

May 11, 2022

**6b** | Consent  
Calendar

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Special District Member

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County Member

IMMEDIATE PAST CHAIR

**Derek J. McGregor**  
Public Member

**Lisa Bartlett**

County Member

**Wendy Bucknum**

City Member

**James Fisler**

Special District Member

**Mike Posey**

City Member

### ALTERNATES

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County Member

**Kathryn Freshley**

Special District Member

**Peggy Huang**

City Member

**Lou Penrose**

Public Member

### STAFF

**Carolyn Emery**

Executive Officer

**Scott Smith**

General Counsel

**TO:** Local Agency Formation Commission  
of Orange County

**FROM:** Executive Officer  
Policy Analyst

**SUBJECT:** Amendments to the Local Guidelines for Implementing the  
California Environment Quality Act (CEQA)

### BACKGROUND

In accordance with Section 21082 of the California Public Resources Code (Environmental Quality), the Commission adopted the *Local Guidelines for Implementing the California Environmental Quality Act* ("Guidelines"). The Guidelines are updated, as needed, annually to reflect changes enacted by the Legislature. For most projects considered by the Commission, OC LAFCO is the responsible agency under CEQA. However, OC LAFCO may also serve as the lead agency for Commission-initiated projects or applications filed by landowners. The complete 2022 local CEQA Guidelines will be available on the OC LAFCO website following adoption by the Commission.

The next section of this report provides a summary of the changes to the Guidelines, effective January 1, 2022.

### 2022 Local CEQA Guidelines

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

- **Posting CEQA Documents and Related Notices on Lead Agency's Website (Sections 1,3,6 & 7):** This revision requires the lead agency to post the Draft Environmental Impact Report (EIR), Final EIR, Negative Declaration, Mitigated Negative Declaration and other related notices prepared for a project on the lead agency's website. For projects in which OC LAFCO is the lead agency, the CEQA determination approved by the Commission and other related notices must be posted on the agency's website.

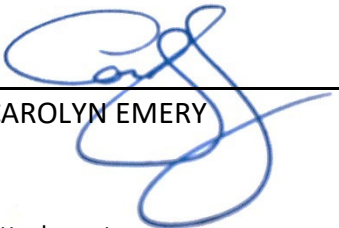
- **Notices of Exemption (Section 3.04):** The revision requires that for projects that are exempt from CEQA, a Notice of Exemption (NOE) must be filed electronically with the County Clerk's Office and the notice must be posted on the agency's website. Additionally, a project applicant, rather than the agency, may electronically file an NOE for a project that is exempt from CEQA with the County Clerk's Office and the NOE must be posted on the agency's website. For projects in which OC LAFCO is the lead agency, the Commission must file the Notice of Exemption electronically with the Orange County Clerk Recorder's Office if the Commission determines a project is exempt from CEQA. The NOE must also be posted on the agency's website.
- **Submission of CEQA Documents and Related Notices to State Clearinghouse (Section 6.11 & 7):** This section directs the lead agency to submit all EIRs and any related CEQA notices to the State Clearinghouse. For projects in which OC LAFCO is the lead agency, the Commission must submit CEQA documents and related notices through the Office of Planning and Research's CEQA submittal portal.
- **Department of Fish and Wildlife Fees:** The Department of Fish and Wildlife has increased its fees for filing environmental documents as of January 1, 2022. The current fees are reflected in the OC LAFCO Fee Schedule adopted by the Commission on March 9, 2022.

#### RECOMMENDED ACTION

Staff recommends the Commission take the following action:

1. Adopt OC LAFCO Resolution No. CP 22-03 amending the "Local Guidelines for Implementing the California Environmental Quality Act." (**Attachment 2**)

Respectfully submitted,



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CAROLYN EMERY



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GAVIN CENTENO

Attachments:

1. 2022 Summary of Changes to Local CEQA Guidelines, prepared by Best Best & Krieger
2. OC LAFCO Resolution No. CP 22-03

## Memorandum

**TO:** Orange County Local Agency Formation Commission  
**FROM:** Best Best & Krieger LLP  
**DATE:** April 11, 2022  
**RE:** 2022 Summary of Changes to Local CEQA Guidelines

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In 2021, the California Legislature took action to revise the California Environmental Quality Act (“CEQA”). Notably, Assembly Bill (“AB”) 819 amends the Public Resources Code to, among other things: (1) expand the scope of CEQA documents that must be submitted to the Office of Planning and Research’s (“OPR”) State Clearinghouse; (2) require lead agencies to submit such documents to OPR electronically; and (3) require a lead agency to post various environmental documents and notices on its website, if the lead agency has a website. In addition, the Legislature passed multiple bills to exempt certain categories of activity from CEQA.

These revisions to CEQA have been incorporated into the 2022 Local Guidelines for Implementing the California Environmental Quality Act (“Local Guidelines”) for the Orange County Local Agency Formation Commission (“Commission”). This memorandum summarizes the substantive amendments to the Commission’s 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.

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

### REVISIONS TO LOCAL GUIDELINES

**1. SECTIONS 1.08, 1.09, 3.04, 6.04, 6.10, 6.11, 6.20, 7.03, 7.25, & 7.39:  
 POSTING CEQA DOCUMENTS AND RELATED NOTICES ON LEAD AGENCY’S WEBSITE**

With AB 819, the California Legislature amended CEQA to require a Lead Agency to post the Draft Environmental Impact Report (“EIR”), Final EIR, Negative Declaration, or Mitigated Negative Declaration (“MND”) prepared for a project on the Lead Agency’s website, if the Lead Agency has a website.

In addition, AB 819 requires a Lead Agency to post various CEQA notices on its website. This requirement extends to any Notice of Exemption, Notice of Intent to Adopt a Negative Declaration or Mitigated Negative Declaration, Notice of Preparation, Notice of Availability, and Notice of Determination. Sections 1.08, 3.04, 6.04, 6.11, 6.20, 7.03, 7.25, and 7.39 of the 2022 Local Guidelines have been revised to reflect these new requirements.

**2. SECTIONS 2.04 & 6.16 PROCEDURE TO APPEAL A CEQA DETERMINATION MADE BY A NON-ELECTED DECISIONMAKING BODY**

The Commission may charge a non-elected decisionmaking body with the responsibility of making an exemption determination or adopting or certifying environmental documents under CEQA. But, a determination made by a non-elected decisionmaking body must be appealable to the Commission's Board of Commissioners. Sections 2.04 and 6.16 of the Local Guidelines have been revised to elaborate that any CEQA determination made by a non-elected decisionmaking body shall be final unless it is timely appealed to the Board of Commissioners.

**3. SECTION 3.04 NOTICES OF EXEMPTION**

Section 3.04 has been revised consistent with AB 819 to provide that (1) a Notice of Exemption must now be filed electronically with the County Clerk, if the County Clerk accepts electronic filing of Notices of Exemption; and (2) the Commission must post its Notices of Exemption on its website.

Additionally, Section 3.04 has been revised to update the procedure by which a project applicant, rather than the Commission, may file a Notice of Exemption for a project that the Commission has determined is exempt from CEQA. For a project applicant to file a Notice of Exemption, the project applicant must attach a Certificate of Determination from the Commission to the Notice of Exemption.

**4. SECTION 3.23 EXEMPTION RE: CONSERVATION AND RESTORATION OF CALIFORNIA NATIVE FISH AND WILDLIFE**

With its adoption of Senate Bill ("SB") 155, the Legislature has created a CEQA exemption for projects that have as their exclusive purpose the recovery of California fish and wildlife (including projects for habitat restoration), if certain conditions are met. Section 3.23 has been added to the Local Guidelines to reflect this new exemption.

**5. SECTION 3.24 EXEMPTION RE: LINEAR BROADBAND DEPLOYMENT IN A RIGHT-OF-WAY**

The Legislature's enactment of SB 156 has created a CEQA exemption for projects that consist of linear broadband deployment in a right-of-way, if certain conditions are met. To qualify for the exemption, the project must be located in an area identified by the Public Utilities Commission as a component of the statewide open-access middle-mile broadband network; must be constructed along, or within 30-feet of, the right-of-way of any public road or highway; and must be either deployed underground where the surface area is restored to a condition existing before the project or placed aurally along an existing utility pole right-of-way. Additionally, the project is required to include conditions of approval to address potential environmental impacts, including, but not limited to, requiring monitors during construction activities or measures to address impacts to biological or cultural resources. We have added Section 3.24 to the Local Guidelines to reflect this new exemption.

**6. SECTION 3.25 EXEMPTION RE: NEEDLE AND SYRINGE EXCHANGE SERVICES**

Under existing law, cities and counties meeting certain requirements may apply to the State Department of Public Health for authorization to provide hypodermic needle and syringe exchange services consistent with state standards in any location where the State Department of Public Health determines that the conditions exist for the rapid spread of human immunodeficiency virus (HIV), viral hepatitis, or any other potentially deadly or disabling infections that are spread through the sharing of used hypodermic needles and syringes. In 2021, the Legislature enacted AB 1344 to expressly exempt from CEQA needle and syringe exchange services application submissions, authorizations, and operations. This exemption is reflected in Section 3.25 of the Local Guidelines.

**7. SECTION 6.11 SUBMISSION OF NEGATIVE DECLARATIONS AND RELATED NOTICES TO STATE CLEARINGHOUSE**

Under AB 819, all Negative Declarations and MNDs must be submitted electronically to the State Clearinghouse via the Office of Planning and Research’s “CEQA Submit” website, even if the Negative Declaration or MND does not require state agency review. When submitting the Negative Declaration or MND to the State Clearinghouse, the Lead Agency must also submit a Notice of Completion via the “CEQA Submit” website.

Section 6.11 of the Local Guidelines has been revised to reflect this change in the law, and it includes instructions on how to submit both documents that require state agency review and documents that do not require state agency review.

**8. SECTIONS 7.03, 7.25, 7.26 & 7.39 SUBMISSION OF EIRS AND RELATED NOTICES TO STATE CLEARINGHOUSE**

Under AB 819, all EIRs must be submitted electronically to the State Clearinghouse via the Office of Planning and Research’s “CEQA Submit” website, even if the EIR does not require state agency review. In addition, a Lead Agency must submit any Notice of Preparation, Notice of Completion, and Notice of Determination related to the EIR to the Office of Planning and Research via the “CEQA Submit” website. Sections 7.03, 7.25, 7.26, and 7.39 of the Local Guidelines have been revised to reflect these requirements.

**9. SECTION 7.05 STREAMLINED CEQA LITIGATION FOR ENVIRONMENTAL LEADERSHIP DEVELOPMENT PROJECTS**

In 2021, the Legislature passed the Jobs and Economic Improvement Through Environmental Leadership Act of 2021, which reenacts with certain changes the Jobs and Economic Improvement Through Environmental Leadership Act of 2011, which was repealed by its own terms on January 1, 2021. If the Governor certifies a project as an Environmental Leadership Development Project, any lawsuit challenging the project—including any appeals to the Court of Appeal or the California Supreme Court—must be resolved, to the extent feasible, within 270 days of the filing of the certified record of proceedings with the trial court. Section 7.05 of the Local Guidelines, which previously addressed the previous iteration of the law from 2011, has been updated to reflect the 2021 iteration of the law.

**10. 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. In 2021, the Legislature adopted AB 1174 to further clarify the process. Under existing law, a development approved under the streamlined ministerial process can generally be valid indefinitely so long as it meets certain requirements. Among other things, AB 1174 clarifies that to be valid indefinitely, the project must include public investment in housing affordability, beyond tax credits, and have at least 50 percent of units affordable to households making at or below 80 percent of the area median income. Section 9.01 of the Local Guidelines has been revised to reflect AB 1174.

**11. SECTION 9.02 MINISTERIAL APPROVAL PROCESS FOR SPECIFIED URBAN LOT SPLITS AND HOUSING DEVELOPMENTS**

SB 9 provides for the ministerial approval (i.e., approval not subject to CEQA) of (1) proposed housing developments containing no more than two residential units within a single-family residential zone; and (2) urban lot splits. This is not a blanket exemption from CEQA, as SB 9 sets forth numerous conditions that must be met in order for a proposed project to qualify for ministerial approval. The ministerial approval process established by SB 9 is set forth in Section 9.02 of the Local Guidelines.

**12. SECTION 9.03 EXEMPTION RE: APPROVAL OF ORDINANCE TO ZONE ANY PARCEL FOR UP TO 10 UNITS OF RESIDENTIAL DENSITY PER PARCEL**

SB 10 provides that a local government may adopt an ordinance to zone a parcel for up to 10 residential units, and that such action (if certain conditions are met) does not qualify as a “project” subject to CEQA. Section 9.03 has been added to the Local Guidelines to reflect SB 10.

**Other Changes**

Effective January 1, 2022, the Department of Fish and Wildlife has increased its fees. For a Negative Declaration or a Mitigated Negative Declaration, the new filing fee is \$2,548.00. For an EIR, the new filing fee is \$3,539.25. For an environmental document prepared pursuant to a Certified Regulatory Program, the filing fee has been increased to \$1,203.25.

**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 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 22-03)**

**May 11, 2022**

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 (“OC 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 OC LAFCO hereby resolves as follows:

**SECTION 1.** The OC LAFCO hereby adopts the “2022 Local Guidelines for Implementing the California Environmental Quality Act,” a copy of which is on file at the offices of the OC LAFCO and is available for inspection by the public.

**SECTION 2.** All prior actions of the OC LAFCO enacting earlier guidelines are hereby repealed.

AYES:

NOES:

STATE OF CALIFORNIA)

) SS.

COUNTY OF ORANGE )

I, DOUGLASS DAVERT, 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 11<sup>th</sup> day of May 2022.

IN WITNESS WHEREOF, I have hereunto set my hand this 11<sup>th</sup> day of May 2022.

DOUGLASS DAVERT  
Chair of the Orange County  
Local Agency Formation Commission

By: \_\_\_\_\_  
DOUGLASS DAVERT

ATTEST:

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