

February 24, 2012

VIA ELECTRONIC MAIL (CEQA.Guidelines@ceres.ca.gov)

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

Re: Comments on Proposed Guidelines for SB 226 CEQA Streamlining

Dear Mr. Calfee:

Thank you for the opportunity to comment on the proposed CEQA Guidelines the Governor's Office of Planning and Research has issued to implement Senate Bill 226 ("Proposed CEQA Guidelines" or "the Guidelines"). We represent organizations dedicated to ensuring that low-income communities and communities of color equally benefit from and are not disproportionately impacted by policy changes like those proposed in S.B. 226.

We appreciate the extensive work that OPR has undertaken to develop the Proposed CEQA Guidelines, but we are concerned that, in their current form, the Guidelines fail to follow S.B. 226's mandates to promote the policies of Senate Bill 375 ("S.B. 375"), the state planning priorities, and the bill's directive to protect the health of vulnerable populations. Cal. Pub. Res. Code § 21094.5.5(b). As explained in more detail below, each of these mandates calls for the Guidelines to address the needs of underserved Californians and promote equity in health and housing. Without consideration of these needs, CEQA exemptions for certain projects could negatively affect communities that are already overburdened with challenges, including adverse health impacts. Moreover, absent explicit safeguards for affordable housing in the Guidelines, many of S.B. 226's intended benefits could not only skip over low-income Californians, they could lead to the displacement of such communities from the areas targeted for infill development. Given the Guidelines' stated objectives to reduce vehicle miles traveled (VMT) and greenhouse gas emissions, it would be ill-advised to adopt guidelines that disadvantage low-income households and people of color who tend to have lower rates of vehicle ownership, lower vehicle miles traveled, and higher rates of transit usage.¹

¹ Stephanie Pollack, Barry Bluestone & Chase Billingham, *Maintaining Diversity in America's Transit-Rich Neighborhoods: Tools for Equitable Neighborhood Change* 12-13 (Dukakis Center for Urban and Regional Policy, Oct. 2010), available at www.northeastern.edu/dukakiscenter/documents/TRN_Equity_final.pdf.

I. S.B. 226 Calls For Proposed CEQA Guidelines to Promote Social Equity and Address Housing Needs of Californians at *All* Income Levels

A. Proposed CEQA Guidelines Must Address the Need to Maintain and Develop Affordable Housing in Order to Promote S.B. 375 Policies.

S.B. 226 makes clear that the CEQA Guidelines to be adopted by the Natural Resources Agency “shall promote” the implementation of the land use and transportation policies of S.B. 375 or the Sustainable Communities and Climate Protection Act of 2008. Cal. Pub. Res. Code § 21094.5.5(b)(1). S.B. 375 contains many provisions local governments must abide by with respect to affordable housing:

- Housing elements must make “adequate provision for the housing needs of all economic segments of the community.” Cal. Gov’t. Code § 65583(c).
- Housing elements must “assist in the development of adequate housing to meet the needs of extremely low, very low, low-, and moderate-income households.” *Id.* § 65583(c)(1)(C)(2).
- Housing elements must “[c]onserve and improve the condition of the existing affordable housing stock, which may include addressing ways to mitigate the loss of dwelling units demolished by public or private action.” *Id.* § 65583(c)(1)(C)(4).
- Transit Priority Projects cannot “result in any net loss in the number of affordable housing units within the project area.” Cal. Pub. Res. Code § 21155.1(b)(3).
- Transit Priority Projects must ensure that minimum percentages of housing be sold or rented to very low, low-, and moderate-income families and that developers provide legal commitments to ensure continued availability of affordable housing units, or payment of in-lieu fees for development of affordable housing. *Id.* § 21155.1(c).

B. Proposed CEQA Guidelines Must Promote State Planning Priorities by Explicitly Addressing Equity and Impacts on Vulnerable Communities.

S.B. 226 also states that OPR “shall promote . . . the state planning priorities specified in Section 65041.1 of the Government Code and in the most recently adopted Environmental Goals and Policy Report [“EGPR”]” issued by OPR. Cal. Pub. Res. Code § 21094.5.5(b)(2). The first of three state planning priorities is to promote equity, particularly in underserved areas. Cal. Gov’t. Code § 65041.1(a). Relevant sections of the state planning priorities include the following:

- The state planning priorities are intended to “promote equity, strengthen the economy, protect the environment, and promote public health and safety in the state, including in urban, suburban, and rural communities...” Cal. Gov’t. Code § 65041.1; EGPR, p. 5.

- State planning priorities shall be as follows: “To promote infill development and equity by rehabilitating, maintaining, and improving existing infrastructure that supports infill development . . . particularly in underserved areas, and to preserving cultural and historic resources.” Cal. Gov’t. Code § 65041.1(a); EGPR, p. 5.

Guidelines that fail to protect lower-income residents from displacement and loss of affordable housing would run afoul of these provisions. Indeed, OPR itself concluded that “inequitable land use, where poor communities are isolated from jobs or education or bear the burden of incompatible land uses, creates pockets of poverty.” EGPR, p. 48. OPR further concluded that “equity is achieved when State and community resources are equally distributed to, and accessible by, all regimes and segments of the population.” *Id.* The Proposed CEQA Guidelines fail to address these state equity priorities and the needs of the communities they are intended to protect. In order to meet S.B. 226’s mandates, the Guidelines should be revised to explicitly reflect these priorities and needs as discussed below.

II. Proposed CEQA Guidelines Should Be Revised to Promote Equity and Serve Vulnerable Communities

A. Appendix M Performance Standards Should Consider Affordable Housing Needs Among Residential Infill Projects.

The Proposed CEQA Guidelines’ four performance standards applicable to all projects (i.e., renewable energy, active transit, transit station area plans, and soil and water remediation) and additional VMT performance standards for Residential projects fail to account for the statewide policy objective to maintain and develop affordable housing. While we understand OPR’s objective to employ the fewest standards necessary to promote a number of environmental objectives, simplicity cannot come at the risk of displacing low-income communities or precluding low-income communities from the recognized benefits of infill development. Accordingly, we propose that the following affordable housing provisions be included in the guidelines:

For all projects – Residential, Commercial, Office Buildings, or a Small Community Walkable Project – it should be made clear that no project can result in a net loss of affordable housing units within a project area. Any affordable units demolished by an infill project must be replaced on at least a 1:1 basis at the same level of affordability. Replacement housing also needs to be accessible to existing residents to avoid involuntary displacement.

For residential projects in particular, eligibility for CEQA streamlining should also be reserved for developments that will include a substantial component of affordable housing that targets the lowest-income households. Specifically, we recommend reserving CEQA streamlining for projects in which 20% of the units will be affordable to lower-income households (half at the very low income level and half at the low income level). In no event should a project qualify for CEQA streamlining if it provides less than 15% affordable units – 6% affordable to very low-income, 9% affordable to low-income. This standard would be

consistent with many local inclusionary policies and with California redevelopment requirements. Cal. Health & Safety Code § 33413(b)(2)(A)(i).

These changes are consistent with the land use and housing policies in S.B. 375, as well as the broader legislative and state planning priorities that S.B. 226 is intended to promote.

B. Appendix M Should Account for VMT Benefits of Affordable Housing Near Transit

Appendix M of the Proposed CEQA Guidelines should explicitly recognize affordable housing generation as a strategy to reduce VMT, and accurately credit VMT reductions from production of affordable housing. Both URBEMIS and CalEEmod, emissions inventory or modeling tools referred to in Footnote IV of Appendix M, significantly undervalue affordable housing as a trip reduction strategy. URBEMIS and CalEEmod cap the reduction credit for affordable housing at 4% irrespective of the depth of affordability. The recent City of San Diego affordable housing parking survey showed how this is significantly undercounting the driving reduction credit of dedicated affordable housing, especially for low and very-low income units.²

C. The Appendix N Checklist Should Also Consider as Environmental Impacts the Health and Housing Impacts of Infill Projects on Vulnerable Communities

Appendix N of the Proposed CEQA Guidelines should also reflect S.B. 226's mandates to promote equity and meet the housing and public health needs of California's vulnerable communities. Accordingly, the Appendix N checklist should require lead agencies to consider additional issues, including:

- Could the project create or exacerbate a known environmental health hazard?
- Would the project increase population exposure to a known environmental health hazard?
- Could the project disproportionately affect the human health of environmental justice communities?
- Displacement and lack of affordable housing can lead to grave health impacts including stress, depression, and anxiety; inability to afford necessities such as

² Wilbure Smith Associates, *San Diego Affordable Housing Parking Study* (Dec. 2011), available at <http://www.sandiego.gov/planning/programs/transportation/mobility/pdf/111231sdafhfinal.pdf>. See also, Barbara Lee, *Quantifying Greenhouse Gas Mitigation Measures: A Resource for Local Government to Assess Emission Reductions from Greenhouse Gas Mitigation Measures* 155-158, 176-178 (CAPCOA, Aug. 2010), available at <http://www.capcoa.org/wp-content/uploads/2010/11/CAPCOA-Quantification-Report-9-14-Final.pdf> (analyzing the use of high density housing and deed-restricted affordable housing as mitigation strategies to reduce VMT and GHG emissions).

health care, nutritious food, and utilities; and residential instability leading to poor educational attainment for children.^{3, 4}

- Would the project result in a loss of affordable housing?
- In addition to the existing questions on population growth and displacement in Section XIII, the checklist should ask: is the project likely to displace low-income residents or residents of color?

D. Notice of Exemption for a Project Qualifying for Streamlining Under the Proposed Guidelines Should Be Mandatory, Particularly for Environmental Justice Communities

Public participation is a cornerstone of the CEQA process. Although it is not entirely clear in the current draft, Section 15183.3(c)(2)(A) of the Proposed CEQA Guidelines advises a lead agency to file a Notice of Exemption in the event it determines a project would not cause new specific effects or more significant effects than previously analyzed, suggesting such a notice is optional. In order to ensure at least a minimum level of public participation, however, the Guidelines should *require* a Notice of Exemption be issued by a lead agency if it determines no environmental review is necessary. Notice should be mandatory so that residents impacted by the land use decision are informed about the project and can prepare an appropriate response in a timely manner. This is particularly true for communities facing barriers to participation, including Environmental Justice communities that have been historically divested from decision-making processes yet are the best equipped with on-the-ground information about the decisions' impacts.

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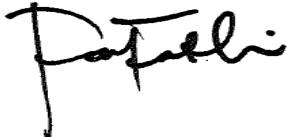
Without considering their impacts on California's vulnerable residents, as S.B. 226 requires the Guidelines to do, CEQA streamlining may decrease opportunities for public participation and lead to adverse health impacts low-income communities of color. It also has the potential to decrease affordable housing options and displace low-income, low-VMT households to exurban areas where these households will be forced to drive more. Such an outcome would run directly counter to the objectives of S.B. 226 and S.B. 375. As you undertake the revision of the Proposed Guidelines, we hope that you actively engage with the residents that stand to be most impacted by your decisions and take steps to ensure that the environmental, social, and health benefits contemplated by infill development will extend to all Californians.

³ Rajiv Bhatia & Carolina Guzman, *The Case for Housing Impacts Assessment: The Human Health and Social Impacts of Inadequate Housing and Their Consideration in CEQA Policy and Practice* (San Francisco Department of Public Health, PHES Technical Research Report, May 2004), available at <http://www.sfphes.org/publications/reports/HIAR-May2004.pdf>.

⁴ Paula Braveman et al., *Where We Live Matters for Our Health: Links Between Housing and Health*, (Robert Wood Johnson Foundation, Issue Brief Series, May 2011), available at <http://www.rwjf.org/files/research/sdohseries2011housing.pdf>.

Thank you for your consideration of these important issues. Please contact Parisa Fatehi-Weeks (pfatehi@publicadvocates.org, 415.431.7430 x305) if we can provide any additional information.

Sincerely,



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Assembly Speaker John A. Pérez
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