



February 23, 2012

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

Emailed: CEQA.Guidelines@ceres.ca.gov

RE: Comments on the Proposed Addition to the CEQA Guidelines Implementing SB 226

Dear Chris:

As an organization of real estate developers who focus exclusively on infill, the California Infill Builders Association (“Infill Builders”) is pleased to submit these comments on the proposed addition to the CEQA Guidelines implementing SB 226 (Simitian and Vargas). California needs to favor development within existing urban areas to achieve its environmental goals and to improve the economies of its cities and towns. However, land configuration, contextual conditions, construction costs at higher densities, and other barriers make infill development riskier and more expensive than building on farmland and on greenfields. With financing from redevelopment agencies no longer a source to help close the cost gap, CEQA streamlining becomes an even more important strategy for increasing certainty and lowering the cost of infill development. The Infill Builders applauds SB 226 as an incremental step toward that goal.

The Governor’s Office of Planning and Research (“OPR”) prepared the proposed Guidelines in response to the Legislature’s direction in SB 226 to add to the CEQA Guidelines a streamlined CEQA review process for infill projects, as well as performance standards that determine an infill project’s eligibility for that streamlined review. The Infill Builders appreciates OPR’s hard work in drafting these guidelines and performance standards and recognizes the challenges that OPR faces in crafting a balance between regulatory certainty and allowing stakeholder input on local decision-making processes. We hope the following comments help OPR further refine and improve these draft guidelines.


1. SB 226 relies on good programmatic environmental review documents at the local level to make the streamlining provisions for smaller projects effective. SB 226 essentially develops an enhanced tiering process to allow projects subject to prior CEQA analysis

and studies to avoid review for impacts already studied programmatically. As a result, the approach is only as good as the existing plans and environmental review documents, many of which may be outdated or incomplete. OPR must therefore commit itself to providing local governments with assistance for developing and improving comprehensive and high quality programmatic CEQA documents through templates, grants, and other means.

2. The Infill Builders fear that the uneven quality of existing programmatic CEQA documents will unleash a new line of legal challenges to SB 226 projects based on the projects' alleged inconsistency with program documents. Even with the deferential standard of review allowed by SB 226 on these decisions, litigation and challenges could still delay a project in court for a minimum of 12-24 months, resulting in significant uncertainty for even exceptional infill projects. OPR can address this problem by providing local government assistance and possibly written support for model projects. OPR should also consider additional CEQA streamlining for these programmatic documents, such as bolstering expedited review for infill-focused plans in the General Plan Guidelines update. See "Top Roadblocks," attached.
3. The guidelines do not make clear how local governments will evaluate "mixed-use projects" that could include retail, commercial, and residential space. The Infill Builders suggest that OPR develop guidance for local governments to evaluate mixed-use projects based on the dominant use of the project, as determined by square footage. If these projects are not evaluated in this manner, the risk of conflicting review standards could have the unintended consequence of promoting potentially less desirable single-use projects.
4. OPR should consider expanding the streamlining benefits to include hospitals.
5. Except for affordable housing, OPR should eliminate the provisions allowing "green buildings" to override the vehicle miles traveled (VMT) metric.

The Infill Builders appreciates the opportunity to comment on these draft guidelines and performance standards and welcomes the chance to participate in future conversations on this issue of vital importance to California's economic and environmental future.

Sincerely,



Meea Kang
President, California Infill Builders Association



The Top Roadblocks to Infill Development in California

Introduction

California needs to favor development within existing urban areas to achieve its environmental goals and to help improve the economies of its cities and towns. But land configuration, contextual conditions, and construction costs at higher densities make infill development more difficult, risky, and expensive than building on farmland and sprawl areas today. However, some barriers to infill can be addressed within the public domain. For example, infill projects can be thwarted by individual neighbors, poor performing schools, excessive parking requirements, and inadequate infrastructure. The California Infill Builders Association (“Infill Builders”) presents the following list of the top barriers to infill and some possible solutions.

1. Inadequate infrastructure

Many prime locations for infill development suffer from weak demand for housing due to deteriorating and/or unappealing sidewalks and streets, lack of public transit, insufficient or aging utilities, and underperforming schools in city centers. Moreover, cities have relied historically on negotiated exactions from private developers as a primary source of funds for public improvements. This has created a barrier to smaller, incremental projects (especially in emerging neighborhoods) that cannot afford the process or results of such negotiations, and it has created an impetus for cities to seek larger, “game-changing” projects that can bear the burden of public infrastructure. Moreover, public infrastructure is rarely built in accordance with a broader planning vision in mind—it is generally controlled by engineering and/or public works departments rather than planning departments. Affected areas require significant public investments in infrastructure to make infill projects profitable and attract for private financing, especially with respect to incremental projects.

Solutions: State should authorize tax increment financing to help finance infill infrastructure in priority infill and transit-rich areas.

State should assure funds associated with school bonds are awarded to encourage infill development. Reform funding procedures, revise construction standards, remove barriers to providing schools to serve infill areas.

State should develop infrastructure financing programs, such as infrastructure financing districts or a revitalized Infrastructure Bank, targeted at infill priority areas.

State should program state bond and discretionary funding to support transit and alternative modes of transportation to the car and infill in “priority growth areas/infill areas.”

State and local governments should replace local agencies’ reliance on one-off negotiations with developers with capital infrastructure plans that can be funded in part by predictable impact fees along with other sources

2. An Uncertain Regulatory Process

Finance sources are reluctant to support infill projects due to the permitting uncertainty arising from myriad local government requirements, planning and zoning restrictions, fire and other code limitations, extensive project-specific environmental review processes, and local opposition (“no-growth” advocates and unhappy neighbors). These challenges also include regional permitting hurdles involving water and localized air quality impacts on urban development. Developers often joke that “cows don’t sue,” meaning that greenfield sites are less risky and less expensive to entitle.

Solutions: State should allow preparation of “infill-focused” environmental impact reports (EIR) based on Infill Plans or Infill Opportunity Zones that would address issues of parking, design, open space, traffic and other issues in detail. Projects could tier off of these EIRs. The General Plan Guidelines update underway should require infill-focused plans and increase certainty/reduce unnecessary duplication of environmental review for these plans. Plan making guidelines must facilitate a process that can commence and be completed with the goal of guiding current market conditions.

Local governments should include a general plan “infill” element for mixed uses, higher density, “complete neighborhoods.” Again, projects consistent with these elements should be protected from duplicative review and legal challenges;

Local governments should develop and implement “form-based codes” for infill projects to provide increased certainty using administrative approval for consistent projects. These documents should not necessarily be prescriptive as to use and building form but should accommodate future growth and reduce vehicle miles traveled.

Local governments should reduce parking requirements for infill projects near transit.

3. Higher Economic Costs

The typically more expensive construction process, longer permitting time, and additional infrastructure burdens make infill development in existing neighborhoods less economically competitive than in undeveloped areas, thereby reducing below capital market thresholds.

Solutions: State should authorize creative use of tax incentives, including abatement.

State and local governments must recognize that a progressive infill program of upgrading urban infrastructure and preserving affordable housing will be spotty, poorly planned, and resource inefficient if funding relies solely on impact fees assessed on new construction. State and local governments should therefore reduce the burden of impact fees and development fees on development costs and explore new ways to distribute the burden of infrastructure costs, costs of government service, and affordable housing across a broad range of properties and business activities benefitting from infill development. For example, public financing of infrastructure and affordable housing might take the form of purely property tax increment as well as a surcharge on document transfer fees that can draw on the uplift of all real estate values.

4. Skewed Tax Incentives

Local governments prefer to permit large single-use retail buildings to maximize sales tax revenue and minimize infrastructure costs, rather than mixed-use development.

Solutions: State should revise Prop 13 for commercial properties to incentivize these properties to come up for sale.

State should create state/local tax swap: allow local governments to exchange equal amounts of sales tax revenue for property tax funding from the state to incentivize qualifying infill projects.

State should modify 2/3 vote requirement for certain “taxes” such as for transit and infill infrastructure.

5. Restrictive Local Land Use Policies

Certain legislation intended to support infill require regional and/or local jurisdictions to conduct extensive planning studies in order to make findings and adopt new local land use plans for transit-oriented projects. These plans are typically expensive, infused with politics, and time-consuming to adopt, and they are often redundant with established state policy. Three significant misallocation of resources result:

- The plan-making process becomes an end in itself and highly disconnected from the market forces which make planning effective;
- Planning focuses too heavily on regulating properties the public does not own while asserting inadequate vision and mandate for properties and rights of way the public does own; and
- Local governments often fail to acknowledge that infill development will have some unmitigable impacts, such as localized traffic congestion. Plans therefore presume impacts, perceived and real, can be mitigated by new land use controls and procedures.

These efforts to mitigate will therefore have the unintended result of creating new barriers to infill projects.

Solutions: The State should develop guidance for local governments regarding good projects in the right locations and provide legislative relief to allow local governments to offer a clear, simple statement of vision for each infill priority neighborhood.

State and local infrastructure spending should be targeted to these areas (including streets, parks, schools, etc.).

Local land use plans, infrastructure planning, and land use discretionary approval applied to infill/urban redevelopment in these priority areas need not make further findings to comply with General Plan updates, CEQA, and other land use laws.