

CALIFORNIA NATURAL RESOURCES AGENCY

PUBLIC HEARING ON SB 226
300 SOUTH SPRING STREET
AUDITORIUM
LOS ANGELES, CALIFORNIA

FRIDAY, SEPTEMBER 7, 2012

1:15 P.M.

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MS. BAUGH: Good afternoon. My name is Heather Baugh. I'm the Assistant General Counsel for the Natural Resources Agency. I'm here today with my colleague, Mr. Chris Calfee, who's General Counsel for the Office of Planning and Research.

This is the September 7, 2012 CEQA hearing on the regulatory update to the CEQA guidelines, focusing on SB 226.

And so with that information, I want to tell you thank you for coming for those of you who have. There's packets at the front of the room if you need additional information. And I'm going to give you a bit of housekeeping the State requires me to say, and then Chris is going to provide a bit more information on the statute, what the package intends, and then we're going to accept public comments.

So, exits for emergency at the back of the room. The rest rooms are out of the auditorium and to your right.

This hearing will go from this point until four o'clock. We will be accepting public comment up until the end of the hearing. The official public comment period closes on September 10. You are welcome to come to the September 10 hearing in Sacramento as well. You can submit any comments up until five

1 o'clock on the 10th, and we will be accepting them up
2 until that point.

3 Your oral comments today will be transcribed
4 by our court reporter. We will also be responding to
5 those oral comments. So if you have them, please speak
6 clearly and introduce yourself and your entity, and she
7 will take down everything that you say, and we will be
8 responding to them as we are required to do by law.

9 Without further ado, Mr. Calfee.

10 MR. CALFEE: Thank you, Heather.

11 My name is Christopher Calfee. I'm Senior
12 Counsel at the Governor's Office of Planning and
13 Research. And since this proposal originated at OPR, I
14 am here to provide a little bit of background and a
15 summary of the proposal.

16 So just a bit of background on SB 226. Early
17 on in this administration, OPR continued work that had
18 begun while Governor Brown was Attorney General to
19 identify some high impact and meaningful improvements
20 to CEQA. One of those areas where improvement was
21 needed was in the context of infill development.

22 So why are we focusing on infill? Infill is
23 good for the pocketbook. It requires people to drive
24 less. It lowers energy bills and lowers water bills.
25 Infill is an efficient way to deliver infrastructure

1 and services.

2 Infill is also good for the environment. It
3 saves open spaces and important habitats, and is far
4 less resource-intensive than greenfield development.

5 And actually probably most important is that
6 most new development is expected to happen in infill
7 locations. So changes to CEQA that affect infill areas
8 will be expected to have the most impact.

9 You might ask, but don't we already have some
10 incentives for infill in the CEQA statute? Yes, we do
11 have the statutory exemption for infill projects, but
12 those, the criteria for that statutory exemption are
13 quite restrictive, and we have been told that it's
14 rather inflexible.

15 So how does SB 226 change things? SB 226 is
16 not an exemption. It is a streamlining provision. And
17 it streamlines review for projects that are
18 environmentally beneficial and whose impacts have been
19 addressed at a planning level.

20 So to summarize what's in this proposal, I
21 would characterize the streamlining provision as quite
22 powerful. Once review is done at a planning level such
23 as a general plan or zoning code, no new review is
24 required at the project level unless there's some new
25 impacts that have never been considered, or those

1 impacts are worse than previously considered.

2 Even if the project would result in some new
3 or worse impacts, new review is still not required as
4 long as local development policies, quote,
5 substantially mitigate those effects, even if those,
6 the mitigation is not to a less than significant level.
7 Even if a new EIR is required to address a brand-new
8 impact, the EIR is limited to analyzing just that new
9 effect. The alternatives analysis is quite limited.
10 There's no need to look at alternative locations or
11 densities, and there's no need to analyze growth in
12 using impacts.

13 Significantly, a lead agency's determinations
14 under this process benefit from the deferential
15 substantial evidence standard of review, meaning that
16 as long as there is evidence to support the agency's
17 conclusion, that conclusion should be upheld in court
18 if challenged.

19 The proposed Section 15183.3 describes this
20 new process in great detail and is a major piece of
21 this proposal package.

22 To benefit from the streamlining process, the
23 statute requires that projects satisfy a set of
24 performance standards, and the statute sets forth what
25 those standards have to promote.

1 The standards have to promote reductions in
2 greenhouse gas emissions, reductions in vehicle miles
3 traveled, reductions in energy use and reductions in
4 water use. They also have to support transit and
5 promote the protection of public health.

6 Despite that long list of objectives, OPR and
7 the Resources Agency has worked very hard to focus on
8 the fewest and simplest standards possible.

9 Proposed Appendix M in the proposal package
10 contains these performance standards. Because
11 different projects behave differently, the standards
12 are separated out by project type, but in a nutshell,
13 the standards boil down to this:

14 Projects will be eligible for streamlining if
15 they reduce the amount of driving that will be needed
16 within the region. They can do this in one of two
17 ways. They can either locate the projects in an area
18 within the region where there's already less than
19 average driving; or they can design the project in a
20 way that people, residents and users of the project
21 don't need to drive as much.

22 There are a few other performance standards
23 that apply that aren't related to driving, such as
24 including renewable energy features and cleaning up
25 hazardous materials.

1 So how can project applicants and lead
2 agencies figure out whether they can use the streamline
3 process? Proposed Appendix N creates a checklist for
4 infill projects to walk applicants and lead agencies
5 through the performance standards and to document where
6 impacts have already been addressed. The initial
7 statement of reasons on the Natural Resources Agency's
8 website explains the reasoning and evidentiary basis
9 supporting this package in great detail, and I assume
10 that most folks have already reviewed the proposal
11 package.

12 As Miss Baugh mentioned at the beginning, the
13 purpose of today's hearing is to accept your oral
14 comments on this proposal. I'm happy, however, to
15 answer any technical or clarifying questions that you
16 might have.

17 with that, I will turn it back to Miss Baugh.

18 MS. BAUGH: So we are going to open the floor
19 to public comment. Under the Administrative Procedures
20 Act, we're require to accept public comment for up to
21 45 days, which we've done; and to consider and respond
22 to those comments before finalizing any package.

23 So this is the point in the hearing at which
24 we are taking those oral comments for this region, and
25 we're happy to open the floor to you if you have them.

1 MR. CALFEE: Any comments from the gallery?

2 (No response.)

3 MS. BAUGH: So I think what we'll do then is
4 if we could go off record for a moment. Thank you.

5 (Discussion off the record.)

6 MS. BAUGH: So we're back on record.

7 We are going to go off record until we have a
8 member of the public who's interested in making a
9 public comment under the ADA, and then we'll go off
10 record until that point, at which time we will go back
11 on record to hear and take that comment. Thank you.

12 (Discussion off the record.)

13 MS. BAUGH: So we're back on the record.

14 It's 2:06 on September 7, 2012. We are going to close
15 the hearing for lack of participation. We've had two
16 audience members -- I'm sorry, three audience members,
17 and no one who wished to speak. We will be accepting
18 comments, and if people from this hearing say that they
19 had trouble because they've come after the hearing is
20 closed, we will consider accepting their comments
21 beyond the public hearing date.

22 MR. CALFEE: And we're also conducting a
23 hearing on Monday that will be webcast throughout the
24 State.

25 (Whereupon the hearing concluded at 2:07 p.m.)

CERTIFICATE OF REPORTER

I, BARBARA SMALL, a Certified Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing hearing was reported in shorthand by me, Barbara Small, a Certified Shorthand Reporter of the State of California and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 10th day of September, 2012.

BARBARA SMALL, CSR

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