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VIA U.S. MAIL AND ELECTRONIC MAIL

February 24, 2012

Christopher Calfee
Governor's Office of Planning and Research
1400 Tenth Street
Sacramento, CA 95815
ceqa.guidelines@ceres.ca.gov

RE: City of Oakland Comments on Proposed Draft CEQA Guidelines to Implement SB 226 (Streamlining for Infill Projects)

Dear Mr. Calfee:

Thank you for the opportunity to review and comment on the proposed draft revisions to the State CEQA Guidelines for the implementation of SB 226 ("Draft Guidelines"). The City of Oakland respectfully submits the following comments and requests (a) that OPR provide detailed responses to the City's comments, and other public comments, prior to OPR submitting the final Draft Guidelines to the Natural Resources Agency and (b) an opportunity to review and comment on such responses and any revisions to the Draft Guidelines for at least 30 days before the final draft is submitted to the Natural Resources Agency.

General Comments

1. **Limited Streamlining:** The Draft Guidelines, as proposed, would result in limited CEQA streamlining for infill projects because (a) very few projects would meet the eligibility requirements for infill streamlining and (b) projects that do meet the eligibility requirements would still be subject to lengthy and costly environmental review. Very few projects would meet the eligibility requirements because very few projects, including good infill projects consistent with the intent of AB 32 and SB 226, would meet all the required performance standards contained in Appendix M of the Draft Guidelines. The performance standards should be structured so that good infill projects consistent with the State's greenhouse gas reduction policies are eligible for CEQA streamlining. Additional comments concerning the proposed performance standards are contained below. For those projects that are eligible for CEQA streamlining, the Draft Guidelines require a written "infill checklist" which appears to be similar to an Initial Study. Initial Studies are lengthy and costly exercises. The new infill checklist will likely require even more work than an Initial Study because the infill checklist must analyze the effects of the

project and compare those effects to the previous environmental analysis. Requiring a written evaluation for infill projects that would not cause any new significant impacts is inconsistent with CEQA streamlining. Rather than a written checklist, the lead agency should be required to simply make a finding, supported by substantial evidence in the record, that the project would not result in any new significant impacts.

Performance Standards

2. Renewable Energy: This performance standard is vague. There are a variety of renewable energy components that can be incorporated into a project. It is unclear how many renewable energy components are required. Furthermore, the focus on *renewable* energy in the performance standard appears inconsistent with SB 226 which states that the performance standards shall promote energy *efficiency*. If this performance standard is to be included, we recommend a clear "brightline" standard. For example, projects meeting a certified green building standard could be deemed to meet this performance standard.
3. Active Transportation: This performance standard is vague. There are project design features that encourage walking and bicycling, however, most of these features relate to the overall character of a project and do not translate well into a definitive performance standard. If this performance standard is to be included, we recommend a clear "brightline" standard. For example, projects incorporating bicycle parking could be deemed to meet this performance standard.
4. Residential Project VMT and Location: It is unclear how VMT is to be considered in the proposed performance standards. The proposed performance standards state that a residential project is eligible if it achieves a certain level of *existing* per capita VMT less than the regional VMT. A proposed project does not have an *existing* VMT. This should be changed to *proposed* VMT. It appears that the intent of the performance standards is to determine project eligibility based on either the project's proposed VMT compared to regional VMT or the VMT of the project's location compared to regional VMT. We support this dual method approach; the language of the proposed performance standards should be clear in this regard.
5. Residential Projects Near High-Volume Roadways: The City of Oakland supports planning for healthy communities, and considers the public health impact of proposed residential development near sources of air pollution. However, this performance standard appears to be in conflict with growing case law reaffirming that CEQA is concerned with the impact of a project on the environment and not the impact of the environment on the project (see *Ballona Wetlands Land Trust et al. v. City of Los Angeles* (2011) Cal. App. 4th (No. B231965, Second Dist., Div. Three, Nov. 9, 2011); *South Orange County Wastewater Authority v. City of Dana Point* (2011) 196 Cal. App. 4th 1604, 1614-1618; *City of Long Beach v. Los Angeles Unified School Dist.* (2009)

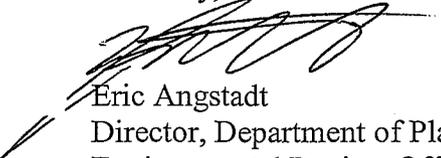
176 Cal. App. 4th 889, 905; and Baird v. County of Contra Costa (1995) 32 Cal. App. 4th 1464, 1468).

6. Commercial/Retail Project VMT and Location: While the proposed performance standards for residential projects appear to consider either the project's proposed VMT compared to regional VMT or the VMT of the project's location compared to regional VMT (as discussed in comment no. 4 above), it is unclear how project VMT and location are considered for commercial/retail projects. In one section of the proposed performance standards only the VMT of the location is considered and not the project's VMT. Unfortunately this would discourage low-VMT and otherwise good projects in locations with high existing VMT. Instead, we should encourage low-VMT projects in high-VMT areas in order to reduce the overall VMT for the location. In another section of the proposed performance standards, the project's VMT is considered compared to *existing* VMT. It is unclear what *existing* VMT refers to – the VMT of the site, the traffic analysis zone, or the region. We recommend that the commercial/retail VMT-related performance standards be clarified and simplified. Projects with low VMT (regardless of the VMT of their location) and projects in low-VMT locations should be encouraged and eligible for streamlining.

7. CALGreen Tiers: Several of the proposed performance standards reference the new CALGreen building code, and specifically the optional CALGreen Tiers. Several jurisdictions including the City of Oakland have not adopted the Tiers and instead rely on other recognized third-party green building rating systems such as the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) program or Build It Green's GreenPoint Rated program. For such jurisdictions, requiring a project applicant to provide compliance documents to meet both the CALGreen Tier standard and the local green building standard would be duplicative and unnecessarily onerous. We recommend that the CEQA Guidelines allow for the option of an appropriate LEED or GreenPoint Rated rating consistent with the CALGreen Tiers in order to qualify for streamlining.

Please contact Darin Ranelletti, Planner III, at (510) 238-3663 or dranelletti@oaklandnet.com if you have any questions.

Sincerely,



Eric Angstadt

Director, Department of Planning, Building and Neighborhood Preservation
Environmental Review Officer