



# California Governor's Office Releases Comprehensive Update to State California Environmental Quality Act (CEQA) Guidelines

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On August 11, 2015, the California Governor's Office of Planning and Research (OPR) released its Preliminary Discussion Draft of a comprehensive update to the CEQA Guidelines – the first global update to the CEQA Guidelines in almost twenty years. OPR's regulatory package is a bold and sweeping proposal. The California Resources Agency's CEQA implementing regulations (Cal. Code Regs., tit. 14, §§ 15000 et seq.), commonly known as the "CEQA Guidelines," are the CEQA practitioner's compass for navigating the treacherous waters of CEQA's procedural and substantive requirements. The Guidelines are important because the courts will often defer to interpretations of CEQA in the Guidelines. The Preliminary Discussion Draft appears to offer increased clarity as to some of CEQA's more thorny requirements, in exchange for more aggressive limits on energy and transportation impacts of future development. Although OPR's announcements states that the Preliminary Discussion Draft does not encompass CEQA Guidelines amendments to transportation impacts analysis pursuant to Senate Bill 743 (Steinberg 2013), the Preliminary Discussion Draft endorses the controversial vehicle miles traveled standard for assessing transportation impacts.

The proposed amendments address CEQA's complex requirements for establishing an environmental baseline, identifying the appropriate "threshold of significance" for an environmental impact, streamlining environmental review for particular projects, exempting certain projects from environmental review, formulating adequate mitigation measures when practical considerations impede the development of a detailed mitigation plan, and assessing a project's water and energy impacts, among other topics. These changes largely codify seminal judicial decisions interpreting the substantive requirements of the Act. The Preliminary Discussion Draft also proposes a new exemption for "transit oriented development" projects, requires lead agencies to consult with public transit agencies located in a project's proximity, and heightens

CEQA's requirements for analyzing energy impacts – all to support the State's efforts to increase energy efficiency and to promote infill development and multi-modal transportation.

Importantly, the Preliminary Discussion Draft includes a revamped "Appendix G" to the CEQA Guidelines, which contains a sample environmental checklist for preparing environmental documents. Although lead agencies are not required to adhere to Appendix G, most agencies rely on the checklist to define the resource areas studied and the thresholds of significance used in an environmental review document. The environmental checklist is also frequently used by agencies to determine whether an environmental impact report must be prepared. As such, if adopted, OPR's proposal to substantively revise Appendix G will significantly impact how public agencies implement CEQA on a daily basis.

The proposed revisions to Appendix G are equal parts welcome and shocking. For example, the Preliminary Discussion Draft does away with Appendix G's subjective standard for assessing a project's aesthetic impacts and eliminates recommendations for addressing geology impacts that are redundant to state law relating to seismic impacts. OPR also proposed to amend Appendix G to include vehicle miles traveled as a threshold for evaluating transportation impacts. Senate Bill 743 requires OPR to promulgate CEQA Guidelines establishing criteria for determining the significance of transportation impacts of projects within transit priority areas. Many public agencies and other members of the regulated community have expressed significant opposition to the use of a vehicle miles traveled standard for assessing the significance of traffic impacts. OPR's proposed revisions to the transportation section of Appendix G is likely to garner criticism from the regulated community and places the proverbial cart before the horse, since OPR is yet to daylight its revised Senate Bill 743 implementing guidelines.

Two major topics not directly addressed by the Preliminary Discussion Draft are standards governing greenhouse gas emissions analysis and the so-called "CEQA in reverse" issue – i.e., whether CEQA requires an analysis of the environment's impacts on the project in addition to an analysis of how the project may impact the environment. With respect to these topics, OPR has appropriately deferred to the California Supreme Court, which is expected to issue decisions on these issues in *Cleveland National Forest Foundation v. SANDAG* (2014) 231 Cal.App.4th 1056 (cert. granted 2015) (addressing whether CEQA requires an analysis of project consistency with greenhouse gas emissions reduction targets in Executive Order S-03-05), *Center for Biological Diversity v. Department of Fish and Wildlife* (2014) 224 Cal.App.4th 1105 (cert. granted 2014) (addressing environmental baseline requirements for greenhouse gas emissions) and *California Building Industry Association v. Bay Area Air Quality Management District* (2013) 218 Cal.App.4th 1171 (cert. granted 2013) (addressing the circumstances, if any, requiring analysis of the environment's impacts on the project). OPR is accepting comments on the Preliminary Discussion Draft through October 12, 2015.