In the Matter of:

CEQA Guidelines Update 2018

PUBLIC HEARING

CALIFORNIA ENERGY COMMISSION
ART ROSENFELD HEARING ROOM
1516 9TH STREET
SACRAMENTO, CALIFORNIA

THURSDAY, MARCH 15, 2018
1:30 P.M.

Reported by:
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APPEARANCES

STAFF

Christopher Calfee, Deputy Secretary and General Counsel
Jeannie Lee, Senior Counsel

PUBLIC COMMENT

Ella Wise, ClimatePlan
Anna Alvarado, City of San Jose
Dan Alison
Bill Magavern, Coalition for Clean Air
Linda Khamoushian, California Bicycle Coalition
MR. CALFEE: Good afternoon everyone.

Welcome to Sacramento at the Energy Commission.

We are here today for a public hearing on the Natural Resources Agency’s proposed updates to the CEQA Guidelines.

My name is Christopher Calfee. I’m General Counsel at the Natural Resources Agency.

I’m joined by my colleague Jeannie Lee, who is Senior Counsel at the Governor’s Office of Planning and Research. We’re also joined by a court reporter, who will be transcribing the hearing.

At the top, I wanted to thank both the court reporter and the Energy Commission for providing this meeting space today.

Again, the purpose of today’s hearing is to accept oral comments on the CEQA Guidelines proposal. We will not be administering oaths, but the hearing will be transcribed and the transcript will be included in the rulemaking record.
Also, this hearing is being webcast and recorded.

We will not engage in any back and forth in this forum, but we will be taking notes on your comments and may ask clarifying questions, if necessary.

To assist the court reporter, those wishing to speak should fill out a speaker card and hand that card to one of us in the front. Speakers will be called in the order that cards are received. We will ask speakers to please state their name and affiliation for the record, and to please speak into the microphone.

Also, if you have a business card, if you could leave one with the court reporter, that would help him out.

For the purpose of allocating time, may I please see a show of hands of who intends to provide oral comment today? Okay. It looks like we can probably accommodate you within the three hour time period, so we will not be placing limits at this time. If others decide to provide comment, then we welcome that as well.

A couple of additional housekeeping details before we get started.
Emergency exits are located in the back of the room, where indicated. Restrooms are located in the atrium behind you. As you exit the hearing room the restrooms are to the left.

To avoid disruption to others, please take this opportunity to silence your cell phones. And if you have not done so already, please sign in at the sign-in sheet at the back of the room.

Before we open the floor to public comment, I will provide a very brief background on the process and the content of the proposal.

So generally, the California Environmental Quality Act requires public agencies to consider the environmental impacts of proposed projects. And if those impacts may be significant and adverse, the Agency must consider feasible mitigation measures or alternatives to avoid those impacts. That process includes the preparation of either a negative declaration or an environmental impact report and includes opportunities for the public to review and comment on those studies.

While CEQA requires study, the choice of whether to approve a project or to require
changes in the project remains with the lead agency. The CEQA Guidelines are administrative regulations that implement CEQA and provide guidance to public agencies on how to comply with the law. The Guidelines are developed by the Governor’s Office of Planning and Research and adopted through a rulemaking process by the Natural Resources Agency. CEQA requires regular updates to the Guidelines to incorporate changes in the statute and in case law.

The Governor’s Office of Planning and Research and the Natural Resources Agency began this current update in the Summer of 2013 by asking for -- asking stakeholders to provide suggestions on what updates were needed. Having collected that input, we developed a list of possible changes and again invited public input on whether we identified the right changes.

In 2015, the Office of Planning and Research released its initial draft of the update package and again invited public input. At the same time, OPR also developed several drafts of changes related to transportation and hazards. It finalized its proposal in November 2017.

After OPR finalized its proposal, the
Natural Resources Agency began this rulemaking process. It started with a formal Notice of Proposed Rulemaking, which was released on January 26th, 2018, together with the text of proposed changes and the Initial Statement of Reasons which explained the basis of those changes.

This is the second of two public hearings on the Guidelines proposal. The first was held in Los Angeles yesterday, and today is the second. The written comment period closes today at five o’clock.

Once all comments have been reviewed the Agency may make further revisions to the proposal and, if so, may seek additional input. Those who would like notice of further activity on the Guidelines should sign up for the listserv on the Natural Resources Agency’s website at resources.ca.gov/ceqa.

So I’ll give a brief summary of the content of the proposal.

This package is intended to make the CEQA process easier and quicker to implement, and also to better protect natural and fiscal resources, consistent with California’s environmental
policies. The package proposes several changes intended to result in a smoother, more predictable process for agencies, project applicants and the public.

First, the package promotes using existing regulatory standards as thresholds of significance. Doing so allows agencies to rely on the work of expert agencies without foreclosing consideration of possible project-specific effects.

Second, the package updates the environmental checklist that many agencies use to conduct their environmental review. Redundant questions in the existing checklist would be eliminated and some questions would be updated to address contemporary topics. The checklist has also been updated with new questions related to transportation and wildfire, as required by statute.

Third, the package includes several changes to make existing programmatic review easier to use for later projects. Specifically, it clarifies the rules on tiering and provides additional guidance on when a later project may be considered within the scope of an existing
Fourth, the package enhances several exemptions. For example, it updates an existing exemption for projects implementing a specific plan to include not just residential projects, but also commercial and mixed-use projects near transit. It also clarifies the rules on exemptions for changes to existing facilities so vacant buildings can be more easily redeveloped.

Finally, the package includes a new section to assist agencies in complying with CEQA, following resolution of a court challenge, and help the public and project proponents understand the effect of a remand on project implementation.

In addition to those efficiency improvements, the package also includes a number of changes related to environmental protection. Those changes include guidance regarding energy impacts analysis by addressing not just building design, but also transportation equipment use, location, and other relevant factors.

Second, the package proposes guidance on the analysis of water supply impacts, as was set out in the California Supreme Court’s decision in
Vineyard Area Citizens for Responsible Growth.

That analysis requires looking at a proposed project’s possible sources of water supply over the life of the project and the environmental impacts of supplying that water to the project.

Third, as directed by the legislature, the package includes a new section addressing evaluation of transportation impacts. This new update will focus on vehicle miles traveled, instead of on congestion, which should promote project designs that reduce the need for automobile travel.

Finally, the package includes a number of technical changes responding to recent cases and statutory changes. For example, one of the changes clarifies when agencies must consider the effects of locating projects in hazardous locations. Other changes address changes in case law dealing with greenhouse gas emissions, as well as when it’s appropriate to use future conditions for a project baseline. There are many other technical changes in the package.

So this concludes the background portion of the presentation, and we’ll now open the hearing to public comments. I believe we have at
least one person who would like to speak and, if
so, would you please come up to this podium here.


My name is Ella Wise and I’m the State Policy
Associate with ClimatePlan. We’re a statewide
network of more than 50 organizations working to
support more sustainable and equitable
communities. Our comments are in regards to the
transportation impacts, and some of the comments
are regards to OPR’s technical advisory, which I
realize are separate from these Guidelines, but
we’ll take the opportunity to comment on those,
as well. We have submitted a letter with more
than 15 signatures of different organizations
that we’ve very recently submitted.

So first of all, thank you so much for
your work. This has been a long process and it’s
innovating new policy and a real paradigm shift.
And thank you so much for the technical work and
public outreach that’s gone into developing the
Guidelines.

We are in strong support of the statewide
replacement of level of service with vehicle
miles traveled, as you probably know. And we’re
in strong support of much of the Guidelines,
including preference for active transportation projects, transit-oriented development, consistency with sustainable community strategies, and the clarification -- (Microphone stops working.)

MS. WISE: Thank you for the clarification to discourage roadway capacity expansion in the name of safety, so thank you for those.

That said, we do have some recommendations. We’re very concerned that the Guidelines exempt roadway capacity projects from using the VMT metric. With the proposed rulemaking, the state has determined that the best approach to examining transportation impacts is VMT, and yet at the same time the state exempts roadway capacity projects which arguably have the greatest impact.

So to close this loophole, we recommend that Caltrans commit to applying the VMT metric, including induced VMT analysis when they are responsible -- when they are the responsible agency. And I realize, again, that you’re not Caltrans hosting this, but I want to make that recommendation clear.
Our second recommendation is to strengthen the VMT threshold over time to align with long-range climate goals. So a lot of thought and consideration went into the recommended VMT threshold. But as our climate needs change and our climate goals change and the technical advisory and the scoping plan change, we’d like to see the state commit to updating the VMT threshold over time to be consistent with the scoping plan goals for VMT reduction.

Third, we recommend reducing the risks of gentrification and displacement, so I want to make clear that we think the replacement of LOS with VMT will help advance social equity, but we want to reduce any displacement risks, and we have two specific recommendations for the technical advisory to do so.

One is to streamline affordable housing -- 100 percent affordable housing in infill locations consistent with SB 226 and existing streamlining.

And the second specific recommendation is more in regards to anti-displacement, and that is to not streamline or add to the exemptions of presumption of less than significant projects.
that result in a net reduction of affordable
rental units, so that we’re not streamlining
projects that result in displacement.

And fourth, we commend regularly
monitoring the implementation of these
Guidelines, as well as OPR monitoring the
technical advisory, as so much work has gone into
this with staff, as well as stakeholders across
the state. We’d like to make sure that these --
that the Guidelines are working, and to recommend
concrete changes if not. And it seems that OPR’s
annual planning survey could be a great
opportunity for that monitoring, particularly on
the roadway capacity measurements.

Thanks very much.

MR. CALFEE: Thank you for your comment.
I believe we have another speaker.

MS. ALVARADO: Good afternoon. My name
is Anna Alvarado and I’m here today representing
the City of San Jose. Thank you all for the hard
work you and OPR have done on the CEQA
Guidelines. The outreach opportunity to work
with OPR staff has been outstanding, so thank
you.

As the fourth and largest city to adopt a
VMT-based CEQA standard, San Jose has dug deep into the effects of this proposed change. The proposed Guidelines are very strong and move the state in the right direction on achieving climate action targets, increasing livability and access, and really beating our affordable housing crisis. We ask that you pass them with one change.

We respectfully ask that the exclusion for transportation projects that induce VMT be removed. We believe all projects should be measured by the same fundamental metric, a per capita VMT-based metric that uses appropriate reduction targets at this threshold. This fundamental metric should apply to all projects, including transportation projects that reduce VMT and land use projects, no matter where they are or if they are reuse projects. We are concerned that suggestions, like ITEs, to only apply VMT to certain areas of a city would lead to confusion, added CEQA burden on infill projects, and open cities up for litigation.

We have provided further comments in our joint letter with Los Angeles, San Francisco, Long Beach, Oakland and Sacramento. And we definitely look forward to continuing to work...
with you on implementation of SB 743.

Thank you.

MR. CALFEE: Thank you for your comment.

It looks like we have another speaker.

MR. ALISON: My name is Dan Alison. I’m a citizen, not representing an organization. And I would like to speak today specifically about 15064.3(b)(2), the exemption for transportation. I believe that it is wrong. The rest of the document is wonderful. It really will help move things along for infill development and reduce the prevalence of greenfield development, and that’s all to the good. But the problem is, is transportation drives greenfield development, rather than greenfield development driving transportation. And if we exempt transportation, we’re still going to get a lot of greenfield development.

Specifically, the -- it doesn’t do anything to reduce transportation VMT. It allows an agency to use anything it wants. And I am certain that almost every single agency in this Sacramento region where I live will not use VMT. They’re locked into level of service and love it. And even a discussion about a possible change to
VMT had them up in arms. They like things the way they are and they will not change, unless they’re forced to change. Possibly two cities in this region will, all the counties will not, all the rest of the cities will not change. They’ll continue doing the same thing they’ve always done.

And, sure, a request a Caltrans to use VMT instead of level of service is a great thing, but a lot of the projects happen at a more local level, at the region, county and city level.

Capacity expansion is exactly the problem. Most of our greenhouse gas emissions are from transportation, or at least it’s the biggest single source. And if we allow capacity expansion without, apparently, any limits, nothing good will come out of this. Nothing else that we can do encourage infill and reduce greenfield will counteract that. Transportation is the issue. And I think it was the original intent of the legislators to make sure that level of service was no longer used for transportation projects, and I’m very disappointed to see this exemption in there.

Thank you for your time.
MR. CALFEE: Thank you for your comment. It looks like we have another potential speaker.

MR. MEGAVERN: Good afternoon. Bill Magavern with the Coalition for Clean Air. I’m here to speak on the transportation impacts Guidelines which implement SB 743, which I believe was passed four-and-a-half years ago as part of a package that also included an effort to streamline the construction of a downtown arena. The arena has now been open for a year-and-a-half, so I think it’s well past time to get these Guidelines into place.

We do support them on the hole. Most of our work at Coalition for Clean Air is addressed at reducing emissions from transportation. And that’s because over 80 percent of the air pollution in the state of California comes from mobile sources of pollution, primarily both personal and freight transportation. And in order to actually reach both our air quality and climate standards we need to reduce vehicle miles traveled, and that’s something that the state has not been doing well at, at all.

In fact, I was at an event recently where
Governor Brown addressed the 50th anniversary of the Air Resources Board. And he noted that after he had called for a 50 percent reduction in petroleum used in cars and trucks, actually, petroleum use in cars and trucks has gone up. And that’s primarily -- well, it’s really entirely due to the increase in vehicle miles traveled. We’re making some progress in cleaner engine technologies. We’re making a little bit of progress in cleaning up fuels. We’re not really making progress on reducing VMT.

So these Guidelines will help with that. They certainly weren’t -- won’t solve the whole problem, but they’re a piece of the solution in changing this perverse level of service criterion that actual has been a disincentive to infill development and an incentive to sprawl-inducing development.

We do not support the highway exemption at all. We think that is a very bad idea that goes contrary to the entire thrust and purpose of these Guidelines, so we hope that that can be fixed. But on the whole, we’d like to see these actually go into practice.

Thank you.
MR. CALFEE: Thank you for your comment.

Dan Alison. Oh, got it. Thank you.

A few people filtered into the room after we got started. Is there anyone else who would like to provide oral comment?

MS. KHAMOUSHIAN: Good afternoon. Linda Khamoushian with the California Bicycle Coalition here today to echo and reiterate some of the efforts and comments that our colleagues have made here today, particularly to mention that, you know, we’re a coalition of, you know, a dozen, over a dozen organizations that have signed a letter to really take a moment to address, you know, some of the concerns. And so I’ll just give a summary again of what my colleague Ella has already mentioned.

So thanks again for the Guidelines. I think, you know, coming from an urban planning perspective, this is a huge shift in the work that we do, so it’s exciting, but also, the Guidelines are so critical to make that transition smooth.

And so, you know, looking at our recommendations again here, it’s -- we really want to see -- to apply the VMT-based approach to
all projects. This exemption is something we
want to understand, you know, how we can address
this issue for the highway exemption.

Strengthen the VMT threshold over time to
align with the long-range climate goals. In all
the efforts that we do in different policy areas,
we really want to see a coordination among
helping the state reach its goals and what is
already aligned, so we’d really like to see that
strengthened in these Guidelines. Advancing the
components of social equity is really critical to
not displace people in the process of making this
transition and implementing this new method.

One of the ways that we can see
improvements along the way is that if we can
strengthen the Guidelines in respect to how to
monitor the implementation as we see the results
going forward. And again, to reiterate,
clarifying how to determine consistency with --
at the SES (phonetic).

Lastly, clarification of how to determine
low VMT areas in map-based screening approaches.

And if there’s any other questions or,
you know, ways that we can work with you to help
strengthen these Guidelines, we would be
available for that.

Thank you.

MR. CALFEE: Thank you for those comments.

We have plenty of time, if anyone else would like to offer any written -- or, excuse me, oral comments. Okay.

If no one else would like to speak at this time, I’ll move on to the closing portion of this hearing with, first, a thank you for those who logged in and for your interest. Thank you for those in the room and for all of the speakers. I really appreciate your participation in this process.

The written comment period is open until five o’clock this afternoon. Written comments are encouraged to be submitted electronically to cega.guidelines@resources.ca.gov. And again, five o’clock is the comment deadline for that.

Those of you who may be viewing online, I realize you didn’t have a chance to speak to this room, but if you would like to submit your comments, please do so through the -- through an email submission.

Once the comment period closes this
afternoon, we will -- staff will be reviewing all
of the comments that are received and will decide
whether any additional revisions to the
Guidelines are needed. If so, we may make some
revisions and ask for additional public comment.

So again, those who would like to stay
tuned into the latest activity on the CEQA
Guidelines should sign up on the agencies
listserv, and that's available at the agency's
website, resources.ca.gov/ceqa.

So if there are no other public comments,
I'll close the public hearing. Thank you very
much everyone.

(The public hearing concluded at 1:55 p.m.)