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September 30, 2014

Christopher Calfee, Senior Counsel
Governor's Office of Planning and Research
1400 Tenth Street
Sacramento, CA 95814

Re: R.E.A.L. Coalition Comments: OPR SB 743 Draft Guidelines

Dear Mr. Calfee,

On behalf of the Regional Economic Association Leaders of California (R.E.A.L.)—an association of 21 of California's most influential business and economic development organizations, representing more than 11,000 employers providing more than three million jobs across the state—please find the below comments on and recommendations to the Office of Planning and Research's (OPR) draft proposals to the California Environmental Quality Act (CEQA) Guidelines, pursuant to Senate Bill 743's implementation.

At the outset, we want to restate our deep and categorical commitments to sustainable growth, realistic greenhouse gas (GHG) emissions reduction and combating the effects of climate change. We also want to reaffirm our support for the original goals set forth in CEQA and California's landmark Global Warming Solutions Act of 2006 (Assembly Bill (AB) 32), which has proven to be the nation's most aggressive attempt to reduce GHG emissions and combat the effects of climate change.

However, we also understand the need to promote smart, sustainable growth and reduce GHG emissions in a way that both minimizes costs and maximizes the environmental and economic co-benefits to California, as is explicitly called for under AB 32. And so, as you continue your rulemaking process under the rubric of SB 743's goal to streamline CEQA for infill projects, we exhort you to account for the state's critical real estate, construction and development industries – which together support 104,270 establishments and 884,100 direct jobs throughout California with a payroll of approximately \$47.5 billion (2012) – and the critical roles these industries play in growing California's job and tax base, as well as providing affordable housing for our state's growing population.

Therefore, we offer the following comments on the recently released OPR proposed draft guidelines (the Proposal):

OPR Proposal Severely Departs from SB 743's Stated Policy Goals

The Proposal inexplicably fails to incorporate the parts of SB 743 that are designed to streamline CEQA for some infill projects in some locations (e.g., eliminating aesthetics, parking, and auto mobile delay as CEQA impacts for such projects). Even more inexplicable, given the Governor's repeated support for efforts to reform and streamline CEQA, the Proposal endeavors to dramatically expand CEQA by mandating evaluation and mitigation of

"vehicle miles traveled" (VMT) as a new CEQA impact – and, still more confounding, single-out certain infill projects as the first category of projects that must comply with this new VMT regime before it becomes mandatory for all projects in 2016. OPR's VMT proposal goes far beyond CEQA's statutory scope by recommending mitigation measures that delve into *ultra vires* socioeconomic issues, undermine regional and local GHG reduction plans, attempt to erode local agency constitutional land use policy authority, and increase the cost, complexity and litigation uncertainty already inherent in CEQA.

In sum, we believe that OPR's Proposal is counterproductive to SB 743's stated goal of streamlining CEQA for infill projects, and is a clear departure from the Governor's support for CEQA streamlining.

OPR Proposal will seriously hamper infill development throughout California

California's CEQA regulations are regularly hijacked for "non-environmental" reasons, and these non-environmental abuses of the statute have greatly hampered infill development throughout the state. Without reform and bona fide infill [CEQA] streamlining, CEQA will continue to serve as a "lightning rod" for those merely opposing development – rather than seeking environmental protection. As Governor Brown succinctly put it, "CEQA reform is the Lord's work." And so, OPR needs to be at least singing from the same hymn book.

For these reasons, we strongly oppose the Proposal, and we offer the following five (5) comments and alternative approach recommendations.

1. Absence of cost-effective VMT models

The Proposal provides that a "development project that results in [VMT] greater than the regional average for the land use type may indicate a significant impact." Despite the fact that VMT would play a significant role in the CEQA process for infill development, there are few, if any, models that purport to accurately characterize VMT at a project-specific level for infill projects. The absence of such models will lead to increased study costs and litigation uncertainty as development opponents will have a new tool to use in CEQA lawsuits aimed at stopping or delaying a project.

Alternative Approach: OPR should partner with regional and local entities to develop VMT models that are effective at a project-level basis. This should occur prior to instituting the new mandates – to prevent an increase in study costs and litigation due to uncertainty.

2. No level of service relief

SB 743 eliminates automobile delay – most commonly measured through levels of service (LOS) – as a CEQA significant impact for projects located in transit priority areas. However, SB 743 does not eliminate the need to evaluate and mitigate for LOS impacts under CEQA – and the Proposal does not purport to substitute VMT for LOS. Without this substitution, infill developments will remain beholden to LOS, in addition to the new VMT requirements.

Alternative Approach: OPR should remove mandates for LOS analysis in areas where VMT is in use. This will ensure that projects do not have to engage in both a LOS and VMT analysis, which merely increases CEQA regulations rather than streamlining the process for infill development.

3. Neither LOS nor VMT should be applicable to infill projects in Transit Priority Areas

By its very nature, infill development in Transit Priority Areas is unique – and different than development in suburban contexts – in that it increases density and thus reduces distances between locations. As such, these types of projects should trigger a presumption of reduced: number of trips, trip lengths, and miles traveled. Because neither LOS nor VMT properly compare infill developments in Transit Priority Areas to similar developments in suburban contexts, they are unable to recognize this key distinction.

Alternative Approach: For infill projects in Transit Priority Areas, establish a non-rebuttable presumption in-and-of-itself that number of trips, trip lengths, miles traveled, etc., would be reduced. Thus, eliminate the requirement

for automobile traffic analysis entirely. Alternatively, develop a methodology that estimates business-as-usual trip generation characteristics of a project, then reduces these numbers based on internal trip capture, pass-by, transit, walking, biking, proximity to nearby uses, etc. that occur due to the infill. If this reduction does not meet a particular threshold – say a 40 percent reduction – then traditional mitigation measures, such as bike parking, bike infrastructure, and car-sharing can come into play.

4. The Proposal undermines and usurps the authority of local land use controls

The Proposal effectively converts project-level CEQA review into a regional land use planning process. It undermines the SB 375 planning framework with a VMT regime that has planning implications that go far beyond CEQA's existing framework. The Proposal's mitigation mechanisms include: "increasing access to common goods and services, such as groceries, schools, and daycare," "incorporating affordable housing into the project," and "improving the jobs/housing fit of a community." This regime would apply on a project-level basis, regardless of the regional planning decision made in the overall SB 375 or local general plan framework. Decisions on these planning priorities should reside at the local level, to ensure that residents have the opportunity to effectively define their own communities.

Alternative Approach: *OPR should not seek to identify local priorities on important land use and planning issues. Instead, projects should be judged on their consistency with SB 375. This approach is not only more pragmatic than utilizing the Proposal's mitigation mechanisms, but also will reduce litigation and streamline infill development.*

5. No ease in CEQA's litigation uncertainty

Despite the Governor's direction, the Proposal does not address key litigation issues – rather it provides the specter of additional CEQA lawsuits. As an example: when evaluating the VMT impact that is required to be mitigated to a level below some VMT regional norm, what should a project-level VMT model assume by way of employment over time for future residential unit occupants? How should a developer attempt to address future market conditions and evolving life cycle conditions? Addressing these questions requires quite a lot of supposition, bordering on sheer conjecture. CEQA currently requires that projects estimate transportation trip rates, done through estimating GHG emissions by layering on further variables – e.g., destinations and destination length, by transit mode. Instead of reducing the need for guesswork, the Proposal merely add another layer of speculation to EIRs, which will naturally lead to additional litigation by those opposed to infill development.

Alternative Approach: *California should ban litigation based on VMT until and after VMT models, metrics and mitigation measures have been developed and pilot-tested. Additionally, following VMT model testing, OPR should then develop an update to the Proposal that provides practical, pragmatic, and litigation-ready standards for stakeholders.*

In conclusion, the R.E.A.L. Coalition thanks OPR and its staff for their work on the Proposal. However, despite OPR's best efforts, the Proposal *will not advance* OPR's stated (SB 743-mandated) goal to remove unnecessary and cumbersome roadblocks to development. For these reasons, we strongly oppose the Proposal, offer the above suggestions and recommend that California develop new guidelines based upon the following three pillars:

- First, CEQA should complement – not duplicate and/or completely replace – existing laws.
- Second, CEQA should not require analysis of projects that already comply with approved plans for which EIR has already been completed.
- Third, reform should prevent lawsuits from being filed for failure to comply with CEQA's procedural requirements. (In all cases, local governments and other lead agencies would continue to retain full authority to reject projects or to condition project approvals and impose additional mitigation measures, consistent with their full authority under law other than CEQA.)

Unless reconsidered, OPR's proposed CEQA Guideline changes will lead to more confusion, increasing litigation risk for infill development, and harm efforts to build the developments that will revive our cities, build the homes our neighbors need, and create the good paying jobs all of California so desperately needs.

We hope that you will fully engage our coalition and reasonably consider the above recommendations to ensure that the SB 743 rulemaking process and implementation are thoughtfully structured in a way that strengthens our state and regional economies, and continues to significantly lead the way in improving not just the state's, but the world's environment.

Sincerely,



Lucy Dunn
President & CEO
Orange County Business Council



Carl Guardino
President and CEO
Silicon Valley Leadership Group



Ron Addington
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Bill Allen
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cc: Governor Jerry Brown