

From: Josh Mukhopadhyay, Goldfarb & Lipman

Subject: SB 226 Comments

To whom it may concern,

Our comments center around the issue of SB 226's added utility over existing CEQA exemption/streamlining provisions. Pages 7-9 of the narrative explanation include a table comparing existing exemption/streamlining provisions with potential SB 226 streamlining. We noticed that these tables do not include comparisons to the categorical infill exemption or the program EIR option.

We prepared the attached table for an internal discussion of the proposed SB 226 guidelines, as a means to identify and highlight the potential advantages. We believe that it would be helpful for OPR to consider all existing exemption/streamlining provisions while it formulates the new guidelines required under SB 226 so that the final product is more likely to provide the additional relief the statute seeks to create for infill project environmental review.

Thank you for your consideration.

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**Table 1  
Comparison of Existing Exemptions to SB 226**

	Statutory Exemption (15195)	Streamlining Under SB 226	Categorical Exemption (15332)
Project Type	Only Residential and Mixed Use	Residential Commercial/Retail Public Office Buildings Transit Stations Schools	No restriction
Project Size	Under 4 acres Under 100 units	No limitation	Under 5 acres
Infill Project Location	Large Urban Areas (population >100,000) Previously developed site or surrounded 75% by urban uses and 25% by previously developed uses; within ½ mile of transit stop	Incorporated cities of any size and dense unincorporated islands Previously developed site or surrounded 75% by urban uses	Incorporated cities of any size Site substantially surrounded by urban uses
Time Period for Planning Level Review	Within 5 years of Project	No limitation provided that new effects of the project would need to be analyzed.	No limitation
Plan Consistency	Requires consistency with General Plan and Zoning	Project may include general plan amendments or zoning variances, provided that new effects would need to be analyzed.	Requires consistency with General Plan and Zoning

	Statutory Exemption (15195)	Streamlining Under SB 226	Categorical Exemption (15332)
Public Review	None	None if all effects were previously analyzed or substantially mitigated by uniformly applicable development policies; otherwise streamlined.	None
Substantive Environmental Requirements	<ol style="list-style-type: none"> <li>1. Lengthy list of environmental conditions to be met (not including traffic)</li> <li>2. 5-10% affordable</li> <li>3. Density and other requirements</li> <li>4. Can't be used if actual impacts</li> </ol>	<ol style="list-style-type: none"> <li>1. Consistency with APS/SCS.</li> <li>2. Plan-level EIR must have analyzed all impacts; or mitigable with uniform policies</li> <li>3. Meets performance standards.</li> </ol>	<ol style="list-style-type: none"> <li>1. No significant impacts related to traffic, noise, air quality, or water quality</li> <li>2. Sites must have no value for endangered/rare/threatened species and be adequately served by all required utilities and public services</li> <li>3. Can't be used if actual impacts; historic, hazmat, scenic highways</li> </ol>

**Table 2  
Comparing Existing Streamlining Mechanisms with SB 226**

	<u>Tiering</u>	<u>Master EIRs</u>	<u>Section 21083.3</u> (Consistency with GP or <u>Zoning</u> )	<u>Streamlining Under</u> <u>SB 226</u>	<u>Program EIR</u>
Time Limit on Prior EIR	None	5 Years	None	None	None
Plan Consistency	Requires consistency with General Plan and Zoning	Silent	Requires consistency with General Plan and Zoning	Project may include general plan amendments or zoning variances, provided that new effects would need to be analyzed	Silent; however, amendments to plan-level documents would normally not be within scope of Program EIR
Project-Level Description	Not required in first-tier EIR	Projects relying on the Master EIR must have been specifically identified	Not required in general plan or zoning EIR	Not required in EIR for a planning level decision	Not required in Program EIR, but project must be within scope of project covered by Program EIR
Project Contribution to Cumulative Significant Effects	Additional EIR required for projects that contribute to the significant effect identified in the first-tier EIR	Analysis does not need be repeated at the project level	Analysis does not need to be repeated at the project level	Analysis does not need to be repeated at the project level	Analysis does not need to be repeated at the project level

	<u>Tiering</u>	<u>Master EIRs</u>	<u>Section 21083.3</u> <u>(Consistency with GP or</u> <u>Zoning)</u>	<u>Streamlining Under</u> <u>SB 226</u>	<u>Program EIR</u>
Document Containing Programmatic Analysis	An EIR prepared for a program, plan, policy or ordinance	A Master EIR specified projects	An EIR for a comprehensive general plan amendment or zoning code	An EIR for a planning level decision, as well as any supplements or addenda thereto	An EIR prepared for a series of actions that can be characterized as one large project and are related; typically for general plan and RDA adoption
Effect of Development Standards	Can be used as thresholds of significance in an analysis, but not conclusively	Can be used as thresholds of significance in an analysis, but not conclusively	Can be used to address peculiar effects of the project, only if adopted by a city or county with a finding that the standard will substantially mitigate the effects of future projects	Can be used to address either new specific effects or effects that are more significant than previously analyzed, provided the finding is made at project approval	Silent; project must incorporate all mitigation measures specified in Program EIR