

Misleading Attacks On California's New Transportation Analysis Under CEQA | 1

Last year, the California legislature [passed](#) badly needed reform to change how agencies evaluate a project's transportation impacts under the California Environmental Quality Act (CEQA). The Governor's Office of Planning and Research (OPR) was tasked with coming up with new guidelines for how this analysis should be done going forward. As [I blogged about](#), the [new proposed transportation metric](#), vehicle miles traveled (VMT), will inherently benefit infill projects and punish sprawl projects, because infill by its nature decreases VMT.

But you would never know that if you just read the [misleading diatribe](#) against the new guidelines by the influential large law firm Holland & Knight. Right off the bat, Holland & Knight attorneys get it wrong on both the legislation and the guidelines:

OPR proposes to dramatically expand CEQA by mandating evaluation and mitigation of "vehicle miles traveled" (VMT) as a new CEQA impact and 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.

In fact, the opposite is true. The guidelines essentially exempt any project within a half-mile of transit — or in areas that are below the regional average VMT levels — from *any* transportation analysis under CEQA. And lest you think that's a small area, keep in mind that almost the entirety of urban Los Angeles is within a half-mile of a high quality transit stop, due to the extensive bus network.



A little less of this, please

What OPR is actually doing is eliminating the existing "level of service" (LOS) transportation analysis (which basically means auto delay) from CEQA in infill areas first and statewide by 2016. OPR is then replacing it with a VMT study requirement only in areas with high average VMT. Projects in low average VMT or transit areas either won't need to do any transportation study whatsoever or won't need to mitigate at all. That hardly equals an "expansion" of CEQA. Furthermore, the 2013 CEQA legislation specifically required OPR to come up with a replacement for LOS and called out VMT as the most likely substitute.

Holland & Knight attorneys then attempt to scare infill developers and their advocates by claiming that the new metric will lead to additional litigation. First of all, as mentioned, most infill projects won't even need a transportation analysis under CEQA anymore, eliminating expensive and contentious traffic studies. Second, these traffic studies already trigger litigation all the time under the existing LOS transportation analysis, so it's not like these guidelines are ruining the wonderful world for infill under the status quo. And finally, and most importantly, the OPR guidelines make lead agency decisions as bulletproof as possible on how to analyze transportation impacts under the new metric. How? By giving lead agencies discretion to pick the VMT model of their choice and to use their professional judgment in applying it to projects. LOS analysis certainly doesn't have that kind of legal protection, as traffic studies are challenged all the time based on their methodology and assumptions.

But Holland & Knight attorneys protest that lead agencies lack affordable and easy-to-use VMT models, leading to more uncertainty:

[I]t must be acknowledged that we have few, if any, models that purport to be able to accurately characterize VMT at a project-specific level for infill projects. The absence of such models will lead to increased study costs (at a minimum) and litigation/enforcement uncertainty as "NIMBY" opponents will have a new tool to use in CEQA lawsuits aimed at stopping or delaying a project.

The reality is that agencies around the state are using off-the-shelf VMT models all the time, most notably for local climate action plans and for regional plans under SB 375. This is not a new field, and dozens of models exist for lead agencies to use their discretion to use.

Finally, Holland & Knight attorneys complain that the measures required to mitigate high VMT levels "go beyond CEQA's statutory scope and delve into socioeconomic and land use policy planning issues that the legislature has repeatedly declined to include in CEQA." I

disagree. OPR's suggested mitigation measures are sensible and targeted to reducing VMT, such as by improving access to transit, providing transit passes and bike-sharing, and reducing or unbundling parking. Ultimately, how else could a project with high VMT mitigate this impact? The goal here, after all, is to reduce driving and to use CEQA as a tool to encourage that reduction where feasible.

It's unfortunate that Holland & Knight attorneys are attempting to spread this misinformation to their clients and beyond. The state needs to leave behind the old framework of prioritizing autos over transit, bicycling, and walking. At the same time, CEQA should require sprawl project developers to account for their impacts on regional traffic and air pollution. VMT is the most sensible metric to accomplish these goals, and OPR's guidelines are well thought out, with opportunity for continued refinement from stakeholder input. Yes, it will involve a new framework and some getting used to. Yes, LOS will still exist in some local plans and agency analyses. But this is the beginning of a long overdue transition, and Holland & Knight should cease with the misinformation and let the state move forward.