

CEQA

The California Environmental Quality Act

Title 14. California Code of Regulations
Chapter 3. Guidelines for Implementation of the
California Environmental Quality Act

Article 18. Statutory Exemptions

Sections 15260 to 15285

(Note: Newly revised language is underlined; deleted language is stricken through. The numbered sections have been adopted by the Secretary of Resources as part of the California Code of Regulations. The discussions after each section are provided by the Governor's Office of Planning and Research; they are not in the California Code of Regulations.)

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.

15261. Ongoing Project

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(a) If a project being carried out by a public agency was approved prior to November 23, 1970, the project shall be exempt from CEQA unless either of the following conditions exist:

(1) A substantial portion of public funds allocated for the project have not been spent, and it is still feasible to modify the project to mitigate potentially adverse environmental effects, or to choose feasible alternatives to the project, including the alternative of "no project" or halting the project, provided that a project subject to the National Environmental Policy Act (NEPA) shall be exempt from CEQA as an on-going project if, under regulations promulgated under NEPA, the project would be too far advanced as of January 1, 1970, to require preparation of an EIS.

(2) A public agency proposes to modify the project in such a way that the project might have a new significant effect on the environment.

(b) A private project shall be exempt from CEQA if the project received approval of a lease, license, certificate, permit, or other entitlement for use from a public agency prior to April 5, 1973, subject to the following provisions:

(1) CEQA does not prohibit a public agency from considering environmental factors in connection with the approval or disapproval of a project, or from imposing reasonable fees on the appropriate private person or entity for preparing an environmental report under authority other than CEQA. Local agencies may require environmental reports for projects covered by this paragraph pursuant to local ordinances during this interim period.

(2) Where a project was approved prior to December 5, 1972, and prior to that date the project was legally challenged for noncompliance with CEQA, the project shall be bound by special rules set forth in Section 21170 of CEQA.

(3) Where a private project has been granted a discretionary governmental approval for part of the project before April 5, 1973, and another or additional discretionary governmental approvals after April 5, 1973, the project shall be subject to CEQA only if the approval or approvals after April 5, 1973, involve a greater degree of responsibility or control over the project as a whole than did the approval or approvals prior to that date.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Sections 21169, 21170, and 21171, Public Resources Code; County of Inyo v. Yorty, 32 Cal. App. 3d 795.

Discussion: While not specifically mentioned among the statutory exemptions contained in CEQA, the ongoing project exemption is a result of the prospective application of statutes when they are enacted. Accordingly, CEQA clearly applies to governmental projects approved after November 23, 1970, the effective date of CEQA. This section seeks to codify case law interpreting the application of CEQA to projects which were in process at the time of CEQA's effective date but not yet finally approved or still capable of being changed to avoid environmental damage. This section is also complicated by the special rules that apply to private projects approved after the *Friends of Mammoth* decision in 1972 and before April 5, 1973, the end of the statutory moratorium on the application of CEQA to private projects. The special rules are included here with some administrative interpretation in the interest of completeness of the ongoing project exception.

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

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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.

15263. Discharge Requirements

The State Water Resources Control Board and the regional boards are exempt from the requirement to prepare an EIR or a Negative Declaration prior to the adoption of waste discharge requirements, except requirements for new sources as defined in the Federal Water Pollution Control Act or in other acts which amend or supplement the Federal Water Pollution Control Act. The term "waste discharge requirements" as used in this section is the equivalent of the term "permits" as used in the Federal Water Pollution Control Act.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Section 13389, Water Code.

Discussion: This section identifies and interprets the exemption for waste discharge requirements from existing sources under the Federal Water Pollution Control Act. This exemption is contained in the Water Code and would not be readily discovered by anybody reviewing CEQA. This Guideline section specifies that this partial exemption applies only to the preparation of EIRs and Negative Declarations. This is not a total exemption in CEQA. This section is included in the interest of completeness of this article and as part of the effort to bring together in one place the many different exemptions which are scattered throughout the codes.

15264. Timberland Preserves

Local agencies are exempt from the requirement to prepare an EIR or Negative Declaration on the adoption of timberland preserve zones under Government Code Sections 51100 et seq. (Gov. Code, Sec. 51119).

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Government Code Section 51119, Government Code.

Discussion: This exemption is also a partial exemption applying only to the requirement to prepare an EIR or Negative Declaration. This section repeats the exemption found in Section 51119 of the Government Code. The exemption located there would be difficult for people to find when they are reviewing the CEQA statute and trying to determine its application to the activity.

15265. Adoption of Coastal Plans and Programs

(a) CEQA does not apply to activities and approvals pursuant to the California Coastal Act (commencing with Section 30000 of the Public Resources Code) by:

- (1) Any local government, as defined in Section 30109 of the Public Resources Code, necessary for the preparation and adoption of a local coastal program, or
 - (2) Any state university or college, as defined in Section 30119, as necessary for the preparation and adoption of a long-range land use development plan.
- (b) CEQA shall apply to the certification of a local coastal program or long-range land use development plan by the California Coastal Commission.
- (c) This section shifts the burden of CEQA compliance from the local agency or the state university or college to the California Coastal Commission. The Coastal Commission's program of certifying local

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coastal programs and long-range land use development plans has been certified under Section 21080.5, Public Resources Code. See: Section 15192.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Sections 21080.9, Public Resources Code.

Discussion: This section identifies and explains the exemption which applies to the certification of coastal plans and programs. The section shows that the exemption amounts to a shift in responsibility from local governments and the state university and college system to the California Coastal Commission. The section also notes that the process used by the Coastal Commission in approving the local coastal programs or the long-range land use development plans by the state university or colleges has been certified as a "functional equivalent" program so that the Coastal Commission can use a short form of CEQA compliance. This section is necessary to explain how CEQA applies to local coastal programs and long-range land use development plans.

15266. General Plan Time Extension

CEQA shall not apply to the granting of an extension of time by the Office of Planning and Research to a city or county for the preparation and adoption of one or more elements of a city or county general plan.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Section 21080.10(a), Public Resources Code.

Discussion: This section is necessary to make it clear that CEQA does not apply at all to the actions of the Office of Planning and Research in granting an extension of time to a city or county for the preparation and adoption of one or more elements of a local general plan.

15267. Financial Assistance to Low or Moderate Income Housing

CEQA does not apply to actions taken by the Department of and Community Development to provide financial assistance for the development and construction of residential housing for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code. The residential project which is the subject of the application for financial assistance will be subject to CEQA when approvals are granted by another agency.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Section 21080.10(b), Public Resources Code.

Discussion: This section identifies and interprets the exemption granted to the financial assistance activities of the state Department of Housing and Community Development which involve the development and construction of residential housing for persons of low or moderate income. The section notes that this exemption is not an exemption for the project which receives the funds. CEQA will apply to the approvals of the housing project by other agencies.

15268. Ministerial Projects

(a) Ministerial projects are exempt from the requirements of CEQA. The determination of what is "ministerial" can most appropriately be made by the particular public agency involved based upon its analysis of its own laws, and each public agency should make such determination either as a part of its implementing regulations or on a case-by-case basis.

(b) In the absence of any discretionary provision contained in the local ordinance or other law establishing the requirements for the permit, license, or other entitlement for use, the following actions shall be presumed to be ministerial:

(1) Issuance of building permits.

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(2) Issuance of business licenses.

(3) Approval of final subdivision maps.

(4) Approval of individual utility service connections and disconnections.

(c) Each public agency should, in its implementing regulations or ordinances, provide an identification or itemization of its projects and actions which are deemed ministerial under the applicable laws and ordinances.

(d) Where a project involves an approval that contains elements of both a ministerial action and a discretionary action, the project will be deemed to be discretionary and will be subject to the requirements of CEQA.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Section 21080 (b)(1), Public Resources Code; *Day v. City of Glendale*, 51 Cal. App. 3d 817.

Discussion: This section provides an interpretation of the exemption for ministerial projects. The term "ministerial" is defined in Section 15369. This section provides additional explanation. The key point is that the determination of whether a particular project is ministerial must be based on an examination of the law or ordinance authorizing the particular permit. The problem is that ordinances vary. Ordinances in adjacent counties requiring permits for the same kind of activity may provide different kinds of controls over the activity. In one county, the ordinance may be ministerial, and in the other the permit may be discretionary and therefore subject to CEQA. The section identifies four types of permits or licenses which are normally ministerial in most jurisdictions. The section creates a presumption that these activities are ministerial unless evidence is presented showing that there are discretionary provisions in the relevant local ordinance.

The section encourages public agencies to identify their ministerial permits in their implementing procedures. This approach will simplify the administration of the process in the individual agency. This section also codifies the ruling in *Day v. City of Glendale* cited in the note and other court decisions which have held that where a project approval involves elements of both ministerial action and discretionary action, the project will be deemed to be discretionary and therefore subject to CEQA.

The court in *Friends of Westwood, Inc. v. Los Angeles* (1986) 191 Cal. App. 3d 259, provided guidance, and held that the legislative history of CEQA indicates that the term 'ministerial' is limited to those approvals which can be legally compelled without substantial modification or change. "It is enough that the [agency] possesses discretion to require changes which would mitigate in whole or part one or more of the [significant or potentially significant] environmental consequences an EIR might conceivably uncover."

15269. Emergency Projects

The following emergency projects are exempt from the requirements of CEQA.

(a) Projects to maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster in a disaster stricken area in which a state of emergency has been proclaimed by the Governor pursuant to the California Emergency Services Act, commencing with Section 8550 of the Government Code. This includes projects that will remove, destroy, or significantly alter an historical resource when that resource represents an imminent threat to the public of bodily harm or of damage to adjacent property or when the project has received a determination by the State Office of Historic Preservation pursuant to Section 5028(b) of Public Resources Code.

(b) Emergency repairs to publicly or privately owned service facilities necessary to maintain service essential to the public health, safety or welfare.

(c) Specific actions necessary to prevent or mitigate an emergency. This does not include long-term projects undertaken for the purpose of preventing or mitigating a situation that has a low probability of

occurrence in the short-term.

(d) Projects undertaken, carried out, or approved by a public agency to maintain, repair, or restore an existing highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide, provided that the project is within the existing right of way of that highway and is initiated within one year of the damage occurring. This exemption does not apply to highways designated as official state scenic highways, nor any project undertaken, carried out, or approved by a public agency to expand or widen a highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide.

(e) Seismic work on highways and bridges pursuant to Section 180.2 of the Streets and Highways Code, Section 180 et seq.

Note: Authority: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080(b)(2), (3), and (4), 21080.33 and 21172, Public Resources Code; *Castaic Lake Water Agency v. City of Santa Clarita* (1995) 41 Cal.App.4th 1257; and *Western Municipal Water District of Riverside County v. Superior Court of San Bernardino County* (1987) 187 Cal.App.3d 1104.

Discussion: This section identifies the emergency exemptions from CEQA. The exemptions for emergency repairs to existing highways and for emergency projects involving historical resources that are an imminent threat to the public reflect statutory provisions. Highway repairs are limited to those which do not expand or widen the highway.

In *Western Municipal Water District of Riverside County v. Superior Court of San Bernardino County* (1987) 187 Cal. App. 3d 1104, the court held that an emergency is an occurrence, not a condition, and that the occurrence must involve a clear and imminent danger, demanding immediate attention. In this case, the water district proposed to dewater areas that could potentially be subject to liquefaction in the event of an earthquake. The excess water was to be pumped out to reduce the hazard as an emergency project. The court, however, ruled that this was not the proper use of this exemption. The imminence of an earthquake is not a condition but a potential event and no real change had yet occurred or could be incontestably foreseen as being mitigated by the proposed actions. The standard of review is there must be substantial evidence in the record to support the agency findings of an emergency, in this case, the Court found inadequate evidence of imminent danger and the subsequent need for immediate action. This holding is now codified in subsection (c).

15270. Projects Which are Disapproved

(a) CEQA does not apply to projects which a public agency rejects or disapproves.

(b) This section is intended to allow an initial screening of projects on the merits for quick disapprovals prior to the initiation of the CEQA process where the agency can determine that the project cannot be approved.

(c) This section shall not relieve an applicant from paying the costs for an EIR or Negative Declaration prepared for his project prior to the Lead Agency's disapproval of the project after normal evaluation and processing.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Section 21080 (b)(5), Public Resources Code.

Discussion: This section identifies and interprets the exemption for disapprovals. This exemption was originally added to CEQA to clarify that a public agency could turn down a permit application without first preparing an EIR or Negative Declaration. Subsection (c) makes the point that if the public agency prepares an EIR or Negative Declaration for the project, and then the agency decides to disapprove the project, the project applicant must still pay the cost of that EIR or Negative Declaration.

This section may also be used to avoid automatic approvals. If an applicant was not cooperative in providing requested information in a timely manner, and as a result the agency could not complete the CEQA process in the required time, the agency can disapprove the project to prevent the permit from

being granted by operation of law without the mitigation measures that would have been developed through the CEQA process.

15271. Early Activities Related to Thermal Power Plants

(a) CEQA does not apply to actions undertaken by a public agency relating to any thermal power plant site or facility including the expenditure, obligation, or encumbrance of funds by a public agency for planning, engineering, or design purposes, or for the conditional sale or purchase of equipment, fuel, water (except groundwater), steam, or power for such a thermal power plant, if the thermal power plant site and related facility will be the subject of an EIR or Negative Declaration or other document or documents prepared pursuant to a regulatory program certified pursuant to Public Resources Code Section 21080.5, which will be prepared by:

- (1) The State Energy Resources Conservation and Development Commission,
- (2) The Public Utilities Commission, or
- (3) The city or county in which the power plant and related facility would be located.

(b) The EIR, Negative Declaration, or other document prepared for the thermal power plant site or facility, shall include the environmental impact, if any, of the early activities described in this section.

(c) This section acts to delay the timing of CEQA compliance from the early activities of a utility to the time when a regulatory agency is requested to approve the thermal power plant and shifts the responsibility for preparing the document to the regulatory agency.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Section 15080 (b)(6), Public Resources Code.

Discussion: This section identifies and interprets the exemption for early activities related to thermal electric power plants. This section delays the CEQA compliance for thermal power plants for all utilities until the power plant needed approval from a regulatory agency. The statutory exception provides that when an EIR, Negative Declaration, or a document under a certified program is prepared, that document must include the environmental impacts of any of the early activities described in the section as being exempt from CEQA compliance.

Subsection (c) explains the purpose as shifting both the timing and the responsibility for preparing the EIR. Although the utility would ultimately pay for the cost, preparing the document would be the responsibility of the regulatory agency.

15272. Olympic Games

CEQA does not apply to activities or approvals necessary to the bidding for, hosting or staging of, and funding or carrying out of, Olympic Games under the authority of the International Olympic Committee, except for the construction of facilities necessary for such Olympic Games. If the facilities are required by the International Olympic Committee as a condition of being awarded the Olympic Games, the Lead Agency need not discuss the "no project" alternative in an EIR with respect to those facilities.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Section 21080 (b)(7), Public Resources Code.

15273. Rates, Tolls, Fares, and Charges

(a) CEQA does not apply to the establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, or other charges by public agencies which the public agency finds are for the purpose of:

- (1) Meeting operating expenses, including employee wage rates and fringe benefits,
- (2) Purchasing or leasing supplies, equipment, or materials,
- (3) Meeting financial reserve needs and requirements,
- (4) Obtaining funds for capital projects, necessary to maintain service within existing service areas, or
- (5) Obtaining funds necessary to maintain such intra-city transfers as are authorized by city charter.

(b) Rate increases to fund capital projects for the expansion of a system remain subject to CEQA. The agency granting the rate increase shall act either as the Lead Agency if no other agency has prepared environmental documents for the capital project or as a Responsible Agency if another agency has already complied with CEQA as the Lead Agency.

(c) The public agency shall incorporate written findings in the record of any proceeding in which an exemption under this section is claimed setting forth with specificity the basis for the claim of exemption.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Section 21080 (b)(8), Public Resources Code.

Discussion: This section identifies and interprets the exemption that applies to the adoption of rates, tolls, fares, and other charges. The section spells out the provisions of the statutory exemption for these charges and in summary form provides an interpretation of the kinds of rate increases that still remain subject to CEQA. The section also identifies the requirement to make written findings to support the claim that the rate change falls within the specific exemptions provided in this section. These findings are an unusual requirement with an exemption and need to be highlighted.

15274. Family Day Care Homes

(a) CEQA does not apply to establishment or operation of a large family day care home, which provides in-home care for up to fourteen ~~twelve~~ children, as defined in Section 1596.78 of the Health and Safety Code.

(b) Under the Health and Safety Code, local agencies cannot require use permits for the establishment or operation of a small family day care home, which provides in-home care for up to eight ~~six~~ children, and the establishment or operation of a small family day care home is a ministerial action which is not subject to CEQA.

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

15275. Specified Mass Transit Projects

CEQA does not apply to the following mass transit projects:

(a) The institution or increase of passenger or commuter service on rail lines or high-occupancy vehicle lanes already in use, including the modernization of existing stations and parking facilities;

(b) Facility extensions not to exceed four miles in length which are required for transfer of passengers from or to exclusive public mass transit guideway or busway public transit services.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Section 21080 (b)(11), (12), and (13), Public Resources Code.

Discussion: This section combined several exemptions that apply to mass transit projects. The revised

description of these projects clarifies the nature of the exemption and the activities to which the exemption applies.

15276. Transportation Improvement and Congestion Management Programs

(a) CEQA does not apply to the development or adoption of a regional transportation improvement program or the state transportation improvement program. Individual projects developed pursuant to these programs shall remain subject to CEQA.

(b) CEQA does not apply to preparation and adoption of a congestion management program by a county congestion management agency pursuant to Government Code Section 65089, et seq.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Section 21080 (b)(13), Public Resources Code.

Discussion: This section identifies and interprets the exemptions that apply to the development or adoption of state and regional transportation improvement programs, as well as congestion management plans. The section clarifies that the exemption for transportation improvement programs does not apply to individual projects undertaken pursuant to such programs.

The California Supreme Court held, in *Napa Valley Wine Train, Inc. v. Public Utilities Commission* (1990) 50 Cal 3d 370, that rail passenger service is to be construed with reference to the existence of a rail right of way and not the physical rail line, its condition, or type of rail traffic. In this case, the fact that the existing rail right of way had not been formally abandoned, not its physical existence or frequency of recent pattern of use of the line was the pertinent criteria. See also the discussion for Section 15260.

15277. Projects Located Outside California

CEQA does not apply to any project or portion thereof located outside of California which will be subject to environmental impact review pursuant to the National Environmental Policy Act of 1969 or pursuant to a law of that state requiring preparation of a document containing essentially the same points of analysis as in an Environmental Impact Statement prepared under the National Environmental Policy Act of 1969. Any emissions or discharges that would have a significant effect on the environment in the State of California are subject to CEQA where a California public agency has authority over the emissions or discharges.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Section 21080 (b)(15), Public Resources Code; 58 Opinions of the California Attorney General 614 (S.O. 75/50).

Discussion: The section identifies and interprets the exemption that applies to projects located in another state. The section repeats part of the statutory language and provides further explanation.

This partial exemption from CEQA was a response to an Attorney General's opinion stating that when a California public agency takes an action outside of the State of California, the California agency is still bound by the requirements in CEQA to prepare an EIR if the agency's action would cause a significant effect on the environment. The Attorney General's opinion noted that the definition of the term "environment" in CEQA did not stop at the borders of the State of California. It said that CEQA applies to any exercise of powers by a California state or local agency. Where the agency was exercising powers granted by the Legislature, they were also subject to constraints enacted by the Legislature. Accordingly, when the California Department of Water Resources proposed to build a power plant in Nevada, the Department prepared an EIR analyzing the effects of its proposed action on the environment. This section will apply mostly where California public agencies undertake their own projects outside the state.

15278. Application of Coatings

(a) CEQA does not apply to a discretionary decision by an air quality management district for a project consisting of the application of coatings within an existing facility at an automotive manufacturing plant if the district finds all of the following:

(1) The project will not cause a net increase in any emissions of any pollutant for which a national or state ambient air quality standard has been established after the internal emission accounting for previous emission reductions achieved at the facility and recognized by the district.

(2) The project will not cause a net increase in adverse impacts of toxic air contaminants as determined by a health risk assessment. The term "net increase in adverse impacts of toxic air contaminants as determined by a health risk assessment" shall be determined in accordance with the rules and regulations of the district.

(3) The project will not cause any other adverse effect on the environment.

(b) The district shall provide a 10-day notice, at the time of the issuance of the permit, of any such exemption. Notice shall be published in two newspapers of general circulation in the area of the project and shall be mailed to any person who makes a written request for such a notice. The notice shall state that the complete file on the project and the basis for the district's findings of exemption are available for inspection and copying at the office of the district.

(c) Any person may appeal the issuance of a permit based on an exemption under subdivision (a) to the hearing board as provided in Section 42302.1 of the Health and Safety Code. The permit shall be revoked by the hearing board if there is substantial evidence in light of the whole record before the board that the project may not satisfy one or more of the criteria established pursuant to subdivision (a). If there is no such substantial evidence, the exemption shall be upheld. Any appeal under this subdivision shall be scheduled for hearing on the calendar of the hearing board within 10 working days of the appeal being filed. The hearing board shall give the appeal priority on its calendar and shall render a decision on the appeal within 21 working days of the appeal being filed. The hearing board may delegate the authority to hear and decide such an appeal to a subcommittee of its body.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Chapter 1131, Statutes of 1993, Section 1.

15279. Housing for Agricultural Employees

(a) CEQA does not apply to any development project which consists of the construction, conversion, or use of residential housing for agricultural employees, as defined below, provided the development is either:

(1) Affordable to lower income households, as defined in Section 50079.5 of the Health and Safety Code, there is no public financial assistance for the development project, and the developer provides sufficient legal commitments to the appropriate local agency to ensure that the housing units will continue to be available to lower-income households for a period of at least 15 years; or

(2) Affordable to low and moderate-income households, as defined in paragraph (2) of subdivision (h) of Section 65589.5 of the Government Code, at monthly housing costs determined pursuant to paragraph (2) of subdivision (h) of Section 65589.5 of the Government Code, there is public financial assistance for the project, and the developer provides sufficient legal commitments to the appropriate local agency to ensure that the housing units will continue to be available to low and moderate-income households for a period of at least 15 years.

(b) The development must also meet all the following criteria:

(1) It is consistent with the applicable city, county, or city and county general plan as it existed on the date the project application was deemed complete.

(2) It is consistent with the local zoning, as it existed on the date the project application was deemed complete, unless the zoning is inconsistent with the general plan because the city, county, or city and

county has not rezoned the property to bring it into consistency with the general plan.

(3) If the project is proposed in an urbanized area, it does not exceed 45 dwelling units, or if it consists of dormitories, barracks or other group living facilities houses not more than 45 agricultural employees, and its site is adjacent on at least two sides to land that has been previously developed.

(4) If the project is proposed in a nonurbanized area, its site is zoned for general agricultural use and the project consists of not more than 20 dwelling units or, if it consists of dormitories, barracks or other group living facilities, it houses not more than 20 agricultural employees.

(5) Its site is not more than five acres in area, except that a project located in an area with a population density of at least 1000 persons per square mile shall not be more than two acres in area.

(6) Its site is, or can be, adequately served by utilities.

(7) Its site has no value as wildlife habitat.

(8) Its site is not included on any list of hazardous waste or other facilities and sites compiled pursuant to Section 65962 of the Government Code.

(9) It will not involve the demolition of, or any substantial adverse change in, any structure that is listed, or determined to be eligible for listing in the California Register of Historical Resources.

(c) As used in this section, "residential housing for agricultural employees" means housing accommodations for an agricultural employee, as defined in subdivision (b) of Section 1140.4 of the Labor Code.

(d) As used in this section, "urbanized area" means either of the following:

(1) an area with a population density of at least 1000 persons per square mile; or

(2) an area with a population density of less than 1000 persons per square mile that is identified as an urban area in the general plan adopted by the applicable city, county, or city and county and was not designated at the time the application was deemed complete as an area reserved for future urban growth.

(e) This section does not apply if the public agency which is carrying out or approving the development project determines that there is a reasonable possibility that the project would have a significant effect on the environment due to unusual circumstances or that the cumulative impact of successive projects of the same type in the same area over time would be significant.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Section 21080.10, Public Resources Code.

Discussion: Public Resources Code section 21080.10 establishes a statutory exemption for agricultural employees housing. The conditions and limitations of this exemption are detailed in this section.

15280. Lower-income Housing Projects

(a) CEQA does not apply to any development project which consists of the construction, conversion, or use of residential housing consisting of not more than 100 45-units in an urbanized area, provided that it is either:

(1) Affordable to lower-income households, as defined in Section 50079.5 of the Health and Safety Code, and the developer provides sufficient legal commitments to the appropriate local agency to ensure that the housing units will continue to be available to lower income households for a period of at least 15 years; or

(2) Affordable to low and moderate-income households, as defined in paragraph (2) of subdivision (h)

of Section 65589.5 of the Government Code, at monthly housing costs determined pursuant to paragraph (2) of subdivision (h) of Section 65589.5 of the Government Code.

(b) The development must also meet all the following criteria:

(1) It is consistent with the local jurisdiction's general plan as it existed on the date the project application was deemed complete.

(2) It is consistent with the local zoning as it existed on the date the project application was deemed complete, unless the zoning is inconsistent with the general plan because the city, county, or city and county has not rezoned the property to bring it into consistency with the general plan.

(3) Its site has been previously developed or is currently developed with urban uses, or the immediately contiguous properties surrounding the site are or have been previously developed with urban uses.

(4) Its site is not more than two acres in area.

(5) Its site is, or can be, adequately served by utilities.

(6) Its site has no value as wildlife habitat.

(7) It will not involve the demolition of, or any substantial adverse change in, any district, landmark, object, building, structure, site, area, or place that is listed, or determined to be eligible for listing in the California Register of Historical Resources.

(8) Its site is not included on any list of hazardous waste or other facilities and sites compiled pursuant to Section 65962.5 of the Government Code, and the site has been subject to an assessment by a California registered environmental assessor to determine both the presence of hazardous contaminants, if any, and the potential for exposure of site occupants to significant health hazards from nearby properties and activities.

(c) For purposes of this section, "urbanized area" means an area that has a population density of at least 1000 persons per square mile.

(d) If hazardous contaminants are found on the site, they must be removed or any significant effects mitigated to a level of insignificance in order to apply this exemption. If a potential for exposure to significant health hazards from nearby properties and activities is found to exist, the effects of the potential exposure must be mitigated to a level of insignificance in order to apply this exemption. Any removal or mitigation to insignificance must be completed prior to any residential occupancy of the project.

(e) This section does not apply if there is a reasonable possibility that the project would have a significant effect on the environment due to unusual circumstances or due to the related or cumulative impacts of reasonably foreseeable other projects in the vicinity.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Section 21080.14, Public Resources Code.

Discussion: Public Resources Code section 21080.14 establishes a statutory exemption for lower-income residential projects in urban areas. The conditions and limitations of this exemption are detailed in this section.

15281. Air Quality Permits

CEQA does not apply to the issuance, modification, amendment, or renewal of any permit by an air pollution control district or air quality management district pursuant to Title V, as defined in Section 39053.3 of the Health and Safety Code, or pursuant to an air district Title V program established under Sections 42301.10, 42301.11, and 42301.12 of the Health and Safety Code, unless the issuance, modification, amendment, or renewal authorizes a physical or operational change to a source or

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facility.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Section 21080.24, Public Resources Code.

15282. Other Statutory Exemptions

The following is a list of existing statutory exemptions. Each subsection summarizes statutory exemptions found in the California Code. Lead agencies are not to rely on the language contained in the summaries below but must rely on the actual statutory language that creates the exemption. This list is intended to assist lead agencies in finding them, but not as a substitute for them. This section is merely a reference tool.

- (a) The notification of discovery of Native American burial sites as set forth in Section 5097.98(c) of the Public Resources Code.
- (b) Specified prison facilities as set forth in Sections 21080.01, 21080.02, 21080.03 and 21080.07 of the Public Resources Code.
- (c) The lease or purchase of the rail right-of-way used for the San Francisco Peninsula commute service between San Francisco and San Jose as set forth in Section 21080.05 of the Public Resources Code.
- (d) Any activity or approval necessary for or incidental to project funding or authorization for the expenditure of funds for the project, by the Rural Economic Development Infrastructure Panel as set forth in Section 21080.08 of the Public Resources Code.
- (e) The construction of housing or neighborhood commercial facilities in an urbanized area pursuant to the provisions of Section 21080.7 of the Public Resources Code.
- (f) The conversion of an existing rental mobilehome park to a resident initiated subdivision, cooperative, or condominium for mobilehomes as set forth in Section 21080.8 of the Public Resources Code.
- (g) Settlements of title and boundary problems by the State Lands Commission and to exchanges or leases in connection with those settlements as set forth in Section 21080.11 of the Public Resources Code.
- (h) Any railroad grade separation project which eliminates an existing grade crossing or which reconstructs an existing grade separation as set forth in Section 21080.13 of the Public Resources Code.
- (i) The adoption of an ordinance regarding second units in a single-family or multifamily residential zone by a city or county to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code as set forth in Section 21080.17 of the Public Resources Code.
- (j) The closing of any public school or the transfer of students from that public school to another school in which kindergarten or any grades 1 through 12 is maintained as set forth in 21080.18 of the Public Resources Code.
- (k) A project for restriping streets or highways to relieve traffic congestion as set forth in Section 21080.19 of the Public Resources Code.
- (l) The installation of new pipeline or maintenance, repair, restoration, removal, or demolition of an existing pipeline as set forth in Section 21080.21 of the Public Resources Code, as long as the project does not exceed one mile in length.
- (m) The activities and approvals by a local government necessary for the preparation of general plan amendments pursuant to Public Resources Code §29763 as set forth in Section 21080.22 of the Public Resources Code. Section 29763 of the Public Resources Code refers to local government amendments

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made for consistency with the Delta Protection Commission's regional plan.

(n) Minor alterations to utilities made for the purposes of complying with Sections 4026.7 and 4026.8 of the Health and Safety Code as set forth in Section 21080.26 of the Public Resources Code.

(o) The adoption of an ordinance exempting a city or county from the provisions of the Solar Shade Control Act as set forth in Section 25985 of the Public Resources Code.

(p) The acquisition of land by the Department of Transportation if received or acquired within a statewide or regional priority corridor designated pursuant to Section 65081.3 of the Government Code as set forth in Section 33911 of the Public Resources Code.

(q) The adoption or amendment of a nondisposal facility element as set forth in Section 41735 of the Public Resources Code.

(r) Cooperative agreements for the development of Solid Waste Management Facilities on Indian country as set forth in Section 44203(g) of the Public Resources Code.

(s) Determinations made regarding a city or county's regional housing needs as set forth in Section 65584 of the Government Code.

(t) Any action necessary to bring a general plan or relevant mandatory element of the general plan into compliance pursuant to a court order as set forth in Section 65759 of the Government Code.

(u) Industrial Development Authority activities as set forth in Section 91543 of the Government Code.

(v) Temporary changes in the point of diversion, place of use, of purpose of use due to a transfer or exchange of water or water rights as set forth in Section 1729 of the Water Code.

(w) The preparation and adoption of Urban Water Management Plans pursuant to the provisions of Section 10652 of the Water Code.

Note: Authority: Sections 21083 and 21087, Public Resources Code; References: Sections 5097.98(c), 21080.01, 21080.02, 21080.03, 21080.05, 21080.07, 21080.08, 21080.7, 21080.8, 21080.11, 21080.13, 21080.17, 21080.18, 21080.19, 21080.21, 21080.22, 21080.26, 25985, 33911, 41735, and 44203(g), Public Resources Code.

Discussion: There are numerous statutory exemptions from CEQA, not all of which can be found in CEQA itself. This section identifies many of these exemptions and provides the reader with cross references to the pertinent statutes.

15283. Housing Needs Allocation.

CEQA does not apply to regional housing needs determinations made by the Department of Housing and Community Development, a council of governments, or a city or county pursuant to Section 65584 of the Government Code.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 65584, Government Code.

Discussion: This section describes the statutory exemption for regional housing need allocations made prior to and during the preparation of city and county general plan housing elements.

15284. Pipelines.

(a) CEQA does not apply to any project consisting of the inspection, maintenance, repair, restoration, reconditioning, relocation, replacement, or removal of an existing hazardous or volatile liquid pipeline

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or any valve, flange, meter, or other piece of equipment that is directly attached to the pipeline.

(b) To qualify for this exemption, the diameter of the affected pipeline must not be increased and the project must be located outside the boundaries of an oil refinery. The project must also meet all of the following criteria:

- (1) The affected section of pipeline is less than eight miles in length and actual construction and excavation activities are not undertaken over a length of more than one-half mile at a time.
- (2) The affected section of pipeline is not less than eight miles distance from any section of pipeline that had been subject to this exemption in the previous 12 months.
- (3) The project is not solely for the purpose of excavating soil that is contaminated by hazardous materials.
- (4) To the extent not otherwise required by law, the person undertaking the project has, in advance of undertaking the project, prepared a plan that will result in notification of the appropriate agencies so that they may take action, if necessary, to provide for the emergency evacuation of members of the public who may be located in close proximity to the project, and those agencies, including but not limited to the local fire department, police, sheriff, and California Highway Patrol as appropriate, have reviewed and agreed to that plan.
- (5) Project activities take place within an existing right-of-way and that right-of-way will be restored to its pre-project condition upon completion of the project.
- (6) The project applicant will comply with all conditions otherwise authorized by law, imposed by the city or county as part of any local agency permit process, and to comply with the Keene-Nejedly California Wetlands Preservation Act (Public Resources Code Section 5810, et seq.), the California Endangered Species Act (Fish and Game Code Section 2050, et seq.), other applicable state laws, and all applicable federal laws.

(c) When the lead agency determines that a project meets all of the criteria of subdivisions (a) and (b), the party undertaking the project shall do all of the following:

- (1) Notify in writing all responsible and trustee agencies, as well as any public agency with environmental, public health protection, or emergency response authority, of the lead agency's invocation of this exemption.
- (2) Mail notice of the project to the last known name and address of all organizations and individuals who have previously requested such notice and notify the public in the affected area by at least one of the following procedures:
 - (A) Publication at least one time in a newspaper of general circulation in the area affected by the proposed project. If more than one area is affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas.
 - (B) Posting of notice on and off site in the area where the project is to be located.
 - (C) Direct mailing to the owners and occupants of contiguous property shown on the latest equalized assessment roll.

The notice shall include a brief description of the proposed project and its location, and the date, time, and place of any public meetings or hearings on the proposed project. This notice may be combined with the public notice required under other law, as applicable, but shall meet the preceding minimum requirements.

- (3) In the case of private rights-of-way over private property, receive from the underlying property owner permission for access to the property.
- (4) Immediately inform the lead agency if any soil contaminated with hazardous materials is discovered.

(5) Comply with all conditions otherwise authorized by law, imposed by the city or county as part of any local agency permit process, and to comply with the Keene-Nejedly California Wetlands Preservation Act (Public Resources Code Section 5810, et seq.), the California Endangered Species Act (Fish and Game Code Section 2050, et seq.), other applicable state laws, and all applicable federal laws.

(d) For purposes of this section, "pipeline" is used as defined in subdivision (a) of Government Code Section 51010.5. This definition includes every intrastate pipeline used for the transportation of hazardous liquid substances or highly volatile liquid substances, including a common carrier pipeline, and all piping containing those substances located within a refined products bulk loading facility which is owned by a common carrier and is served by a pipeline of that common carrier, and the common carrier owns and serves by pipeline at least five such facilities in California.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Section 21080.23, Public Resources Code.

Discussion: This section describes the statutory exemption for the inspection, maintenance, repair, restoration, reconditioning, relocation, replacement, or removal of existing hazardous or volatile liquid pipelines. The Legislature's purpose in creating this exemption was to encourage the upkeep of existing pipelines by limiting the review required of particular activities.

Subsection (b) establishes the criteria under which a pipeline project qualifies for this exemption. These include a prohibition on increasing the diameter of the existing pipeline, limitations on the length of pipeline which may be worked on at any one time, provision of an emergency notification plan to local safety agencies and the California Highway Patrol for their review and agreement, site restoration, and compliance with local, state, and federal environmental laws. Subsection (c) clarifies that the lead agency is responsible for determining that the criteria described in subsection (b) have been met. This exemption is to be invoked by the lead agency, not the project applicant. The project applicant is responsible for providing public notice, obtaining property owner's permission where the pipeline crosses private property, and complying with all regulatory requirements.

15285. Transit Agency Responses to Revenue Shortfalls.

(a) CEQA does not apply to actions taken on or after July 1, 1995 to implement budget reductions made by a publicly owned transit agency as a result of a fiscal emergency caused by the failure of agency revenues to adequately fund agency programs and facilities. Actions shall be limited to those directly undertaken by or financially supported in whole or in part by the transit agency pursuant to Section 15378(a)(1) or (2), including actions which reduce or eliminate the availability of an existing publicly owned transit service, facility, program, or activity.

(b) When invoking this exemption, the transit agency shall make a specific finding that there is a fiscal emergency. Before taking its proposed budgetary actions and making the finding of fiscal emergency, the transit agency shall hold a public hearing. After this public hearing, the transit agency shall respond within 30 days at a regular public meeting to suggestions made by the public at that initial hearing. The transit agency may make the finding of fiscal emergency only after it has responded to public suggestions.

(c) For purposes of this subdivision, "fiscal emergency" means that the transit agency is projected to have negative working capital within one year from the date that the agency finds that a fiscal emergency exists. "Working capital" is defined as the sum of all unrestricted cash, unrestricted short-term investments, and unrestricted short-term accounts receivable, minus unrestricted accounts payable. Employee retirements funds, including deferred compensation plans and Section 401(k) plans, health insurance reserves, bond payment reserves, workers' compensation reserves, and insurance reserves shall not be included as working capital.

(d) This exemption does not apply to the action of any publicly owned transit agency to reduce or eliminate a transit service, facility, program, or activity that was approved or adopted as a mitigation measure in any environmental document certified or adopted by any public agency under either CEQA or NEPA. Further, it does not apply to actions of the Los Angeles County Metropolitan Transportation

Authority.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code. References: Sections 21080 and 21080.32, Public Resources Code.

Discussion: This section describes the statutory exemption established for certain public transit agency budget reductions.

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