



February 23, 2012

CEQA Guidelines Update
c/o Christopher Calfee
1400 Tenth Street
Sacramento, CA 95814

Re: Comments on SB 226 Guidelines

On behalf of the Natural Resources Defense Council, which has over 1.2 million members and online activists nationwide, more than 250,000 of whom live in California, we present these comments on the SB 226 draft Guidelines released by the Governor's Office of Planning and Research last month.

We believe the overall approach to determining which infill projects should receive streamlining benefits is sound. Basing a project's environmental impact on its overall regional context, and its density, is consistent with the academic literature on the relationship between land use, transportation and travel behavior. Throughout the Guidelines, projects of all types are encouraged to be in low-VMT areas, proximate to transit, and in walkable areas. This contextual approach allows a focus not only on projects that will likely have beneficial environmental impacts, but also to account for the benefits projects can have *on existing surrounding uses*. Both sets of benefits are important to consider.

Part of our overall approach to analyzing the Guidelines is an understanding that they are to provide a benefit, a comparative advantage, to good infill projects. The Guidelines do not forbid any projects; they simply reward projects that will help the environment. Therefore, concerns about specific elements of the Guidelines do not mean that we propose prohibiting development, but rather, that we do not believe the location or the nature of the project deserves special consideration or benefit.

Below, please find our comments on specific elements of the Guidelines. These comments are made to encourage further refinement of what we believe, again, is an essentially sound approach to determining which projects should receive streamlining under SB 226.

SB 226 Should Only Encourage Residential Projects in Areas with Below Average VMT

Unless VMT growth is reversed, California's transportation sector will never reduce its contribution to the state's greenhouse gas emissions to 1990 levels by 2020, as called for in AB 32. Continued VMT growth can nullify the environmental benefits of cleaner cars and lower-carbon fuels. The importance of changes to land use and transportation planning were recognized in AB 32 and enshrined in SB 375.

SB 226 should continue California's groundbreaking progress in this vital policy area and should not inadvertently increase VMT by benefiting projects in outlying areas with high per capita VMT. Accordingly, ***SB 226 should only target its benefits to those residential projects in TAZs with per capita VMT levels at or below their regional average.*** Projects that are in TAZ's with per capita VMT levels that are 100% or more than the regional average should not be eligible for SB 226 benefits.

Residential projects that wish to take advantage of SB 226 benefits should either a) be located in TAZs with 75% or below regional per capita VMT; or b) be located in areas with 75% - 100% of regional per capita VMT and show, using sketch modeling that considers their specific context within the TAZ and transportation demand management strategies, that their residents are likely to contribute 75% or less of average per capita VMT for the region.

This recommendation differs from the proposed regulations not only in eliminating projects in higher-than-average-VMT TAZs but also by removing CALGreen as an element of the system. In the proposed Guidelines, it appears that OPR is suggesting that there can be a trade-off between good location and green building. At the same time, we recognize that the Guidelines mention state interests in infill beyond just VMT and GHG reduction; namely, building energy and water efficiency.

Nevertheless, we do not believe that using CALGreen in the proposed manner ensures environmental performance. We have found that opinions about the beneficial environmental impacts of CALGreen Tiers 1 and 2 are quite varied, and it is impossible for us at this point to accept that CALGreen Tiers 1 and 2 are *effective enough* to justify streamlining projects in poor locations. Further, OPR has provided no sound analysis to suggest that the environmental benefit derived from CALGreen justifies its substitution for reducing a project's VMT.

The desire to include CALGreen seems to stem from an interest in promoting energy efficiency and reduced water consumption. However, as the Narrative indicates, low VMT correlates highly with reduced building energy use, as units in low VMT areas tend to be smaller and more likely to be attached, and the

same general characteristics suggest lower levels of per capita water use, as well.

We recommend, then, the use of VMT as the single standard for the evaluation of acceptable residential projects and that benefits only accrue to projects in areas below regional per capita VMT. This simplifies the system, a goal for OPR, while providing a margin of safety to ensure environmental benefits.

SB 226 Should Provide Guidance on Near-Roadway Development

The proposed Guidelines rightly call out the importance of considering the public health impacts of locating residential development close to high-volume roadways. While the evidence of negative health impacts from living close to high-volume roadways is significant and convincing, it is rare to find a local jurisdiction or air district that has established specific policies or guidelines in place. Requiring project sponsors, then, to simply abide by established policies is not a strong enough level of protection, particularly for Guidelines that provide a benefit to residential developers. SB 226 is an opportunity to put forward a sensible approach to this important issue.

The following recommendation is consistent with policies and guidelines adopted by a number of jurisdictions, including the City of Oakland, the City and County of San Francisco, the Bay Area Air Quality Management District and the Sacramento Metropolitan Air Quality Management District. The recommendation is carefully designed to both provide meaningful public health protections while reducing uncertainty for project developers.

There are two recommended thresholds for jurisdictions and projects to consider:

- An increase of 10/1,000,000 cancer risk, which is the threshold adopted by the Bay Area Air Quality Management District; and
- An increase of 0.2 micrograms/m³ in concentrations of PM 2.5. This is the standard adopted by the City and County of San Francisco.

Residential projects **within 200 feet of a high-volume roadway** (100,000 AADT+) must *demonstrate* based on data approved by an air district, or through risk assessment and modeling, that exposure concentrations are below these thresholds. These studies can include mitigation measures. If the project cannot so demonstrate, it is ineligible for SB 226 benefits.

Residential projects that are located **between 200 feet and 1000 feet** of a high-volume roadway (100,000 AADT +) can either a) demonstrate that they lie in areas with concentrations below the thresholds using air district approved data, or modeling and risk assessment; OR b) they can simply install indoor air filters consistent with specifications set out by the San Francisco Department of Public Health without doing any modeling.

Residential projects that are located **within 200 feet of a roadway of a lower-volume highway or busy arterial (50,000 AADT)** can either a) demonstrate that they lie in areas with concentrations below the thresholds using air district approved data or modeling and risk assessment; OR b) they can simply install indoor air filters consistent with specifications set out by the San Francisco Department of Public Health without doing any modeling.

This approach gives reasonable assurance that projects that will benefit from streamlined environmental review will not unnecessarily expose future residents to serious public health risks. This approach gives a straightforward mitigation that can be used in most cases (filtering) while also providing an opportunity for project sponsors and local jurisdictions to demonstrate that no mitigation is necessary on a specific site where there are no serious public health risks.

SB 226 Should Require Projects to Examine Effects From Prior EIRs That Have Not Been Brought to Less Than Significant Level

SB 226 permits projects to avoid repetitive environmental review by tiering off plan-level EIRs. For environmental effects that have been analyzed and mitigated to less than significant levels, this makes good sense, and may save infill projects time and expense, encouraging good infill and streamlining the review process.

However, the proposed Guidelines permit projects to consider environmental impacts “analyzed” in a planning-level EIR even if they have not been mitigated to a less than significant level. Particularly with older EIRs there may not only be new effects from specific projects, but there may be newly available mitigations for previous impacts that can reduce environmental harm.

We recommend, then, that where an infill project may cause a new effect, *or an effect that was previously analyzed but not reduced to a less than significant level*, the streamlined CEQA analysis will focus on those effects. If the lead agency finds that the new impact, or the previously examined impact that was not reduced to a less than significant level, is less than significant, or can be mitigated to a less than significant level, the agency could complete the Infill Checklist to make that determination.

SB 226 Should Limit the Age of EIRs Used for Tiering to 10 Years

To ensure that SB 226 serves as an incentive for localities to keep their plans up-to-date, as opposed to encouraging them to preserve older, less thorough EIRs, planning level EIRs used for tiering should have an “expiration date” for the purposes of SB 226 benefits of ten years (that is, ten years from date of certification).

This cut-off accepts that local jurisdictions need time to update their planning documents while also ensuring that EIRs are still relatively contemporary in their consideration of environmental impacts and available mitigations.

SB 226 Should Set Minimum Density Standards

The Guidelines wisely adopt the SB 375 Transit Priority Area minimum density and FAR standards for projects in areas that have not adopted a Sustainable Community Strategy (20 du/acre and 0.75 FAR). Countless studies have pointed to the importance of density, in concert with regional location, in influencing residents' VMT.

However, the Guidelines remove this minimum density requirement in regions that have adopted SCSs. While SCSs represent the regions' best efforts to achieve their GHG reduction targets, not all projects consistent with SCSs will necessarily have an environmental benefit.

To ensure that SB 226 continues to encourage the best infill projects, we recommend that the density and FAR requirements set forth in the Guidelines apply to projects both prior to, and after, the adoption of an SCS.

SB 226 Should Encourage Affordable Housing Preservation

Residential projects that seek eligibility for SB 226 benefits should demonstrate that they do not cause a reduction in deed-restricted affordable housing; or, if deed-restricted affordable units are to be demolished, that project approval is conditioned upon replacement of those units in equal number, affordability level and unit type.

Commercial Projects Should Rely on Context, Not Transportation Studies

The proposed Guidelines set out a commendable set of context-specific requirements for commercial projects hoping to benefit from SB 226. By locating commercial uses in low VMT areas, areas with high walkability, or areas near transit, the Guidelines likely encourage neighborhood-serving retail, or "urbanized" big box concepts, that will contribute to reducing VMT.

However, the Guidelines also offer commercial projects the option of obtaining a transportation study that would show that the project would reduce VMT. We recommend that this option be eliminated. Not only is it highly susceptible to gaming (the study is not qualified by any minimum standards), but it is completely out of character with the dominant theme of the Guidelines: the importance of context. Given the strong correlation between neighborhood serving and urban retail and the context-specific requirements for commercial developments, it seems the only use of this provision is to encourage big box development that need only be better than business as usual to get CEQA

streamlining. That is simply not a high enough performance standard for such benefits.

Revisit Guidelines

SB 226 is a new approach to promoting infill. While the Guidelines provide an encouraging set of policies, the question of whether SB 226 meets its statutory purpose will only be answered on the ground.

Therefore, we recommend OPR commit to a review of the Guidelines in three to five years. Such a review would include an accounting of which projects took advantage of SB 226 benefits and where those projects were located, with a focus on the usefulness of the near-roadway standards. If possible, the review should also include an assessment of the actual VMT of a sample of projects which achieved the 226 benefit through efforts to reduce their VMT to 75% of the region's average. Such a review could yield insights into which strategies are effective in achieving actual VMT reductions, as well as whether the guidelines need to be strengthened. The review must also include input from local planning staff and developers to ascertain whether the benefits offered by SB 226 made a difference in deciding where and how to build, as well as an analysis of the types and age of the planning-level EIRs that were used to account for project effects.

Thank you very much for the opportunity to respond to these initial Guidelines. Please let us know if you have any questions or would like any additional information.

Sincerely

A handwritten signature in black ink, appearing to read "Justin Horner", with a long, wavy flourish extending to the right.

Justin Horner
Transportation Policy Analyst