



## Newly Proposed CEQA Guidelines Are Coming to Your Town!

League of California Cities 2018 Annual Conference

Thursday, September 13<sup>th</sup>, 2018

8:15am – 9:30am

### About Us

Charity Schiller, Partner  
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Charity helps public and private clients negotiate the maze of laws that apply to infrastructure and private development projects, so that those projects can be entitled and built. Specifically, Charity assists clients with all aspects of CEQA, NEPA, and related environmental laws. She is an experienced litigator, successfully defending her clients before administrative boards and trial and appellate courts throughout California.



## About Us

Erik Ruehr, Director of Traffic Engineering and Chair of the Institute of Transportation Engineers SB 743 Task Force

VRPA Technologies

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As task force chair, Erik is responsible for representing 2,000 transportation engineers and planners in California on issues related to the implementation of SB 743. Erik has a wide range of experience in the transportation engineering field and he has prepared over 100 transportation analyses for CEQA projects in locations throughout California.



## About Us

Matt Maddox, Senior Program Manager

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Matt is involved in a wide range of urban planning and land use studies, sustainable design review, General Plans, Climate Action Plans, technical modeling for air quality and greenhouse gas analysis, climate change policy development, CEQA/NEPA environmental documentation, as well as community involvement and permitting activities. He has a strong background in environmental management, policy, and environmental planning.



## About Us

Ryan Stendell, Director of  
Community Development for the  
City of Palm Desert

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Ryan has overseen Palm Desert's Parks and Recreation Operations as well as other special projects including serving as co-staff lead in the update of Palm Desert's General Plan. As Director of Community Development, Ryan oversees several City Departments including Planning, Code Compliance/Licensing and Public Art. He also serves as the primary staff liaison to the Planning Commission.



## CEQA Overview

Public Resources Code, § 21000 et seq.  
14 Cal. Code Regulations, § 15000 et seq.



## CEQA's Purpose (PRC § § 21000-21002; 14 CCR § 15002)

- State's preeminent environmental law
- Patterned after the National Environmental Policy Act
- Overriding goals are to protect the environment and further public disclosure
- CEQA's purpose is not to stop projects, but rather to ensure that environmental impacts are adequately disclosed and mitigated to the extent possible
- CEQA has "teeth"



## The CEQA Process

- Always ask three questions:
  - Is it a "Project"?
  - Is it "Exempt"?
  - If it *is* a "project" and is *not* "exempt," what level of CEQA review is required?
- Project = a discretionary approval by a public agency that may result in direct/indirect environmental impacts.
- Exemptions = statutory, categorical, or catch-all.
- What level of review typically determined through an Initial Study.



## The CEQA Process (cont.)

- Options for substantive CEQA review?
  - Negative Declaration
  - Mitigated Negative Declaration (MND)
  - Environmental Impact Report (EIR)
- Many other options too depending on the circumstances: Supplemental/Subsequent EIRs, Subsequent MNDs, Addendum, written findings, reliance on NEPA document

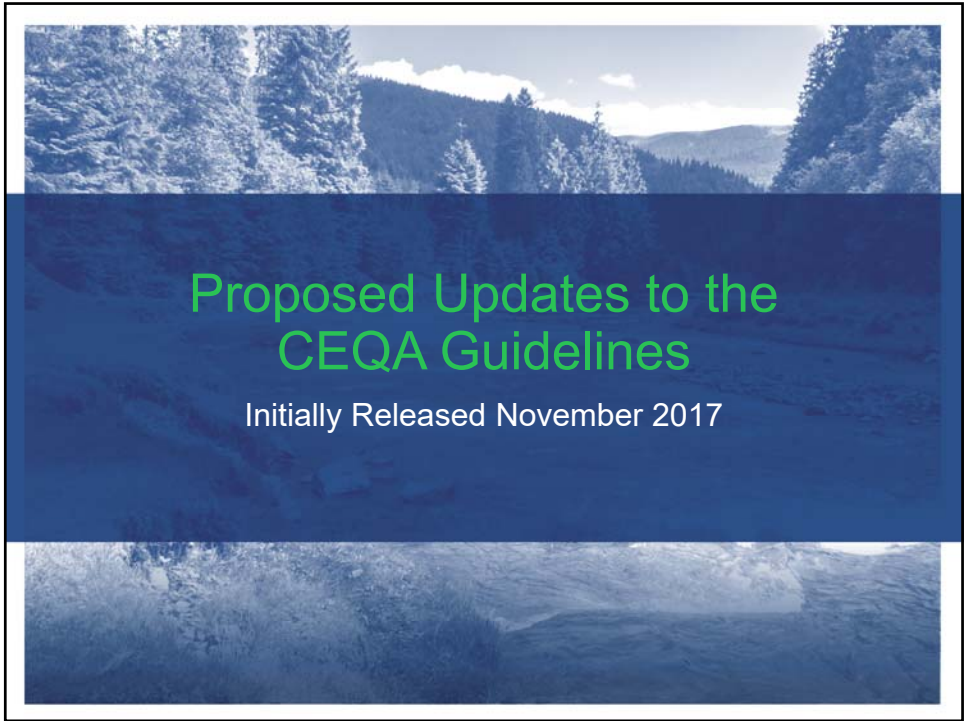


## The CEQA Process (cont.)

- What do you do with a CEQA document once prepared?
  - Release the document to the public and reviewing agencies for comment (circulation periods vary).
  - Take document to decision-making body for consideration.
  - Written findings required for EIRs, and recommended for MNDs.
  - Any approval happens **LAST!**
- Watch for administrative appeals.
- Finally, litigation....

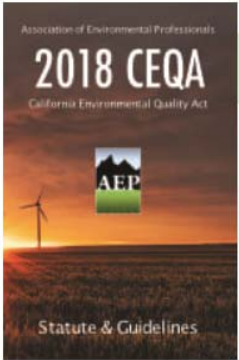






### Overview (cont.)

- Part of the rule-making process
- Per CEQA Guidelines 15007, “[a]mendments to the Guidelines apply prospectively only.”
- Many minor changes, and several major ones.



## CEQA Guidelines Appendix G

- Initial Study Checklist reflects many proposed changes.
  - Eliminates duplicative questions (e.g., cumulative air quality question, land use HCP question). Still must analyze these issues, but analysis would appear elsewhere.
  - Reorganizes some issues (e.g., hydrology and utilities questions).
  - Makes other minor clarifications.
- Adds two “new” categories of impacts.



## Transportation Impacts

- SB 743 (2013) added Section 21099 to the Public Resources Code, which required OPR to update the CEQA Guidelines to require an analysis of transportation using something other than LOS.
- Legislature specifically focused on using Vehicle Miles Traveled (VMT) instead of Level of Service (LOS).
- Proposed new CEQA Guidelines 16064.3 and changes to Appendix G confirm that vehicle delay is not a significant impact for land development projects, and that VMT is the focus going forward.



## Transportation Impacts (cont.)

- Major Policy-Based Paradigm Shift:
  - CEQA transportation analysis based on VMT favors projects in densely developed areas near transit and discourages projects in suburban and rural areas.
  - Although it is intended to facilitate infill projects, does it unintentionally *worsen* the housing crisis by making it harder for rural areas to build *affordable* housing?
- Practical effects:
  - Most jurisdictions use LOS standards (A through F) to measure roadway function. These delay-based standards are often reflected in local general plan circulation elements.
  - LOS analysis conducted through CEQA currently serves as the basis for requiring development projects to pay for roadway improvements.



## Transportation Impacts (cont.)

- Regardless of the debate, VMT is here to stay.
  - Guidelines 15064.3 (a): “Except as provided in subdivision (b)(2) below (regarding roadway capacity), a project’s effect on automobile delay does not constitute a significant environmental impact.”
  - Appendix G: Deletes questions focused on delay and congestion management. Requires consideration of transit, bicycle, and pedestrian paths.





## Transportation Impacts (cont.)

- Selecting a threshold of significance:
  - If VMT threshold is too low, an EIR will be required for many projects (even small projects).
  - If VMT threshold is too high (i.e., illusory), this may subject the agency to legal challenge.
- The limits of analysis:
  - CEQA does not require lead agencies to analyze impacts that are speculative. (State CEQA Guidelines, § 15145.)
  - However, agencies must analyze all those impacts that are **reasonably foreseeable**. (State CEQA Guidelines, § 15064.)



## Transportation Impacts (cont.)



- VMT mitigation strategies:
  - Addition of bicycle, transit, or pedestrian facilities?
  - Offsite mitigation (VMT fee programs)?
  - Tiered environmental studies for small land development and roadway projects.



## Transportation Impacts (cont.)

- Per Guidelines 15064.3(c), agencies may elect to move to VMT immediately. However, the requirements are proposed to take effect state-wide beginning July 1, 2020 (i.e., there is an opt-in period).
- For more information, see OPR's Technical Advisory on Analyzing Transportation Impacts under CEQA (April 2018) available at:  
[http://www.opr.ca.gov/docs/20180416-743\\_Technical\\_Advisory\\_4.16.18.pdf](http://www.opr.ca.gov/docs/20180416-743_Technical_Advisory_4.16.18.pdf)



## Water Supply

- Guidelines 15155(f) would require agencies to consider the degree of certainty that exists as to project water supplies throughout the life of the project.
- Agencies must also evaluate the pros and cons of a project based on water demand.
- If an agency cannot determine that water will be available for the life of the project, the agency shall evaluate potential alternative water supplies and their respective environmental impacts.



## CEQA Guidelines Appendix G (Energy Impacts)

**VI. ENERGY** Would the project:

a) Result in a potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy, or wasteful use of energy resources, during project construction or operation?

b) Conflict with or obstruct a state or local plan for renewable energy or energy efficiency?

## CEQA Guidelines Appendix G (Energy Impacts cont.)

- Prior approach: Appendix F was used to consider energy analysis in EIRs (often no analysis for Negative Declarations); focus was largely on operations; analysis was often scattered throughout document or folded into the GHG discussions.
- New approach: Energy usage will be considered in all CEQA documents (not just EIRs); construction and operational impacts are pertinent; analysis is more centralized.



## SB 375 – Transportation GHG Reduction Targets (cont.)

- Technically not part of the CEQA Guidelines Update
- However, connection between VMT, energy, and GHG/air quality issues.
- CARB adopted updates to the regional GHG emissions reduction targets on **March 22, 2018**.
- The new SB 375 targets will become effective **October 1, 2018**.



## The Proposed Targets – 2020

MPO	Currently Adopted Target	MPO-Recommended Target	CARB Recommended Target
MTC/ABAG	-7%	-	-10%
SACOG	-7%	-	-7%
SANDAG	-7%	-	-15%
SCAG	-8%	-	-8%
Fresno COG		-6%	-6%
Kern COG		-9%	-9%
Kings CAG		-5%	-5%
Madera CTC	-5%	-10%	-10%
Merced CAG		-10.1%	-10%
San Joaquin COG		-12 to -13%	-12%
Stanislaus COG		-12 to -13%	-12%
Tulare CAG		-13 to -14%	-13%
AMBAG	0%	-3%	-3%
Butte CAG	1%	-	-6%
San Luis Obispo COG	-8%	-2%	-3%
Santa Barbara CAG	0%	-13%	-13%
Shasta RTA	0%	-	-4%
Tahoe MPO	-7%	-8.8%	-8%



## The Proposed Targets – 2035

MPO	2035			
	Current Target	Current SCS Anticipated Performance	MPO Recommended Target	CARB Recommended Target
MTC/ABAG	-15%	-15.5% <sup>d</sup>	-18%	-19%
SACOG	-16%	-16%	-18%	-19% <sup>a</sup>
SANDAG	-13%	-18% <sup>c</sup>	-18%	-19%
SCAG	-13%	-16% <sup>c</sup>	-18%	-19%
Fresno COG		-10% <sup>c</sup>	-13%	-13% <sup>b</sup>
Kern COG		-13% <sup>c</sup>	-13%	-15% <sup>b</sup>
Kings CAG		-12% <sup>c</sup>	-12%	-13% <sup>b</sup>
Madera CTC	-10%	At least -10%	-15 to -20%	-16% <sup>b</sup>
Merced CAG		-12.7% <sup>c,d</sup>	-12.7%	-14% <sup>b</sup>
San Joaquin COG		14% <sup>c</sup>	-14 to -15%	-16% <sup>b</sup>
Stanislaus COG		14% <sup>c</sup>	-14 to -15%	-16% <sup>b</sup>
Tulare CAG		15% <sup>c</sup>	-15 to -16%	-16% <sup>b</sup>
AMBAG	-5%	-6%	-6%	-6%
Butte CAG	1%	-7%	-7%	-7%
San Luis Obispo COG	-8%	-10.9%	-4 to -8%	-11%
Santa Barbara CAG	0%	-17%	-17%	-17%
Shasta RTA	0%	-0.5%	-3.5%	-4%
Tahoe MPO	-5%	-5% <sup>d</sup>	-5%	-5%

<sup>a</sup> If SACOG is not able to secure the funding and commitments to implement their proposed pilot project, CARB staff would evaluate the SCS performance against an 18 percent target. See Appendix A, MPO Target Recommendations and CARB Staff Recommendations, pages A-7 through A-9 for further discussion.

<sup>b</sup> Recommended targets apply to the San Joaquin Valley MPOs third cycle SCS plans.

<sup>c</sup> Current SCS anticipated performance as reflected with updated MPO modeling analysis.

<sup>d</sup> SCS adopted, but CARB evaluation not yet completed.



## CEQA Guidelines Appendix G (Wildfire Impacts)

**XX. WILDFIRE. If located in or near state responsibility areas or lands classified as very high fire hazard severity zones, would the project:**

- |  |                          |                          |                          |                          |
|--|--------------------------|--------------------------|--------------------------|--------------------------|
| <b><u>a) Impair an adopted emergency response plan or emergency evacuation plan?</u></b>   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b><u>b) Due to slope, prevailing winds, and other factors, exacerbate wildfire risks, and thereby expose project occupants to pollutant concentrations from a wildfire or the uncontrolled spread of a wildfire?</u></b>  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b><u>c) Require the installation or maintenance of associated infrastructure (such as roads, fuel breaks, emergency water sources, power lines or other utilities) that may exacerbate fire risk or that may result in temporary or ongoing impacts to the environment?</u></b> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <b><u>d) Expose people or structures to significant risks, including downslope or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes?</u></b>  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |





## CEQA Guidelines Appendix G (Wildfire Impacts cont.)

- Appendix G would be amended to expressly address fire hazard impacts.
- Used to be – and still will be at a general level – considered as part of hazards analysis.
- Applies to lands classified as very high fire hazard severity zones, and to lands in or nearby state responsibility areas. (See Pub. Resources Code 21083.01.)

A landscape photograph showing a river flowing through a forested valley. The trees are dense and green, and the sky is blue with some clouds. The image is used as a background for the text.

Big-Picture Take-Aways For  
Applying New CEQA Guidelines  
In the Planning Process

## Boots on the Ground CEQA Analysis

### 3-Layered Approach

- Fig Leaf Analysis
- Practical Analysis
- Litigation-Proof Analysis



## Boots on the Ground CEQA Analysis (Cont'd)

What method to use depends largely on situational awareness of:

- Level of Comfortable Risk
- Threats of Litigation
- NIMBYISM
- Actual Environmental Impacts as defined by CEQA



## Must justify your CEQA conclusion with facts (i.e., you must say why, in detail).

- “Naked checklists” have long been disallowed, but courts are looking for agencies to provide ever-increasing levels of detail about why agencies reached certain conclusions.
- This is consistent with providing “substantial evidence” supporting the decision, but raises questions re whether CEQA’s other provisions are being applied (e.g., EIRs need not be exhaustive; perfection in analysis is not required.; etc.)



## Justify Your Thresholds of Significance

- Proposed revisions to Guidelines 15064(b)(2) and 15064.7(d) would increase the emphasis placed on thresholds of significance.
- Would encourage agencies to explain – with substantial evidence – how compliance with a selected threshold means that the project’s impacts are less than significant.
- “Compliance with the threshold does not relieve a lead agency of the obligation to consider substantial evidence indicating that the project’s environmental effects may still be significant.”



## Multiple Pending Proposals May Be Okay

- ***Aptos Council v. County of Santa Cruz***  
(6th Dist. 2017) 10 Cal.App.5th 266



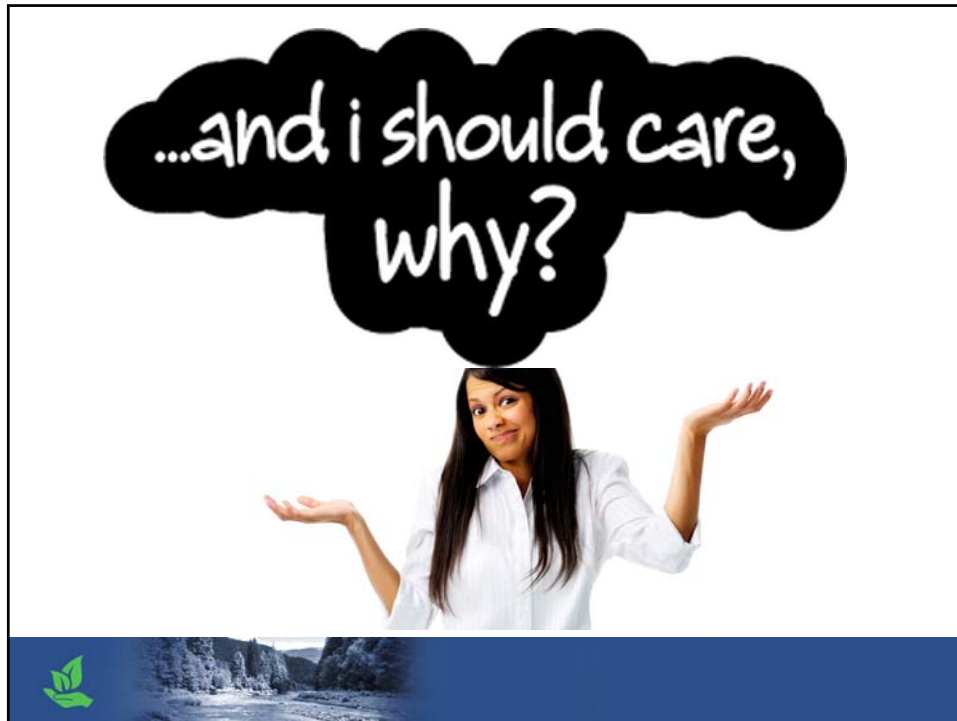
Photo: Friends of the Eel River



## Aptos Council v. County of Santa Cruz

- Court upholds three separately processed ordinances that (1) extended minor exceptions to zoning site standards, (2) altered certain height, density, and parking requirements for hotels in commercial districts, and (3) established an administrative process for approving minor exceptions to the County's sign ordinance against a challenge alleging piecemeal review.
- County not guilty of piecemealing.
  - *The ordinances serve different purposes.*
  - None of the ordinances is a reasonably foreseeable consequence of one of the others.





### Mini-Summary of CEQA Litigation

- Petition for Writ of Mandate = The Lawsuit
- Petitioner = Plaintiff
- Respondent = Defendant
- Real Party in Interest = any recipients of public agency approvals (i.e., usually a private developer)
- Does not involve witnesses or evidentiary exhibits. → → → →
- Evidence = The Administrative Record (all the documentation that formed the basis of the agency's decision).





## Remedies on Remand (Would Be NEW Section 15234)

- Public Resources Code 21168.9 already vests the courts with ability to void or partially void project approvals and to use equitable powers to shape relief.
- New Guidelines 15234 would elaborate upon this existing authority, confirming that:
  - An agency may proceed with project activities, during the remand period where the court has exercised its equitable discretion to permit project activities to proceed during that period because the environment will be given a greater level of protection if the project remains operative than if it were inoperative during that period.
  - As to those portions of an environmental document that a court finds to comply with CEQA, additional environmental review shall only be required as required by the court consistent with principles of res judicata.





# Thank you!

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