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CEQA Guidelines Receive Update, Climate Change Drives Major Amendments

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At the end of 2018, the Office of Planning and Research's (OPR's) years-long effort (since 2011) to update the Guidelines (CEQA Guidelines) implementing the California Environmental Quality Act became a reality. This comprehensive update to nearly 30 sections of the CEQA Guidelines (along with some additions) incorporates new statutes and court decisions. The final text of the amendments can be found [here](#). California's battle to ward off the effects of climate change has ushered some of the biggest changes to the Guidelines, including criteria for assessing Vehicle Miles Traveled (VMT) for determining a project's traffic impacts (as well as inclusion in the Appendix G checklist) and a clear mandate to address climate change impacts during environmental review (discussed below).

In addition to VMT being added to the Appendix G checklist, there are many other changes to the checklist that the reader should review. For example, Section XII - Population and Housing, is now Section XIV, and newly states that the consideration of population growth impacts should be for growth that is "unplanned." Induced growth has been an issue in many project reviews and this change provides better direction for the analysis.

A change to the Class I categorical exemptions at section 15301 - Existing Facilities is also worth noting. OPR expanded the existing facilities exemption by adding the word "former," broadening the language so now it exempts: "...facilities, mechanical equipment, or topographical features, involving negligible or no expansion of **existing or former** use ~~beyond that existing at the time of the lead agency's determination.~~" This helps clarify that, for example, a project may still be exempt from CEQA due to previous activities at the facility.

These are just a few examples of the many changes to the CEQA Guidelines. One change that is glaringly absent is the requirement for OPR and county clerks to post all CEQA notices electronically. Currently, the statute of limitations starts to run on the date OPR or the county clerk receives the notice, stamps a date on it, and then physically posts the notice on a board or clipboard- and this old process is part of a short 30 days to challenge a Notice of Determination. If you are not in Sacramento at OPR's office or the county clerk's office, you have no idea that the notice was posted and you have to increase your carbon footprint by traveling to check for yourself. OPR needs to change this outdated process and require electronic posting so everyone can be informed quickly and in an environmentally responsible manner.

A discussion providing the reasoning for each of the changes within the update may be found in the Natural Resource Agency's Final Statement of Reasons, available [here](#).

Vehicle Miles Traveled

Perhaps one of the most contested issues for purposes of CEQA environmental review, especially in a traffic-congested California, is the determination of the traffic impacts for a given project. With this update, the Resources Agency has adopted entirely new section 15064.3 - Determining the Significance of Traffic Impacts - which sides with using Vehicle Miles Traveled as an alternative to Level of Service. This change provides consistency with SB 743, which mandated that OPR provide an alternative traffic impact methodology that better



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considers greenhouse gas emissions, among other things. New section 15064.3 directs that VMT is generally the best way to assess such impacts, and defining VMT to mean “the amount and distance of automobile travel attributable to a project.” Lead agencies in California may elect to use this standard immediately, but VMT will apply statewide on July 1, 2020.

Greenhouse Gas Emissions

In response to case law developments mandating climate change analyses under CEQA, the update also includes various amendments to section 15064.4 – Determining the Significance of Impacts from Greenhouse Gas Emissions. These changes include a mandate to assess a project’s greenhouse gas emissions (changing a “should” to a “shall”) and various clarifications on the required analysis, e.g., clarifying the focus from amount of greenhouse gas emissions to actual effect on climate change. The updated Guidelines direct lead agencies to determine a project’s “incremental contribution” to climate change, and warns that such contributions may be “cumulatively considerable” even if emissions are seemingly small when compared against state, national, and global emissions totals. This latter “clarification” does not do much to clarify, and signals that almost any “incremental contribution” could be considered significant. Project proponents and lead agencies will need to do much in the way of generating defensible climate change analyses, including a discussion of any methodologies used and a comparison of the project’s impacts with any of California’s various climate change goals.

Takeaways

These amendments can largely be seen as an effort to modernize the Guidelines to keep up with the pace of statutory and case law changes to CEQA. Many of the rules now espoused by the Guidelines have been considered the law for some time already. While this update maintains the CEQA Guidelines’ status as an essential starting point for CEQA analysis, lead agencies, project proponents, and practitioners will need to be vigilant in tracking case law and statutory updates not reflected in the regulations.

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