

## Lockey, Heather@CNRA

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**From:** Gomez, Virginia <vgomez@thetollroads.com>  
**Sent:** Thursday, March 15, 2018 9:25 AM  
**To:** CEQA Guidelines@CNRA  
**Cc:** McFall, Valarie  
**Subject:** TCA Comments on Proposed Amendments to CEQA Guidelines (1/26/18)  
**Attachments:** TCA Comments on Proposed Amendments to CEQA Guidelines Dated 01-26-2018.pdf

**Importance:** High

Dear Staff,

Attached please find the Transportation Corridor Agencies' comments on the proposed amendments to the CEQA Guidelines dated January 26, 2018. Please let me know if you have any questions or require further information.

Thank you,

**Virginia Gomez**  
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Transportation Corridor Agencies  
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## **Transportation Corridor Agencies™**

Via Email:

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

March 15, 2018

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

RE: Comments on Proposed Amendments to the CEQA Guidelines dated  
January 26, 2018

This letter provides the comments of the Foothill/Eastern Transportation Corridor Agency and the San Joaquin Hills Transportation Corridor Agency (collectively, "TCAs") regarding the above-referenced proposed amendments to the California Environmental Quality Act ("CEQA") Guidelines ("Amendments"). The TCAs are public joint powers authorities formed by the County of Orange and fifteen cities. The TCA planned, designed, financed and built 51 miles of new regional toll highways that are part of the State Highway System. Over 300,000 drivers use the TCAs' projects every day.

The TCAs submitted comments on earlier drafts of the Amendments. Those comments are incorporated by reference herein.

### **Proposed Section 15064.3. Determining the Significance of Transportation Impacts.**

The TCAs welcome the recognition by the Resources Agency that prior drafts of the Amendments would have created significant additional regulatory barriers to the timely and cost-effective delivery of mobility improvements to the people of the State of California. In particular, we appreciate the Resources Agency's recognition that the geographic and demographic diversity of California makes it not feasible or prudent to establish a "one size fits all" approach to evaluation of transportation impacts under CEQA. We applaud the decision of the Resources Agency to delete the "road diet" from the Amendments and from the Technical Advisory, and to leave discretion to agencies conducting CEQA review of road and highway projects to select the appropriate measure of transportation impact." As described in our prior comments and those of many other transportation agencies, the "road diet" and other provisions of the Technical Advisory would have a devastating impact on the delivery of mobility improvements to support the State's vibrant economy and growing population. For the reasons described in the Petition to the Office of Administrative Law by the Building Industry Legal Defense Foundation, the Technical Advisory is a regulation subject to the Administrative Procedure Act. We request that the Technical Advisory be withdrawn and that the Resources Agency comply with the California Administrative Procedure Act ("APA") requirements regarding regulation.

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We understand that the intent of section 15064.3 is to make it clear that agencies evaluating roadway capacity projects are not required to use vehicle miles traveled as a measure of transportation impacts of capacity projects, and transportation agencies will have continued discretion to select a methodology such as the Level of Service, average daily trips, and other similar measures of use of a road or highway project that are well-established in transportation planning and engineering. This approach will allow transportation agencies to utilize these methods for evaluating the transportation impacts of roads and highways and, as required by CEQA, to analyze impacts of transportation on local general plans that establish traffic delay as a measure of transportation impact. (See, e.g., CEQA Guidelines, § 15125, subd. (d).)

Unfortunately, the proposed amendment to section 15064.3(b) creates unnecessary confusion and ambiguity by adding the language **“consistent with CEQA and other applicable requirements”** to the language of the amendment. **We request that the Natural Resources Agency delete the text “consistent with CEQA and other applicable requirements”.**

The Amendments are required to comply with the standards of the APA (Gov’t Code, § 11340 et seq.). Among other requirements, the APA requires a rule “in plain, straightforward language avoiding technical terms as much as possible using coherent and easily readable language.” (Office of Administrative Law, Guide to Public Participation in the Regulatory Process (“OAL Guide”), p. 25.) “Clarity” as defined in the APA means “written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them.” (Gov’t Code, § 11349(c).) A regulation is presumed to be unclear if, among others:

- (1) The regulation has more than one meaning;
- (2) The language of the regulation conflicts with the description of its effect,
- (3) The regulation uses an undefined term which does not have a meaning generally familiar to those who are “directly affected”, and  
...
- (5) The regulation presents information in a format not readily understandable. . . .

(OAL Guide, p. 26-26.) The text quoted above (**“consistent with CEQA and other applicable requirements”**) violates the above clarity standards of the APA. The regulation does not describe what is meant by “consistent with CEQA and other applicable requirements.” CEQA is a complex statute. The California courts have issued hundreds of opinions interpreting CEQA. Many of the courts’ CEQA decisions conflict or leave considerable ambiguity regarding what is required to comply with CEQA. Similarly, there are dozens of state and federal laws governing the planning and approval of transportation projects. Without additional clarification, it is not possible for transportation agencies and the public to understand the meaning of “consistent with CEQA and other applicable requirements” of proposed section 15064.3.

The ambiguous language of proposed section 15064.3 will only confound further the material confusion and complexity of state law requirements applicable to greenhouse gas emission (“GHG”) impacts of transportation improvements. Other provisions of the Amendments (e.g., §

Christopher Calfee  
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15064.4) address the evaluation of impact of GHG emissions. California law (S.B. 375) address the evaluation of GHG emissions from transportation projects and land use included in regional transportation plans/sustainable communities strategies. As the explanatory sections of the Amendments notes several California courts have addressed the evaluation of GHG emissions impacts under CEQA, and that the law governing evaluation of GHG impacts is evolving along with state statutory requirements. The Amendments should not be adding to the complexity and confusion surrounding the ever-evolving standards regarding GHG emissions by suggesting that the discretion afforded transportation agencies in section 15064.3(c) to evaluate transportation impacts of capacity-enhancing projects is somehow constrained by state law requirements applicable to GHG emissions.

As has been well documented, CEQA compliance for major transportation projects is extremely complex, expensive and time-consuming. It is common for the compliance process for CEQA and other state and federal environmental laws applicable to major infrastructure improvements to extend for several decades with processing and escalation of costs increasing by many tens of millions of dollars. As evidence of the above statement, one need not look any further than the delays in the approval of Governor Brown's signature infrastructure projects – the High Speed Rail Project and the California WaterFix. Both projects are the subject of many years of extensive and ongoing CEQA litigation.

Finally, we request that the Resources Agency provide that the Amendments will not take effect until two years after the final approval of the Amendments under the APA.

Sincerely,



Michael A. Kraman  
Chief Executive Officer