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February 22, 2012

Ken Alex, Director
Governor's Office of Planning and Research
Via email: CEQA.Guildelines@ceres.ca.gov

RE: Comments on SB 226 CEQA Guidelines

Dear Mr. Alex:

As local community residents who have worked to improve our community and the health and welfare of our residents and have utilized the provisions of CEQA to do so over the years, we would like to provide input on the Office of Planning and Research's proposed guidelines to implement Senate Bill 226. We have particular interest and concern about the proposed standards for infill projects and their impacts on the health and long-term well-being of our residents and the community as a whole. We believe that CEQA has served the State of California extremely well by providing us a most important tool for protecting environmental quality and we do not wish to see CEQA's effectiveness undermined by new implementation guidelines that might be promulgated to implement SB 226. It is our hope that, instead, the crafting of guidelines be used to upgrade the quality of environmental review to be done and reduce political influences in the planning process. I, personally, am a graduate of the UCLA School of Public Health and have been quite pleased to see the recent coming together of urban planners with public health professionals who share in the realization that we must work together to create and nurture healthy communities through better urban planning.

While we understand that there are critics of CEQA who believe it to be "unfriendly " toward business and would like to see its provisions significantly weakened, we have seen time and time again how the provisions of CEQA have been utilized in our community to seek and obtain significant improvements in project plans and in community mitigations for large projects. Sadly we have seen that in the majority of larger cases we have challenged under CEQA, that we could not rely on the City of Los Angeles' planning process in order to do a thoughtful or analytical review of project alternatives. Too often, the environmental review process has become one of posting and meeting deadlines and checking off steps on a list of "to do" items. And, equally troubling is the fact that the City allows project developers to hire those performing their traffic studies and the EIR documents as a whole, leaving little wonder how these documents always favor the developer's project plan and never an alternative presented. (Of course, those alternatives are usually options that no one, including project critics would have advocated for and most often ignore viable options (such as a simple reduction in height or total number of units).

So, while it may seem reasonable to limit the application of CEQA's procedural

requirements as SB 226 seeks to do where established mitigations, regulations and standards assure that a project achieves CEQAs substantive policy ends—including greenhouse gas emissions reductions, energy and water conservation, and the protection of human health, we are very concerned that the current implementation guidelines are not adequate to protect the public's health and do enough to create the standards necessary to ensure that new infill projects will achieve our collected environmental goals. The proposed standards for infill projects in Appendix M, which these guidelines reference, have several important gaps and weaknesses that should be addressed:

●The standards, as proposed, are insufficient to protect public health from air pollution, noise, and traffic hazards in infill areas;

● Infill standards for residential uses need to include standards for infrastructure necessary for complete, walkable neighborhoods;

●Infill standards need to avoid the demolition and loss of affordable housing;

●Standards must recognize that while limiting VMT is beneficial regionally, increased
vehicle traffic density in infill areas can still lead to significant environmental degradation;

●Infill standards should be sufficiently specified to be objectively and consistently evaluated.

Adequate analysis and mitigation of significant public health impacts is an existing mandate of CEQA

CEQA provides one of the State's most important laws to protect and promote human health and welfare. It clearly articulates that the well-being of people is an environmental policy goal (California Public Resources Code. § 21000). State regulations for CEQA require an EIR to be prepared whenever environmental effects of a project have the potential to cause substantial adverse effects on human beings, either directly or indirectly (CCR §15065). Regulations further require that, when prepared, an Environmental Impact Report (EIR) discuss "health and safety problems caused by the physical changes" (CCR §15126.2).

Historically, guidance for the practice of CEQA has not specified the types of public health effects requiring analysis nor related analytic methods or standards of significance; however, courts have repeatedly affirmed CEQA's mandate to analyze potentially significant adverse health effects.

SB 226 similarly requires that the infill standards for CEQA streamlining attend to the "protection of public health, including the health of vulnerable populations from air or water pollution, or soil contamination." Importantly, SB 226 does not limit the scope of public health protection considered in the standards. Beyond contaminated, air, water, and soil, environmental factors relevant for public health and safety include the noise, parks and, natural areas, transportation systems, housing, and public infrastructure such as schools, hospitals, and community facilities. This is especially important to us as our City consistently fails to perform annual infrastructure analysis leaving a significant gap in its ability to determine how much development can be approved without significant negative impacts on the health and quality of life in our City. We rely upon CEQA as a tool to address infrastructure-related issues as they pertain to project impacts.

Infill standards must be sufficient to address the breadth of potentially significant adverse

human health impacts that may result from the development of infill projects in California. The narrative accompanying the draft guidelines includes a very limited discussion of the potential health benefits and harms of infill development. The regional air pollution and local active transportation benefits of infill development may be substantial and are recognized in the guidelines and standards; however, infill development can often increase the population exposed to and the intensity of exposure to air pollutants, noise exposure, pedestrian and bicycle collision hazards. We are already seeing the presentation of large residential projects located directly adjacent to (and sometimes nearly BENEATH) major freeways with little genuine concern demonstrated for the impacts of continued exposure to the particulates generated by nearby large volumes of traffic. These projects are often the very places where "affordable" housing is proposed (and where significant density bonuses are granted) thus raising questions of environment justice impacts (in addition to public health concerns—especially for children who might be residents of these projects.

As noted by Dr. Rajiv Bhatia in his comment letter to your office, the analysis of health impacts at the regional scale, such as the Woodcock et al. analysis cited by OPR, obscures differences in intra-regional effects and related environmental justice impacts. He notes that planners and public health professionals alike increasingly recognize that these aggregate regional environmental health benefits can mask localized increases in environmental health hazards. Furthermore, without the implementation of substantial countermeasures, mode shifts to greater active transport use will increase pedestrian and bicyclist injuries. Potential environmental health hazards are not reasons by themselves to prohibit infill development from any area; however, these environmental health threats require acknowledgement in the infill standards and effective management through local policies and regulations. However, the State must not weaken standards in the HOPE that local municipalities will take appropriate action. Past history has already demonstrated that that is and will not be the case. The State must mandate clear standards.

Standards to protect new residential development from air pollution hot spots should be based on a cumulative assessment of hazardous pollutant concentrations

The proposed infill standards recognize the strong evidence-based relationship between vehicle air pollution emissions and health impacts. Vehicle emissions including, articulate matter, carbon monoxide, nitrogen dioxide, and ozone have well-established causal relationships with human health and are subject to nationwide ambient air quality standards, monitoring and control requirements under the Federal Clean Air Act. A Health Effects Institute (HEI) Report in 2008 concluded that "evidence was now sufficient to infer a causal relationship between exposure to traffic-related air pollution and exacerbation of asthma and suggestive to infer a causal relationship with onset of childhood asthma, non-asthma respiratory symptoms, impaired lung function, and total and cardiovascular mortality."

The implementation of air pollution regulations under the Clean Air Act does not assure that air pollution standards are achieved equitably in all areas. Ambient concentrations of PM 2.5 and NO2 vary greatly in California among and within regions with levels exceeding the current national standard in areas of major population centers. These gaps in regulatory protection are related, in part, to the failure of the current ambient air quality monitoring network is to adequately assess intra-regional variation in pollutant

level. For example, PM 2.5 concentrations are known to be much higher near busy highways, rail yards, and ports than at regional monitors but inadequate intra-regional monitoring means that these higher levels are often not considered by regulators. An infill criterion based on roadway volume and proximity alone, as currently proposed in Appendix M, would not be protective for air pollution risks due to hotspots of air pollution. Proximity to roadways is a rough and imprecise proxy for health-relevant air pollution exposure. The impact of roadways depends on not only vehicle volume and proximity, but also wind direction, meteorology, pollutant type, and most import background pollutant levels. In many areas, air pollution concentrations are lower than Federal and State criteria air pollutant standards even within 500 feet of busy freeways. In other areas, particularly those with higher background concentrations, air pollution concentrations from roadways contribute to nonconformance of state and Federal standards well outside a 500 foot boundary. Infill projects may be impacted by regulated non-roadway air pollution sources, such as Ports, rail yards, and distribution centers.

Public health impacts depend on cumulative exposure to air pollutants and not exposure attributable to a single source. Existing state and federal standards for air pollutants, including standards for NO2 and PM2.5, provide scientifically defensible and robust criteria for infill standards for residential projects. Technology to assess intra-regional exposure variation and project level pollutant concentrations now exists with computational modeling approaches such as dispersion modeling and land use regression. These tools can be used to create maps of cumulative air pollution concentrations within regions as is currently being done in the San Francisco Community Risk Reduction Plan to evaluate whether infill residential development needs additional ventilation system protections. No such efforts exist in Los Angeles to our knowledge. Mechanisms are needed in the state's regulations to ensure that "best practices" are employed throughout the state.

Infill standards should include noise protections for residential, school, and other noise sensitive uses

Urban noise can result in health consequences equal in import to air pollution. Sufficient scientific evidence documents that chronic exposure to moderate levels of noise below levels required for mechanical damage to hearing can result in other health and physiological impacts including cognitive impairment, decreased school performance, sleep disturbance, and hypertension and ischemic heart disease. Numerous studies also show that children exposed to chronic transportation noise have deficits in school performance and educational outcomes. Infill projects are commonly located in close proximity to noise sources, such as commercial and industrial uses, high volume arterial streets, and transit corridors. Health-protective performance standards for noise protection would be an important complement to the infill standards. Authoritative sources for such standards already exist and are cited in Dr. Bhatia's letter. He notes that the California Noise Insulation Standards (California Code of Regulations, Title 24 Section 1207 et seq.) establishes a health protective interior noise standard of 45 dBA Ldn. Which is equivalent to the EPA recommended levels for health and welfare protection in residential interiors. Standard acoustical treatments exist to achieve these standards. Under California law, residential structures located where the Ldn or CNEL exceeds 60 dbA require an acoustical analysis showing that the proposed design will limit exterior noise to the prescribed allowable interior noise level.

Infill standards are also required to protect new residential, school, and institutional uses from excessive ambient levels of noise. Many jurisdictions specify ambient noise levels that are acceptable for residential and other sensitive use development in their General Plans. However, these standards are inconsistently applied and enforced in practice. Infill performance standards should explicitly reference and apply these existing local noise compatibility standards.

Infill Standards should include protections from pedestrian injury hazards

In 2010, California's traffic fatalities decreased 11.9 percent from 3,081 in 2009 to 2,715; however, pedestrian fatalities increased 15.4 percent from 567 to 599 over the same time period. Environmental factors that are causally associated with pedestrian-vehicle collision frequencies include traffic volumes, vehicle speed, roadway width, intersection design and geometry, and transit stops. Infill projects are often developed in location of a city with the highest levels of these environmental risk factors. Furthermore, by their nature, infill projects aim to increase pedestrian exposure to these hazards.

In many of the EIR documents we have reviewed, we have found that the traffic studies fail to adequately assess existing traffic congestion. By doing so, dangers to pedestrians and bicyclists are overlooked or greatly diminished. When the LA Dept. of Transportation evaluates intersection capacity (and/or congestion), their model fails to take into account the fact that when traffic is so backed up that cars are unable to pass through an intersection and be counted (and may be backed up for many blocks), the resultant numbers make it appear that F level intersections are actually performing at far more acceptable standards. (How is it that Olympic Blvd. intersections during afternoon peak hours can be gridlocked for 2-3 miles for eastbound traffic approaching the 405 freeway, but those same intersections are rated at "C" levels of service? State standards must ensure that methodologies used by local municipalities truly assess environmental factors as they are experienced in reality (as opposed to those artificially created on paper). When traffic is congested at higher levels, driver attention and patience is sorely tested and often leads to cut-through traffic that degrades nearby neighbors, results in speeding vehicles that endanger residents and others on the roads—including bicyclists who are especially vulnerable to these impatient drivers often traveling upon unfamiliar streets ill-equipped to carry commuter traffic.

To protect public health for residents of infill projects it is important that infill standards include adequate protective criteria for pedestrian collision hazards. For example, performance standards could require implementation of pedestrian safety mitigations in areas where the frequency of vehicle-pedestrian collisions exceed or are expected to exceed public health objectives. Healthy People 2020, the nation's public health goals, set a target of 20.3 pedestrian injuries per 100,000 population. Criteria could also be based on the density of injuries per street mile. Required mitigations could include a number of the proven pedestrian safety countermeasures based on existing research.

Infill standards need to be protective of affordable housing

Infill projects often result in the demolition of existing structures, including existing housing. In our area we most often see new residential projects that remove existing affordable housing and replace it with much higher priced apartment or condominium developments. Time and time again, we see projects take advantage of density bonus formulas to provide one or two or a handful of "affordable" units in their mix and

neglecting to note that the buildings they removed provided significantly more "affordable" housing in the first place. Residents of the former buildings, many who have been long-time residents of a community are permanently displaced with little hope of finding new housing in the area. This affects not only lower-income residents, but also hits hard at middle income wage earners and young professionals in their early career years. Infill standards need to be protective of affordable housing by ensuring that housing demolished in the course of development be replaced at least on a 1:1 basis at the same level of affordability. Replacement housing also needs to be accessible to existing residents to avoid involuntary displacement. Infill guidelines should not hasten, incentivize or result in the obliteration of existing affordable housing stock and the dismantling of the communities in which they lie.

Infill projects may result in significant increases in local area traffic volume and associated environmental degradation

The primary criterion for residential projects is projected reduction of project-generated VMT per capita relative to existing regional VMT per capita. This criterion is protective against harmful consequences of the growth of vehicle use on regional energy use and air pollutant levels. However, infill projects can still contribute substantial new vehicle traffic to a local area, increasing the concentration or density of vehicle flows on streets, arterials, and highways. Traffic density is a good proxy for several adverse environmental health exposures associated with vehicle use. The intensity of vehicle air pollution emissions, traffic noise, and safety hazards to non-motorized users are all generally proportional to the density and proximity of vehicles in an area. Local roadway vehicle density is typically unregulated and increases in local traffic volumes could thus lead could lead to degradation of existing environmental conditions in infill areas. As discussed above, infill project may occur in areas where existing traffic-related environmental hazards are already significant. Infill standards must recognize and attend to the local impacts of increases in VMT. For example, an additional infill standard for residential projects could limit qualified projects to those where VMT density is less than specific criterion (e.g. the 90th percentile of VMT density in the region). This would prevent the further spatial concentration of adverse public health impacts associated with VMT density.

In our community, cumulative impacts of traffic are routinely underestimated (if not ignored). LA City does not require traffic impacts for residential projects less than 49 units in size. However, we have seen development in some areas where the cumulative impact of projects less than 49 units in size have been extremely significant. Yet, there is no mechanism that requires that such impacts be evaluated. Should infill regulations incentivize further densification, there must be a mechanism established and required for evaluating cumulative impacts.

The West Los Angeles area will soon receive its first fixed light rail public transit line (EXPO Line). The area is well-known for having some of the worst traffic in the City and there are significant fears amongst many residents that although we have sufficient densities already to warrant the fixed rail, that its very presence will open the floodgates to significant numbers of TOD's, despite the fact that traffic is insufferable. How can the state's standards incentivize cities to do more than a "one size fits all" set of development standards and instead adopt assessment methodologies that honestly assess conditions in a given community? The state must recognize that municipalities are cash strapped and that the planning departments that rely on general fund financing

have been particularly hard hit with staff cutbacks. Local community plans are many years overdue and the planning decisions of today are being done in significant piecemeal fashion – more often by exception than by rule. This allows the planning process to become a highly politicized one – less guided by good planning standards than by political influence.

The placement of infill projects on "transit corridors" in our area is not always an appropriate development standard. Many so-called "transit corridors" are, while designated transit corridors, already in gridlock traffic conditions.

Infill Standards should include minimum standards for infrastructure, such as neighborhood parks, libraries and schools

Public health depends not only on the absence of environmental hazards but additionally on the sufficiency of resources for health. Accessible neighborhood infrastructure of sufficient quality is necessary for walkable neighborhoods and the transportation goals of SB 226. Proximity of parks, recreational facilities and natural areas contribute to physical activity and better health status. Proximity to schools results in more children walking and/or bicycling to school. Over the past decade, many infill residential projects have been proposed or developed in locations without essential public infrastructure for complete neighborhoods. Infill projects in our area have triggered a re-evaluation of school boundaries such that local children may be forced to attend an elementary school removed from the neighborhood and on the other side of a major freeway. Yet, each time we mention concerns about school capacity when reviewing projects, instead of an honest assessment, we are told that there will be few, if any children living in the newly proposed projects.

There has been and we fear will continue to be a lack of a feedback mechanism in the planning process that would allow for future correction of newly proposed standards (and existing standards). In the current application of CEQA, there has not appeared to be a mechanism to address or correct what happens when project documentation significantly understates project impacts. For example, when project environmental documentation states that a new project will generate significantly less traffic than the project it is replacing, and the reviewing City signs off on that traffic study and EIR, why is there not a mechanism for feedback that reviews whether or not such claims were true and whether reality matches the conclusions drawn in project paperwork? There seems to be no evaluation mechanism that would serve as an incentive for honest assessments in EIR documents or that could be used to return to a project and seek mitigations if called for. Poorly crafted environmental documents result in communities (who have the resources) to have to use CEQA to challenge those projects. While some in the business community may then conclude that CEQA unnecessarily slows down the entitlement process, we would say that CEQA is needed to make up for shoddy review and analysis done by the municipality whose job it is to adequately assess infrastructure impacts. (This returns us to the earlier points raised pertaining to the City of Los Angeles' abdication of their responsibility to do formal annual (or biannual) infrastructure assessments or to adopt measures to take into account cumulative project impacts. The infrastructure assessment requirements must be more clearly mandated for our City says that while they are mandated, they are not required.)

Additional infill standards need to ensure a minimum level of necessary infrastructure. For example, a standard could require sufficient school capacity for new infill project

residents in neighborhood schools or, alternatively, an existing plan to provide the increase in school demand. Such standards should place a value on the integrity of existing communities and their institutions. Similar standards should exist for parks and other essential neighborhood infrastructure.

Poorly specified infill standards could lead to inconsistent and subjective interpretation

A number of standards appear to be weakly specified which could lead to inconsistent interpretation and application. While the standards should not be overly proscriptive, there are opportunities to strengthen the standards in several cases. It is extremely important to set minimum standards and incentivize projects that do more than the bare minimum. Below are examples of how standards can be strengthened:

- Standards for renewable energy could be replaced by objective quantitative performance objective, for example, the amount of renewable energy generation as a percent of total energy use.
- Standards for active transportation could provide specificity with regards to expected or qualifying design features.
- Standards for transit stop proximity could also specify a minimum transit service frequency.

Can the standards define a process whereby a city would not be allowed to approve additional infill projects UNLESS they had actually implemented required plans? So, for example, if a city had not done their annual infrastructure assessments, might there be a process for halting certain levels of development until that reporting has been done? If a city has, for example, developed a bicycle plan, but has failed to actually implement the plan, what consequences might there be for assuming such facilities exist when in reality they do not (and will not for quite some time). If fixed rail transit exists in a given area but there fails to be the delivery of public transit to get riders to the fixed rail (and/or the streets adjacent to the rail are so congested that people cannot reasonably gain access to it), should developers be allowed to claim transit credits and increase density on an adjacent project site thus further degrading the quality of life in the area?

The Appendix N checklist should include explicit questions on issues of public health importance

Environmental factors relevant for public health and safety include the quality of air, soil, and water, the level of environmental noise, food resources, parks and public spaces, natural areas, natural resources, transportation systems, housing, and public infrastructure such as schools, hospitals, and community facilities. The practice of environmental assessment under CEQA has historically not attended to the public health consequences of changes in these environmental factors. In part, this gap may be a result of the invisibility of public health criteria in the current CEQA checklist—Appendix G of the State's CEQA guidelines. Appendix N, the infill environmental checklist form, should attend to this deficiency by explicitly listing several of the most common public health consequences associated with physical environmental change.

Additions to the checklist in Appendix N consistent with SB 226 are suggested below.

● *Would the project's physical changes result in public health and safety problems, directly or indirectly? (CCR §15126.2)*

● *Could the project create or exacerbate a known environmental health hazard?*

● *Would the project increase population exposure to a known environmental health hazard?*

● *Would the project would create or contribute to "hotspots" of air pollutants above existing State or Federal Air Quality Standards OR would the project locate a new sensitive use in a locations above existing State of Federal air quality standards*

● *Would the project provide sufficient accessibility to public facilities or resources, such as parks and public and natural spaces that provide resources for physical activity, leisure, socialization, and recuperation?*

● *Would the project result in a net loss of affordable housing?*

● *Could the project affect disparities in exposure to environmental hazards?*

Thank you for your consideration of our comments on the proposed SB 226 guidelines. It is unfortunate that the hearings on the proposed standards took place immediately before the deadline for comments thus leaving little time and opportunity for community-wide discussion. It would be beneficial to all interested and concerned to have an extended comment period that would foster additional discussion. That time might also be used to seek consensus among different stakeholder groups. This important policy and its potential impacts warrant additional public discourse. We trust that there will be ample opportunity to comment on the next draft produced by your office.

Sincerely,

Barbara Broide
President