

CEQA EXEMPTIONS

Thursday April 12, 2018

PRESENTED BY

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YOU GET A EXEMPTION!!!



AND YOU GET A EXEMPTION!!!

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CEQA

The California Environmental Quality Act (CEQA) was enacted by the Legislature in 1970.

Require that all state and local agencies prepare environmental analyses before making decisions that affect the environment both to inform decisionmakers on the impacts and to assure “an apprehensive citizenry” that the decisionmakers are considering the environmental impacts in their decisions.

Levels of CEQA Review:

- Not a Project (ministerial act, etc)
- General Rule Exemption
- Statutory or Categorical Exemption
- Negative Declaration / Mitigated Negative Declaration
- Environmental Impact Report, including Findings of Overriding Consideration

What's an Exemption

1. A class of projects which the Legislature, or the Resources Agency has determined do not require environmental review under CEQA.
2. Statutory Exemptions are absolute
3. Categorical Exemptions exempt classes of projects unless “unusual circumstances” exist

Common Applicable LAFCo CEQA Exemptions

THE “GENERAL RULE” EXEMPTION

§ 15061. Review for Exemption.

- (a) Once a lead agency has determined that an activity is a project subject to CEQA, a lead agency shall determine whether the project is exempt from CEQA.
- (b) A project is exempt from CEQA if:
 - (1) The project is exempt by statute (see, e.g. Article 18, commencing with Section 15260).
 - (2) The project is exempt pursuant to a categorical exemption (see Article 19, commencing with Section 15300) and the application of that categorical exemption is not barred by one of the exceptions set forth in Section 15300.2.
 - (3) The activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.
 - (4) The project will be rejected or disapproved by a public agency. (See Section 15270(b)).

§15319. Annexations of Existing Facilities and Lots for Exempt Facilities.

- Class 19 consists of only the following annexations:
- (a) Annexations to a city or special district of areas containing existing public or private structures developed to the density allowed by the current zoning or pre-zoning of either the gaining or losing governmental agency whichever is more restrictive, provided, however, that the extension of utility services to the existing facilities would have a capacity to serve only the existing facilities.
- (b) Annexations of individual small parcels of the minimum size for facilities exempted by Section 15303, New Construction or Conversion of Small Structures.
- NOTE: Authority cited: Sections 21083[Deering's] and 21087[Deering's], Public Resources Code. Reference: Section 21084[Deering's], Public Resources Code.

§15320. Changes in Organization of Local Agencies.

- Class 20 consists of changes in the organization or reorganization of local governmental agencies where the changes do not change the geographical area in which previously existing powers are exercised. Examples include but are not limited to:
 - (a) Establishment of a subsidiary district.
 - (b) Consolidation of two or more districts having identical powers.
 - (c) Merger with a city of a district lying entirely within the boundaries of the city.
- NOTE: Authority cited: Sections 21083[Deering's] and 21087[Deering's], Public Resources Code. Reference: Section 21084[Deering's], Public Resources Code.

Section 15303. New Construction or Conversion of Small Structures.

Class 3 consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. The numbers of structures described in this section are the maximum allowable on any legal parcel. Examples of this exemption include but are not limited to:

- (a) One single family residence, or a second dwelling unit in a residential zone. In urbanized areas, up to three single family residences may be constructed or converted under this exemption.
- (b) A duplex or similar multi family residential structure totaling no more than four dwelling units. In urbanized areas, this exemption applies to apartments, duplexes, and similar structures designed for not more than six dwelling units.
- (c) A store, motel, office, restaurant or similar structure not involving the use of significant amounts of hazardous substances, and not exceeding 2500 square feet in floor area. In urbanized areas, the exemption also applies to up to four such commercial buildings not exceeding 10,000 square feet in floor area on sites zoned for such use if not involving the use of significant amounts of hazardous substances where all necessary public services and facilities are available and the surrounding area is not environmentally sensitive.
- (d) Water main, sewage, electrical, gas, and other utility extensions, including street improvements, of reasonable length to serve such construction.
- (e) Accessory (appurtenant) structures including garages, carports, patios, swimming pools, and fences.
- (f) An accessory steam sterilization unit for the treatment of medical waste at a facility occupied by a medical waste generator, provided that the unit is installed and operated in accordance with the Medical Waste Management Act (Section 117600[Deering's], et seq., of the Health and Safety Code) and accepts no offsite waste.

Common Misused Exemption:

Section 15332. In Fill Development Projects.

Class 32 consists of projects characterized as in fill development meeting the conditions described in this section.

(a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.

(b) The proposed development occurs **within city limits** on a project site of no more than five acres substantially surrounded by urban uses.

(c) The project site has no value, as habitat for endangered, rare or threatened species.

(d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.

(e) The site can be adequately served by all required utilities and public services.

EXCEPTIONS TO APPLICATION OF CEQA EXEMPTIONS

Section 15300.2. Exceptions.

- (a) Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply in all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.
- (b) Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.
- (c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.
- (d) Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements which are required as mitigation by an adopted negative declaration or certified EIR.
- (e) Hazardous Waste Sites. A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5[Deering's] of the Government Code.
- (f) Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.

Supreme Court of California

BERKELEY HILLSIDE PRESERVATION et al., v. CITY OF BERKELEY 2015 60 Cal.4th 1086

The Supreme Court held that:

- (1) For an CEQA exemption to not apply, either the project does not meet the exemption criteria or there are “unusual circumstances” related to the project that create an exception to the CEQA exemption.
- (2) The “Unusual Circumstances” exception is not satisfied by a mere reasonable possibility that an activity will have a significant effect on the environment, disapproving earlier cases to the contrary;
- (2) An agency's decision whether “unusual circumstances” exist is reviewed under the deferential “substantial evidence” standard;
- (3) If a determination is made that there are unusual circumstances, the “fair argument” standard applies to lead agency's determination of whether project may have significant effect on environment due to unusual circumstances;

Key is that exemption applies absent “unusual circumstances”

ESTABLISHING UNUSUAL CIRCUMSTANCES

The Supreme Court said:

“A party invoking the exception may establish an unusual circumstance without evidence of an environmental effect, by showing that the project has some feature that distinguishes it from others in the exempt class, such as its size or location. In such a case, to render the exception applicable, the party need only show a reasonable possibility of a significant effect due to that unusual circumstance. Alternatively, under our reading of the guideline, a party may establish an unusual circumstance with evidence that the project *will* have a significant environmental effect. That evidence, if convincing, necessarily also establishes “a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.”

(Guidelines, § 15300.2, subd. (c).) (*Berkeley Hillside, supra*, p. 1105)...

In determining whether the environmental effects of a proposed project are unusual or typical, local agencies have discretion to consider conditions in the vicinity of the proposed project (Id. at p. 1119)

ESTABLISHING UNUSUAL CIRCUMSTANCES--2

Where agency makes no specific findings to support exemption, then courts must review it both to determine whether there is substantial evidence to support a finding of no unusual circumstances and whether there is a fair argument of a reasonable possibility that any purported unusual circumstances identified by the petitioner will have a significant effect on the environment (for purposes of the second element).

Respect Life South San Francisco v. City of South San Francisco (2017) 15 Cal.App.5th 449, 458 [223 Cal.Rptr.3d 202, 210]

Take-Away: Make fact-based findings to support use of categorical exemption

FILING A CEQA NOTICE OF EXEMPTION

CEQA contains strict and short time limits for legal challenge to agency decisions that violate CEQA.

- 30 days from the date a Notice of Determination (NOD) is filed with the County Clerk
- 35 days from the date a Notice of Exemption (NOE) is filed.
- 180 days if no notice is filed.

Example: Rural Fire Protection District Consolidation

- Rural FPD's fire chief is retiring. The Board and firefighters decide now would be a good time to consolidate with the County Fire Agency. Some administrative savings will occur from consolidation but they will be more than offset by the increased wages paid to the Rural FPD firefighters to bring them up to the County's pay levels. To make it work financially, Rural FPD and County Fire agree that at least one Rural fire station will have to be shut down. They select the station that serves a small, primarily Hispanic community of Esperanza out in the farmlands some distance from any other fire station.

The Rural Fire Protection Consolidation

(continued – 2)

- Rural FPD and County Fire adopt resolutions of application to LAFCo calling for the dissolution of Rural FPD and annexation of its territory to County Fire. At the same time they execute an annexation agreement which includes the provision for closing the station in Esperanza.
- The resolutions do not say anything about CEQA.

The Rural Fire Protection Consolidation

(continued – 3)

- LAFCO staff processes the application and sets it for hearing. The staff recommends approval and the proposed LAFCo resolution includes as a condition that the annexation will be subject to the terms of the two agencies' annexation agreement. The resolution also adopts a Class 20 categorical exemption from CEQA.
- At the hearing, 30 residents of Esperanza show up and speak out against the decision to close their station. They argue that the closure will more than double the response time and put their lives and property at risk. The agencies also ask for a continuance to resolve some questions about the transfer of pension liabilities for firefighters.

The Rural Fire Protection Consolidation

(continued – 4)

- Two days before the continued hearing, the LAFCO clerk files the NOE with the county clerk because he will be leaving for a two-week vacation immediately following the hearing.
- At the continued hearing, an attorney from Rural Legal Assistance appears along with citizens from Esperanza, and challenges the adequacy of the CEQA categorical exemption. He provides an analysis prepared by Fire Expert Consultants, inc. analyzing the likely impacts on emergency response time and indicating that they will not meet accepted standards if the station is closed.

The Rural Fire Protection Consolidation

(continued – 3)

- The Commission approves the reorganization as proposed by the agencies and includes in its resolution a determination to use the Class 20 Exemption.

IS THE CLASS 20 EXEMPTION APPROPRIATE?

- **IS THE DECISION TO ALLOW THE CONSOLIDATION AS PROPOSED APPROPRIATE UNDER CKH?**

The Rural Fire Protection Consolidation

(continued – 5)

- Concerned Citizens of Esperanza (CCE) timely files a request for reconsideration within 30 days. The Commission after holding a reconsideration hearing two months later, affirms its original decision
- 35 days after the Commission reconsideration decision CCE files suit to challenge LAFCO's approval and include, among other claims, a CEQA challenge to the exemption.

IS THEIR CEQA CLAIM TIMELY?

- What about if CCE files suit 179 days after the Reconsideration Decision?
- What if they include a challenge to the CEQA exemption as part of a reverse validation action filed within 60 days of recording the COC?

STILL WAITING



**FOR MY CEQA PROJECT TO
START**

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Thank you for attending.

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