

# CEQA Requirements

17200 Los Robles Way Lot Line Adjustment Application

Alison Steer- 304 Harding Ave, Los Gatos

# List of Supporting Exhibits

- Exhibit 19: CEQA Basics 08-31-2010
- Exhibit 20: Exemptions Topics Paper 03-23-161

# State CEQA Guidelines Section 15604(d)

## Determining the Significance of the Environmental Effects Caused by a Project

- In evaluating the significance of the environmental effect of a project, the lead agency shall consider direct physical changes in the environment which may be caused by the project and reasonably foreseeable indirect physical changes in the environment which may be caused by the project.
- (1) A direct physical change in the environment is a physical change in the environment which is caused by and immediately related to the project. Examples of direct physical changes in the environment are the dust, noise, and traffic of heavy equipment that would result from construction of a sewage treatment plant and possible odors from operation of the plant.
- (2) An indirect physical change in the environment is a physical change in the environment which is not immediately related to the project, but which is caused indirectly by the project. If a direct physical change in the environment in turn causes another change in the environment, then the other change is an indirect physical change in the environment. For example, the construction of a new sewage treatment plant may facilitate population growth in the service area due to the increase in sewage treatment capacity and may lead to an increase in air pollution.
- (3) An indirect physical change is to be considered only if that change is a reasonably foreseeable impact which may be caused by the project. A change which is speculative or unlikely to occur is not reasonably foreseeable.

# Summary of State CEQA Guidelines Section 15604(f) and (g)

- Section [15064\(f\)\(1\)](#) indicates that if a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect. Section 15064(g) states that after application of the principles set forth above in section 15064(f), and in marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, the lead agency shall be guided by the following principle: “If there is disagreement among expert opinion supported by facts over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant and shall prepare an EIR.”

Santa Clara  
County Online  
Property  
Profile  
APN  
532-36-075

## Planning and Development Information

**APN:53236075 is incorporated (LOS GATOS).**

General Plan: **USA**

USA: **Los Gatos (100%)**

SOI: **Los Gatos**

Zoning: **INCORPORATED**

Supervisor District: **1**

Approved Building Site: **Research needed to evaluate parcel as a Building Site**

## Special Area Policies and Information

- Los Gatos Hillside Specific Plan Area: **IN**
  - Fire Responsibility Area: LRA (100%)
  - Fire Protection District: Santa Clara County Central Fire Protection District
  - Geohazard: County fault rupture hazard zone
  - Geohazard: **County landslide hazard zone**
  - Geohazard: **State seismic hazard zone (earthquake induced landslides)**
  - Historic Parcel: NO
  - FEMA Flood Zone: D (100%)
  - Sanitary District: West Valley Sanitation District
  - Watershed: San Francisco Bay
  - Rain isohyet: 27 inches
- Nearest named creek: ROSS CREEK (1318 feet)  
Nearest named lake: Vasona Reservoir (5674 feet)

Santa Clara  
County Online  
Property  
Profile  
APN  
532-36-076

## Planning and Development Information

**APN:53236076 is incorporated (LOS GATOS).**

General Plan: USA

USA: Los Gatos (100%)

SOI: Los Gatos

Zoning: INCORPORATED

Supervisor District: 1

Approved Building Site: **Research needed to evaluate parcel as a Building Site**

## Special Area Policies and Information

- Los Gatos Hillside Specific Plan Area: IN
- Fire Responsibility Area: LRA (100%)
- Fire Protection District: Santa Clara County Central Fire Protection District
- Geohazard: County fault rupture hazard zone
- Geohazard: County landslide hazard zone
- Geohazard: State seismic hazard zone (earthquake induced landslides)
- Historic Parcel: NO
- FEMA Flood Zone: D (96.6%), X (3.4%)
- Sanitary District: West Valley Sanitation District
- Watershed: San Francisco Bay
- Rain isohyet: 27 inches
- Nearest named creek: ROSS CREEK (1111 feet)
- Nearest named lake: Vasona Reservoir (5551 feet)

# Required Findings from DRC and Planning Commission

**PLANNING COMMISSION – September 8, 2021**

**REQUIRED FINDINGS FOR:**

**17200 Los Robles Way**

**Subdivision Application M-20-012**

**Consider an Appeal of a Development Review Committee Decision Approving a Lot Line Adjustment Between Three Adjacent Lots on Properties Zoned R-1:20. APNs 532-36-075, -076, and -077. PROPERTY OWNERS: Daren Goodsell, Trustee and Mark Von Kaenel. APPLICANT: Tony Jean. APPELLANTS: Alison and David Steer, Terry and Bob Rinehart, Nancy and Jim Neipp, Gary and Michelle Gysin, and Gianfranco and Eileen De Feo. PROJECT PLANNER: Ryan Safty.**

## FINDINGS

**Required findings for CEQA:**

- The project is not subject to the California Environmental Quality Act pursuant to the adopted Guidelines for the Implementation of CEQA, Section 15061(b)(3): A project is exempt from CEQA when the activity is covered by the common sense exemption that CEQA only applies 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 will have a significant effect on the environment, the activity is not subject to CEQA. The project proposes to modify lot lines between three legal, adjacent parcels. **No development is proposed at this time.**

# Required Findings by DRC and Planning Commission

## Required findings to deny a Subdivision application:

- As required by Section 66474 of the State Subdivision Map Act the map shall be denied if any of the following findings are made: **None of the findings could be made to deny the application.**

Instead, the Planning Commission makes the following affirmative findings:

- a. That the proposed map is consistent with all elements of the General Plan.
- b. That the design and improvement of the proposed subdivision is consistent with all elements of the General Plan.
- c. That the site is physically suitable for the type of development.
- d. That the site is physically suitable for the proposed density of development.
- e. That the design of the subdivision and the proposed improvements are not likely to cause substantial environmental damage nor substantially and avoidably injure fish or wildlife or their habitat.
- f. That the design of the subdivision and type of improvements is not likely to cause serious public health problems.

EXHIBIT 2



# 17200 Los Robles Way LLA application is not Categorically Exempt from CEQA

- 17200 Los Robles Way lot line adjustment application M-20-012 is not categorically exempt from CEQA. CEQA Class 5, "Minor Alterations in Land Use Limitations," exemption per [Section 15305](#) of the CEQA Guidelines excludes slopes >20% and lot line adjustments that result in changes to land use density.
- 17200 Los Robles Way has 26% average slope.

#### AVERAGE SLOPE CALCULATIONS: (ENTIRE PROPERTY)

CONTOUR INTERVAL (I)	5 FEET
CONTOUR LENGTH (L)	7102 FEET
AREA (A)	3.13 ACRES 136343 SQUARE FEET

#### AVERAGE SLOPE (S)

$$S=IL/A = 5' \times 7102' / 136343 \text{ S.F.} = 26\%$$

Per Exhibit 21:  
Exemptions  
Topics Paper  
03-23-161

## Common Sense Exemption

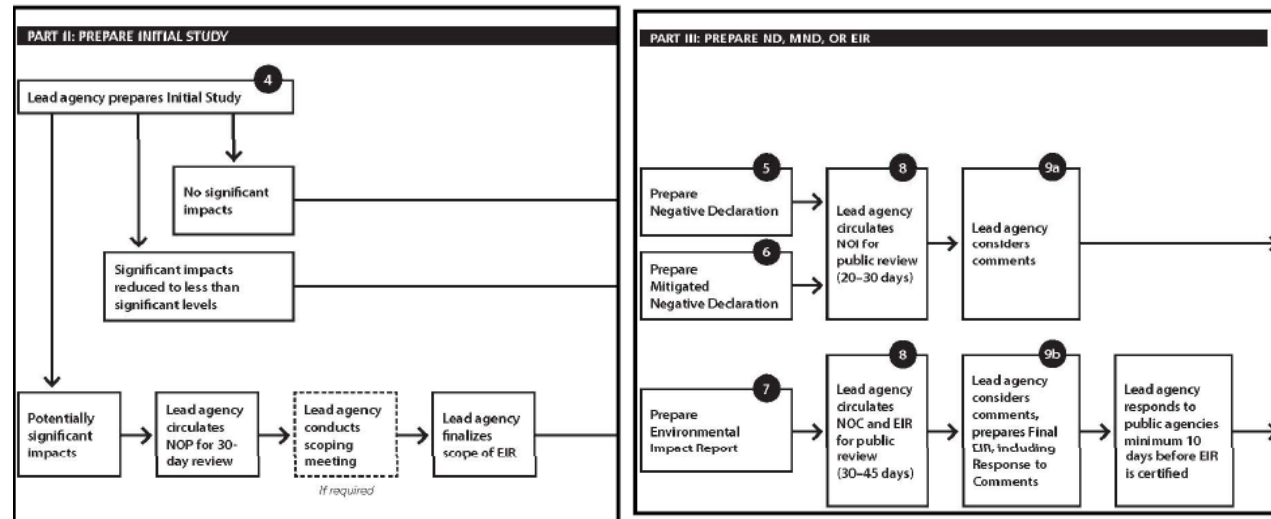
When an action or project does not fall within any statutory or categorical exemption, yet it can still be seen with certainty that there is no possibility that the activity may have a significant impact on the environment, the general rule exemption or common sense exemption applies.

According to the State CEQA Guidelines, “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” [State CEQA Guidelines Section 15061(b)(3)]. When determining whether this project applies to a project, please note the use of the words “**with certainty**” and “**no possibility.**” A Lead Agency’s determination that the general rule exemption applies must be supported with **factual evidence.**

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# Per Exhibit 22: CEQA Basics 08-31-2010

- Lead Agency determines if this is a Project. If the Project is not statutory or categorically exempt-> Lead agency to prepare **Initial Study**. Determines whether there is no significant impact, significant impacts reduced to less than significant levels, or potentially significant impacts. If all impacts are not significant or mitigated to a less than significant level, a Negative Declaration or Mitigated Negative Declaration will be prepared. If any significant impact is identified and cannot be mitigated, an EIR must be prepared.



# 17200 Los Robles Way Project should not be exempted from CEQA

**17200 Los Robles Way Project should not be exempt from CEQA because there is reasonable possibility that the project will have a significant adverse effect on the environment due to unusual circumstances.**

Based on the Santa Clara County Property Profile for 17200 Los Robles Way and previously submitted JCP reports, we believe this **Project** is located on a geologic unit or soil that is unstable, or that would become unstable as a result of the Project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse. In addition, there is potential that this project would expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving landslides

**There is a reasonably foreseeable future development which will result in indirect physical changes in the environment.**

Per CEQA Section 15604 (g) "After application of the principles set forth above in Section 15064(f), and in marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, the lead agency shall be guided by the following principle: If there is disagreement among expert opinion supported by facts over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant and shall prepare an EIR."

**Note: No Initial Study was performed on 17200 Los Robles Way, or Negative Declaration Prepared**



# The California Environmental Quality Act

## CEQA BASICS

Prepared for:

**Orange County Department of Education**

Prepared by:



Contact: DWAYNE MEARS, AICP – Principal

714.966.9220 | [dmears@planningcenter.com](mailto:dmears@planningcenter.com)



CEQA / Environmental Process

## **The Beginning**

- 1969: President Nixon signs National Environmental Policy Act (NEPA)
- 1970: Governor Reagan signs California Environmental Quality Act (CEQA)



CEQA / Environmental Process

## **Applicability**

CEQA applies to ‘all’ projects subject to public agency discretionary action



CEQA / Environmental Process

## Objectives of CEQA

### Protect the Environment

- Seek ways to avoid or minimize environmental damage
- Generally, through mitigation measures and alternatives

### Public Disclosure

- Inform decision makers about the environmental consequences
- Disclose to the public why decisions were made





CEQA / Environmental Process

## The Rules

### The Statute

- Public Resources Code §§ 21000-21178

### The Guidelines

- California Code of Regulations Title 14, §15000 et seq.

### The Courts

- Ongoing case law

CEQA Statute and Guidelines available online for free: <http://ceres.ca.gov/ceqa/>



CEQA / Environmental Process

## Agency Roles

### Lead Agency

- has primary approval authority over the project

### Responsible Agency

- has approval authority over some aspect of project

### Trustee Agency

- has authority over some resources (e.g., CA Department of Fish & Game)



CEQA / Environmental Process

## **Four Phases of CEQA**

1. Preliminary Review

2. Initial Study (IS)

3. Negative Declaration (ND) / Mitigated Negative Declaration (MND) / Environmental Impact Report (EIR)

4. Project Consideration/Approval

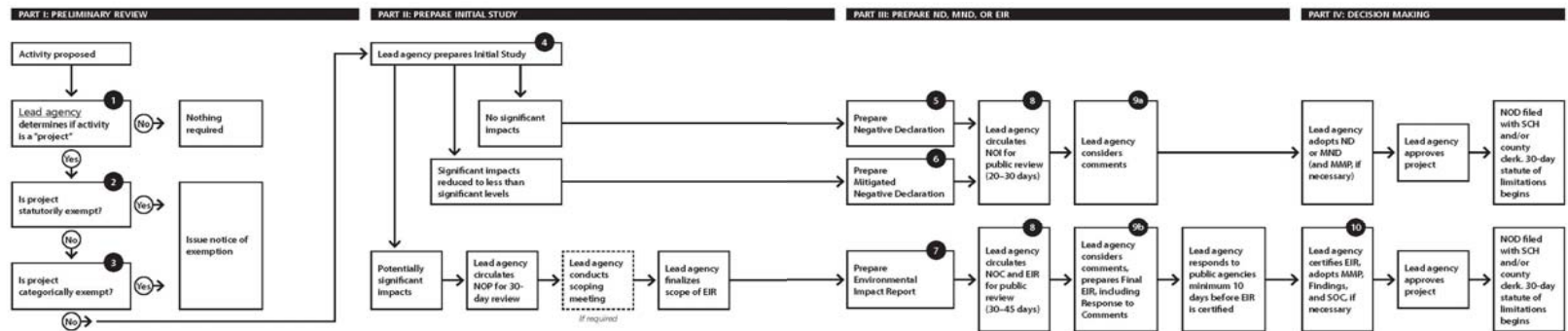


# CEQA / Environmental Process

## The CEQA Process

### the process in a nutshell

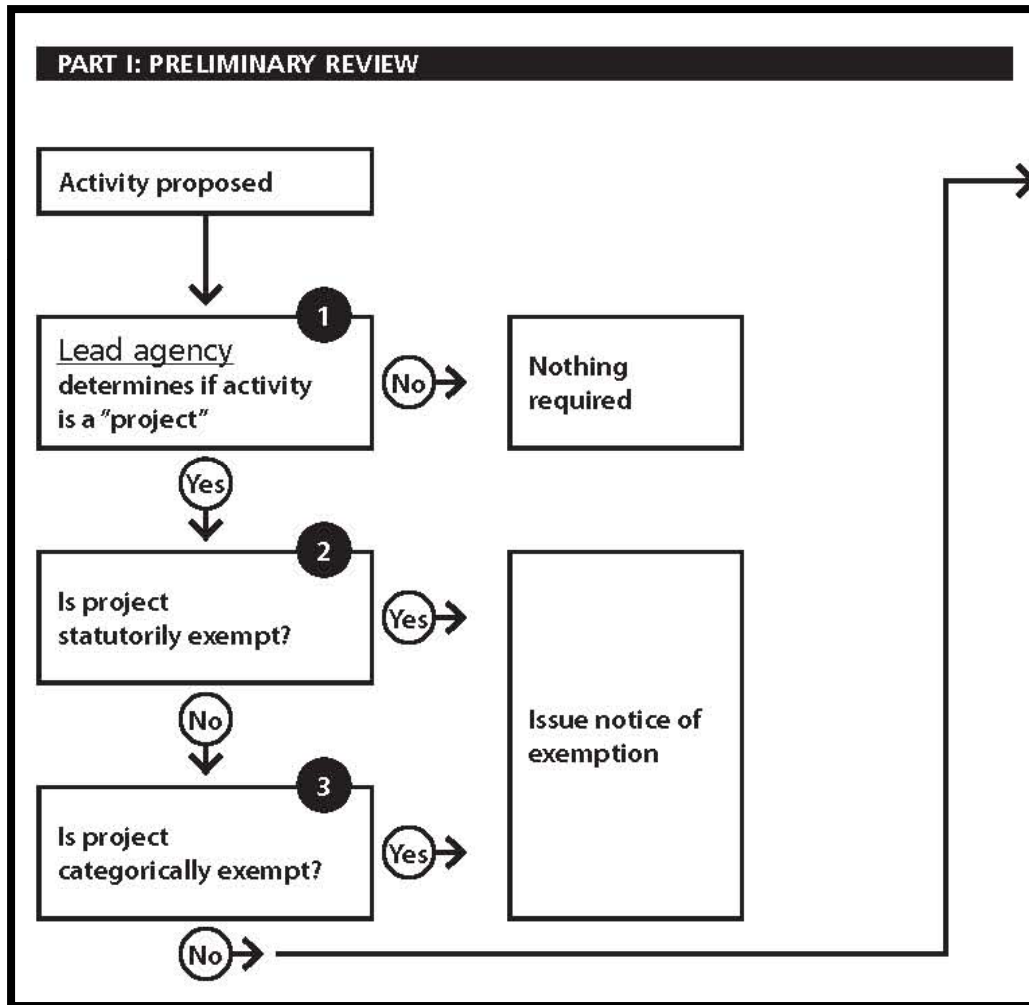
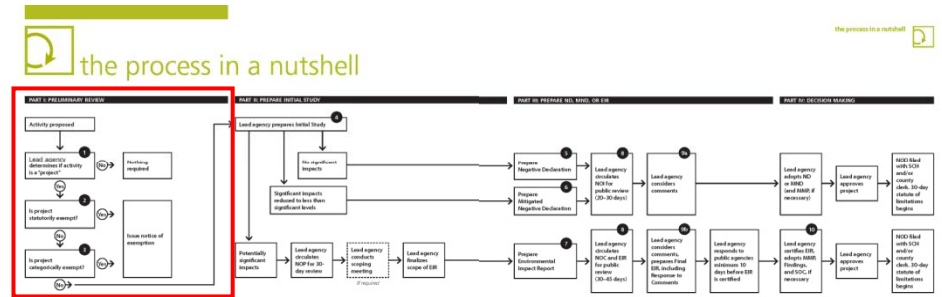
the process in a nutshell





# CEQA / Environmental Process

## Part I: Preliminary Review





CEQA / Environmental Process

## Exempt from CEQA?

### Three Types of Exemptions:

#### 1. Statutorial

- blanket exemptions given by Legislature

#### 2. Categorical

- types or classes of projects determined by Secretary of Resources Agency not to have significant impact

#### 3. “Common Sense” Rule

- CEQA applies only to projects with potential for significant impact on environment



CEQA / Environmental Process

## **Exempt from CEQA? Statutory Exemptions**

- Ongoing projects
- Emergency Repairs
- Feasibility and Planning Studies
- Ministerial Approvals (absence of discretion)
- School closures (where actions at receiving schools are exempt)
- Others



CEQA / Environmental Process

## Exempt from CEQA? Categorical Exemptions

- Class 1: Existing Facilities
- Class 2: Replacement or Reconstruction
- Class 3: New construction/minor conversion of small structures
- Class 4: Minor alterations to land
- Class 14: Minor additions to schools, but limited to:
  - 10 classrooms, or
  - 25% net capacity increase, whichever is less
- A total of 30+ categories





CEQA / Environmental Process

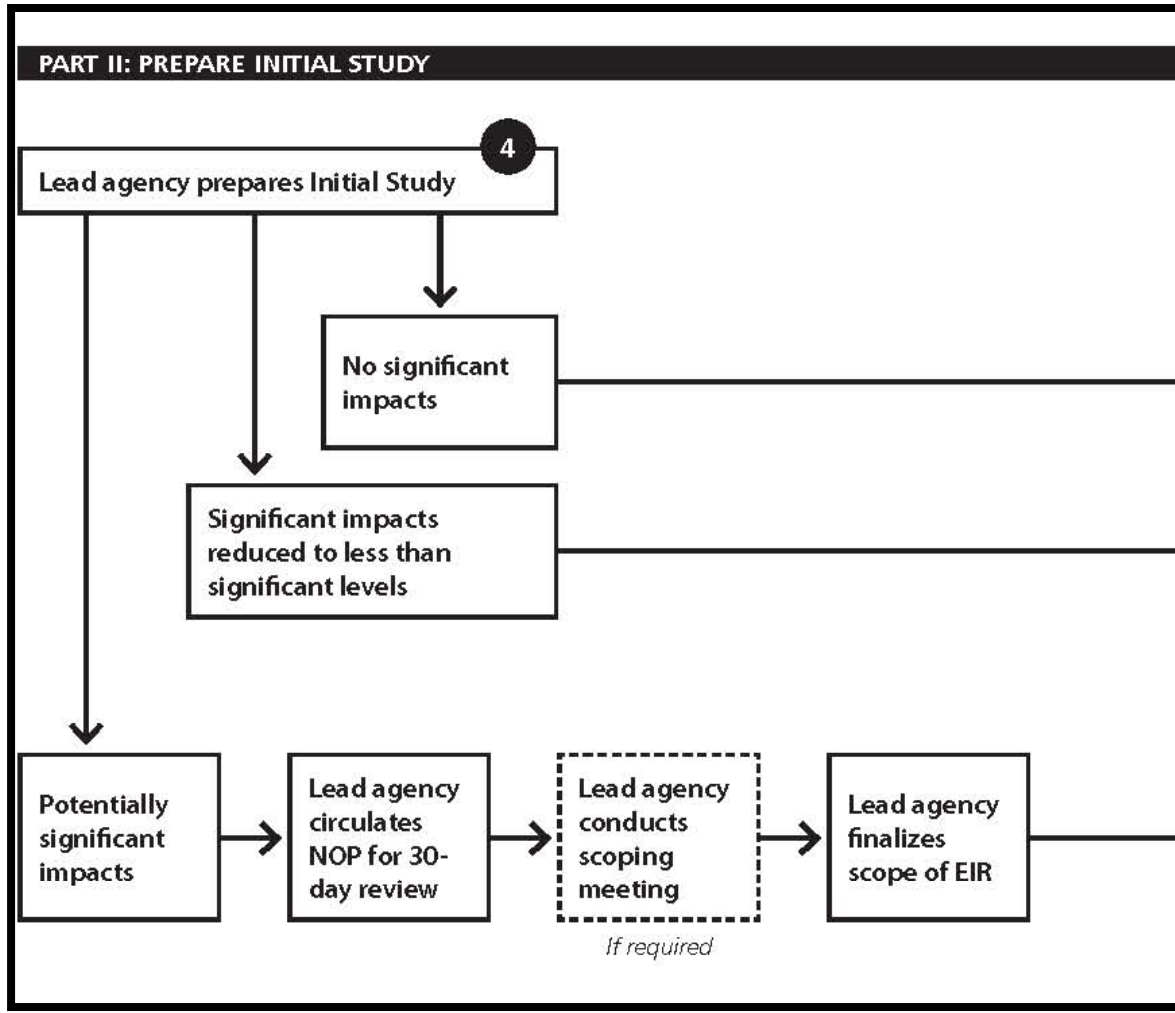
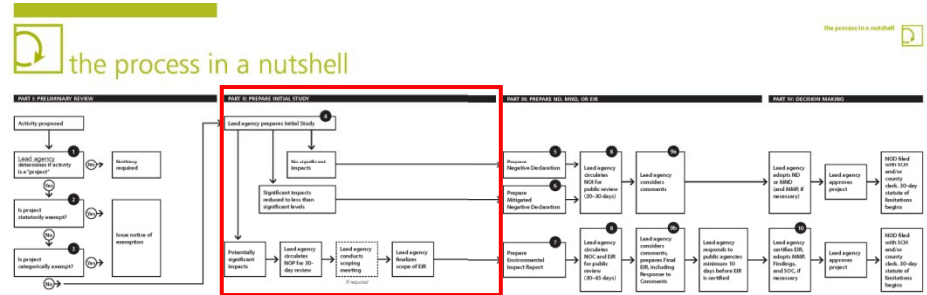
## Exempt from CEQA? Categorical Exemptions

- Even where project falls within one of the exemption classes, the exemption is not permitted if one of these exceptions is triggered:
  - Sensitive location
  - Cumulative impact
  - Significant impact
  - Scenic highways
  - Hazardous waste sites
  - Historic resources



# CEQA / Environmental Process

## Part II: Prepare Initial Study





CEQA / Environmental Process

## **CEQA Checklist Topics**

- Aesthetics
- Agriculture and Forestry Resources
- Air Quality
- Biological Resources
- Cultural Resources
- Geology and Soils
- Greenhouse Gas Emissions
- Hazards and Hazardous Materials
- Hydrology and Water Quality



CEQA / Environmental Process

## **CEQA Checklist Topics**

- Land Use and Planning
- Mineral Resources
- Noise
- Population
- Public Services
- Recreation
- Transportation/Traffic
- Utilities and Service Systems
- Mandatory Findings of Significance



## CEQA / Environmental Process

### CEQA Checklist Topics

SAMPLE QUESTION	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
Issues:				
<u>I. AESTHETICS</u> -- Would the project:				
a) Have a substantial adverse effect on a scenic vista?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Substantially degrade the existing visual character or quality of the site and its surroundings?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>II. AGRICULTURE RESOURCES:</u> In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. Would the project:				
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>III. AIR QUALITY</u> -- Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:				

This is the first page of the CEQA Checklist. The appropriate box must be checked and supporting documentation justifying the determination must be provided.

If any significant impact is identified and cannot be mitigated, an EIR must be prepared.

If all impacts are not significant or mitigated to a less than significant level, a Negative Declaration or Mitigated Negative Declaration will be prepared.



CEQA / Environmental Process

## **Determining Significant Impacts**

### “Significant Impact”

- a substantial or potentially substantial adverse change in physical conditions

### “Less than Significant Impact”

- a change in physical conditions that is not substantial



CEQA / Environmental Process

## **Determining Significant Impacts**

No Significant Impacts:

- Negative Declaration (ND)

Significant Impacts Can be Mitigated to Less than Significant:

- Mitigated Negative Declaration (MND)

Some impacts cannot be avoided or mitigated:

- Environmental Impact Report (EIR)



CEQA / Environmental Process

## **Determining Significance of Cumulative Impacts**

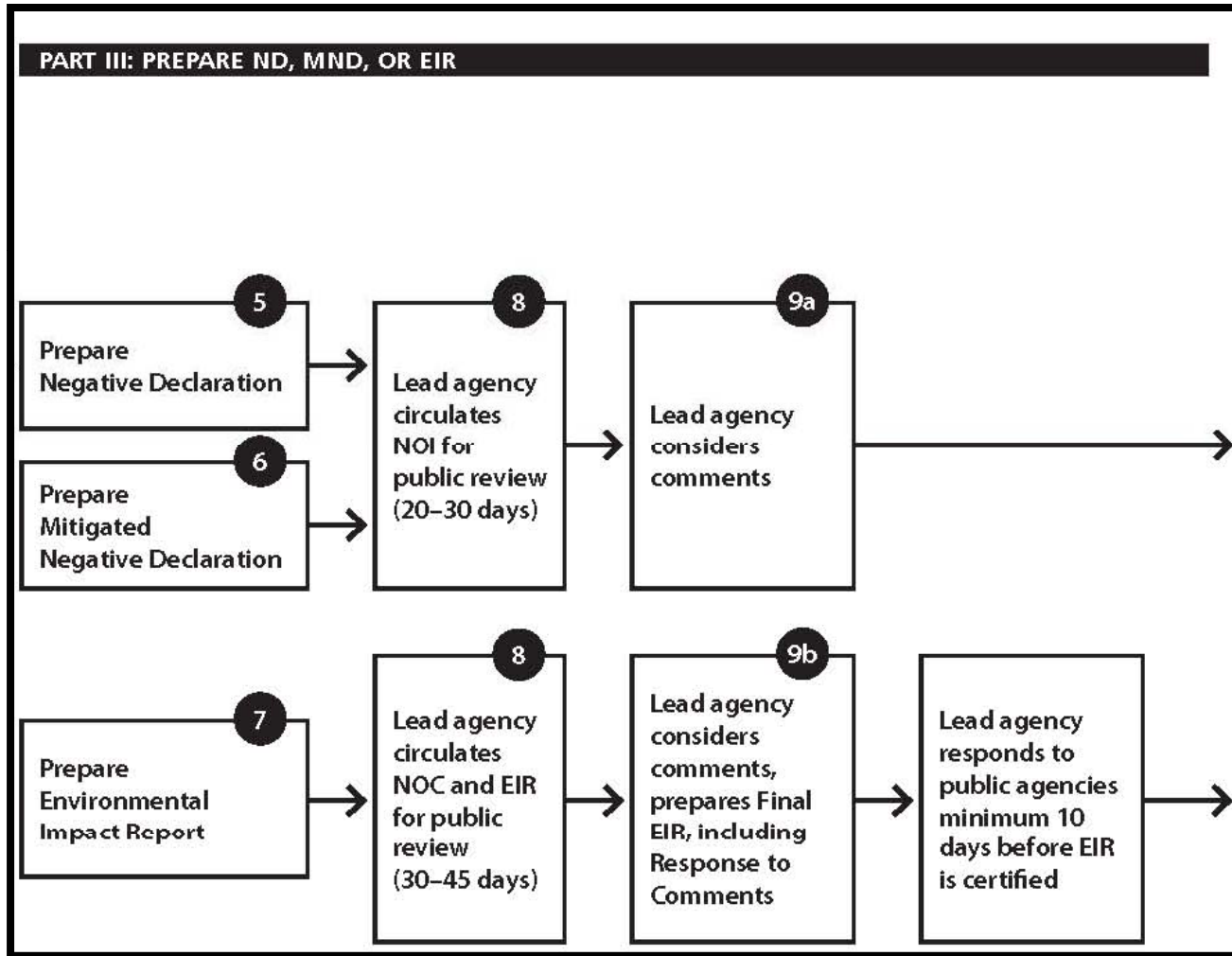
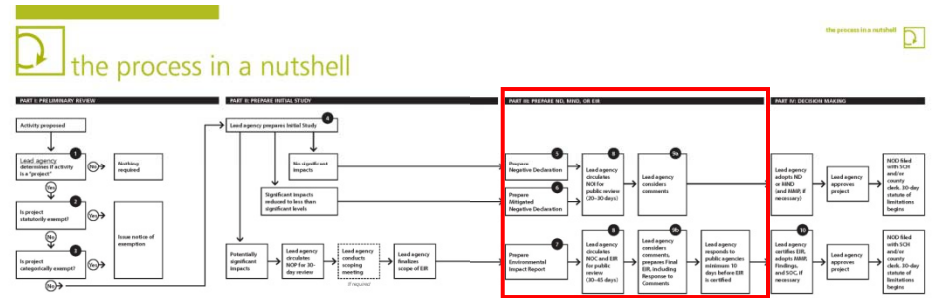
- “Considerable” Contribution to Cumulative Impact
- Not Cumulatively Considerable if:
  - Project’s contribution substantially reduced
  - Project would comply with mitigation program





# CEQA / Environmental Process

## Part III: Prepare ND or EIR





CEQA / Environmental Process

## **Contents of Negative Declaration or MND**

- Brief Description of project, location, proponent's name
- Proposed finding that the project will have No Significant Impact
- Initial Study (IS) documenting basis for finding
- Mitigation Measures (MND only)
- Mitigation Monitoring & Reporting Plan (MND only)



## CEQA / Environmental Process

### Major Steps for an ND/MND

Where no significant impacts will occur:

- Negative Declaration
  - Circulate ND and IS
  - Short review (20-30 days)
  - No significant impacts
  
- Mitigated Negative Declaration
  - Circulate MND and IS
  - Short review (20-30 days)
  - Impacts mitigated to Less than Significant impact



CEQA / Environmental Process

## **Contents of an Environmental Impact Report**

Where significant impacts are possible:

- Table of Contents
- Summary
- Project Description
- Environmental Setting
- Consideration and discussion of Impacts
- Significance Thresholds
- Significant Effects
- Mitigation Measures
- Alternatives
- Cumulative Impacts
- Significant Irreversible Changes
- Growth-Inducing Impacts
- Effects Found Not to be Significant
- Organizations/Persons Consulted



CEQA / Environmental Process

## Major Steps with an Environmental Impact Report

- Notice of Preparation for 30 days (typically circulated with IS)
- Scoping meeting required under certain circumstances
- Draft EIR circulated for 45 days with Notice of Completion and Notice of Availability
- Public Hearings on Draft EIR are discretionary



## CEQA / Environmental Process

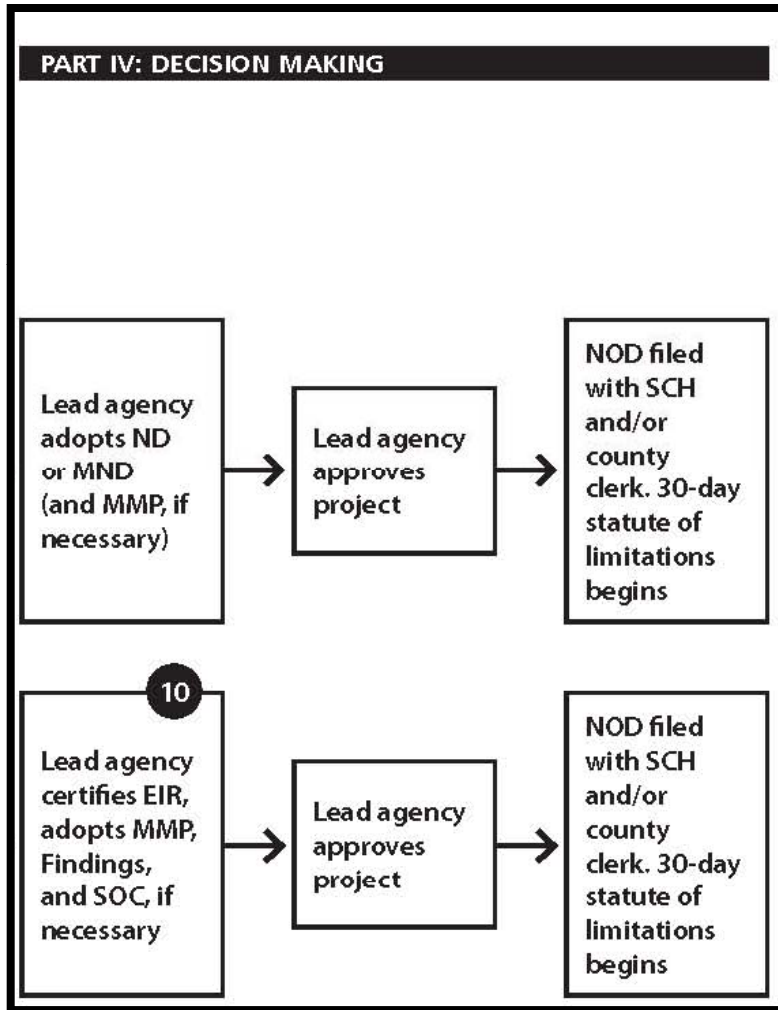
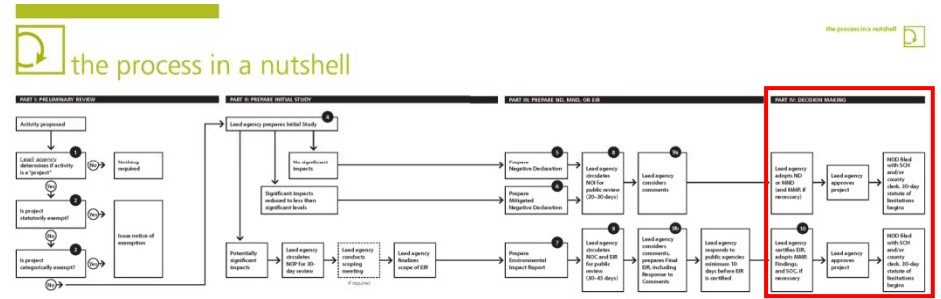
### **Major Steps with an Environmental Impact Report** (continued)

- Proposed responses to comments sent to responding public agencies 10 days prior to certification
- Public hearing generally held for discretionary approval
- EIR certification, project approval, CEQA findings, statement of overriding considerations
- Notice of Determination is filed, which starts 30-day statute of limitations



# CEQA / Environmental Process

## Part IV: Decision Making





## CEQA / Environmental Process

### **Final Steps for an ND/MND**

- Public hearing generally held for discretionary approval
- ND or MND is approved
- Mitigation monitoring and reporting plan is approved (for MND only)
- Notice of Determination is filed, which begins the 30-day statute of limitations





CEQA / Environmental Process

## **Final Steps for an EIR**

- Findings
- Mitigation Monitoring Plan
- Statement of Overriding Considerations
- Project Approval
- File Notice of Determination
- 30-Day Statute of Limitations



# CEQA Portal Topic Paper

## Exemptions

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### What Is An Exemption?

While CEQA requires compliance for all discretionary actions taken by government agencies, it also carves out specific individual projects and classes of projects for which compliance with CEQA is not required. These are called exemptions. If a project fits within one of the specified exemptions, the Lead Agency need not prepare an Initial Study or any other CEQA document. Exemptions are intended to save time and cost related to CEQA compliance for certain activities and projects, including those that the California Legislature or the California Secretary of Natural Resources determined would not have a significant impact on the environment.

There are three types of exemptions available under CEQA: statutory, categorical, and the “general rule” or “common sense” exemption. Statutory exemptions are granted by the California Legislature for individual or classes of projects, and apply regardless of the environmental impacts of the project for state policy reasons. In contrast, categorical exemptions are classes of projects exempted from CEQA because the California Secretary of Natural Resources has determined that they typically do not have substantial impacts on the environment. The “general rule” or “common sense” exemption applies to projects that don’t fit within a statutory or categorical exemption, but where it can be clearly demonstrated that the project has no potential to have significant environmental effects.

In addition, there is a fourth type of exemption available only to certain state agencies, a Certified State Regulatory Program exemption. The Certified Regulatory Program exemption is not a complete exemption from CEQA requirements, but rather the substitution of a “CEQA-equivalent document” for what CEQA would otherwise require.

Although not an exemption in the same sense as otherwise discussed in this Topic Paper, CEQA has the potential to be preempted under federal law, for example, for private rail projects authorized by the Federal Surface Transportation Board under the Interstate Commerce Commission Termination Act. (See, *Town of Atherton v. California High-Speed Rail Authority* (2014) 228 Cal.App.4th 314 and cases cited therein.)

### Why Are Exemptions Important?

Exemptions are important for lead agencies, as the proper use of exemptions can save time and money in processing qualifying projects, including both public projects undertaken by the agency itself and private development projects. However, the improper application of an exemption to a project deprives decision makers and the public of information about project impacts. It also opens the Lead Agency to delays in project implementation if, as a result of a

successful legal challenge, the agency is ordered to rescind its approvals and complete CEQA review for the project.

## What are the Different Types of Exemptions?

Statutory and categorical exemptions include individual projects and defined classes of projects that are exempt from CEQA. These two types of exemptions differ in purpose and intent. However, the most notable difference between them is that statutory exemptions are absolute – when a project qualifies for a statutory exemption, CEQA absolutely does not apply. In contrast, categorical exemptions are subject to a variety of “exceptions.” If an exception applies to an otherwise categorically exempt project, the project must go through CEQA review even if it otherwise qualifies for a categorical exemption.

## Statutory Exemptions

The State Legislature can adopt laws that totally exempt certain projects from CEQA. Many of the individual projects and project types that have been granted statutory exemptions are listed in Public Resources Code Sections 21080 et seq., and State CEQA Guidelines Sections 15261 through 15285. Still more statutory exemptions can be found in other sections of the Public Resources Code, or in other California Codes including the California Education Code, Fish and Game Code, Government Code, Health and Safety Code, and Water Code.

Projects covered by statutory exemptions may include those that could result in significant environmental effects, but for which the Legislature has determined that the benefits of these projects to the state or a particular community outweigh the benefits of complying with CEQA. For example, the Legislature created an exemption for hosting the Olympic Games in 1984 in Los Angeles, which brought the City over \$200 million in revenue.

Statutory exemptions range from the broad to the specific. Statutory exemptions that apply to broad categories of actions include:

- **Ministerial Projects**, where the Lead Agency uses objective standards and little or no judgment in its decision-making. For example, approval of most building permits consists of reviewing objective standards as outlined in the City Zoning Code and California Building Code [CEQA Statute Sections 21080(b)(1) and State CEQA Guidelines Sections 15268 and 15369].<sup>1</sup>
- **Emergency Projects**, where urgency is required to implement projects that reduce threats to health and property [CEQA Statute Sections 21080(b)(2)-(4) and State CEQA Guidelines Section 15269].

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<sup>1</sup> See also the CEQA Triggers Topic Paper.

- **Disapproved Projects**, where an agency declines to approve a project or commence an action [Public Resource Code Section 21080(b)(5) and State CEQA Guidelines Section 15270(a)].

In addition, the following more specific types of actions or projects are also exempt by statute:

- An ongoing project (that was in place before CEQA was passed);
- Feasibility and planning studies (where there are no physical facilities or improvements proposed to be constructed at the time the plan is approved, assumes future CEQA compliance of actual facilities proposed to be constructed);
- Discharge requirements;
- Timberland preserves;
- Adoption of Local Coastal Plans and Programs;
- Granting a General Plan time extension (although approval of a General Plan itself usually requires preparation of a programmatic EIR);
- Financial assistance to low or moderate income housing;
- Early activities related to thermal power plants (does not apply to actual construction of the power plant);
- Olympic games (originally meant for Los Angeles in 1984 but could apply to other locations and other times, if necessary);
- Setting rates, tolls, fares, and charges (as long as they are not tied to constructing new physical facilities);
- Family day care homes (applies to residential structures in residential areas);
- Specified mass transit projects;
- State and regional transportation improvement programs (RTIP);
- Projects located outside California (or portions of projects that lie outside; the portions that are inside the state must comply);
- Application of coatings (may still be subject to local air district permitting);
- Certain types of pipeline work;
- Air quality permits; and
- Other miscellaneous actions per State CEQA Guidelines Section 15282 (a list of 22 specific actions or projects is provided in sub-sections a through v).

**Important Note:** A Lead Agency contemplating using one of these exemptions should carefully review both the Public Resources Code and the State CEQA Guidelines to determine whether specific criteria apply that may or may not be applicable to their proposed project. For example, some statutory exemptions have special noticing requirements that do not apply to others. Additionally, some statutory exemptions are partial exemptions and, therefore, a Lead Agency should be aware of the scope of any applicable statutory exemption.

## Categorical Exemptions

Unlike statutory exemptions, which are adopted by the California Legislature and placed in the California statutes, categorical exemptions are adopted by the California Secretary for Natural Resources and incorporated into the State CEQA Guidelines.

Through Public Resources Code Section 21084, the California Legislature directed the Secretary of Natural Resources to include within the State CEQA Guidelines a list of project “classes” which the Secretary determines do not have a significant effect on the environment and therefore shall be exempt from CEQA review.

State CEQA Guidelines Sections 15301 through 15333 describe the following 33 “classes” of Categorical Exemptions (referred to as Class 1, Class 2, etc.):

1. Existing facilities;
2. Replacement or reconstruction of existing structures and facilities;
3. New construction or conversion of small structures;
4. Minor alterations to land;
5. Minor alterations in land use limitations;
6. Information collection;
7. Actions by regulatory agencies for protection of natural resources;
8. Actions by regulatory agencies for protection of the environment;
9. Inspections;
10. Loans;
11. Accessory structures;
12. Surplus government property sales;
13. Acquisition of lands for wildlife conservation purposes;
14. Minor additions to schools;
15. Minor land divisions;

16. Transfer of ownership of land in order to create parks;
17. Open space contracts or easements;
18. Designation of wilderness areas;
19. Annexations of existing facilities and lots for exempt facilities;
20. Changes in organization of local agencies;
21. Enforcement actions by regulatory agencies;
22. Educational or training programs involving no physical changes;
23. Normal operations of facilities for public gatherings;
24. Regulations of working conditions;
25. Transfers of ownership of interest in land to preserve existing natural conditions and historical resources;
26. Acquisition of housing for housing assistance programs;
27. Leasing new facilities;
27. Small hydroelectric projects at existing facilities;
28. Cogeneration projects at existing facilities;
30. Minor actions to prevent, minimize, stabilize, mitigate, or eliminate the release or threat of release of hazardous waste or hazardous substances;
31. Historical resource restoration or rehabilitation;
32. In-fill development projects; and
33. Small habitat restoration projects.

**Important Note:** The Public Resources Code and especially the State CEQA Guidelines provide additional detail as to when these exemptions may apply. For many of the exemptions, the State CEQA Guidelines also provide non-exhaustive examples of the general types of projects that would fall within the exemption class. For all categorical exemptions, it is the responsibility of the Lead Agency to demonstrate and determine that the proposed action falls within an exempt category, and support this determination with factual evidence.

## **General Rule or Common Sense Exemption**

When an action or project does not fall within any statutory or categorical exemption, yet it can still be seen with certainty that there is no possibility that the activity may have a significant

impact on the environment, the general rule exemption or common sense exemption applies. According to the State CEQA Guidelines, “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” [State CEQA Guidelines Section 15061(b)(3)]. When determining whether this project applies to a project, please note the use of the words “with certainty” and “no possibility.” A Lead Agency’s determination that the general rule exemption applies must be supported with factual evidence.

## Does My Project Qualify for an Exemption?

After it is determined that an activity or action is a “project” under CEQA (see CEQA Triggers Topic Paper), the Lead Agency should next consider whether a specific CEQA exemption applies. In order to determine whether a project qualifies for an exemption, the lead agency evaluates whether the project fits into any of the statutory or categorical exemptions listed in Articles 18 and 19 in the State CEQA Guidelines, respectively. If it is plainly clear that the activity has no potential to result in any significant environmental impacts, a “general rule” exemption may apply [State CEQA Guidelines Section 15061(b)(3)].

### Statutory Exemptions

If a project matches the description of any of the statutory exemptions, no further action is required to determine its exempt status.

### Categorical Exemptions

If a project falls within any of the categorical exemption classes, the Lead Agency must next evaluate whether any exception to the exemptions apply. These exceptions to the exemptions define circumstances that override or negate the agency’s ability to use a categorical exemption. In other words, if an exception applies, then the project no longer qualifies for a categorical exemption and the Lead Agency must proceed to complete CEQA review. The exceptions are described in Public Resources Code Section 21084(c), (d), and (e) and State CEQA Guidelines Section 15300.2. These exceptions apply (and therefore a categorical exemption does not apply) where:

- The project is located in a sensitive environment such that the project may impact an officially mapped and designated environmental resource of hazardous or critical concern<sup>2</sup>;
- The cumulative effect of successive projects of the same type in the same place, over time, is significant;
- The project may have a significant environmental impact due to unusual circumstances;

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<sup>2</sup> Note: This exception only applies where the Lead Agency is looking to use the Class 3 (existing facilities), Class 4 (minor alterations to land), Class 5 (minor alterations in land use limitations), Class 6 (information collection), or Class 11 (accessory structures) exemptions. This exception does not apply to any other categorical exemption.

- The project may damage scenic resources (i.e. trees, historic buildings, or rock outcroppings) within an official state scenic highway;
- The project is located on a hazardous waste site; or
- The project may cause a substantial adverse change to a historical resource.

If any of these exceptions pertain to the project or the project site, the agency or governmental unit cannot use a categorical exemption and must instead proceed with environmental review under CEQA.

## Important Notes

Where a project cannot be fairly said to fall within one of the categorical exemption classes, or where a Lead Agency cannot support its determination that a categorical exemption applies with facts and evidence, the use of the exemption may be challenged in court. If a court determines that the exemption was used in error, the Lead Agency will usually be required to rescind its project approvals unless and until it completes an Initial Study, and re-approves the project based on either a negative declaration, a mitigated negative declaration, or an environmental impact report.

In addition, a project cannot be “mitigated into an exemption” by adding measures or controls during the project’s approval process to avoid identified potential environmental impacts. However, sometimes it can be unclear whether an element is a mitigation measure added to the project to reduce a potential impact, or whether it is a project feature or a part of the project’s design. Project design features, in contrast to mitigation measures, may be considered in determining whether a project qualifies for a categorical exemption. Typically, if a measure or feature was not originally contemplated in the project’s design, but was added in response to an identified potential impact, best practice is to consider it to be a mitigation measure, and not attempt to apply a CEQA exemption.

## Can a Lead Agency Use More Than One Categorical Exemption?

Yes, a Lead Agency may apply multiple categorical exemptions to a single project, as long as each cited exemption applies to the project in full. This is sometimes referred to as “layering.”

Generally, the entire project must qualify for each exemption – a Lead Agency cannot “piecemeal” a project by separating it out into smaller pieces, and then use different exemptions to exempt each “piece.”



## What are the Process Requirements for an Exemption?

There are no specific procedures for a Lead Agency to follow prior to approving a project that is exempt from CEQA. Under CEQA, use of an exemption does not require prior public notice, does not require a public comment period, and does not require special findings.<sup>3</sup>

After approval of a project, the lead agency may, but is not required to prepare and file a Notice of Exemption (NOE) with the County Clerk's office. The NOE must include a brief description of the project, a finding that the project is exempt, citations to the exemptions that are being relied upon, and an explanation of why the project qualifies for the exemption(s). Unlike other CEQA notices and documents, NOEs are not subject to public review or circulation.

The principal benefit of filing an NOE, is that it reduces the statute of limitations for filing a legal challenge to the project from 180 days after project approval to 35 days after filing of the NOE. Thus, filing an NOE reduces the timeframe within which a project is susceptible to legal challenge. Therefore, even if it is not required by CEQA, filing an NOE as soon after approval of an exempted project is good practice.

If a lead agency chooses to file a NOE, it must do so **after** the project is approved. The NOE is filed with the County Clerk<sup>4</sup>, who posts it within 24 hours of receiving it, and who must keep it posted for 30 days. The 35-day statute of limitations does not begin until the NOE has been filed. If no NOE is filed, the 180-day statute of limitations applies from the date the project is approved.

Appendix E of the State CEQA Guidelines contains a recommended NOE form. The form can also be found online at [http://www.opr.ca.gov/s\\_ceqadocumentsubmission.php](http://www.opr.ca.gov/s_ceqadocumentsubmission.php).

## If My Project is Exempt, Do I Need to Prepare an IS/MND or EIR?

Once a Lead Agency determines that an exemption applies to a project, no further CEQA compliance or environmental review is required.

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<sup>3</sup> However, a Local Agency's own local CEQA Guidelines or municipal code may have more requirements. In addition, for strategic reasons, a Lead Agency may wish to provide public notice and allow for public comment prior to relying on an exemption. Doing so may limit who can later file a lawsuit against the use of the exemption, and upon which grounds a lawsuit can be based.

<sup>4</sup> Some statutory exemptions (the statutory agricultural housing exemption, affordable housing exemption, and residential infill exemption) also require filing with the State Clearinghouse.

## Categorical Exclusions Under NEPA

NEPA provides for “categorical exclusions” rather than exemptions for projects or actions that can be demonstrated to have no potential for significant environmental impacts. However, unlike CEQA, NEPA allows each federal agency or governmental unit to define its own unique list of exclusions. This means that each federal agency may have some exclusions that are similar and some that are different, sometimes very different, from those of other agencies. This allows each agency or governmental unit to establish exclusions that are specifically tailored to the needs of the agency and the resources for which it is responsible.

As with categorical exemptions under CEQA, the NEPA categorical exclusion allows federal agencies and governmental units to concentrate their NEPA compliance efforts on actions that could have a significant impact on the environment, while minimizing time, effort, and budget expended on administrative or minor actions that would not have a significant impact on the environment. It allows the agencies and governmental units to conduct their daily business in an efficient manner while still protecting important natural resources.

## Exemptions in a Joint CEQA/NEPA Document

In cases where both a Categorical Exclusion under NEPA and a Categorical Exemption under CEQA may apply, the agencies should coordinate to ensure that the consideration of potential effects is consistent with the review of extraordinary circumstances or exceptions. (Council on Environmental Quality and Governor’s Office of Planning and Research 2014).

Both NEPA and CEQA also provide for certain statutory exemptions. As acts of Congress and of the California Legislature, NEPA and CEQA are subject to exceptions also enacted by Congress or the Legislature. The exemptions can be complete, limited, or conditional depending on the statutory language in the exemption. Many CEQA statutory exemptions are contained within CEQA while others are found in other laws. The NEPA statutory exemptions are contained in other laws.

## Areas of Controversy Regarding Exemptions?

### The Unusual Circumstances Exception

Before the recent California Supreme Court case *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal. 4th 1086, California courts had applied the unusual circumstances exception to the use of categorical exemptions in different ways. Some courts viewed the exception as rather narrow – applying only when there is evidence there were unusual circumstances surrounding the project **and** evidence that these unusual circumstances may result in a significant impact to the environment. Other courts viewed the exception as being broader – applying anytime there is a fair argument that the project may result in a significant

impact. In *Berkeley Hillside Preservation*, the Supreme Court held that the exception was narrow, and applied only when it can be shown that **both** unusual circumstances are present, **and** those unusual circumstances lead to a reasonable possibility the project could result in a significant impact. However, the court also adopted a rather complicated test for determining when either of these requirements are present. The agency's determination that an unusual circumstance does not apply need only be supported by substantial evidence. However, once the agency has found that an unusual circumstance does apply, if there is substantial evidence to support a fair argument that a significant impact might occur as a result of that unusual circumstance, the categorical exemption cannot be used. Because the case is so recent, it remains to be seen how easily the lower courts will apply this test, and how this case will impact application of exemptions and exceptions to the exemptions in the future.

## Use of More Than One Exemption

At least one court has determined that 2 exemptions can be combined to exempt a project, and each exemption is not required to cover the whole project, so long as the whole project is covered by the combined exemptions. *Surfrider v. California Coastal Commission* (1994) 26 Cal.App.4th 151.

## Important Cases

The following published cases involve issues related to CEQA exemptions:

- *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal. 4th 1086. California Supreme Court holds that the mere possibility of a significant impact is not, in itself, an unusual circumstance, and therefore is not enough to negate the application of a categorical exemption. Court also explains the history and applicability of categorical exemptions and the unusual circumstances exception.
- *Tomlinson v. County of Alameda* (2012) 54 Cal. 4th 281. California Supreme Court holds that even if not required by CEQA, where an agency gives notice of its grounds for an exemption determination, and the determination is preceded by public hearings giving the public the opportunity to raise objections, CEQA's exhaustion of administrative remedies requirement applies. Under that requirement, only individuals and entities who raised objections to the exemption before the agency may file a lawsuit challenging the agency's use of the exemption.
- *Muzzy Ranch Co. v. Solano County Airport Land Use Commission* (2007) 41 Cal. 4th 372. California Supreme Court holds that county adoption of a plan that embraced existing development restrictions qualified for the "common sense exemption" because the plan was consistent with existing general plan and zoning designations and development controls.
- *Main San Gabriel Basin Watermaster v. State Water Resources Control Board* (1993) 12 Cal. App. 4th 1371. Disapproved projects are not subject to the CEQA environmental review process.

## Related CEQA Portal Topics

- Overview of the CEQA Process (To come)
- CEQA Triggers (In process)
- Lead Agency, Trustee Agencies, and Responsible Agencies

## Exemptions in the CEQA Guidelines

The following sections of the CEQA Guidelines address important concepts regarding exemptions. This is not a comprehensive list:

- **Section 15061** - provides general guidance regarding exemptions from CEQA compliance
- **Section 15061(b)(3)** – Describes the general rule that CEQA only applies to projects which have the potential for causing a significant effect on the environment.
- **Section 15062** – Describes the procedures for and advantages of filing a Notice of Exemption
- **Sections 15261 through 15285** – Define activities statutorily exempt from CEQA compliance
- **Section 15300.2** – Defines exceptions to categorical exemptions
- **Sections 15301 through 15333** – Define activities categorically exempt from CEQA compliance

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