



## Environmental Planning Services

### Exemption Summary

March 13, 2018

*"The fact that you did something, and nobody complained doesn't mean you did it right." A Very Wise Person*

All references are to sections of the CEQA Guidelines unless otherwise indicated. The following is only a summary: read the Guidelines section, confer with your team and with Environmental Planning Services, and think before you leap!

### Background

**Multiple categorical exemptions:** There is no prohibition against using more than one categorical exemption for a single project but doing so is not favored. It raises a red flag. If you need to do it, discuss your approach with your team and with Environmental Planning Services.

**Findings (substantial evidence) versus bare conclusions:** The Environmental Considerations or Findings section of the Record of Decision is the place where the facts supporting the exemption should be set forth. For example, section 15332 requires the project site to be no more than five acres in size. The findings should read: "The project site is 3.5 acres in size."

**Categorical exemptions:** The categorical exemptions consist of categories of activities OPR has identified that do not, in the usual case, result in any significant effects. There are 33 classes of categorical exemptions. (Sections 15301-15333.)

**Exceptions:** Under section 15003.2 a categorical exemption is not appropriate if:

- (1) **Significant effect.** There are unusual circumstances that result in a significant effect (fair argument for potential significant effect; a two-part test);
- (2) **Cumulative.** Successive projects of the same type in the same place result in an impact that over time is significant;
- (3) **Hazardous waste.** The project site is on the Cortese list;
- (4) **Location.** Certain specified sensitive environments;
- (5) **Scenic Highways.** Affects scenic resources within official state scenic highways; or
- (6) **Historic Resources.** The project would cause a substantial adverse change in a historic resource.

**If you think the project might result in a significant effect, or if you identify any "red flags," then discuss the issue before using an exemption.**

### **Categorical Exemptions (most often used)**

**15301 (Existing Facilities):** This can be used for the operation, repair, permitting or alteration of existing public or private structures. The key question is whether the project involves negligible or no expansion in use. This rule is being amended to allow more latitude in terms of prior uses. If you want to use this, consider the present and past uses, and any prior CEQA review.

**15302 (Replacement or Reconstruction):** This covers replacement or reconstruction of existing structures and facilities on the same site and having the same purpose and capacity as the structure replaced.

**15303 (New construction or Conversion of Small Structures):** Used for the construction of limited numbers of new, small facilities, and conversion of existing structures where only minor modifications are made in the exterior of the structure. The section includes examples. This covers accessory structures such as garages, carports, patios, swimming pools and fences.

**15304 (Minor Alterations to Land):** This covers minor public or private alterations in the condition of land, water and/or vegetation. Included: grading on land with a slope of less than 10%, new gardening or landscaping, and carnivals.

**15305 (Minor Alterations in Land Use Limitations):** Minor lot line adjustments, setbacks that do not result in the creation of new parcels.

**15311 (Accessory Structures):** Signs, small parking lots.

**15315 (Minor Land Divisions):** This covers the division of property in urbanized areas zoned for residential, commercial or industrial uses into four or fewer parcels when it is consistent with the general plan and zoning, no variances or exceptions are required, all services are available, the parcel has slope less than 20% and has not been involved in a division of a larger parcel in the last two years.,

**15331 (Historical Resources Restoration/Rehabilitation):** Maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation or reconstruction of historical resources in a manner consistent with the Secretary of the Interior's Standards.

**15332 (Infill Development):** Covers projects that meet a number of standards: (a) consistent with general plan and all applicable zoning designation and regulations; (b) within city limits on a site of no more than five acres; (c) site has no value as habitat; (d) no significant effects for traffic, noise, air quality or air quality would occur; and the site is served by utilities and public services. *(Note: It is the City's practice to avoid the use of categorical exemptions if any significant effect would occur—not just 15332.)*

### The “Common Sense” Exemption

**15061(b)(3) (Common sense):** This section is based on the common-sense notion that if you can determine with certainty that a project would not have a significant effect on the environment then, as a practical matter it must be exempt from CEQA. This exemption is treated differently than categorical exemptions by the courts, however. If a reasonable argument is made to suggest a possibility of a significant effect, then the City must refute that claim to a certainty before the exemption applies. This exemption.

Courts will readily overturn the exemption and send the City back to either document the issues properly, or prepare an environmental document (e.g., MND or EIR). Use this exemption carefully and consult with EPS before doing so—in some cases we will require additional information, sometimes from an environmental consultant, before using this approach.

### Some Exemption and Streamlining Sections

**15177; 15183; 15183.3:** These sections support a project review that asks whether the project would have significant effects that have not been identified in a “program-level” document. This would include, for example, the Master EIR the City prepared for the general plan, or an EIR for a community plan, or the SACOG Sustainable Communities Strategy. These, and similar approaches, are not shortcuts—each of these, and most of the others, require preparation of an initial study, a time-consuming, and relatively expensive, process.

#### Questions:

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