



May 12, 2021

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**CAROLYN EMERY**  
EXECUTIVE OFFICER

**TO:** Local Agency Formation Commission

**FROM:** Executive Officer  
Assistant Executive Officer

**SUBJECT:** 2021 Update to the Local Guidelines for Implementing the California Environmental Quality Act (CEQA)

In accordance with Section 21082 of the California Public Resources Code (Environmental Quality), the Commission has adopted *Local Guidelines for Implementing the California Environmental Quality Act* ("Guidelines"). The Guidelines are annually updated as needed to reflect changes enacted by the Legislature. For most projects considered by the Commission, OC LAFCO is identified as a responsible agency under CEQA. However, OC LAFCO may also serve as lead agency for Commission-initiated projects or applications filed by landowners.

**2021 Revisions to the Local CEQA Guidelines**

The memorandum prepared by the Commission's counsel is attached and provides a detailed summary of the revisions and additions to the Guidelines. The key revisions for potential LAFCO actions are summarized as follows:

- **Small Disadvantaged Community Water System and State Small Water System (Section 3.23):** This section was added to align with SB 974. Projects relative to installation, repair, or reconstruction of water infrastructure for small disadvantaged community water systems are exempt from CEQA. Additionally, state small water systems that improve water supply, quality and reliability; encourage water conservation; and provide safe drinking water for existing residences in disadvantaged communities are also exempt from CEQA.
- **Determining the Significance of Transportation Impacts (Section 5.09):** This revision provides that the most appropriate measure for analyzing transportation impacts under CEQA is "vehicles miles traveled," replacing the "level of service"

measure previously applied. This revision went into effect July 1, 2020.

- **Public Review for Negative Declaration or EIR (Sections 6.04 and 7.28):** These sections clarify the ending date for the public review period for the stated CEQA documents may not fall on a weekend, legal holiday, or any other day the lead agency's offices are closed. Alternatively, these provisions do not apply where, due to the Covid-19 pandemic, lead agency offices are physically closed to the public but are operating remotely or virtually.

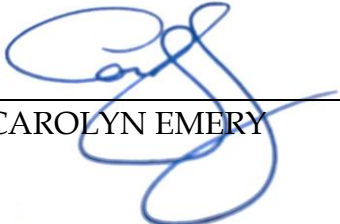
Additionally, the memorandum notes that the Department of Fish and Wildlife has increased its fees for filing environmental documents. These new fees, that became effective January 1, 2021, are reflected in the OC LAFCO Fee Schedule. The complete 2021 local CEQA Guidelines will be available on the OC LAFCO website following adoption by the Commission.

**RECOMMENDED ACTIONS:**

Staff recommends the Commission take the following action:

1. Approve the Orange LAFCO Resolution No. CP 21-03 amending and adopting the "2021 Local Guidelines for Implementing the California Environmental Quality Act". (*Attachment B*)

Respectfully submitted,

  
\_\_\_\_\_  
CAROLYN EMERY

  
\_\_\_\_\_  
RAYMOND BARRAGAN

Attachments:

- A. 2021 Summary of Changes to Local CEQA Guidelines, prepared by Best Best & Krieger
- B. Orange LAFCO Resolution No. CP 21-03

## Memorandum

**TO:** Orange County Local Agency Formation Commission  
**FROM:** Best Best & Krieger LLP  
**DATE:** April 13, 2021  
**RE:** 2021 Summary of Changes to Local CEQA Guidelines

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### REVISIONS TO LOCAL GUIDELINES

#### Revised and New Sections

**1. SECTION 3.02(G) MINISTERIAL ACTIONS**

The Local Guidelines include a list of ministerial actions not subject to CEQA review, and we have supplemented this list to reflect the California Legislature's adoption of AB 2421. Specifically, we added a subdivision (g) to Section 3.02 of the Local Guidelines to reflect that an application to install an emergency standby generator to serve a macro cell tower must be reviewed on an administrative, nondiscretionary basis where certain conditions are met. Because such an application requires only a ministerial approval, its approval is not subject to CEQA.

**2. SECTION 3.21 TRANSIT PRIORITIZATION PROJECTS**

Section 3.21 has been added to the Local Guidelines to reflect the Legislature's adoption of SB 288, which exempts certain transit prioritization and other transportation projects from CEQA, including projects relating to pedestrian and bicycle facilities; projects relating to signal coordination, signal modifications, the installation of ramp meters, the installation of dedicated transit or very high occupancy vehicle lanes; the installation of shared turning lanes; and projects carried out by a city or county to reduce minimum parking requirements. A full list of the projects exempt from CEQA under SB 288 is set forth in Section 3.21.

**3. SECTION 3.22 RESTRIPIING STREETS AND HIGHWAYS FOR BICYCLE LANES**

Section 3.22 has been added to the Local Guidelines to reflect codification of Public Resources Code section 21080.20. This section exempts from CEQA a bicycle transportation plan for an urbanized area for the restriping of streets and highways, bicycle parking and storage, signal timing to improve street and highway intersection operations, and the related signage for bicycles, pedestrians, and vehicles.

**4. SECTION 3.23 SMALL DISADVANTAGED COMMUNITY WATER SYSTEM AND STATE SMALL WATER SYSTEM**

With its adoption of SB 974, the Legislature has exempted from CEQA certain projects consisting solely of the installation, repair, or reconstruction of water infrastructure for small disadvantaged community water systems or state small water systems that (1) improve the water system's water quality, water supply, or water reliability; (2) encourage water conservation; or (3) provide safe drinking water service to existing residences within a disadvantaged community. We

have added Section 3.23 to the Local Guidelines to reflect these exemptions.

## **5. SECTION 5.09 DETERMINING THE SIGNIFICANCE OF TRANSPORTATION IMPACTS**

In December 2018, the Office of Administrative Law adopted State CEQA Guidelines section 15064.3, which codified a change in how transportation impacts must be analyzed under CEQA. Section 15064.3 of the State CEQA Guidelines provides that “vehicle miles traveled,” or VMT, shall be the most appropriate measure of transportation impacts under CEQA. VMT refers to the amount and distance of automobile travel attributable to a project. Under Section 15064.3, VMT shall replace a proposed project’s effect on automobile delay—generally measured by “level of service” or LOS—as the appropriate measure for transportation impacts. Accordingly, a project’s effect on automobile delay shall no longer constitute a significant transportation environmental impact under CEQA.

Section 15064.3, however, provided that its provisions would not go into effect until July 1, 2020, unless a lead agency elected to be governed by its provisions earlier. In last year’s 2020 Local CEQA Guidelines, we made clear that unless the Commission established otherwise via a separate action, the Commission did not elect to be governed by the provisions of Section 15064.3 before July 1, 2020.

This year, we have amended the Local CEQA Guidelines to remove the language providing that the Commission has not elected to be governed by the provisions of Section 15064.3. Whether the Commission takes separate action or not, the Commission must now consider Section 15064.3 when addressing a project’s transportation impacts. This does not mean, however, that the Commission must necessarily adopt any new thresholds of significance relating to VMT, though the Commission may seek to adopt a threshold of significance if it is so inclined.

## **6. SECTIONS 6.04 & 7.28 PUBLIC REVIEW FOR NEGATIVE DECLARATION OR EIR**

Sections 6.04 and 7.28 of the Local Guidelines discuss the length of the public review period for a negative declaration or EIR. We have revised these sections to clarify that the ending date for the relevant public review period may not fall on a weekend, legal holiday, or other day on which the lead agency’s offices are closed.

We understand that in response to the Covid-19 pandemic, many public agencies have closed their physical offices to the public; we are not suggesting that in such circumstance, the public review period should continue indefinitely until the agency opens its offices to the public. Accordingly, we have made clear that a public agency’s office is not considered closed for purposes of calculating the relevant public review period where the agency’s office may be physically closed, but the agency is nonetheless open for business and is operating remotely or virtually.

**7. SECTIONS 6.11, 7.25 & 7.26 SUBMISSION OF DOCUMENTS TO STATE CLEARINGHOUSE**

As of November 3, 2020, the State Clearinghouse no longer accepts printed copies of CEQA documents. Rather, all CEQA documents submitted to the State Clearinghouse must be submitted electronically via the State Clearinghouse's "CEQA Submit" database. A step-by-step discussion of how to submit documents to the State Clearinghouse can be found at <http://www.opr.ca.gov/clearinghouse/ceqa/document-submission.html>.

These developments have been memorialized in Sections 6.11, 7.25 and 7.26 of the Local Guidelines.

**8. SECTION 9.01 STREAMLINED MINISTERIAL APPROVAL PROCESS FOR AFFORDABLE HOUSING PROJECTS**

The Legislature has provided for a streamlined, ministerial approval process for certain affordable housing projects satisfying various conditions. This process is not new, and it is already included in the Local Guidelines in Section 9.01. The Legislature, however, has amended this process to provide for more robust tribal consultation and to provide for increased protection of tribal cultural resources. The new provisions relating to tribal cultural resources are set forth in Section 9.01(b) of the Local Guidelines.

**Other Changes**

Effective January 1, 2021, the Department of Fish and Wildlife has increased its fees. For a Negative Declaration or a Mitigated Negative Declaration, the new filing fee is \$2,480.25. For an EIR, the new filing fee is \$3,445.25. For an environmental document pursuant to a Certified Regulatory Program, the filing fee has been increased to \$1,171.25.

**Conclusion**

As always, CEQA remains complicated and, at times, challenging to apply. The only constant in this area of law is how quickly the rules change. Should you have questions about any of the provisions discussed above, or about the environmental review of any of your Commission's projects, please contact a BB&K attorney for assistance.

**BEST BEST & KRIEGER LLP**

**RESOLUTION OF THE LOCAL AGENCY FORMATION  
COMMISSION OF ORANGE COUNTY AMENDING AND  
ADOPTING LOCAL GUIDELINES FOR IMPLEMENTING  
THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (PUB.  
RESOURCES CODE §§ 21000 ET SEQ.)**

**(CP 21-03)**

**May 12, 2021**

On motion of Commissioner \_\_\_\_\_, duly seconded and carried, the following resolution was adopted.

**WHEREAS**, the California Legislature has amended the California Environmental Quality Act (“CEQA”) (Pub. Resources Code §§ 21000 et seq.), the Natural Resources Agency has amended portions of the State CEQA Guidelines (Cal. Code Regs, tit. 14, §§ 15000 et seq.), and the California courts have interpreted specific provisions of CEQA and the State CEQA Guidelines; and

**WHEREAS**, Public Resources Code section 21082 requires all public agencies to adopt objectives, criteria and procedures for (1) the evaluation of public and private projects undertaken or approved by such public agencies, and (2) the preparation, if required, of environmental impact reports and negative declarations in connection with that evaluation; and

**WHEREAS**, the Local Agency Formation Commission of Orange County (“Orange County LAFCO”) must revise its local guidelines for implementing CEQA to make them consistent with the current provisions and interpretations of CEQA and the State CEQA Guidelines.

**NOW, THEREFORE**, the Orange County LAFCO hereby resolves as follows:

**SECTION 1.** The Orange County LAFCO hereby adopts the “2021 Local Guidelines for Implementing the California Environmental Quality Act,” a copy of which is on file at the offices of the Orange County LAFCO and is available for inspection by the public.

