

## Additional Information on Environmental Rules for Local Governments

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TO: Frank Hauck, ESC, CA OES, Local Government Mitigation Planning Coordinator

FROM: Dennis Castrillo, Senior Environmental Planner, CA OES

Thanks for stopping by and discussing the local hazard mitigation planning effort currently underway. As I understand, these plans gather information about hazards that may exist within their community, suggest broad alternatives but do not identify specific construction projects.

Here are two exemptions (see attachment) local governments may want to consider when answering the question of whether preparation of a local hazard mitigation plan is subject to CEQA. When you open the attachment you will note I have included other sections of CEQA that may affect their decision on whether to apply the statutory or categorical exemption. If the local agency determines that neither of these exemptions apply, then they should prepare a CEQA initial study to determine the type of environmental document necessary.

Until there is a clear legal opinion about the applicability of CEQA to these plans, I suggest we give local agencies direction on how they could proceed but ultimately they must determine for themselves on how to comply with CEQA. Lastly, we should continue to make sure that local agencies are considering CEQA in this process and later when they begin proposing specific projects.

**Dennis Castrillo**

### **Statutory Exemption**

#### **15260. General**

This article describes the exemptions from CEQA granted by the Legislature. The exemptions take several forms. Some exemptions are complete exemptions from CEQA. Other exemptions apply to only part of the requirements of CEQA, and still other exemptions apply only to the timing of CEQA compliance.

**Note:** Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Section 21080(b), Public Resources Code.

**Discussion:** This section serves as an introduction to this article on statutory exemptions. The section notes that the exemptions take basically three forms, being either complete exemptions, partial exemptions, or special timing requirements.

The court in *Western Municipal Water District of Riverside County v. Superior Court of San Bernardino County* (1986) 187 Cal. App. 3d 1104, pointed out that "the self-evident purpose of a [statutory] exemption is to provide an escape from the EIR requirement despite a project's clear, significant impact." This is in contrast to categorical exemptions which are disallowed if the project would otherwise have an environmental impact.

By way of example, the Supreme Court held in *Napa Valley Wine Train, Inc. v. Public Utilities Commission* (1990) 50 Cal 3d 370, that CEQA is a legislative act subject to legislative limitations and legislative amendment. Through that premise, the court held that statutory exemptions were enacted to avoid the environmental review process for an entire class of projects. In the specific case, an excursion train proposed for operation within an existing railroad right-of-way fell within the exemption language in Public Resources Code Section 21080(b)(11), even though the use might have potential environmental consequences. Subsequent legislation enacted Public Resources Code Section 21080.04 making the wine train project subject to CEQA.

## **15262. Feasibility and Planning Studies**

A project involving only feasibility or planning studies for possible future actions which the agency, board, or commission has not approved, adopted, or funded does not require the preparation of an EIR or Negative Declaration but does require consideration of environmental factors. This section does not apply to the adoption of a plan that will have a legally binding effect on later activities.

**Note:** Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Sections 21102 and 21150, Public Resources Code.

**Discussion:** This section provides an interpretation of the exception in CEQA for feasibility and planning studies. This section provides an interpretation holding clearly that feasibility and planning studies are exempt from the requirements to prepare EIRs or Negative Declarations. These studies must still include consideration of environmental factors. This interpretation is consistent with the intent of the Legislature as reflected in Sections 21102 and 21150. The section also adds a necessary limitation on this exemption to show that if the adoption of a plan will have a legally binding effect on later activities, the adoption will be subject to CEQA. This clarification is necessary to avoid a conflict with Section 15378(a)(1) that the adoption of a local general plan is a project subject to CEQA.

## **Categorical Exemptions**

### **15300. Categorical Exemptions**

Section 21084 of the Public Resources Code requires these Guidelines to include a list of classes of projects which have been determined not to have a significant effect on the environment and which shall, therefore, be exempt from the provisions of CEQA.

In response to that mandate, the Secretary for Resources has found that the following classes of projects listed in this article do not have a significant effect on the environment, and they are declared to be categorically exempt from the requirement for the preparation of environmental documents.

**Note:** Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Section 21084, Public Resources Code.

### **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 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 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.

**Note:** Authority cited: Sections 21083 and 21087, Public Resources Code; References: Sections 21084 and 21084.1, Public Resources Code; *Wildlife Alive v. Chickering* (1977) 18 Cal.3d 190; *League for Protection of Oakland's Architectural and Historic Resources v. City of Oakland* (1997) 52 Cal.App.4th 896; *Citizens for Responsible Development in West Hollywood v. City of West Hollywood* (1995) 39 Cal.App.4th 925; *City of Pasadena v. State of California* (1993) 14 Cal.App.4th 810; *Association for the Protection etc. Values v. City of Ukiah* (1991) 2 Cal.App.4th 720; and *Baird v. County of Contra Costa* (1995) 32 Cal.App.4th 1464

**Discussion:** In *McQueen v. Mid-Peninsula Regional Open Space* (1988) 202 Cal. App. 3d 1136, the court reiterated that categorical exemptions are construed strictly, shall not be unreasonably expanded beyond their terms, and may not be used where there is substantial evidence that there are unusual circumstances (including future activities) resulting in (or which might reasonably result in) significant impacts which threaten the environment.

### **15306. Information Collection**

Class 6 consists of basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource. These may be strictly for information gathering purposes, or as part of a study leading to an action which a public agency has not yet approved, adopted, or funded.

**Note:** Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Section 21084, Public Resources Code.