

PROPOSED CEQA GUIDELINES SEEK TO EXPEDITE INFILL DEVELOPMENT REVIEWS

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Last year, the state Legislature enacted Senate Bill 226 to streamline review of infill development projects under the California Environmental Quality Act, or CEQA. CEQA is a cornerstone of environmental protection in California, requiring public agencies to evaluate the impacts of projects they undertake or approve, consider alternatives and adopt mitigation measures if feasible. However, developers and local governments have long complained that the CEQA process is expensive, time-consuming and allows NIMBY opponents to wield allegations of environmental effects as a weapon, even against urban, transit-oriented projects that benefit the environment by reducing suburban sprawl, traffic congestion and vehicle pollution. In response to those complaints, SB 226 provides an expedited CEQA process for eligible infill projects and directs the state's Natural Resources Agency to adopt eligibility standards by Jan. 1, 2013. On July 27, the agency issued proposed guidelines for public comment. Those comments are due on Sept. 10.

The proposed guidelines on "Streamlining for Infill Projects" apply to infill projects within the scope of a prior planning-level decision, such as a General Plan, for which a city or county previously

prepared an Environmental Impact Report, or EIR. For these projects, CEQA review is limited to project-specific impacts not addressed in the prior EIR or adverse impacts which are "more significant" than previously described. If no such impacts exist, no further review is necessary. Even if the prior EIR found an impact to be severe, so long as it has not become *more* severe, the prior review suffices under the proposed guidelines. Moreover, if a city, county or lead agency has adopted uniformly applicable development policies or standards (which are referred to in this article as "local policies") and finds that those policies will substantially mitigate any project-specific or more significant impacts, no further review of the infill project is required.

"Substantially mitigate" means the local policy will substantially lessen the effect, but *not* necessarily below the traditional CEQA threshold of "less-than-significant." The lead agency makes these determinations, subject to judicial review under the deferential "substantial evidence" standard, rather than the more stringent "fair argument" standard that applies in some CEQA contexts. Proposed CEQA Guidelines Appendix N contains a sample checklist that can be used to identify which impacts were previously

addressed, which are project-specific or more significant, and which are substantially mitigated by local policies. If all impacts have been addressed, the lead agency simply files a Notice of Determination to that effect and approves the project.

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Alternatively, where project-specific or more significant impacts do exist, the lead agency may prepare a limited negative declaration or an "infill EIR" to address those impacts. However, an infill EIR need not consider alternative locations, densities or building intensities or growth inducing impacts. Excluding those issues from the EIR should substantially speed the review process.

Eligible projects may be residential, retail, commercial or mixed-use, transit stations, schools or public office buildings. In each case, they must be on previously developed urban sites or vacant land at least 75 percent surrounded by urban uses.

In addition, the projects must be consistent with regional land use and transportation strategies and with statewide performance standards specified by the proposed guidelines. The guidelines, in turn, must be consistent with a variety of objectives specified in SB 226 itself, which include implementing regional land use and transportation strategies, encouraging transit villages, reducing greenhouse gas emissions, improving energy efficiency, reducing per capita water use, protecting public health and promoting state planning priorities.

In lieu of separate standards for each objective, the proposed guidelines utilize Vehicle-Miles-Traveled or VMT as a proxy, on the theory that encouraging projects in areas where VMT is below the regional average will increase development density and promote all of the density-related statutory objectives. Residential projects must be located in below-average VMT areas or within a half-mile of an existing major transit stop or high quality transit corridor. Residential projects in other areas can qualify if they consist of 100 or fewer units which will be affordable to low income households for at least 30 years. Commercial and retail projects must be located in below-average VMT areas or within a half-mile of 1,800 households, with no single building exceeding 50,000 square feet. Office buildings must be located in below-average VMT areas or within a quarter-mile of an existing major transit stop. Schools must be close to student populations and provide parking and storage for bicycles and scooters. Transit stations and small

walkable community projects are also eligible.

Additional performance standards require on-site generation of renewable energy for non-residential uses and encourage it for residential uses. To protect public health, the standards also require remediation of any soil and water contamination and, if the project is within 500 feet of a high volume roadway or stationary source of air pollutants, compliance with local public health policies. If no such policies exist, the project must incorporate protective design features or measures such as enhanced air filtration.

In some cases, the performance standards may limit streamlining opportunities. For example, the commercial/retail cap of 50,000 square feet is intended to screen out region-serving projects reached primarily by driving but would also exclude large downtown developments. The requirement for costly design features for development near roadways may exclude projects in the very transportation corridors where the guidelines seek to encourage development.

Most important, the effectiveness of the proposed guidelines depends on the efforts of local agencies in preparing detailed and defensible planning-level EIRs and adopting effective local policies. The guidelines note that a prior planning-level EIR will help most in qualifying later infill projects for streamlined review if the EIR deals with effects of infill development as specifically and comprehensively as possible. The same is true of the local policies. Although cash-strapped local

governments may be reluctant to invest the resources to develop well-crafted planning-level EIRs and local policies, which are purely voluntary under the proposed guidelines, they should seize this opportunity to avoid repetitive project-level reviews.

Nevertheless, if the proposed guidelines are finalized and if cities and counties take full advantage of the opportunity they present, they have the potential to greatly speed the review and approval of eligible infill projects throughout California.



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