

ATTACHMENT #1

Memorandum

TO: Project 5 City Client
FROM: Best Best & Krieger LLP
DATE: March 11, 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 City’s Local Guidelines for Implementing CEQA (“Local Guidelines”) to account for these CEQA developments. This memorandum summarizes the substantive amendments to the City’s Local Guidelines.

The Local Guidelines and this memorandum are designed to help the City 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. Please contact Tammy Ingram at tammy.ingram@bbklaw.com with any technical questions regarding accessing the client portal.

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