



April 10, 2019

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CAROLYN EMERY
Executive Officer

TO: Local Agency Formation Commission
FROM: Executive Officer
Policy Analyst
SUBJECT: 2019 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, such as district consolidations, dissolutions, formations and mergers. The complete 2019 CEQA Guidelines will be available on the OC LAFCO website following adoption by the Commission.

2019 CEQA Guideline Revisions

Attached to this staff report is a memorandum prepared by legal counsel, Best Best & Krieger, which provides a detailed summary of the substantive amendments to the local CEQA guidelines (Attachment A). The key revisions incorporated into the 2019 local guidelines are summarized as follows:

- **Time of Preparation (Section 1.10):** The revision emphasizes the need to consider an environmental document before granting approval of a project subject to CEQA.
- **Emergency Projects (Section 3.08):** The amendment clarifies the exemption for emergency repairs. The exemption includes repairs that require a reasonable amount of time for planning to address an anticipated emergency.
- **Categorical Exemptions (Section 3.22):** The revision clarifies that a Lead Agency has the ability to determine whether the type of

activity on an existing facility is subject to the categorical exemption.

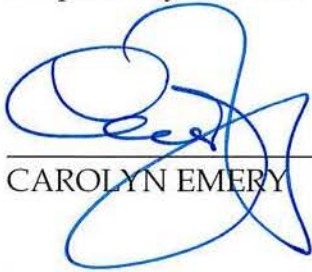
- **Completion and Adoption of Negative Declaration (Section 4.03):** The revision provides the Commission with 180 days to complete a Negative Declaration and the option to request a one-time 90-day extension.
- **Preparation of Initial Study (Section 5.01):** The revision provides flexibility to the Lead Agency with various options for preparing an Initial Study.
- **Consultation with Water Agencies regarding Large Development Projects (Section 5.16):**
The amendment provides that the Commission, in its role as a responsible agency, must be involved in consultations with the city or county when there is no public water system identified for the development project.
- **Climate Change and Greenhouse Gas Emissions (Section 5.19):**
The revision seeks to assist lead agencies in determining whether a project's greenhouse gas emissions will have a significant effect on the environment.
- **Consultation with Public Transit Agencies (Sections 6.04 & 7.03):** The amendment states that the Commission should consult with public transit agencies before circulating CEQA notices where (1) the public transit agency has facilities within one-half mile of the proposed project, and (2) the proposed project is one of statewide, regional, or areawide significance.
- **Consideration of Energy Impacts (Section 7.19):** The amendment requires further mitigation for significant environmental impacts due to wasteful, inefficient, or unnecessary use of energy or energy resources.
- **Analysis of Mitigation Measures (Section 7.22):** This revision provides that the analysis should identify mitigation measures for each significant environmental effect identified within an EIR.
- **Response to Comments on Draft EIR (Section 7.30):** The revision provides that the Commission may respond to a general comment with a general response. Additionally, the revision provides the flexibility to respond to comments in an electronic format.

RECOMMENDATION

Staff recommends that the Commission:

1. Approve the form of resolution adopting "Local Guidelines for Implementing the California Environmental Quality Act" (CP 19-06, Attachment B).

Respectfully submitted,



CAROLYN EMERY



GAVIN CENTENO

Attachments:

- A. Memorandum of 2019 Summary of Changes to Local CEQA Guidelines, *prepared by Best Best & Krieger*
- B. 2019 LAFCO CEQA Draft Form of Resolution

Memorandum

TO: Orange County Local Agency Formation Commission
FROM: Best Best & Krieger LLP
DATE: February 27, 2019
RE: 2019 Summary of Changes to Local CEQA Guidelines

On December 28, 2018, the Office of Administrative Law approved the first comprehensive update to the Guidelines for California Environmental Quality Act (“State CEQA Guidelines”) in many years. The update to the State CEQA Guidelines entails changes to nearly thirty (30) different sections of the State CEQA Guidelines, the addition of new sections, and amendments to several appendices—including the widely used Appendix G Initial Study “Checklist.”

The revisions to the State CEQA Guidelines have been incorporated into the *2019 Local Guidelines for Implementing the California Environmental Quality Act for Orange County Local Agency Formation Commission* (“Local Guidelines”). The Local Guidelines, the related CEQA forms, and other important legal alerts may be accessed via the Best Best & Krieger LLP (“BB&K”) CEQA client portal at www.bbklaw.net/CEQA. For technical support, please contact Tammy Ingram at tammy.ingram@bbklaw.com.

Public agencies must comply with the amendments to the State CEQA Guidelines no later than 120 days after the effective date of the guideline amendments—i.e., no later than April 29, 2019. We recommend that the Commission adopt the updated Local Guidelines within a month of receiving them from BB&K.

The amendments to the State CEQA Guidelines have no retroactive effect and apply only prospectively. Accordingly, new requirements in the Local Guidelines will apply only to steps in the CEQA process not yet undertaken at the time the Commission adopts the Local Guidelines. That said, the Commission may elect to implement any permissive or advisory elements of the amended Local Guidelines immediately.

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.

Revised Sections

1. SECTION 1.10 TIME OF PREPARATION

We added Section 1.10 to the Local Guidelines to reflect existing case law and revisions to the State CEQA Guidelines regarding when CEQA review must be completed. The revision emphasizes the need to complete CEQA review before project approval; it also addresses when CEQA review is necessary for activities preceding project approval.

2. SECTION 3.08 EMERGENCY PROJECTS

Section 3.08 of the Local Guidelines has been amended to clarify the applicability of CEQA's exemption for emergency projects. Among other things, the Section has been amended to explain that exempt emergency repairs may include those repairs that require a reasonable amount of planning to address an anticipated emergency.

3. SECTION 3.19 EXEMPTION FOR INFILL PROJECTS IN TRANSIT PRIORITY AREAS

Section 3.19 has been amended to reflect the statutory exemption set forth in Public Resources Code section 21155.4 and State CEQA Guidelines section 15182. Section 3.19 exempts residential, mixed-use, and certain commercial projects from CEQA where the project is located within a transit priority area, is consistent with a specific plan, and is consistent with regional plans for reducing greenhouse gas emissions.

4. SECTION 3.20 EXEMPTION FOR RESIDENTIAL PROJECTS UNDERTAKEN PURSUANT TO A SPECIFIC PLAN

Section 3.20 reflects the statutory exemption set forth in Government Code section 65457 and State CEQA Guidelines section 15182, which exempt certain residential projects consistent with a specific plan.

5. SECTION 3.22 CATEGORICAL EXEMPTIONS

The Class 1 categorical exemption—set forth in Local Guidelines section 3.22—generally exempts, among other activities, minor alterations to existing facilities, provided the activity involves negligible or no expansion of use. The Class 1 exemption has been revised to clarify that a lead agency may determine whether an activity involves negligible or no expansion of use based on the facility's "existing or former use," not just the use existing at the time of the lead agency's determination.

6. SECTION 4.03 COMPLETION AND ADOPTION OF NEGATIVE DECLARATION

Section 4.03 has been amended to reflect revisions to the State CEQA Guidelines

regarding the time to complete a Negative Declaration. The revision provides that the Commission must generally complete a Negative Declaration within 180 days of accepting a complete application, but that a one-time 90-day extension is permissible with the project applicant’s consent.

7. SECTION 5.01 PREPARATION OF INITIAL STUDY

Section 5.01 has been amended to clarify the various arrangements the Commission, as Lead Agency, may use to prepare an Initial Study (e.g., preparing an Initial Study with the Commission’s own staff, contracting with another entity to prepare an Initial Study, etc.).

8. SECTION 5.09 DETERMINING THE SIGNIFICANCE OF TRANSPORTATION IMPACTS

One of the most significant revisions to the State CEQA Guidelines concerns a change in how transportation impacts must be analyzed under CEQA. A new section has been added to the State CEQA Guidelines, Section 15064.3, that 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. Moreover, a project’s effect on automobile delay shall no longer constitute a significant transportation environmental impact under CEQA. Accordingly, a project that makes congestion worse but will not result in significant VMT will not be considered to have a significant environmental impact, and a project with no effect on congestion but with a significant VMT impact will normally be considered to have a significant environmental impact under Section 15064.3. 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.

We have added Section 5.09 to the Local Guidelines to acknowledge and address Section 15064.3. Section 5.09 makes clear that the Commission does not elect to be governed by the provisions of Section 15064.3 before July 1, 2020. Accordingly, the Commission may continue to engage in an LOS analysis to determine transportation impacts.

9. SECTION 5.16 CONSULTATION WITH WATER AGENCIES REGARDING LARGE DEVELOPMENT PROJECTS

Section 5.16 has been amended to reflect the addition of a new subdivision (f) to State CEQA Guidelines section 15155; the new subdivision and Section 5.16 describe the content requirements for a water supply analysis under CEQA.

10. SECTION 5.19 CLIMATE CHANGE AND GREENHOUSE GAS EMISSIONS

Section 5.19 has been revised to reflect a series of amendments to Section 15064.4 of the State CEQA Guidelines, which seeks to assist lead agencies in determining whether a project’s greenhouse gas emissions will have a significant effect on the environment. The Commission

should review Section 5.19 when analyzing the significance of a project's greenhouse gas emissions.

11. SECTIONS 6.04 & 7.03 CONSULTATION WITH PUBLIC TRANSIT AGENCIES

Sections 6.04 and 7.03 have been supplemented with new language providing that the Commission should consult with public transit agencies before circulating a Notice of Intent to Adopt a Negative Declaration or Mitigated Negative Declaration or a Notice of Preparation of Draft Environmental Impact Report (EIR) where (1) the public transit agency has facilities within one-half mile of the proposed project, and (2) the proposed project is one of statewide, regional, or areawide significance.

12. SECTION 7.19 CONSIDERATION OF ENERGY IMPACTS

Section 7.19 has been supplemented with new language—added to State CEQA Guidelines section 15126.2—requiring analysis of a project's energy impacts. The new language further requires mitigation for significant environmental impacts due to wasteful, inefficient, or unnecessary use of energy or energy resources.

13. SECTION 7.20 ENVIRONMENTAL SETTING

Section 7.20 is a new section that reflects revisions to State CEQA Guidelines section 15125 concerning an EIR's description of the environmental baseline. The new language explains that while the environmental baseline should normally reflect conditions as they exist at the time the Notice of Preparation is published, a lead agency may define the environmental baseline by referencing historic or future conditions in certain circumstances. The new language additionally explains that lead agencies may not use a baseline based on hypothetical allowable conditions, such as those that might be allowed—but have never actually occurred—under existing permits or plans.

14. SECTION 7.22 ANALYSIS OF MITIGATION MEASURES

Section 7.22 has been revised, consistent with revisions to State CEQA Guidelines section 15126.4, to clarify that a lead agency may not defer identification of mitigation measures, but that deferral of specific details of mitigation until after project approval may be permissible under certain circumstances.

15. SECTION 7.30 RESPONSE TO COMMENTS ON DRAFT EIR

Section 7.30 has been revised to clarify the scope of a lead agency's duty to respond to comments on a Draft EIR. In particular, the section has been revised to state that the Commission may respond to a general comment with a general response. The section has further been revised to provide that a lead agency may provide its proposed written response to a commenting public agency in an electronic format.

Changes to Local Guidelines Form “J”

The comprehensive update to the State CEQA Guidelines included substantial revisions to Appendix “G” – the Initial Study checklist form. In response, we have revised Form “J” of the Local Guidelines. The updated Form “J” should be used to determine whether a proposed project may have a significant environmental impact for which an EIR is required. The most significant revisions to Form “J” are summarized below.

1. SECTION VI. ENERGY

A new section regarding a project’s energy impacts has been added to Form “J.” As a result, the Commission must now consider a proposed project’s energy impacts at the Initial Study stage.

2. SECTION XVII, SUBDIVISION B. TRANSPORTATION

As discussed above, Section 15064.3 of the State CEQA Guidelines now provides that VMT—not LOS—is the most appropriate measure of transportation impacts. To reflect this change, Appendix “G” of the State CEQA Guidelines has been revised to provide that a project may result in a potentially significant impact if the project conflicts or is inconsistent with Section 15064.3(b)—i.e., if the proposed project results in VMT exceeding an applicable threshold of significance.

Section 15064.3, however, does not apply until July 1, 2020, unless a public agency elects to be governed by its provisions earlier. Accordingly, we have revised the Transportation section of Form “J” to acknowledge Section 15064.3, but to explain that the Commission has not elected to be governed by its provisions and that a VMT analysis is thus not necessary to determine whether a proposed project will have a significant transportation impact. The Commission may continue to utilize the LOS analysis traditionally used to determine whether a project will have a significant transportation impact.

3. SECTION XIX. WILDFIRE

A new section regarding a project’s potential to result in or exacerbate wildfire impacts has been added to Form “J.” The Commission must analyze the questions posed within this section for any project “located in or near state responsibility areas or lands classified as very high fire hazard severity zones.”

Other Changes

Department of Fish and Wildlife. Effective January 1, 2019, the Department of Fish and Wildlife has increased its fees. For a Negative Declaration or a Mitigated Negative Declaration, the new filing fee is \$2,354.75. For an EIR, the new filing fee is \$3,271.00. For an environmental document pursuant to a Certified Regulatory Program, the filing fee has been increased to \$1,112.00.

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 the 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 19-06)

April 10, 2019

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 "2019 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.

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 10th day of April 2019.

IN WITNESS WHEREOF, I have hereunto set my hand this 10th day of April 2019.

CHERYL BROTHERS
Chair of the Orange County
Local Agency Formation Commission

By: _____
CHERYL BROTHERS

ATTEST:

Cheryl Carter Benjamin, Commission Clerk
Orange County LAFCO