



# Proposed CEQA Guideline for Highway Projects Promises Flexibility in the Measurement of Traffic Impacts, But Delivers Ambiguity

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In response to material opposition from many of the transportation agencies in the State, the California Natural Resources Agency has proposed to provide transportation agencies with the discretion to determine the metric for evaluating traffic impacts of highways and road projects. Unfortunately, instead of putting the issue to bed, the proposed regulation introduces considerable ambiguity that will likely lead to a CEQA challenge if any project EIR relies solely on Level of Service (LOS) to evaluate the significance of traffic impacts. The proposed regulation states:

**For roadway capacity projects, agencies have discretion to determine the appropriate measure of transportation impact consistent with CEQA and other applicable requirements.**

The language consistent with CEQA and other applicable requirements arguably creates ambiguity as to whether transportation agencies may rely solely on measures of traffic congestion such as LOS to determine the significance of traffic impacts, or whether the State's climate change legislation mandates a Vehicle Miles Traveled (VMT) analysis.

As we have previously reported, the proposed SB 743 implementing regulation represents a paradigm shift in the evaluation of transportation impacts of road and development projects, by replacing the traffic congestion-based LOS metric with the VMT metric. With VMT, the very acts of driving a vehicle or inducing vehicle travel by improving roadway infrastructure is an environmental impact requiring analysis and potentially mitigation. The proposed regulation generally removes traffic congestion from the required scope of a CEQA impacts analyses.

At a public workshop on the CEQA guidelines update held in Los Angeles on January 31, 2018, representatives from the Governor's Office of Planning and Research (OPR) explained that the proposed regulation should be interpreted to include an LOS carve-out for roadway capacity projects. OPR's stated intent is to make a VMT analysis optional for roadway capacity projects and to retain transportation planning agency discretion to rely on LOS as a measure of traffic impacts. An LOS carve-out for roadway capacity projects would allow transportation agencies to maintain and develop the State's roadway network to meet the demands of a growing a population consistent with past practice and most city and county general plans.. While the statement by OPR's representative was clear, the combination of SB 743 with OPR's proposal and recent case authority addressing the appropriate scope of a greenhouse gas emissions analysis under CEQA suggest that a VMT analysis is required to adequately analyze climate change impacts, is the prevailing standard for analyzing the significance of transportation impacts, and that for most projects a transportation significance threshold based solely on traffic delay is not relevant for CEQA purposes. Since the stated intent of the latest proposed SB 743 implementing regulation was to articulate an exception to these rules for transportation agencies, we believe that further revisions to the language would be useful.

The California Natural Resources Agency is accepting public comments on the State CEQA Guidelines update. The public comment period closes on March 15, 2018.