

May 10, 2023

6c | Consent
Calendar

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Carolyn Emery
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Scott Smith
General Counsel

TO: Local Agency Formation Commission
of Orange County

FROM: Executive Officer
Policy Analyst I

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

BACKGROUND

Pursuant to Section 21082 of the California Public Resources Code (Environmental Quality), the Commission adopted Local Guidelines for Implementing the California Environmental Quality Act (“Guidelines”). The Guidelines were developed by Best Best & Krieger to guide OC LAFCO on actions involving CEQA for projects or applications within the Commission’s purview. 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 Guidelines are reviewed annually and updated, as necessary, by Best Best & Krieger to align with changes in State law. Staff is recommending the Commission adopt the amended local guidelines to incorporate the recent changes discussed in the next section of this report.

2023 LOCAL CEQA GUIDELINES

The attached memorandum 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:

- **Water System Wells and Domestic Well Projects (Section 3.22):**
This section creates a new statutory exemption that applies to projects involving water systems and domestic wells that have been designated by the State as high or medium risk and other noted conditions, including water supply.
- **Affordable and Mixed-Income Housing Development Involving Commercial Zones and Corridors (Sections 9.08 & 9.09):**
These sections create new exemptions for the ministerial approval processing of multi-family housing developments meeting specific

criteria involving affordability, zoning standards and other conditions.


- **Updated References to the California Public Records Act (Various Sections):**
These sections have been updated to reflect the effort of the Legislature in reorganizing and recodifying the entirety of the California Public Records Act (“PRA”) to be consistent with previously enacted legislation. The PRA was formerly codified in Government Code Section 6250 et seq. and is now established in Government Code Section 79200 et seq. The Guidelines have been updated to reflect the respective changes in the code sections.
- **Department of Fish and Wildlife Fees:**
The Department of Fish and Wildlife has increased the fees for filing environmental documents effective January 1, 2023. The current fees are reflected in the OC LAFCO Fee Schedule.

RECOMMENDED ACTION

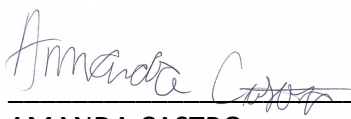
Staff recommends the Commission:

1. Adopt OC LAFCO Resolution No. CP 23-03 amending and approving the “Local Guidelines for Implementing the California Environmental Quality Act.” (*Attachment 2*)

Respectfully submitted,



CAROLYN EMERY



AMANDA CASTRO

Attachments:

1. 2023 Summary of Changes to Local CEQA Guidelines, prepared by Best Best & Krieger
2. OC LAFCO Resolution No. CP 23-03

Memorandum

TO: Orange County Local Agency Formation Commission
FROM: Best Best & Krieger LLP
DATE: April 17, 2023
RE: Summary of Changes to Local CEQA Guidelines

In 2022, the California Legislature took action to exempt certain transportation, water system, and housing projects from the California Environmental Quality Act (“CEQA”). We have revised the Commission’s Local Guidelines for Implementing CEQA (“Local Guidelines”) to account for these CEQA developments. This memorandum summarizes the substantive amendments to the Commission’s Local Guidelines.

The Local Guidelines and this memorandum are designed to help the Commission comply with CEQA when considering a project subject to 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 CEQA client portal at <http://clients.bbklaw.net/pfcc/>. For technical support, please contact Tammy Ingram at tammy.ingram@bbklaw.com.

REVISIONS TO LOCAL GUIDELINES

1. SECTION 3.20 TRANSIT PRIORITIZATION PROJECTS

With its adoption of Senate Bill (“SB”) 922, the California Legislature amended Public Resources Code section 21080.25 to exempt certain transit, bicycle, and pedestrian projects that meet specified criteria and do not induce single-occupancy vehicle trips.

Examples of projects exempt under SB 922 include, but are not limited to: (1) pedestrian and bicycle facilities; (2) transit prioritization projects, such as the installation of traffic signs or new signals; (3) a project for the institution or increase of bus rapid transit, bus, or light rail service; (4) a public project to construct or maintain infrastructure or facilities to charge, refuel, or maintain zero-emission public transit buses, trains, or ferries; and (5) a decision to reduce or eliminate minimum parking requirements or institute parking maximums.

We revised Section 3.20 of the Local Guidelines to account for this exemption and to set forth conditions that must be met for the exemption to apply.

2. SECTION 3.21 TRANSPORTATION PLANS, PEDESTRIAN PLANS, AND BICYCLE TRANSPORTATION PLANS

The California Legislature amended Public Resources Code section 21080.20 to exempt “active transportation plans” and “pedestrian plans” from CEQA. An “active transportation plan”

refers to a plan developed by a local jurisdiction that promotes and encourages people to choose walking, bicycling, or rolling through the creation of safe, comfortable, connected, and accessible walking, bicycling, or rolling networks, and encourages alternatives to single-occupancy vehicle trips. A “pedestrian plan” refers to a plan developed by a local jurisdiction that establishes a comprehensive, coordinated approach to improving pedestrian infrastructure and safety.

While a lead agency’s adoption of an active transportation plan or pedestrian plan is exempt from CEQA, specific projects identified within those plans remain subject to CEQA unless such projects are exempt under a separate provision of CEQA.

We revised Section 3.21 of the Local Guidelines to account for this exemption and to set forth procedural requirements that must be met when finding a project exempt under this provision.

3. SECTION 3.22 WATER SYSTEM WELLS AND DOMESTIC WELL PROJECTS

With the adoption of AB 1642 and its codification at Public Resources Code section 21080.31, the Legislature has enacted a new statutory exemption that applies to the construction, maintenance, repair, or replacement of wells where certain conditions are met. To qualify for the exemption, (1) the domestic well or water system to which the well project is connected must be designated by the State Water Resources Control Board (“State Board”) as high risk or medium risk in the State Board’s drinking water needs assessment; (2) the well project must be designed to mitigate or prevent a circumstance where residents that rely on the well or the water system to which the well is connected would be left without an adequate supply of safe drinking water; (3) the well project may not be designed primarily to serve irrigation or future growth; and (4) a series of other conditions must be met.

We added Section 3.22 to the Local CEQA Guidelines to provide for this statutory exemption and to set forth in greater detail the circumstances in which it may apply.

4. SECTION 9.08 AFFORDABLE HOUSING DEVELOPMENTS IN COMMERCIAL ZONES

The Legislature has created a new CEQA-exempt, ministerial approval process for multifamily housing developments meeting specified criteria, codified at Public Resources Code section 65912.110, et seq. For a proposed multifamily housing development project to qualify for this exemption, the project must (1) ensure that 100 percent of the project’s units, excluding managers’ units, be dedicated to lower income households at an affordable cost or affordable rent; (2) meet applicable objective zoning standards, objective subdivision standards, and objective design review standards, as defined; (3) be located in a zone where office, retail, or parking are a principally permitted use; (4) meet certain labor standards; and (5) meet a list of other conditions, specified in the Local Guidelines.

We have added Section 9.08 to the Local Guidelines to include this exemption and to set forth the various conditions a project must meet to qualify for the exemption.

**5. SECTION 9.09 MIXED-INCOME HOUSING DEVELOPMENTS ALONG
COMMERCIAL CORRIDORS**

The Legislature has additionally created another CEQA-exempt, ministerial approval process for proposed multifamily housing development projects that meet certain affordability criteria, set forth at Public Resources Code section 65912.120, et seq. In addition to meeting the specified affordability criteria, the proposed project must (1) abut a commercial corridor and have frontage along the commercial corridor of at least fifty feet; (2) not be located on a project site greater than 20 acres; (3) be located in a zone where office, retail, or parking is a principally permitted use; (4) meet certain labor standards; and (5) meet a list of over twenty other conditions, specified in the Local Guidelines.

We have added Section 9.09 to the Local Guidelines to include this exemption and to set forth the various conditions a project must meet to qualify for the exemption.

6. VARIOUS SECTIONS UPDATED REFERENCES TO CALIFORNIA PUBLIC RECORDS ACT

The Legislature has recodified and reorganized the entirety of the California Public Records Act (“PRA”) consistent with Assembly Bill (“AB”) 463. Whereas the PRA was previously codified at Government Code section 6250, et seq., the PRA is now codified at Government Code section 7920.000, et seq. We have updated all references to the PRA in the Local Guidelines consistent with AB 463. The reorganization makes no substantive changes to the PRA.

Other Changes

Effective January 1, 2023, the Department of Fish and Wildlife has increased its fees. For a Negative Declaration or a Mitigated Negative Declaration, the new filing fee is \$2,764.00. For an EIR, the new filing fee is \$3,839.25. For an environmental document prepared pursuant to a Certified Regulatory Program, the filing fee has been increased to \$1,305.25.

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, 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 23-03)

May 10, 2023

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 “2023 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 10th day of May 2023.

IN WITNESS WHEREOF, I have hereunto set my hand this 10th day of May 2023.

DOUGLASS DAVERT
Chair of the Local Agency Formation Commission of
Orange County

By: _____
DOUGLASS DAVERT
OC LAFCO

ATTEST:

Cheryl Carter-Benjamin, Commission Clerk
OC LAFCO