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Governors Office of Planning & Research

By email: [CEQA.Guidelines@ceres.ca.gov](mailto:CEQA.Guidelines@ceres.ca.gov)

First class mail to follow

C/O Christopher Califee,  
1400 Tenth Street  
Sacramento, CA 95814

Dear Mr. Califee:

The San Diego Chapter of the Sierra Club (the “Sierra Club” or the “Club”) respectfully submits the following comments on the Governor’s Office of Planning and Research’s (“OPR”) proposed California Environmental Quality Act (“CEQA”) Guidelines for Section 15183.3 *Streamlining for Infill Projects*. The San Diego Chapter is San Diego’s oldest and largest environmental grassroots environmental organization. The San Diego Chapter has over 15,000 members.

The Sierra Club appreciates OPR’s efforts to develop the Guidelines in furtherance of SB 226’s environmental and public health goals. The Guidelines should (1) expedite environmentally beneficial infill development; (2) comply with the states greenhouse gas (“GHG”) objectives enumerated in the Governor’s Executive Order 3-3-05<sup>1</sup>, the Sustainable Communities and Climate Protection Act of 2008 (“SB 375”)<sup>2</sup> and the California Global Warming Solutions Act of 2006 (“AB 32”);<sup>3</sup> (3) reduce per capita water use; (4) increase substantial energy efficiency (including transportation energy); and (5) protect the public health (including vulnerable populations).<sup>4</sup> Regarding Item 2, “comply with the states GHG objectives”, it should be noted that since climate stabilization is the overriding objective, S-3-05 is critical, because it identifies the reduction trajectory that climate scientists believe will give us a reasonable chance to achieve stabilization, as shown, for example, in <http://www.aqmd.gov/ceqa/handbook/GHG/2009/april22mtg/CBDcomments.pdf>.

Through active participation in the first Regional Transportation Plan (RTP) to incorporate the requirements of SB 375 in San Diego County, the Club has unique and practical experience with the challenges and complexity of long-range transportation planning that accounts for lasting reductions in GHG emissions and priority phasing of transit infrastructure. The RTPs developed for the each of the State’s twenty-four Metropolitan Planning Organizations serve as one of the foundational documents on which projects will seek to obtain streamlining benefits. It is therefore crucial for the Guidelines to specifically define the eligibility requirements for streamlining so as not to contravene the intentions of SB 226.

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<sup>1</sup> Executive Order S-3-05 is an official policy of the State of California, established by a gubernatorial order in 2005, and is designed to meet the environmental objective that is relevant under CEQA (climate stabilization). The Governor’s Office of Planning and Research thus cannot simply ignore it.

<sup>2</sup> Chapter 728 of the Statutes of 2008.

<sup>3</sup> Division 25.5 of the Health and Safety Code.

<sup>4</sup> See California Public Resources Code § 21094.5.5. (b) (1)-(7.)

The Guidelines are a highly effective tool in CEQA compliance. Courts have repeatedly reiterated that "at a minimum, ... [the courts] should afford great weight to the Guidelines except when a provision is clearly unauthorized or erroneous under CEQA."<sup>5</sup> With this backdrop, standards the Guidelines set need to be simultaneously realistic and stringent. If SB 226 and the Guidelines are to indeed provide a roadmap to securing a more stable climate future they must permit exclusively exceptional infill projects while promoting high standards that encourage mediocre projects to improve their environmental performance. Furthermore, the Guidelines should be written to reward regions with RTPs that achieve the driving reductions required to support the S-3-05 trajectory, for cars and light-duty trucks.

As with any legislation, the Club understands and appreciates that tradeoffs are unavoidable, but the balance still needs to tip in the favor of environmental compliance in order to make the streamlining benefits beneficial. For that reason, the Club has the following comments and recommendations:

**I. The Proposed Performance Standards should disallow consideration for projects that are in regions with approved RTPs that fail to meet the GHG reductions specified in S-3-05, for cars and light-duty trucks, irrespective of whether or not they meet the SB 375 targets provided by CARB; allowing however, for the use of an APS, as defined in SB 375.**

SB 226 is intended to help regions that are doing their part to stabilize the climate. Regions that are failing in this regard should not benefit. The determination required should be based on (1) the best estimates for State-fleet-average CO<sub>2</sub> per mile driven, accounting for low carbon fuel, and (2) the RTPs estimates for per-capita driving and population growth. An example of such data and its use is shown in Figure 1 of <http://www.nrdc.org/globalWarming/sb375/files/sb375.pdf>.

**II. The Proposed Performance Standards Fail to Adequately Protect the Health of Infill Residents within 500 feet of a High-Volume Roadway.**

The objective of SB 226 is to create sustainable infill communities, but no community can achieve sustainability unless its public health is protected. Many Californians are exposed to polluted air. The California Attorney General intervened in the SANDAG RTP litigation because the San Diego region has the seventh worst air quality in the nation.<sup>6</sup> Diesel particulate emissions have serious health risks and are associated decreased respiratory function, cancer, and are listed by the Air Resources Board as toxic air contaminates.<sup>7</sup> Low-income communities are at greater risk because they are more sensitive and are often adjacent to major roadways. The estimated costs of exposure to this intensified air pollution range from \$1,250 per person per year in the

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<sup>5</sup> *Laurel Heights Improvement Ass'n v Regents of Univ. of Cal.* (This philosophy has been reiterated continuously in subsequent Supreme Court and Appellate Court decisions). See, e.g., *Vineyard Area Citizens for Responsible Growth v City of Rancho Cordova* (2007) 40 Cal App 4th 412, 428 n5, 53 Cal Rptr 3d 821; *Federation of Hillside & Canyon Ass'ns v City of Los Angeles* (2004) 126 Cal App 4th 1180, 1197 n1, 24 Cal Rptr 3d 543; *Plastic Pipe & Fittings Ass'n v California Building Standards Comm'n* (2004) 124 Cal.App. 4th 1390, 1412 n6, 22 Cal Rptr 3d 393; *San Joaquin Raptor/Wildlife Rescue Ctr. v County of Stanislaus* (1996) 42 Cal 4th 608, 614 n2, 49 Cal.Rptr 2d 494.

<sup>6</sup> American Lung Association American Lung Association, State of the Air 2011, at pp. 11, 13.

<sup>7</sup> Cal. Code Regs., tit. 17, § 93000.

South Coast Air Basin to \$1,600 per person per year in the San Joaquin Valley Air Basin.<sup>8</sup> It is vital that *all* feasible mitigation be adopted and carried out to prevent greater risks from increased exposure to polluted air.

The proposed rules are vague with respect to compliance and limit the evaluation to existing relevant general plan policies or the unfettered judgment of the lead the agency attempting to secure streamlining benefits. As is evidenced by the controversy and lawsuits surrounding SANDAG's RTP large planning documents often fail to provide adequate analysis of the health impacts of planning level decisions. The performance standards should include quantifiable assessment and implementation measures to protect human health. Streamlining eligibility should require air quality modeling or other techniques to properly anticipate the dangers and adopt proper mitigation measures.

### **III. The Proposed Performance Standards Fail to Adequately Protect the Health of Employees and Customers of Commercial Infill Residents within 500 feet of a High-Volume Roadway.**

Employees and customers of retail and commercial infill projects located in close proximity to major roadways face similar significant health risks from air pollution. The proposed performance standards fail to address proximity to a high-volume roadway for all projects, except residential projects. All projects within 500 feet of high-volume roadways should require quantifiable assessment and implementation measures that ensure the protection human health.

### **IV. The Renewable Energy Requirement is Insufficient to Meet the Goals of SB 226.**

The proposed performance standards fail to meet SB 226's twin goals of meeting energy efficiency standards and reducing GHG emissions.<sup>9</sup> The proposed standards state that "[a]ll projects shall include renewable energy components, such as solar rooftops, where feasible."<sup>10</sup> The term "where feasible" renders the renewable energy requirement unenforceable and therefore it is inadequate. To meet the stated goal of "[s]ubstantial energy efficiency improvements",<sup>11</sup> the Guidelines should provide additional guidance and compliance options. If solar rooftops are not feasible, the Guidelines should require/promote a project to achieve CALGreen Tier 2 standards, for example.

### **V. The Transportation Study Exception for Commercial Projects is Vague and Contrary to the Sustainable Community Objectives of SB 226.**

The proposed performance standards allow any commercial project eligible for streamlining if a "transportation study" demonstrates a reduction of total Vehicle Miles Traveled ("VMT").<sup>12</sup> The term "transportation study" is vague and insufficient to demonstrate meaningful reductions in VMT. The performance standards should provide further guidance on how the study should be

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<sup>8</sup> Hall and Brajer, *The Benefits of Meeting Federal Clean Air Standards in the South Coast and San Joaquin Valley Air Basins* (2008) at 5.

<sup>9</sup> § 21094.5.5 (b) (3) & (6).

<sup>10</sup> (Appendix M, Section III. (A).

<sup>11</sup> SB 226 § 21094.5.5 (b)(6).

<sup>12</sup> See Appendix M, III (B).

prepared, the standards and methodology required, and if and how the study can be independently reviewed.

Additionally, short-term reductions in VMT fail to meet the goals of SB 375, S-3-05, and AB 32. The controversy surrounding SANDAG's 2050 RTP/SCS backsliding of emissions reduction highlights the need to have clearly defined long-term requirements. To best achieve sustainability, the performance standards are recommended to provide assessment criteria to meet obtainable goals over the long-term. In order for projects to qualify for streamlining, the commercial projects should be required to demonstrate long-term reduction of VMT, by at least 20%. The streamlining provisions should not allow Projects that to result in a net increase of VMT.

#### **VI. “Planned” Transit Stations Should Not Serve as the Basis for Eligibility.**

The proposed performance standards permit projects within one-half mile of existing or *planned* “transit stations” consistent with local plans surrounding the transit station.<sup>13</sup> Relying on planned transit stations is ineffective and inconsistent with the goals of SB 226. Some regional planning documents, for instance, SANDAG's 2050 RTP/SCS account for extended timelines of four plus decades.<sup>14</sup> Regardless of mandated four-year updates, several “planned” transit stations will never see their way to construction. Mere proximity to a “planned” transit stations is an insufficient benchmark in which to make an eligibility determination. The Club would recommend instead a modification, if the streamlining is sought for a “planned” transit stop that stop would need to be planned to be fully constructed within a five year period in order to be eligible for the streamlining provision.

#### **VII. “Transit stop” is inadequately defined.**

The proposed performance standards fail to distinguish between “transit stops” and “transit stations”.<sup>15</sup> As a transit stop and a transit station are in fact two wholly different constructs a proper definition and differentiation are required. The failure to define and distinguish the two terms raises a question as to whether the major transit hubs and infrequently used bus stops are treated equally.

The proposed performance standards make both commercial and office projects eligible for streamlining when they are located within one-quarter mile of a “transit stop”.<sup>16</sup> Streamlining eligibility by virtue of mere proximity to a transit stop is unlikely to achieve the VMT reduction and transit goals. Streamlining eligibility based on proximity to a “transit stop” should require the project to show substantial frequency of use or passenger loads.

In addition, market studies in San Diego have shown that the vast majority of drivers will not change to transit and thus contribute to reduced VMT unless the transit service is frequent and fast enough to be competitive with driving times. Simply having a transit stop - OR a station - is insufficient to alone result in reduced VMT.

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<sup>13</sup> (Appendix M II.)

<sup>14</sup> See e.g. SANDAG 2050 Regional Transportation Plan ([http://www.sandag.org/uploads/2050RTP/F2050rtp\\_all.pdf](http://www.sandag.org/uploads/2050RTP/F2050rtp_all.pdf).)

<sup>15</sup> “Transit Stations” Appendix M II; “Transit Stop” Appendix M III (b).

<sup>16</sup> See Appendix M III (B)&(C).

**VIII. School Eligibility Requirements for Bicycle Parking is Inadequately Defined and School Eligibility Requirements Should Also Address How Car Parking is Operated.**

The proposed performance standards require schools to “provide parking and storage for bicycles and scooters ...”<sup>17</sup> The rules should clarify how much parking is required (i.e. sufficient to meet 100% of the student body) and the form of parking required (i.e. safe and secure bike racks or an enclosed bike cage). The proposed performance requirement standards should also require that the car parking at schools be operated to benefit the employees and students of driving age that never drive, as much as they benefit the employees and students that drive every day. Our Chapter Transportation Chair would be happy to provide the details on how this can be done.

**Conclusion**

The San Diego Chapter of the Sierra Club offers its sincerest gratitude to OPR for the opportunity to comment on the proposed CEQA Guidelines Section 15183.3 *Streamlining for Infill Projects*.

Respectfully Submitted,

John W. Stump  
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<sup>17</sup> Appendix M III (E).