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MEETING DATE: May 8, 2024

TO: Local Agency Formation Commission
of Orange County

FROM: Executive Officer
Policy Analyst II

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

6b | Consent
Calendar

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 LLP 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.

2024 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:

- **Notices of Determination and Notices of Exemption (Sections 3.04, 6.20, & 7.39)**

Current State law requires that local agencies file a Notice of Determination (NOD) or a Notice of Exemption (NOE) with the County Clerk. These sections have been amended to require local agencies to file an NOD or NOE with both the County Clerk and State Clearinghouse of the Office of Planning and Research. OC LAFCO staff has incorporated this change into the agency’s internal procedures for future projects involving Commission-adopted NODs and NOEs.

- **Administrative Records (10.03)**

This section previously allowed a petitioner to request a public agency to prepare administrative records during litigation. The section has been amended to allow a public agency to deny the petitioner's request within five days of receiving the request. Additionally, the amendment further clarifies that an administrative record does not need to include communications that are logistical in nature, such as scheduling or meeting invitations.

- **Department of Fish and Wildlife Fees:**

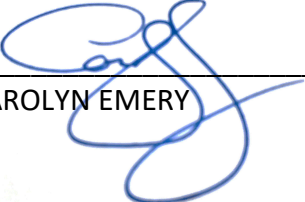
The Department of Fish and Wildlife has increased the fees for filing environmental documents effective January 1, 2024. The current fees are reflected in the OC LAFCO Fee Schedule.

RECOMMENDED ACTION

Staff recommends the Commission:

1. Adopt OC LAFCO Resolution No. CP 24-04 amending and approving the "Local Guidelines for Implementing the California Environmental Quality Act." (*Attachment 2*)

Respectfully submitted,



CAROLYN EMERY



GAVIN CENTENO

Attachments:

1. 2024 Summary of Changes to Local CEQA Guidelines, prepared by Best Best & Krieger
2. Form of OC LAFCO Resolution No. CP 24-04

Memorandum

TO: Orange County Local Agency Formation Commission
FROM: Best Best & Krieger LLP
DATE: March 22, 2024
RE: Summary of Changes to Local CEQA Guidelines

In 2023, the California Legislature revised the California Environmental Quality Act (“CEQA”) to exempt certain affordable housing projects, expand the circumstances in which Notices of Determination and Notices of Exemption must be filed with the State Clearinghouse, and provide public agencies with increased control over the preparation of the administrative record in litigation. 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. For technical support, please contact Tammy Ingram at tammy.ingram@bbklaw.com.

REVISIONS TO LOCAL GUIDELINES

1. SECTIONS 3.04, 6.20, & 7.39 – NOTICES OF DETERMINATION & NOTICES OF EXEMPTION

Public Resources Code section 21152 has been amended to require a local agency to file a Notice of Determination (“NOD”) with both the County Clerk and the State Clearinghouse in the Office of Planning and Research (“OPR”) within five working days of the agency approving a project subject to CEQA. The Legislature further amended Section 21152 to provide that when a local agency files a Notice of Exemption (“NOE”), the agency should file the NOE with both the County Clerk and the State Clearinghouse.

We have revised Sections 3.04, 6.20, and 7.39 of the Local Guidelines to account for the expanded circumstances in which an agency must file an NOD or NOE with the State Clearinghouse.

2. SECTION 9.10 – EXEMPTION FOR A RESPONSIBLE AGENCY’S PROVISION OF FINANCIAL ASSISTANCE FOR THE DEVELOPMENT OF AFFORDABLE HOUSING

Public Resources Code section 21080.10(b) has been amended to exempt action taken by a local agency not acting as the lead agency to provide financial assistance or insurance for the

development and construction of residential housing for persons and families of low- or moderate-income, if the project at issue will be reviewed pursuant to CEQA by another public agency.

We have added Section 9.10 to the Local Guidelines to account for this exemption.

3. SECTION 9.11 – EXEMPTION FOR SPECIFIED AFFORDABLE HOUSING PROJECTS

The Legislature has added Section 21080.40 to the Public Resources Code, which includes a new statutory exemption under CEQA for affordable housing projects that meet the section’s specified requirements. The section exempts from CEQA certain actions taken by lead agencies relating to 100 percent affordable housing projects (as defined), including (i) the issuance of an entitlement by a public agency for an affordable housing project, (ii) an action to lease, convey, or encumber land owned by a public agency for an affordable housing project, (iii) an action to facilitate the lease, conveyance, or encumbrance of land owned or to be purchased by a public agency for an affordable housing project; (iv) rezoning, specific plan amendments, or general plan amendments required specifically and exclusively to allow the construction of an affordable housing project, or (iv) an action to provide financial assistance in furtherance of implementing an affordable housing project.

We have added Section 9.11 to the Local Guidelines to account for this exemption.

4. SECTION 9.12 – EXEMPTION FOR HOUSING DEVELOPMENTS ON LAND OWNED BY INSTITUTIONS OF HIGHER EDUCATION AND RELIGIOUS INSTITUTIONS

The Legislature has added Section 65913.16 to the Government Code, which provides for the ministerial approval of a “housing development project” (meeting specified requirements) located on land owned on or before January 1, 2024 by an independent institution of higher education or a religious institution.

We have added Section 9.12 to the Local Guidelines to account for this exemption.

5. SECTION 10.03 – ADMINISTRATIVE RECORDS

Public Resources Code section 21167.6 has been amended to provide public agencies with increased control over preparation of the administrative record during litigation. In particular, a public agency may now deny a petitioner’s request to prepare the administrative record, provided that it issues the denial within five business days of receiving the petitioner’s request to prepare the administrative record.

Public Resources Code section 21167.6 has further been amended to clarify that an administrative record need not include (1) communications and emails of a logistical nature, such as meeting invitations or scheduling communications; or (2) documents subject to a privilege or exemption set forth in the California Public Records Act.

We have revised Section 10.03 of the Local Guidelines to be consistent with Public Resources Code section 21167.6, as amended.

Other Changes

Effective January 1, 2024, the Department of Fish and Wildlife has increased its fees. For a Negative Declaration or a Mitigated Negative Declaration, the new filing fee is \$2,916.75; for an EIR, the new filing fee is \$4,051.25; and for an environmental document prepared pursuant to a Certified Regulatory Program, the filing fee has been increased to \$1,377.25.

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 24-04)

May 8, 2024

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 “2024 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, Donald P. Wagner, 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 8th day of May 2024.

IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of May 2024.

DONALD P. WAGNER
Chair of the Local Agency Formation Commission of
Orange County

By: _____
DONALD P. WAGNER

ATTEST:

Carolyn Emery, Executive Officer
Orange County Local Agency Formation Commission