretical Project Needing to Mitigate "Significant" VMT

Our transportation consultant analyzed a theoretical 240-dwelling unit apartment building project proposed in Orange County with an average occupancy of 2.5 people per unit, which would be home to 600 residents. For purposes of estimating the costs of potential VMT mitigation options if the Proposal were implemented and made applicable to the project, the consultants assumed a 240-unit apartment project as follows:

- The project is located within Orange County, in a region with per capita VMT of 24.7 miles per day.
- Therefore, consistent with the Proposal, the project would be presumptively determined to have a significant impact unless project VMT were 15 percent lower (i.e., 21 VMT per day).
- If the proposed project were estimated to generate 28.4 VMT per day per resident, it would exceed the target VMT by 7.4 miles per day per capita (26% of projected VMT).
- Factoring this by the residential population of 600 yields 4,400 VMT per day requiring mitigation. ($600 \text{ residents} \times 7.4 \text{ VMT per capita per day} = 4,400 \text{ aggregate VMT/day}$).
- The same number would equate to the presumptive obligation to mitigate 18.33 VMT per apartment unit per day. ($4,400 \text{ aggregate VMT/day} \text{ divided by } 240 \text{ apartment units} = 18.33$).

ATTACHMENT 1

Recalling that the analysis first set forth above shows that the cost of VMT mitigation through the funding of JUMP bikes can cost \$ 533/year per mile/day of utilization, applying such factor to the project's presumptive mitigation obligations set forth above yields the following presumptive VMT mitigation obligation costs:

- \$9,770 per year per apartment unit (18.33 miles/apartment unit/day x \$533/year/mile/day of costs = \$9,770)
- The same amount equates to a cost of \$814 per month for each apartment unit in presumptive VMT mitigation costs. (\$9,770 annual per unit mitigation costs / 12 months/year.)

Costs in Perpetuity

Because of the need to fund these annual costs each year in perpetuity, in order to comply with CEQA, an endowment or trust might need to be established and pre-funded sufficiently to generate the necessary annual revenue needed to fund the above-calculated costs. The present cost of an infinite annuity is the annual cost divided by the growth rate of the principal minus the growth rate of the annual costs. If the average growth rate of the principal is 7 percent per year and the inflation of annual costs is 2 percent per year, then the initial funding necessary is the annual cost divided by 5 percent, or 20 times the annual cost.

Therefore, if pre-funding were required for the costs that are calculated above for the hypothetical 240-unit apartment complex in Orange County, would require pre-funding of the following amounts:

- \$ 195,400 per apartment unit ((\$9,770 annual per unit mitigation costs x factor of 20 for perpetual endowment = \$195,400).
- \$46,896,000 endowment required for the entire 240-unit project (\$195,400 per unit x 240 apartment units).
- \$78,160 per individual tenant (\$195,400 per unit / 2.5 individuals per apartment unit average).

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