



April 8, 2020

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CAROLYN EMERY  
EXECUTIVE OFFICER

**TO:** Local Agency Formation Commission

**FROM:** Executive Officer  
Policy Analyst

**SUBJECT:** 2020 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.

**2020 Revisions to the Local CEQA Guidelines**

*Attachment A* is a memorandum prepared by legal counsel, Best Best & Krieger, which provides a detailed summary of the substantive amendments to Guidelines. The key revisions are summarized as follows:

- **Roadway Improvements (Former Section 3.17):** The removal of this section repeals the statutory exemption for projects to repair, maintain, or make minor alterations to an existing roadway that met certain conditions.
- **Transfer of Land for the Preservation of Natural Conditions (Section 3.20):** This new statutory exemption applies to the acquisition, sale, or other transfer of interest in land by a public agency for the preservation or restoration of natural conditions, agricultural and open space uses of lands and historical resources.
- **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 will go into effect July 1, 2020, unless the lead agency elected to be governed by its provisions earlier. The revision to the local Guidelines makes clear that unless the Commission has established otherwise, via a separate action, the Commission does not elect to be governed by the revisions to this section of the State CEQA Guidelines before July 1, 2020.

- **Supportive and Emergency Housing Projects (Sections 9.03-9.05):** These revisions reflect the enactment of several statutory exemptions to streamline the processes to develop interim, supportive and emergency housing projects across the State.

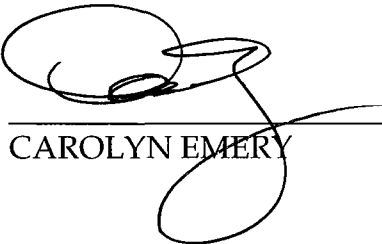
Additionally, the memorandum notes that the Department of Fish and Wildlife has increased its fees for filing environmental documents. These new fees, which became effective January 1, 2020, are reflected in the OC LAFCO Fee Schedule. The complete 2020 local CEQA Guidelines will be available on the OC LAFCO website following adoption by the Commission.

### RECOMMENDATION

Staff recommends that the Commission:

1. Approve the resolution adopting “2020 Local Guidelines for Implementing the California Environmental Quality Act”. (*Attachment B*)

Respectfully submitted,



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CAROLYN EMERY



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GAVIN CENTENO

Attachments:

- A. 2020 Summary of Changes to Local CEQA Guidelines, prepared by Best Best & Krieger
- B. Form of Resolution - 2020 OC LAFCO Local CEQA Guidelines

**Memorandum**

**TO:** Orange County Local Agency Formation Commission  
**FROM:** Best Best & Krieger LLP  
**DATE:** March 18, 2020  
**RE:** 2020 Summary of Changes to Local CEQA Guidelines

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Public agencies are required to adopt implementing procedures for administering their responsibilities under the California Environmental Quality Act (“CEQA”). Accordingly, we have drafted the 2020 *Local Guidelines for Implementing the California Environmental Quality Act* (“Local Guidelines”) to reflect recent amendments to CEQA, as codified in the Public Resources Code. We recommend that your Commission adopt the updated Local Guidelines within a month of receiving them from Best Best & Krieger LLP (“BB&K”).

The Local Guidelines, the related CEQA forms, and other important legal alerts may be accessed via the BB&K CEQA client portal at [www.bbklaw.net/CEQA](http://www.bbklaw.net/CEQA). For technical support, please contact Tammy Ingram at [tammy.ingram@bbklaw.com](mailto:tammy.ingram@bbklaw.com).

This memorandum summarizes the substantive amendments to your Local Guidelines. These Local Guidelines and this memorandum are designed to help the Commission assess the environmental implications of a project prior to its approval, as mandated by CEQA. We still recommend, however, that you consult with an attorney when you have specific questions on major, controversial, or unusual projects or activities.

**REVISIONS TO LOCAL GUIDELINES**

Edits were made throughout the Local Guidelines and the related CEQA forms. This memorandum summarizes the most significant and noteworthy of those edits.

**Supplemental Authority Provided For Reference**

We have supplemented the Local Guidelines with citation to specific provisions of CEQA and/or the State CEQA Guidelines. These citations generally appear at the end of most sections, and they are intended to provide an additional reference point to guide your Commission should questions arise on how to implement a specific Local Guidelines.

**Revised Sections**

**1. FORMER SECTION 3.17 ROADWAY IMPROVEMENTS**

From January 1, 2013 to December 31, 2019, Public Resources Code section 21080.37 provided that projects to repair, maintain, or make minor alterations to an existing roadway were statutorily exempt from CEQA if certain conditions were met. This statutory exemption—codified in previous iterations of these Local Guidelines at Section 3.17—has been repealed. We have thus deleted the section relating to this statutory exemption from the Local Guidelines.

**2. SECTION 3.20 TRANSFER OF LAND FOR THE PRESERVATION OF NATURAL CONDITIONS**

Section 3.20 has been added to the Local Guidelines to reflect a new—but narrow—statutory exemption set forth at Public Resources Code section 21080.28. This exemption applies to the acquisition, sale, or other transfer of interest in land by a public agency for the purpose of fulfilling any of the following purposes: (1) preservation of natural conditions existing at the time of transfer, including plant and animal habitats, (2) restoration of natural conditions, including plant and animal habitats, (3) continuing agricultural use of the land; (4) prevention of encroachment of development into flood plains; (5) preservation of historical resources; or (6) preservation of open space or lands for park purposes.

This exemption is narrow, however, as it applies only to the acquisition, sale, or other transfer of land for one of the above-referenced purposes. The exemption does not apply to the entirety of the project for which the land is acquired, sold, or transferred. Rather, the exemption requires environmental review before any project approval that would authorize physical changes to the land at issue.

**3. SECTION 5.09 DETERMINING THE SIGNIFICANCE OF TRANSPORTATION IMPACTS**

In December 2018, the Office of Administrative Law approved its first comprehensive update of the State CEQA Guidelines in many years. One of its most significant revisions to the State CEQA Guidelines concerned a change in how transportation impacts must be analyzed under CEQA. In particular, Section 15064.3 of the State CEQA Guidelines provides that “vehicle miles traveled,” or VMT, shall be the most appropriate measure of transportation impacts. 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, provides that its provisions will not go into effect until July 1, 2020, unless a lead agency elects to be governed by its provisions earlier.

Section 5.09 of the Local Guidelines acknowledges and addresses Section 15064.3. This section makes clear that unless the Commission has established otherwise via a separate action, the Commission does not elect to be governed by the provisions of Section 15064.3 before July 1, 2020.

Please note that after July 1, 2020, the Commission will be bound by Section 15064.3. 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.

**4. SECTION 9.03 INTERIM MOTEL HOUSING PROJECTS**

The Legislature has enacted a series of statutory exemptions that serve to streamline the



entitlement process for certain affordable housing projects. We have added Section 9.03 to the Local Guidelines to reflect the enactment of Public Resources Code section 21080.50, which statutorily exempts “interim motel housing projects” from CEQA. A project is exempt from CEQA as an “interim motel housing project” where the project consists of the conversion of a structure with a certificate of occupancy as a motel, hotel, residential hotel, or hostel to supportive or transitional housing, and the conversion meets at least one of the following conditions: (1) the conversion does not result in the expansion of more than 10 percent of the floor area of any individual living unit in the structure; and (2) the conversion does not result in any significant effects relating to traffic, noise, air quality, or water quality.

**5. SECTION 9.04 SUPPORTIVE HOUSING AND “NO PLACE LIKE HOME” PROJECTS**

Section 9.04 reflects the enactment of a new chapter to CEQA—Chapter 5.5 of Division 13 of the Public Resources Code—concerning “No Place Like Home projects.” A “No Place Like Home project” is a permanent supportive housing project that meets the criteria for funding pursuant to the No Place Like Home Program (codified at Section 5849.1, et al. of the Welfare & Institutions Code) and for which a public agency applies for, or receives, funding from the Department of Housing and Community Development.

Under the newly enacted provisions, the award of funding for a “No Place Like Home project” is statutorily exempt from CEQA. Moreover, a supportive housing project may be exempt from CEQA if the supportive housing project meets certain criteria. A “supportive housing” project is a project that provides housing with no limit on length of stay; that is occupied by persons with disabilities, families who are homeless, or homeless youth; and that is linked to onsite or offsite services that assist the supportive housing resident to retain housing, improve their health status, and maximize their ability to live and, when possible, work in the community.

**6. SECTION 9.05 SHELTER CRISIS AND EMERGENCY HOUSING**

Section 9.05 reflects a recently enacted (but very narrow) statutory exemption that applies to action taken by certain cities, counties, or state agencies to lease, convey, or encumber land owned by a city or county—or an action to facilitate the lease, conveyance, or encumbrance of land owned by the local government—for, or to provide financial assistance to, a homeless shelter constructed pursuant to the provisions of Government Code section 8698.4. This narrow exemption applies to specified efforts to assist specified cities or counties that have declared a shelter crisis and seek to build a homeless shelter.

**Other Changes**

Effective January 1, 2020, the Department of Fish and Wildlife has increased its fees. For a Negative Declaration or a Mitigated Negative Declaration, the new filing fee is \$2,406.75. For an EIR, the new filing fee is \$3,343.25. For an environmental document pursuant to a Certified Regulatory Program, the filing fee has been increased to \$1,136.50.

**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 20-\_\_)

April 8, 2020

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 “2020 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.

SECTION 2. All prior actions of the Orange County LAFCO enacting earlier guidelines are hereby repealed.

AYES:

NOES:

STATE OF CALIFORNIA )  
 ) SS.  
COUNTY OF ORANGE )

I, CHERYL BROTHERS, Chair of the Local Agency Formation Commission of Orange County, California, hereby certify that the above and foregoing resolution was duly and regularly adopted by said Commission at a regular meeting thereof, held on the 8<sup>th</sup> day of April 2020.

IN WITNESS WHEREOF, I have hereunto set my hand this 8<sup>th</sup> day of April 2020.

CHERYL BROTHERS  
Chair of the Orange County  
Local Agency Formation Commission

By: \_\_\_\_\_  
CHERYL BROTHERS

ATTEST:

\_\_\_\_\_  
Cheryl Carter-Benjamin, Commission Clerk  
Orange County LAFCO