



July 19, 2013

Governor Edmund G. Brown Jr.
State Capitol Suite 1173
Sacramento CA 95814

Senate President pro Tem Darrell Steinberg
State Capitol, Room 205
Sacramento CA 95814

Speaker of the Assembly John A. Pérez
State Capitol, Room 219
Sacramento CA 95814

RE: Recommendations from *CEQA + Infill Discussion Group*

Dear Honorable Governor Brown, Senate President Steinberg and Assembly Speaker Pérez,

On behalf of the undersigned organizations, which represent a diverse cross-section of interest groups working to promote and build sustainable and equitable communities, we are writing to express our support for the core protections and values of the California Environmental Quality Act (CEQA), and offer our suggestions for how CEQA can advance infill and transit-oriented development (TOD) while protecting vulnerable communities, public health and environmental quality. Legislation aimed at addressing this issue is under consideration in the Legislature, and the Governor's Office of Planning and Research is continuing and expanding its efforts to update the CEQA Guidelines.

In spring 2013, a *CEQA + Infill Discussion Group* was convened to examine how to best incentivize infill development and strengthen protections for public health and disadvantaged communities within the framework of CEQA. This group, which met over a two-month period, brought together leading experts and advocates in a variety of fields, including infill development, affordable housing, public health, transportation, environment and environmental justice, and social

equity. The group was not comprised of the ‘usual (CEQA) suspects’, but instead brought together leaders from around the state who share a common goal of seeking a more sustainable California and who see the on-the-ground role CEQA plays in our communities.

As you know, the debate over the CEQA has intensified over recent years, with some interest groups advocating for substantial rollback of the law. The current discussions about CEQA provide an opportunity to explore how to improve its role as it relates to infill and TOD. The infill/TOD issue is particularly complex and challenging. Environmental and community advocates recognize that investing in our urban core is absolutely essential to making California a truly sustainable state, reducing our dependence on imported oil, limiting greenhouse gas emissions and promoting healthier communities. But infill must be done well or it can pose significant threats to local communities, including displacement of existing – often disadvantaged – populations, or imposing a disproportionate share of negative impacts on those populations.

Over the course of this dialogue, a great deal of consensus was reached on both principles and policy recommendations. Participants hope the strong foundation that was built will allow policy development efforts to recognize the critical role CEQA plays in protecting our environment and communities while also promoting more infill and TOD projects that will benefit California’s natural resources and people.

Principles

The group agreed on a broad set of CEQA principles that promote environmentally sustainable and socially equitable infill:

- Robust and early public participation in land use planning is an invaluable component of CEQA that helps empower local communities and should be preserved;
- Maintaining strong mitigation requirements of CEQA and ensuring fulfillment of those requirements is essential;
- Public enforcement is critical to CEQA’s effectiveness. The CEQA process must strive to maximize public benefit while delivering results in a predictable and reasonable timeframe;
- CEQA is not a substitute for thoughtful, up-front planning. Rather, CEQA provides a framework for analyzing and informing plans and policies and addressing project-specific impacts at the local/community level;
- Together, planning and CEQA should foster good infill projects and fully account for the impacts of sprawl/greenfield development;
- “Good infill” encompasses more than just location (though this is one critical component), and should also:
 - Reduce exposure to air pollution and other toxins through location and/or design and technology;
 - Reduce automobile dependency and promote the use of transit and active transportation;
 - Locate jobs and housing in proximity to one another;
 - Foster mixed-income communities that provide quality affordable housing and address displacement of low-income households and low-income housing units;
 - Not impose new, disproportionate environmental burdens on communities/populations that are already heavily burdened;
 - Provide access to daily needs and services, such as jobs, education, healthy food, health care, and park space; and
 - Provide a high quality of life for existing and future residents.

- Planning and CEQA analysis for ‘good infill’ is best done at the plan level. Individual projects can best contribute to achieving the goals of good infill by implementing standard mitigations that are consistent with adopted plans;
- Infill development and the benefits state law provides for such development should not be strictly limited to urban areas or incorporated cities. Small towns in rural areas can also benefit from incentives designed to steer new development to vacant parcels located within existing communities and in close proximity to existing residents;
- Tools must be in place to protect vulnerable communities from displacement and other localized impacts of infill projects.

Recommendations

With these principles in mind, the group developed the following recommendations that will help refocus the CEQA process on the core purposes of the statute; expedite CEQA review of good infill projects; and promote better overall planning for California communities. Not all members of the discussion group are equally supportive of each recommendation; these recommendations should be viewed as a package of policies that, collectively, will help promote good infill and TOD while protecting the core aims of CEQA and safeguarding local communities. As such, these recommendations should be viewed as a cohesive package of reforms to pursue in concert rather than a menu to pick and choose from.

1. Level of Service and Parking

For decades, Level of Service (LOS), which measures traffic volumes and speeds at a particular intersection or roadway, has been California’s common metric for assessing a project’s impact on transportation under CEQA. As a result, CEQA analyses have tended to focus on how to mitigate or modify a project’s impact on vehicle delay. This can result in mitigation measures which actually undermine environmental objectives, such as widening roadways or reducing the density of infill projects. Conversely, projects that enhance transportation choices, such as bus, bike, and pedestrian infrastructure improvements, may be subject to CEQA challenges simply because they impact automobile LOS.

Similarly, the analysis of parking in CEQA can have deleterious unintended consequences. Despite being removed from the CEQA Guidelines in the last update, some courts still consider the impact on parking availability an environmental impact, when in fact a surplus of free parking can actually harm the environment by encouraging automobile trips.

Instead of the outdated LOS metric, CEQA should focus on strategies to reduce automobile use and protect communities from harmful emissions. Particular attention should be paid to localized impacts in environmental justice communities that already suffer disproportionate environmental health and safety burdens.

To accomplish this:

- The CEQA statute should exclude level of service as a metric for transportation analysis and instead require lead agencies to take a multi-modal approach to transportation analysis. This approach should focus on protecting communities from the environmental and public health impacts of auto dependency, such as air quality, pedestrian safety, and greenhouse gas emissions. This new approach should consider both the regional and local context.
- Additionally, OPR should be directed to develop a ranking approach for mitigation measures to address transportation impacts that (like the energy ‘loading order,’) prioritizes more sustainable approaches, such as free transit passes, car-sharing stations, improving pedestrian and bike facilities, limiting the availability of free

parking and other measures that reduce trip generation, vehicle miles travelled (VMT) and localized impacts. Less desirable options that increase vehicle trips or VMT (such as road widening or increased parking) should be pursued **only** when trip reduction strategies have been exhausted or are not feasible.

- CEQA should be amended to expressly eliminate parking as an environmental impact.
- Transportation impacts are best analyzed at the planning level (e.g., as part of the Infill component of the General Plan), and implemented uniformly at the project level, although unique local considerations must always be accounted for at the project level.

2. Displacement

While infill development, done right, can greatly improve the quality and livability of a neighborhood and the health of its residents, new development can also result in both physical (direct) displacement and economic (indirect) displacement as a result of increasing land values. Unchecked, such displacement can have significant environmental, social, and health equity consequences.

There is a longstanding concern that economic displacement negatively and inequitably impacts California communities and the environment, but these impacts are not yet codified in state planning and environmental law. We believe these impacts should be incorporated into the CEQA framework, and are likely best analyzed at the planning level so that both programmatic and uniform project-level mitigation may be adopted. Specifically:

- OPR should be directed to gather the best available research and best practices on preventing and mitigating physical *and* economic displacement. OPR should then incorporate this information into the General Plan Guidelines and CEQA guidelines, providing direction to jurisdictions on how to evaluate potential economic and physical displacement of vulnerable populations, and adopt policies to prevent and mitigate those impacts. Such mitigation measures could include rent stabilization ordinances, inclusionary zoning, and condominium conversion restrictions, to name just a few.
- Jurisdictions should be incentivized to adopt policies to prevent and/or mitigate physical and economic displacement.

3. Promote Early Settlement of Litigation

Prolonged litigation is expensive and often counter-productive, and may result in potential infill projects being abandoned or technical modifications to CEQA documents that do little to address substantive issues of importance to the community. Developer and community interests would be better served by improving CEQA's settlement provisions to make it easier to resolve litigation without protracted litigation.

- Amend existing settlement provisions to make them more effective in practice, including: (1) moving the mandatory settlement conference to a later stage in the CEQA lawsuit; (2) requiring the court to schedule and preside over a CEQA settlement conference and (3) allowing any party—plaintiff, lead agency, or project sponsor—to initiate the mediation option.

Other Considerations

While this dialogue was focused on CEQA's role in facilitating good infill projects and protecting local communities, there was broad agreement that many other policies intersect with CEQA and play a significant role in shaping infill. While by no means a comprehensive list, other policy changes that we encourage the Legislature and Administration to explore include:

- The Office of Planning and Research (OPR) should be directed to work with other appropriate agencies (e.g., HCD) to develop a voluntary set of standards for infill development that are consistent with state and regional goals and the objectives of ‘good infill’ (as outlined above) which could then be incorporated into the housing and land use elements of the General Plan. These standards should include direction to local governments on how to develop infill-focused policies that address localized impacts of infill, including displacement, pedestrian safety and local air quality impacts, and spell out specific mitigations and standards for these impacts. This would complement work already completed or underway by OPR to develop infill guidelines and templates for SB 226 and General Plans. It could also allow for more effective CEQA tiering. Communities interested in infill incentives could perhaps request a certification review of their proposed new infill development standards by HCD or OPR. Infill projects consistent with certified infill development standards could then be eligible for expanded CEQA streamlining.
- Explore changes to congestion management law, which is heavily focused on level of service as the primary measure of the transportation system and has not been updated in over 15 years.
- Additional state funding through the Strategic Growth Council should be made available to local governments to develop and update plans and zoning.
- Explore policies that account for the true costs and externalities of greenfield development/sprawl. Specifically, projects that generate a large number of new automobile trips and increase VMT should be required to mitigate those impacts.

We are grateful for your consideration and attention to preserving and strengthening the California Environmental Quality Act to advance sustainable and equitable communities in California. We welcome the opportunity to discuss these concepts with you.

Sincerely,

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