

CEQA EXEMPTIONS

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PRESENTED BY

Scott Browne, Law Office of P. Scott Browne

Holly Whatley, Colantuono, Highsmith & Whatley, PC



YOU GET A EXEMPTION!!!



AND YOU GET A EXEMPTION!!!

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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

CASE STUDIES

No. 1 The House on the Hill

Homeowner wants to build 6,000 sq. ft. McMansion in a Bay Area city on a R-1 parcel on steep slopes, with a modest 10-car garage. City approves a use permit for the house using the CEQA Guidelines Section 15303, subdivision (a) exemption for “new, small facilities or structures,” including “[o]ne single-family residence, or a second dwelling unit in a residential zone



No. 1 The House on the Hill

(continued – 2)

Neighbors oppose the project, pointing out:

- 1) The house would be one of the largest houses in the City, 4 times the average house size;
- 2) On very steep slopes (50% slope),
- 3) That the house exceeds the City height limits
- 4) The project is inconsistent with the City General Plan
- 5) EIR is appropriate to analyze impacts on noise, air quality, historic neighborhood and safety
- 6) They have architect opine that the construction will require placing fill on steep slopes creating significant landslide risk and project could have seismic issues being on a major active fault

No. 1 The House on the Hill

(continued – 3)

City Planning Director responds:

- 1) There 16 other houses within 300 feet of the project which have greater floor area to lot ratios
- 2) 68 houses in the City are larger than the proposed project
- 3) Many houses are built on steep slopes in the City
- 4) The project is consistent with the City General Plan

Project architect claims opponent's architect does not know how to read plans, that no fill will be required to be placed on steep slopes for the project to be built and no unusual seismic hazard as much of City is on active fault and house is built to required seismic standards

No. 1 The House on the Hill

(continued – 4)

**IS THE CLASS 3 EXEMPTION APPROPRIATE TO
USE FOR THIS PROJECT?**

No. 2 The Struggling Fire Protection District

- Beleaguered FPD has been forced to dip into its reserves for 4 years straight to cover its costs despite running a lean operation. The Fire Chief estimates that the District's reserves will be exhausted in about 22 months at the current rate. He determines service levels cannot be cut further without significantly impairing its ability to provide even the most basic of fire protection services.

No. 2 The Struggling Fire Protection District

(continued – 2)

- 76.1% of Beleaguered FPD's territory overlaps the territory of Town of Modest Means.
- 70% of the registered voters within Beleaguered FPD's territory live in the Town of Modest Means.

No. 2 The Struggling Fire Protection District

(continued – 3)

- The Fire Chief and the City Manager develop a plan to establish the FPD as a subsidiary district of the Town of Modest Means to enable the FPD to realize cost savings in administrative services. The plan recognizes that some FPD fire stations will be closed to reduce overlap
- Both the Board of the FPD and the City Council adopt the appropriate resolutions and apply to LAFCO for the reorg.

No. 2 The Struggling Fire Protection District

(continued – 4)

- LAFCO staff determines the Class 20 exemption is appropriate and prepares a Notice of Exemption.
- The hearing on the application opens but the Commission continues it to allow staff time to answer some questions about the transfer of pension liabilities for firefighters.

No. 2 The Struggling Fire Protection District

(continued – 5)

- After further analysis, it is determined that FPD's pension liability for firefighters is the highest, on a per firefighter basis, of any FPD in the state by 14.9%. No wonder they were bleeding money. Despite this revelation, the Town wishes to proceed with the reorg, which LAFCO staff details in a supplemental staff report.
- 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.

No. 2 The Struggling Fire Protection District (continued – 6)

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

IS THE CLASS 20 EXEMPTION APPROPRIATE?

No. 2 The Struggling Fire Protection District (continued – 7)

- Concerned Citizens for the Unrepresented Unincorporated Communities (CCUUC) 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 CCUUC 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 they file suit 100 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?

Filing Notices of Exemption

- Optional under Pub. Res. Code § 15062
- Why file?
 - Shorter statute of limitations to challenge action
 - 35 days if NOE filed and posted per § 15062
 - 180 days if NOE is not filed and posted

Filing Notices of Exemption

- Filing of NOE is valid only if done *after* approval of the project
 - With the county clerk if done by local agency
 - With OPR if done by state agency
- Filed by either agency or applicant

Filing Notices of Exemption (con't)

- NOE filing valid only if it contains the information specified in 15062, subd. (a)
 - Brief description of project
 - Location of project
 - A finding project is exempt, including citation to Guidelines or statute that applies
 - A brief statement of the reasons to support finding
 - Applicant's name

Filing Notices of Exemption (con't)

County Clerk _____
County of: _____ (Address)

Project Title: _____

Project Applicant: _____

Project Location - Specific:

Project Location - City: _____ Project Location - County: _____

Description of Nature, Purpose and Beneficiaries of Project:

Name of Public Agency Approving Project: _____

Name of Person or Agency Carrying Out Project: _____

Exempt Status: **(check one)**:

STILL WAITING



**FOR MY CEQA PROJECT TO
START**

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Thank you for attending.

- Scott Browne, LAFCO Counsel
 - Law Offices of Scott Browne
 - scott@scottbrowne.com
 - (530) 272-4250
- Holly Whatley
 - Colantuono, Highsmith & Whatley, PC
 - hwhatley@chwlaw.com
 - (213) 542-5704