



COMMUNITY DEVELOPMENT
DEPARTMENT

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May 18, 2012

CEQA Guidelines Update
Governor's Office of Planning and Research
c/o Christopher Calfee
1400 Tenth Street
Sacramento, CA 95814

RE: City of Sacramento Comments on Draft SB 226 CEQA Infill Streamlining Guidelines

Dear Mr. Calfee:

On behalf of the City of Sacramento, we would like to express our appreciation for the work that OPR has done to help streamline the environmental review of infill projects. Enclosed are the City comments and questions related to the current draft of the SB 226 guidelines.

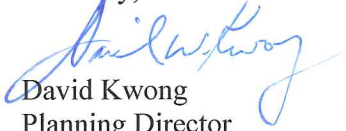
Our most significant concern is the Performance Standard that requires renewable energy for all infill projects. We believe this effectively undermines the effort to encourage infill development. While a worthy goal, this will increase the cost of infill development during difficult economic times and infill development remains a costly and difficult endeavor. Furthermore, requirements for renewable energy listed (e.g., wind power, solar thermal, etc.) are not in the legislation. If the goal is to encourage infill development by streamlining the process and thus reducing cost and uncertainty, this provision runs contrary to this. The California Energy Commission (CEC) already has plans to update the building code to implement mandatory zero net energy standards for residential projects by 2020, and 2030 for commercial projects; and the 2013 building code update is anticipated to contain significant improvements to energy efficiency. Requiring such aggressive measures now given the current market conditions and the difficulty of doing infill development in California undermines the benefits of the CEQA streamlining

Our second concern is that the checklist requires a lot of information and in some cases substantial evidence yet the SB 226 CEQA streamlining measure do not appear to change the vulnerability of the environmental documents for infill projects as is the case with the Sustainable Communities Environmental Assessment (SCEA). Our understanding is that after the Appendix N checklist is prepared and the NOD is filed, the environmental review of the project is still subject to challenge under a "fair argument" standard; whereas, under the SCEA, a reviewer must provide substantial evidence refuting the decision. Given this situation, many infill projects will simply continue to prepare EIRs. While we are unsure whether you can provide greater protection as part of the SB 226 process, we hope that you can investigate this option.

cc: Max Fernandez, Director, CDD
Lezley Buford, Manager, CDD Environmental Services
Tom Buford, Senior Planner, CDD Environmental Services
Desmond Parrington, CDD Infill Coordinator

We appreciate your consideration of our comments and if you have any questions or need any additional information, please contact Desmond Parrington, Infill Coordinator, at (916) 808-5044/ DParrington@cityofsacramento.org or Lezley Buford, Environmental Services Manager, at (916) 808-5935/ LBuford@cityofsacramento.org.

Sincerely,



David Kwong
Planning Director

City of Sacramento
Comments/Questions Related to SB 226 Guidelines
CEQA Streamlining for Infill Development

- Appendix M, Section II – Definitions. It is critical that Metropolitan Planning Organizations or transit agencies be able to provide cities and counties with the type of data and maps necessary to identify areas with low per capita VMT as well as areas designated as high-quality transit corridors. Many jurisdictions including our own may not have the staffing or resources to prepare that information.
- Appendix M, Section II – Definitions. It may be helpful to planning staff in smaller jurisdictions to define “prior EIR.” Many EIRs become outdated after a couple years and it may be useful to note that these are relatively recent EIRs in order to avoid the problem of staff or a developer referencing a 10-year old EIR.
- Appendix M, Section III - Performance Standards Applicable to All Projects. The City recommends that OPR remove the performance standard for renewable energy for all infill projects as this increases the cost and complexity of infill projects. The California Energy Commission will be updating the building codes to incorporate greater energy efficiency standards including in 2020 a requirement for net zero energy. Coupled with the increased CalGreen requirements that will come out in 2014, there does not appear to be a need to include this in Appendix M.
- Appendix M, Section IV – Performance Standards by Project Type, C - Office. Why is a standard of ¼-mile used for office, but the standard of ½-mile from a transit station applies to all other uses?
- Appendix N, Evaluation of the Environmental Impacts of Infill Projects. Under section 8, this states that the lead agency may prepare a Mitigated Negative Declaration or a Negative Declaration depending on the whether there any impacts and if those impacts can be mitigated. Shouldn't it also include a Sustainable Communities Environmental Assessment (SCEA) if the project is a Transit Priority Project?
- Appendix N, Checklist. For the actual checklist, we would recommend separating “Less than Significant” from “Less than Significant with Mitigation Incorporated”. This makes it confusing for the public as they won't easily know whether the issue checked actually required mitigation or whether the impact was simply less than significant.
- General Comment. As contained in Section 21155.2 (7) which covers the SCEA, we would recommend that the CEQA Streamlining proposed under SB 226 utilize the substantial evidence standard for review rather than the fair argument standard. A “fair argument” is the standard of review for Negative Declarations and Mitigated Negative Declarations. Without a change to the standard of review, it is unlikely that many infill projects will risk using the much of the SB 226 pathway (e.g., Appendix N and filing an NOD). Instead, they will likely prepare an Infill EIR, which despite the streamlining contained in SB 226, remains an expensive and time-consuming process.