



May 30, 2012

CEQA Guidelines Update
c/o Christopher Calfee
1400 Tenth Street
Sacramento, CA 95814

Re: SB 226 Guidelines (Revised)

On behalf of the Natural Resources Defense Council, which has more than 1.2 million members and on-line activists nationwide, more than 250,000 of whom are Californians, we present these comments on the revised SB 226 Guidelines released by the Governor's Office of Planning and Research earlier this month.

We would first like to recognize and thank OPR for a number of changes in the revised Guidelines that address concerns raised in our comment letter of February 23, 2012.

- By eliminating the option for projects to benefit from SB 226 by utilizing CALGreen, the revised Guidelines remove a loophole which we felt would encourage projects in bad locations;
- By eliminating the "red" and "yellow" zones, and establishing a single "green" zone of below-average VMT, the new Guidelines meet their goal of administrative simplicity while also ensuring that most, if not all, SB 226 projects will be in low VMT contexts;
- By reducing the eligibility threshold for commercial projects, the new Guidelines minimize the possibility of SB 226 being used to facilitate the development of "big box" retail; and
- The new language in 15183.3(d)(1)(D) goes a long way towards addressing our concerns about unanalyzed or unmitigated effects in previous planning-level EIRs that could be mitigated given new circumstances or mitigation options. These changes minimize the possibility that a project's negative environmental impacts would persist due simply to the age of the underlying environmental document.

We believe the changes outlined above will improve the Guidelines by simplifying their administration while ensuring that SB 226 benefits accrue to environmentally beneficial projects.

NRDC suggests the following additional changes to further improve the proposed Guidelines:

Near-Roadway Development

We still believe that the SB 226 Guidelines could offer more assurance that CEQA streamlining will not be enjoyed by projects that are in locations that could expose residents to harmful concentrations of mobile source emissions. We would propose the following amended section for Appendix M:

Residential Units Near High-Volume Roadways and Other Significant Sources of Air Pollution. If a project includes residential units located within 500 feet, or another lesser distance determined to be appropriate by the local air district based on local conditions, of a high volume roadway or other significant source of air pollutants, the project shall include air quality and health mitigation measures, such as enhanced air filtration and project design, that the lead agency, in consultation with the local air district or the California Air Resources Board, determines, based on substantial evidence, will protect the health of future occupants of the project.

To complement the language above, we would add two entries to the definitions section of Appendix M:

“Air quality and health mitigation measures” include the measures designated by the California Air Pollution Control Officer’s Association, *Health Risk Assessments for Proposed Land Use Projects*, p 13.

“Significant sources of air pollution” include airports, marine ports, rail yards and distribution centers that receive more than 100 heavy-duty truck visits per day; and stationary sources that are designated Major by the Clean Air Act.

These changes would provide a more clearly defined framework for consideration of mobile source emissions-related health effects and what action can be taken to mitigate those effects. The language preserves the authority of local governments, while calling for at least consultation with the appropriate air district. The language also provides an incentive for localities and air districts to perform more detailed air quality analysis.

Transit Stops versus Transit Corridors

While we appreciate the effort to harmonize the transit-related language in the Guidelines with that used in SB 375, we believe that SB 226 benefits should only accrue to projects in proximity to a “Major Transit Stop,” as defined in the Guidelines, and not to projects that are simply adjacent to a “High-quality transit corridor.” In a number of cases, such corridors are freeways, and extending CEQA benefits to large swaths of land alongside freeways is not likely consistent with the intent of SB 226 to promote infill and walkable communities.

“Substantially Mitigate”

Sec. (d)(1)(E) defines “substantially mitigate” as lessening an environmental effect, “but not necessarily below the level of significance.” We are unable to find in the Guidelines, SB 226, CEQA itself, or in any CEQA case law a clear definition of what constitutes a “lessening” of an environmental effect or what constitutes a “substantial” mitigation. This lack of a clear definition gives us serious concern. Not only do we believe that such a lax definition may be abused by local agencies, but we are also concerned that such ambiguity will deter developers of sustainable projects from taking advantage of SB 226 because of the fear of legal challenge to such an undefined standard.

We recommend, therefore, that the Guidelines either a) clarify that “substantially mitigate” means “mitigate below the level of significance,” or b) add the following language to the Section: “projects that mitigate effects below the level of significance shall consider those effects substantially mitigated,” to provide project sponsors an explicit path to meeting the requirements of this Section.

The Age of Environmental Documents

In our previous comments, we had recommended that SB 226 benefits accrue only to projects that are in areas covered by a planning-level EIR that is less than 10 years old. Older EIRs run the risk of containing environmental analysis that would be considered insufficient by contemporary standards as well as approaches to mitigation that are outdated or that lack the benefit of contemporary technologies. While the new language in 15183.3(d)(1)(D) does improve on this situation, we continue to believe that EIRs must be relatively up-to-date. A 10 year cut-off accepts that local jurisdictions need time to update their planning documents while also ensuring that EIRs are still relatively contemporary in their consideration of environmental impacts and available mitigations.

The Use of Transportation Studies for Commercial Projects

The revised Guidelines continue to offer commercial projects the option of obtaining a transportation study that would show that the project would reduce VMT. We once again recommend that this option be eliminated, and that commercial projects utilize a context-based approach, just like all the other project types. We believe a transportation study that would qualify a potentially bad commercial project in an admittedly poor location (or else the context criteria would suffice) could be easily obtained; this compliance pathway is too easily gamed.

Thank you again for all of your work in creating these Guidelines. Please let me know if you have any questions or would like any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Justin Horner", written in a cursive style.

Justin Horner
Transportation Policy Analyst