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February 24, 2012

CEQA Guideline Update
c/o Christopher Calfee
1400 Tenth Street
Sacramento, CA 95814
Submitted via email: CEQA.Guidelines@ceres.ca.gov

Dear Mr. Calfee,

On behalf of the Planning and Conservation League (PCL), following are our comments on the proposed guidelines for implementation of Senate Bill 226 ("Draft Guidelines"). PCL has been dedicated to safeguarding and restoring California's natural environment, as well as promoting and defending the public health and safety of the people of California, for nearly fifty years. In 1970, PCL played an active role in the passage of the California Environmental Quality Act (CEQA), one of California's keystone environmental laws, and we remain dedicated to ensuring that CEQA continues to play a critical role in protecting our state's environment and communities. PCL appreciates the opportunity to submit these comments on the proposed guidelines for implementation of SB 226, which provides CEQA streamlining for certain infill projects, and we are committed to working with the Office of Planning and Research during this process.

In general, PCL appreciates the extensive outreach undertaken by OPR staff, and we feel the approach taken in the proposed Guidelines is moving in the right direction in maintaining a balance between important CEQA protections and trying to promote the development of infill projects. While generally supportive of OPR's approach, however, we do have some significant concerns with aspects of the Draft Guidelines. PCL has included comments on both legal/procedural issues (legal terms, accessing prior EIRs, etc.) and substantive issues (retail, VMTs, etc.). In broader terms, the legal/procedural issues focus on the *Proposed CEQA Guideline § 15183.3* while the substantive issues pertain to *Appendix M*.

Procedural Issues

To Prevent Significant Impacts on California's Environment, the Draft Guidelines Should Redefine What It Means for a Uniformly Applicable Development Policy to "Substantially Mitigate" an Infill Project

PCL is concerned that certain infill projects with new specific effects or effects that are more significant than analyzed ("new specific effects") can be granted a complete CEQA exemption, despite the fact that these projects may have a significant impact on the environment. Under *Proposed Guideline § 15183.3*, subd. (c)(1)(E), if a city, county, or lead agency adopts "uniformly applicable development policies" that would substantially mitigate the new specific effects of an infill project, no further review is needed. The Proposed Guideline defines "substantially mitigate" to mean that uniformly applicable development policies will substantially lessen the project's environmental impacts; it does not mean that impacts will

be lessened to the point of no significance. As a result, there is a loophole for some infill projects with significant impacts on the environment to have a complete CEQA exemption.

This is a significant departure from other projects in California, where mitigating environmental impacts below a level of significance is a priority. The *Proposed Guideline*, as it currently stands, opens the door to heightened environmental and public health threats and raises environmental justice issues for underserved communities that could potentially benefit from good infill projects.

To avoid this, the term “substantially mitigate” in the SB 226 Guidelines should require uniformly applicable development policies to mitigate to a level below “significant”. (See attached chart for more information). If a fair argument exists that the policy will not achieve that, CEQA review is needed and an infill EIR may need to be prepared. Furthermore, stringent standards should be established for a city, county, or lead agency’s adopted uniformly applicable development policies to ensure that these policies substantially address environmental concerns. Finally, there should be a public process to help the agency decide whether the uniformly applicable development policies substantially mitigate the new specific effects. Otherwise, the “substantial evidence” that the agency uses will be derived almost entirely from reports and opinions of those financially interested in the project.

SB 226’s Proposed Guideline Contradicts SB 226 Legislation Regarding Infill EIR Procedures; This Should Be Changed to Prevent Agencies from Bypassing CEQA Review, as Required by SB 226 Itself.

Proposed Guideline § 15183.3, subdivisions (c)(2)(C) and (c)(2)(D) arguably contradicts and overreaches the limits of SB 226. Public Resources Code § 21094.5, subdivision (a)(2) and (b) says that *if the significant effects of the infill project were not addressed in the prior EIR*, the agency must then prepare an EIR. Public Resources Code § 21094.5 does not address what it means to “substantially mitigate the impact.”

In contrast, the *Proposed Guideline* says that if an infill project would have *new specific effects*, and uniformly applied development policies would not substantially mitigate such effect, these effects are subject to CEQA. However, the agency can make findings, based on substantial evidence, that these new specific impacts have been mitigated by uniformly applied development policies.

In other words, the Proposed Guideline allows an agency to bypass some CEQA review by making findings that development policies will substantially mitigate environmental concerns of impacts that were never disclosed or addressed in the prior EIR. Public Resources Code § 21094.5, however, says that if an impact was not discussed or addressed in a prior EIR, it must be analyzed in a tiered EIR. Although Public Resources Code § 21094.5, subd. (a)(2) does allow a lead agency to make a finding that development policies will substantially mitigate an effect, this is allowed *only if* 1) that effect was described in a prior EIR and 2) if, without the development policies, the effects would be significantly greater than described in the prior EIR.

To remedy this, any significant impacts not addressed in a prior EIR should be subject to CEQA review. (See attached chart for more information). Absent an amendment to SB 226, the lead agency should not be able to decide that significant impacts unaddressed by a prior EIR can be mitigated solely through uniformly applied development policies—which at this point, do not even require mitigation to a level less than significant.

The Draft Guidelines Should Contain a Five-Year Expiration Date on Prior EIRs

Information, policies, technology, and economies change over time. A finding that was “significant and unavoidable” several decades ago is not necessarily unavoidable today. Prior EIRs should have an expiration date. Otherwise, decades in the future, infill development will occur using the same

information of projects from the 1970s, 1980s and 1990s. Considering the increasing advancement of technology, a five-year expiration date on prior EIRs is reasonable. PCL asks that Table 2 of the *Narrative Explanation of the Proposed Addition to the CEQA Guideline Implementing SB 226* be changed to reflect an expiration date on prior EIRs.

The Draft Guidelines Should Provide for a Means of Accessing and Referencing Prior EIRs.

The *Proposed Guideline* requires that a written checklist be prepared for an infill project. If the Guideline does not contain an expiration date on EIRs, it will become difficult over decades to reference prior EIRs containing an analysis of the project's significant effects.

To enable easy referencing of prior EIRs, the *Proposed Guideline* should mandate electronic uploading of EIRs online. An electronic database or library should be created to keep records of these electronic EIRs. In addition to mandatory page and section references on the checklist, website references should also be included.

Substantive Issues

The Draft Guidelines Should Redefine Urban Use

SB 226 allows for CEQA streamlining of infill projects in "urban areas." Table 3 of the *Narrative Explanation of the Proposed Addition to the CEQA Guideline Implementing SB 226* references Public Resources Code § 21094.5, subd. (e)(5) to define urban area. However, this definition allows infill development in areas that are unincorporated, as long as these incorporated areas are: 1) surrounded by at least one incorporated city, 2) have a population of 100,000 in combination with the incorporated city, and 3) have a population density at least equal to that of the surrounding city or cities. With this loose definition of "urban area," many 'greenfield' areas will potentially qualify. California's population is projected to increase to nearly 60 million people by the year 2050 and in order to protect California's agricultural and rural areas from sprawl, PCL asks that OPR to tighten its definition of what constitutes an "urban area" or redefine "urban area" for purposes of *Proposed Guideline* § 15183.3.

The Draft Guidelines Should Promote Commercial/Residential Mixed-Use Infill Instead of Granting an Exemption to Big Box Retail

The *Narrative Explanation of the Proposed Addition to the CEQA Guideline Implementing SB 226* ("Narrative") discusses the benefits of mixed-use communities, which promote walking, cycling, and reduce greenhouse gas emissions. Citing the American Lung Association, the *Narrative* explains that persons living in mixed-use and walkable communities are at 35% lower risk for obesity. These walkable communities can reduce transportation costs, air pollution, asthma attacks, lost work days, and significant health costs.

PCL supports smart-growth and mixed-use infill development, and asks that OPR create regulations to promote mixed use in its next iteration of SB 226 Guideline. Mixed use should be added to the tables listed in the Narrative as a project eligible for SB 226 streamlining.

PCL, however, is perplexed as to why commercial big box retail that is over 75,000 square feet can receive a CEQA exemption based upon a transportation finding. Big box retail tends to increase VMT and inhibit walkability. UC Transportation Center's magazine, *Access*, contains an article entitled "Retrofitting the Suburbs to Increase Walking," which found that the more businesses per acre a neighborhood contains, the more likely people would travel by walking. There is no indication that big box retail stores cannot afford to go through the general CEQA process. Thus, PCL believes that the *Proposed Guideline* should focus more on encouraging mixed-use development, and eliminate those concerning commercial/retail properties over 75,000 square feet.

The Draft Guidelines Should Allow CEQA streamlining only for infill projects achieving 75% of regional per capita VMT.

Providing CEQA streamlining to projects exceeding 100% of regional per capita VMT may undermine SB 226's goal of reducing VMT. Requiring these projects to apply CALGreen standards will not necessarily lead to an economic benefit since many cities are already requiring new buildings to comply with CALGreen standards.

Instead, limiting the CEQA Infill Streamlining to projects achieving 75% of regional per capita VMT is a better choice. This encourages business to lower their VMT. With population expected to increase in California, reduction of VMT miles is necessary to maintain the status of greenhouse gas emissions, much less lower them.

The Draft Guidelines Should Protect Public Health, Especially the Health of Those Living and Working Near High Volume Roads

The *Proposed Guideline* is concerned about the health of residents dwelling nearby high volume roadways. To alleviate public health concerns, the *Proposed Guideline* requires residential infill projects located within 500 feet to comply with any public health policies in a local general plan, specific plan, zoning code, or community risk reduction plan. However, since these plans may be rarely updated, PCL asks that OPR consider alternatives to addressing these public health concerns. A report produced by Rhajiv Bhatia in 2008 cites a World Health Organization study estimation that "over 25% of the burden of human illness worldwide can be attributed to modifiable environmental conditions (Frumkin 2004; Pruss-Ustun and Corvalan 2006), and evidence linking social conditions such as employment, transportation, housing, food resources", and other issues to health outcomes. We ask that OPR take a more in depth look at public health and its relationship with the promotion of infill development.

The Draft Guidelines Should Address Affordable Housing Needs

One of the foreseeable effects of infill development is the displacement of affordable housing. Infill project developers should be required to create, or fund, a certain percentage of affordable housing within areas subject to SB 226. Otherwise, SB 226 may, as an externality, displace low and middle-income population from urban areas. Ironically, low and middle-income persons are the very population that would benefit most from the infill development. If low and middle income persons can no longer afford housing in areas of infill development, they may need to travel from their area of relocation to work at offices, retail, and schools at the infill site. Relocating the low and middle-income population contradicts the low VMT goal.

The Draft Guidelines Should Include Other Criteria to Promote Healthier Communities

Recognizing that SB 226 was largely focused on establishing criteria for reducing greenhouse gas emissions and other environmental factors when providing CEQA streamlining, it is important to note that CEQA requires broader factors to be analyzed during the environmental review process. By ignoring factors such as population displacement, preservation of historic resources, and public health concerns, as drafted the proposed guidelines would allow streamlining for projects that could significantly impact local communities. While VMT does provide a good 'surrogate' for many of these factors, vehicle miles travelled does not fully address all these concerns. We would ask OPR to continue to develop criteria that will reflect these broader community concerns.

Conclusion

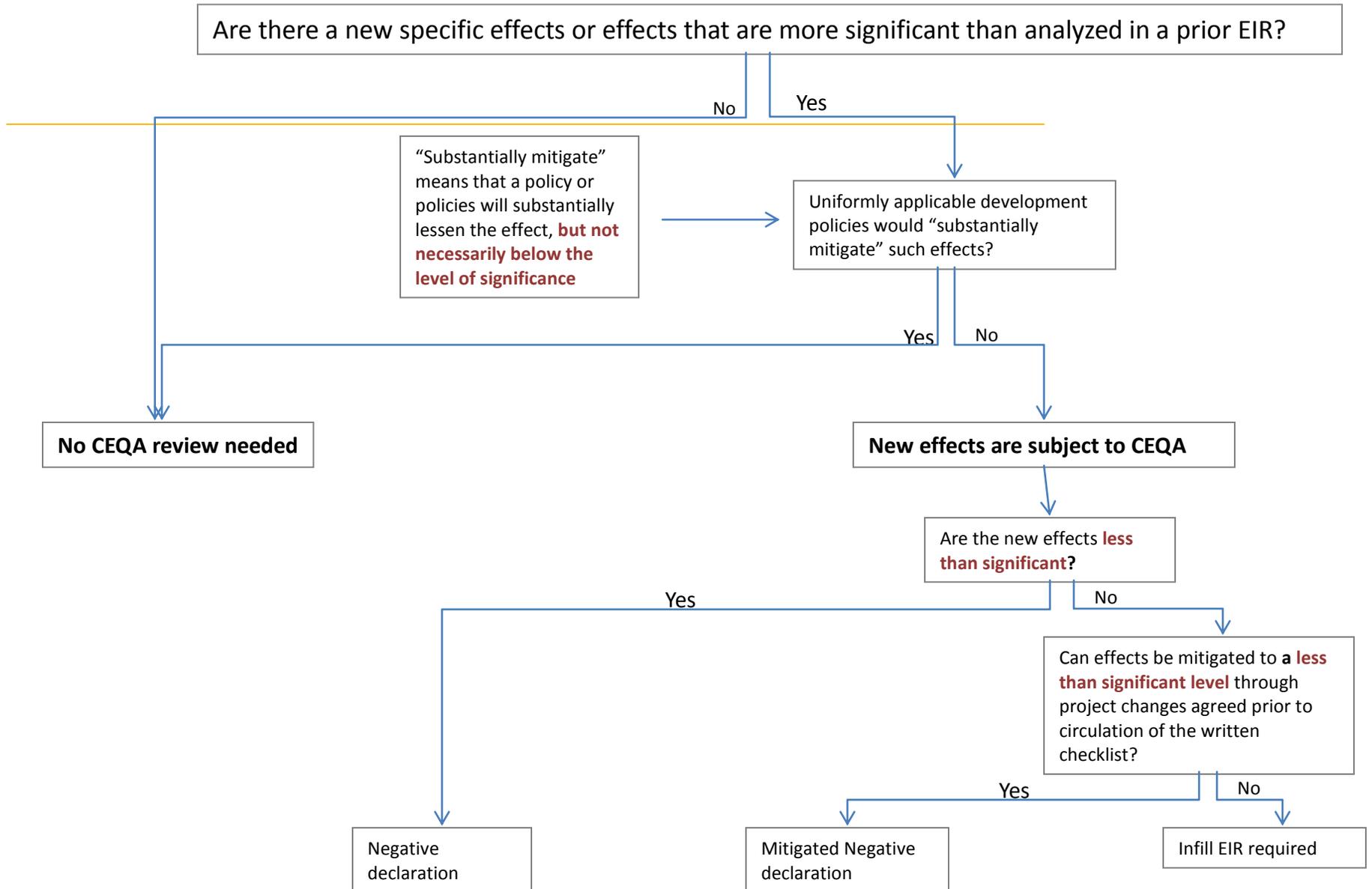
The Planning and Conservation League would like to thank you again for the opportunity to provide comments on the draft and appreciate your time and consideration of our recommendations. Should you have any questions or comments, please feel free to contact us. We look forward to continuing the dialogue around the *Proposed Guidelines* and working with the Office of planning and Research on such an important issue.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bruce Reznik', with a long horizontal line extending to the right.

Bruce Reznik
Executive Director

Current Procedure under *Guideline*



Proposed Change to *Guideline*

