

LAKE ARROWHEAD COMMUNITY SERVICES DISTRICT

MEMORANDUM

DATE: APRIL 23, 2019

TO: BOARD OF DIRECTORS
Lake Arrowhead Community Services District

FROM: 
AIDA HERCULES-DODARO, District Engineer


CATHERINE CERRI, General Manager

SUBJECT: CONSIDER ADOPTION OF RESOLUTION NO. 2019-03,
APPROVING THE 2019 UPDATE TO THE LOCAL CALIFORNIA
ENVIRONMENTAL QUALITY ACT (CEQA) GUIDELINES.

A. RECOMMENDATION

That the Board of Directors adopts Resolution No. 2019-03 approving the 2019 update to the Local California Environmental Quality Act (CEQA) Guidelines.

B. REASON FOR RECOMMENDATION

The State CEQA Guidelines require local agencies to adopt “objectives, criteria and specific procedures” to implement the requirements of the CEQA statute and the State CEQA Guidelines. (State CEQA Guidelines Section 15022). The Lake Arrowhead Community Services District’s (“District”) Local CEQA Guidelines have been revised and amended to reflect the State CEQA Guidelines, the Public Resources Code and local practices.

C. BACKGROUND INFORMATION

CEQA, as contained in Public Resources Code sections 21000 et seq., is California’s most comprehensive environmental law. It requires all public agencies within the state to evaluate the environmental effects of their discretionary approvals. CEQA also aims to prevent significant environmental effects from occurring as a result of agency actions by requiring agencies to avoid or reduce, when feasible, the significant environmental impacts of their decisions.

CEQA Guidelines have undergone their first comprehensive update in many years. After a multi-year engagement with stakeholders, and completion of the formal administrative rulemaking process, the California Natural Resource Agency proposed a

final update package of the CEQA Guidelines. The update was approved by the Office of Administrative Law and submitted to the Secretary of State on December 28, 2018. This update includes a number of amendments and changes to approximately 30 Guideline sections and Appendices, encompassing process or efficiency improvements, substantive improvements and technical improvements.

To this end, CEQA requires all public agencies to adopt specific objectives, criteria and procedures for evaluating public and private projects that are undertaken or approved by such agencies.

D. FISCAL INFORMATION

No fiscal impact is anticipated from amending the Local CEQA Guidelines.

E. ENVIRONMENTAL IMPACT

No environmental impact is anticipated from amending the Local CEQA Guidelines. The District's adoption of the attached Resolution is not a project under State CEQA Guidelines section 15378(b)(5) because it involves an administrative activity process only and that will not result in any environmental impacts.

F. ATTACHMENTS

Attachment 1 - Resolution No. 2019-03

Attachment 2 - Best Best & Krieger, LLP Memo dated February 28, 2019,
regarding 2019 Summary of Changes to Local CEQA Guidelines

RESOLUTION NO. 2019-03

A RESOLUTION OF THE LAKE ARROWHEAD COMMUNITY SERVICES DISTRICT AMENDING AND ADOPTING LOCAL GUIDELINES FOR IMPLEMENTING THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (PUBLIC RESOURCES CODE §§ 21000 ET SEQ.)

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

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 Lake Arrowhead Community Services District 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 Lake Arrowhead Community Services District (“District”) hereby resolves as follows:

SECTION 1. The District 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 District and is available for inspection by the public.

SECTION 2. All prior actions of the District enacting earlier guidelines are hereby repealed.

ADOPTED this 23rd day of April, 2019, at the meeting of the Board of Directors of Lake Arrowhead Community Services District by the following majority vote of the Board:

AYES:
NOES:
ABSENT:
ABSTAIN:

President of the Lake Arrowhead Community Services
District Board of Directors

ATTEST:

Kathleen Field, Secretary to the Lake Arrowhead
Community Services District and to the Board of
Directors

APPROVED AS TO FORM:

General Counsel
Lake Arrowhead Community Services District

Memorandum

TO: Project 5 District Clients
FROM: Best Best & Krieger LLP
DATE: February 28, 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 District’s *2019 Local Guidelines for Implementing the California Environmental Quality Act* (“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 your District 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 your District adopts the Local Guidelines. That said, your District 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 District 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 District 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 District, as Lead Agency, may use to prepare an Initial Study (e.g., preparing an Initial Study with District'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 District does not elect to be governed by the provisions of Section 15064.3 before July 1, 2020. Accordingly, the District 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 District 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 District 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 District 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 District must now consider a proposed project’s energy impacts at the Initial Study stage.

2. SECTION XVII, TRANSPORTATION SUBDIVISION B.

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 District 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 District 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 District 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 your District's projects, please contact a BB&K attorney for assistance.

BEST BEST & KRIEGER LLP