



CENTER FOR
CREATIVE
LAND
RECYCLING

*Redeveloping Land for
Sustainable Communities*

February 24, 2012

Christopher Calfee
Governor's Office of Planning and Research
1400 Tenth Street
Sacramento, CA 95814
CEQA.Guidelines@ceres.ca.gov

Re: CEQA Guidelines Update

Dear Mr. Calfee,

Thank you for the opportunity to provide comments on OPR's draft CEQA Guidelines Section 15183.3 for streamlining CEQA review for infill projects. The Center for Creative Land Recycling (CCLR or "see clear") is the state's only organization solely dedicated to brownfield development and we play an integral role in the revitalization of many sites around the state. Our work is accomplished through training, technical assistance, and small grants and loans for communities and community developers who are attempting to turn around vacant or environmentally distressed properties, including the infill sites targeted by this new program.

1. Soil and Water Remediation (Appendix M, Section II)

The draft guideline require that, if the project site is included on any list compiled pursuant to Section 65962.5 of the Government Code (AKA the "Cortese List"), the project shall implement the recommendations provided in a Phase I environmental assessment, or if one is prepared, a preliminary endangerment assessment.

OPR staff stated at the 2/21/12 Public Workshop Presentation that the purpose of this language is to require implementation of clean-up recommendations if site clean-up is necessary. Given the industrial legacy of our urban cities, nearly every urban infill site will have some sort of contamination issue from past use. We therefore agree with the stated intent of this provision. However, the current language does not get us there. First of all, presence on the Cortese List is not the best indicator of possible unsafe exposure to soil or groundwater contamination. The Cortese List is merely a compilation of sites that are already under some sort of environmental regulatory oversight and are already in various stages of remediation. It therefore does nothing to help ensure protection from contamination that has yet to be brought to the attention of an oversight agency. Furthermore, the Cortese List includes many sites already cleaned up and certified by an oversight agency as safe for reuse. For example, the Water Board's component of the Cortese List includes all sites in their Geotracker database, including sites that have been certified as safe for reuse.

Second, a Phase I assessment does not include cleanup recommendations; it is simply an assessment and identification of possible contaminants of concern (COC) through records search, visual inspection, and interviews. It is a crucial first step, though; in this age of heightened liability concerns, Phase Is have become standard operating procedure for infill developers, especially since a Phase I (AKA “All Appropriate Inquiry”) is required for any purchaser interested in protection from federal Superfund liability.

RECOMMENDATION: Amend Appendix M, Section II as follows:

“The project proponent shall prepare or have prepared an All Appropriate Inquires Phase I environmental assessment and shall work with the appropriate oversight agency to address all constituents of concern identified in the Phase I report.”

2. Projects Near High Volume Roadways (Appendix M, Section III.A)

The draft guideline require that projects within a certain distance of high volume roadways implement whatever measures the lead agency determines are necessary for protection of public health.

It is unclear what purpose this provision provides. The existing CEQA handbook already requires that the Lead Agency evaluate whether or not the project will expose sensitive receptors to substantial air pollutant concentrations, as evidenced by paragraph d of Section III of the existing Environmental Checklist Form, titled “Air Quality”. The tiering nature of SB 226 therefore guarantees that if air quality impact concerns were not sufficiently addressed in the plan-level EIR then they will be identified as a potentially significant effect subject to project-specific CEQA review. The suggested language therefore only serves to create a redundant process that will add more time and expense to the infill project’s CEQA review, which runs directly contrary to the legislative intent of SB 226.

RECOMMENDATION: Remove “Projects Near High Volume Roadways” paragraph from Section III.A of Appendix M.

Thank you again for providing this opportunity to comment on the draft CEQA Guidelines Section 15183.3. We appreciate your effort and the efforts of OPR to encourage infill development in California.

Sincerely,



Stephanie Shakofsky
Executive Director, CCLR



Evan Reeves
Policy & Research Director, CCLR