



## Land Use ADVISORY ■

**JANUARY 3, 2018**

### Governor's Office Proposes Comprehensive Package to Amend CEQA Guidelines

The Governor's Office of Planning and Research (OPR) recently released the most comprehensive package of [proposed changes](#) in decades to the California Environmental Quality Act (CEQA) Guidelines. Covering a range of procedural and substantive provisions, OPR has classified the proposed changes into three broad categories: (i) efficiency improvements; (ii) substantive improvements; and (iii) technical improvements. The proposed package likely will not streamline the CEQA review process or impact the timeline for most development project legal challenges. Yet, the revisions provide some clarification to lead agencies, project applicants, and courts by better aligning the CEQA Guidelines with recent changes in the statute and with recent California Supreme Court and appellate court decisions.

The proposed efficiency improvements include clarifications related to the formation of significance thresholds, tiering, and certain CEQA exemptions (for transit-oriented development projects and alterations to existing facilities). The efficiency improvements also include proposed revisions to the Environmental Checklist in Appendix G, including the deletion of duplicative questions and revisions to questions related to aesthetic impacts, air quality (odor), state wetlands, cultural resources, geology and soils, and land use plans. Additionally, new requirements for lead agencies to evaluate a project's potential impacts to energy and wildfire risks have been proposed, as well as a new section on remedies for legal actions challenging a lead agency's CEQA compliance, clarifying that portions of project approvals may proceed while a lead agency conducts further environmental review if such review is necessary.

The proposed substantive improvements include new guidance on analyzing projects' impacts to energy, water supply, and greenhouse gases (GHGs). The proposed changes specifically attempt to align the CEQA Guidelines for GHG impacts with recent Supreme Court precedent, which held that lead agencies may consider a project's consistency with the state's long-term climate goals or strategies as long as substantial evidence supports the agency's analysis of how the project's incremental contribution to climate change addresses those goals or strategies. *See Center for Biological Diversity v. Dept. of Fish & Wildlife* (2015) 62 Cal.4th 204.

These improvements would also impose new methods for analyzing transportation impacts pursuant to Senate Bill 743 (SB 743). The Legislature enacted SB 743 requiring OPR to develop alternative methods of measuring projects' transportation impacts under CEQA. Under the new transportation guidelines, lead agencies must evaluate a project's potential transportation impacts by evaluating the impacts on vehicle miles traveled (VMT),

This advisory is published by Alston & Bird LLP to provide a summary of significant developments to our clients and friends. It is intended to be informational and does not constitute legal advice regarding any specific situation. This material may also be considered attorney advertising under court rules of certain jurisdictions.

rather than evaluating impacts related to level of service. OPR prepared a separate [Technical Advisory](#) with more specific guidance on the proposed VMT analysis, including recommendations for lead agencies to develop new VMT significance thresholds. In most cases for residential or office projects, OPR concludes that a per capita or per employee VMT reduction of 15 percent below the existing development may be a reasonable significance threshold. For retail projects, OPR recommends that a net increase in total VMT may indicate a significant transportation impact, as new retail developments typically only redistribute shopping trips rather than create new trips. For mixed-use projects, lead agencies may evaluate each project component independently and apply the significance threshold for each project type, or may consider only the project's dominant use. The advisory also includes technical guidance on how to calculate VMT and examples of potential mitigation measures that could reduce VMT.

The proposed technical improvements include clarifications on how an agency may describe a project's environmental baseline. For example, an agency could look to historic and/or future conditions when describing a project's environmental setting. The technical improvements also clarify that lead agencies may defer specific details of mitigation measures when it may be impractical or infeasible to fully formulate those details at the time of project approval and further clarify that a lead agency may provide only general responses to general comments received on environmental documents. Additional technical improvements include minor changes related to notices, the preparation of an initial study, consultation with other agencies, certain exemptions, and other technical corrections.

OPR will not initiate a formal comment period on the current proposed revisions, which already address comments received during previous comment periods, and the Natural Resources Agency will soon initiate a formal administrative rulemaking process under the state's Administrative Procedure Act. The public will have an opportunity to provide additional review and further comments during that process. Once that has been completed, the secretary of the Natural Resources Agency may adopt the revisions as new final CEQA Guidelines.

A table summarizing the list of proposed changes can be found [here](#).

You can subscribe to future *Environment, Land Use & Natural Resources* advisories and other Alston & Bird publications by completing our **publications subscription form**.

If you have any questions or would like additional information, please contact your Alston & Bird attorney or any of the following:

Doug Arnold  
404.881.7637  
doug.arnold@alston.com

Roger Cerda  
213.576.1156  
roger.cerda@alston.com

Clynton Namuo  
213.576.2671  
clynton.namuo@alston.com

Jocelyn Thompson  
415.243.1017  
jocelyn.thompson@alston.com

Paul Beard  
916.498.3354  
paul.beard@alston.com

Skip Fulton  
404.881.7152  
skip.fulton@alston.com

Elise Paeffgen  
202.239.3939  
elise.paeffgen@alston.com

Andrea Warren  
213.576.2518  
andrea.warren@alston.com

Ward Benschopf  
213.576.1108  
ward.benschopf@alston.com

Maureen Gorsen  
916.498.3305  
maureen.gorsen@alston.com

Bruce Pasfield  
202.239.3585  
bruce.pasfield@alston.com

Jonathan Wells  
404.881.7472  
jonathan.wells@alston.com

Meaghan Goodwin Boyd  
404.881.7245  
meaghan.boyd@alston.com

Ronnie Gosselin  
404.881.7965  
ronnie.gosselin@alston.com

Geoffrey Rathgeber  
404.881.4974  
geoff.rathgeber@alston.com

Nicki Carlsen  
213.576.1128  
nicki.carlsen@alston.com

Maya Lopez Grasse  
213.576.2526  
maya.grasse@alston.com

Max Rollens  
213.576.1082  
max.rollens@alston.com

Edward Casey  
213.576.1005  
ed.casey@alston.com

Clay Massey  
404.881.4969  
clay.massey@alston.com

Chris Roux  
202.239.3113  
213.576.1103  
chris.roux@alston.com

# ALSTON & BIRD

WWW.ALSTON.COM

© ALSTON & BIRD LLP 2018

ATLANTA: One Atlantic Center ■ 1201 West Peachtree Street ■ Atlanta, Georgia, USA, 30309-3424 ■ 404.881.7000 ■ Fax: 404.881.7777  
 BEIJING: Hanwei Plaza West Wing ■ Suite 21B2 ■ No. 7 Guanghai Road ■ Chaoyang District ■ Beijing, 100004 CN ■ +86 10 8592 7500  
 BRUSSELS: Level 20 Bastion Tower ■ Place du Champ de Mars ■ B-1050 Brussels, BE ■ +32 2 550 3700 ■ Fax: +32 2 550 3719  
 CHARLOTTE: Bank of America Plaza ■ 101 South Tryon Street ■ Suite 4000 ■ Charlotte, North Carolina, USA, 28280-4000 ■ 704.444.1000 ■ Fax: 704.444.1111  
 DALLAS: 2828 North Harwood Street ■ 18th Floor ■ Dallas, Texas, USA, 75201 ■ 214.922.3400 ■ Fax: 214.922.3899  
 LOS ANGELES: 333 South Hope Street ■ 16th Floor ■ Los Angeles, California, USA, 90071-3004 ■ 213.576.1000 ■ Fax: 213.576.1100  
 NEW YORK: 90 Park Avenue ■ 15th Floor ■ New York, New York, USA, 10016-1387 ■ 212.210.9400 ■ Fax: 212.210.9444  
 RESEARCH TRIANGLE: 4721 Emperor Blvd. ■ Suite 400 ■ Durham, North Carolina, USA, 27703-8580 ■ 919.862.2200 ■ Fax: 919.862.2260  
 SAN FRANCISCO: 560 Mission Street ■ Suite 2100 ■ San Francisco, California, USA, 94105-0912 ■ 415.243.1000 ■ Fax: 415.243.1001  
 SILICON VALLEY: 1950 University Avenue ■ 5th Floor ■ East Palo Alto, California, USA, 94303-2282 ■ 650-838-2000 ■ Fax: 650.838.2001  
 WASHINGTON, DC: The Atlantic Building ■ 950 F Street, NW ■ Washington, DC, USA, 20004-1404 ■ 202.239.3300 ■ Fax: 202.239.3333