

CATEGORICAL EXEMPTIONS

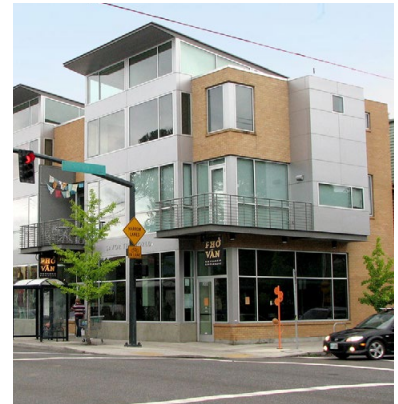
This brochure is for planners seeking to utilize Categorical Exemptions from the California Environmental Quality Act, which can expedite housing project approvals.

INTRODUCTION

The California Department of Housing and Community Development (HCD) Senate Bill 2 Planning Grants Program provides technical assistance to local jurisdictions for planning efforts that accelerate housing approvals and increase housing production. As a part of the program, this factsheet provides guidance on categorical exemptions from the California Environmental Quality Act (CEQA). These exemptions are intended to save agencies, and by extension, the public, time and resources by streamlining approval of projects that would not have adverse impacts on the environment.

Categorical exemptions are identified by the State Resources Agency for "classes" of projects as defined in the CEQA Guidelines ([§ 15300-15331](#)). Agencies can complete a simple discretionary preliminary review to utilize a categorical exemption, which clears the project from typical environmental review under CEQA ([CEQA Guidelines § 15354](#)).

There are two classes of categorical exemptions that can be utilized to streamline housing projects. Class 3, Small Structures, and Class 32, Infill Development Projects, as described below. The tables below provide a framework for a lead agency to conduct a preliminary review in order to: 1) decide which categorical exemption(s) may apply; 2) determine whether there are any exceptions that would prevent the use of a categorical exemption; and 3) substantiate the decision to use a categorical exemption or, alternatively, require further CEQA review.



MINISTERIAL OR "BY RIGHT" PROJECTS ARE NOT SUBJECT TO CEQA

CEQA applies when a governmental agency can exercise judgment in deciding whether and how to carry out or approve a project. This makes the project "**discretionary**" ([CEQA Guidelines, § 15357](#)). Where the law requires a governmental agency to act on a project using fixed standards and the agency does not have authority to use its own subjective judgment, the project is called "**ministerial**," and CEQA does not apply ([CEQA Guidelines, § 15268\(a\), § 15369](#)).

State and local laws and guidelines should be consulted when determining whether a project approval is ministerial.

CLASS 3 – SMALL STRUCTURES



CLASS 3 CATEGORICAL EXEMPTION, NEW CONSTRUCTION OR CONVERSION OF SMALL STRUCTURES

[CEQA Guidelines § 15303](#)

The Class 3 categorical exemption consists of construction, modification, conversion, and location of limited numbers of new, small facilities or structures. Only projects up to a certain maximum size, as defined in CEQA Guidelines § 15303 are allowed to use this exemption. The Class 3 exemption includes, but is not limited to:

- ✓ One single-family residence, or a second dwelling unit in a residential zone. In urbanized areas, up to three single-family residences may be constructed or converted under this exemption.
- ✓ A duplex or similar multi-family residential structure, totaling no more than four dwelling units. In urbanized areas, this exemption applies to apartments, duplexes and similar structures designed for not more than six dwelling units.

In certain instances, projects are excluded from using the Class 3 categorical exemption based on the project's location and/or other "exceptions" due to sensitive resources or other environmental concerns at the project site.

The following table lists the various exceptions that might disqualify a project from using the Class 3 exemption and provides simple Yes or No questions to help the lead agency determine if any of these exceptions apply. Completing this table for a project and including it in the administrative record can be used to substantiate a lead agency's decision to use the Class 3 categorical exemption for the project, provided no exceptions were identified. If this preliminary review identifies a potential for the project to result in a significant environmental impact, the lead agency may prepare an Initial Study to evaluate the project's potential impacts and determine the CEQA compliance document, either a negative declaration or an environmental impact report.

CLASS 3 CATEGORICAL EXEMPTION, NEW CONSTRUCTION OR CONVERSION OF SMALL STRUCTURES [CEQA Guidelines § 15303](#)

CEQA Guidelines § 15300.2 Exceptions	Applicability
<p>(a) Location. Class 3 is qualified by consideration of where the project is to be located – a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, this class of exemptions is considered to apply in all instances, except where the project may impact an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.</p>	
<p>(b) Cumulative Impact. Class 3 exemptions are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.</p>	<p>Is the project consistent with the General Plan and zoning designations? Yes / No</p> <p>If the project is consistent with a General Plan, did the General Plan EIR consider the cumulative impacts of General Plan implementation? Yes / No</p>
<p>(c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.</p>	<p>The project will not have a significant effect on the environment due to unusual circumstances. Specific environmental topics are addressed below:</p> <p>Aesthetics Will the project add substantial light/glare? Yes / No</p> <p>Will it go through design review? Yes / No</p> <p>Agriculture/ Forestry Does the site contain agricultural land or forested land? Yes / No</p> <p><i>(Tip ► Check for Important Farmland here: www.conservation.ca.gov/dlrp/fmmp)</i></p>



CLASS 3 CATEGORICAL EXEMPTION, NEW CONSTRUCTION OR CONVERSION OF SMALL STRUCTURES [CEQA Guidelines § 15303](#)

CEQA Guidelines § 15300.2 Exceptions	Applicability
	<p>Air Quality/GHGs Will the project include a new source of air pollutant emissions? (Note ▶ stationary air pollution sources are typically associated with industrial processes rather than housing, especially a small housing project.) Yes / No</p> <p>Biological Resources Does the site contain: Wetlands? Yes / No Riparian Habitat? Yes / No Special Status Species Habitat? Yes / No (Tip ▶ Run a CNDDDB database search at wildlife.ca.gov/Data/CNDDDB/Maps-and-Data)</p> <p>Cultural Resources See (f) below.</p> <p>Energy Will the project comply with current building code/Title 24 Energy Code? Yes / No</p> <p>Geology/Soils Will the project comply with current building code? (Note ▶ Compliance with the building code, other regulatory provisions, and geotechnical investigations, addresses site-specific soil conditions and ensures seismic safety.) Yes / No</p> <p>Hazards/Hazardous Materials See (e) below.</p> <p>Hydrology/Water Quality Will the project implement best management practices (BMPs) to prevent erosion and construction pollutants from contacting stormwater? Yes / No</p>



CLASS 3 CATEGORICAL EXEMPTION, NEW CONSTRUCTION OR CONVERSION OF SMALL STRUCTURES [CEQA Guidelines § 15303](#)

CEQA Guidelines § 15300.2 Exceptions	Applicability
	<p>Noise Will the project include a new stationary noise sources? (Note ▶ Stationary noise sources are typically associated with mechanical equipment rather than housing, especially a small housing project.) Yes / No</p> <p>Transportation Will the project include roadway or transportation system changes beyond site ingress/egress? Yes / No</p> <p>Utilities/Public Services Is site served by: Water? Yes / No Wastewater? Yes / No Electricity? Yes / No Natural Gas? Yes / No Solid Waste? Yes / No Stormwater drainage? Yes / No</p> <p>(Note ▶ For rural areas without water or wastewater service, check for a code-compliant well and a code-compliant septic system.)</p> <p>Wildfire Hazard Is the site in a high fire hazard severity zone? Yes / No</p> <p>(Tip ▶ Check for fire-hazard severity zones here: osfm.fire.ca.gov/divisions/wildfire-planning-engineering/wildland-hazards-building-codes/fire-hazard-severity-zones-maps)</p>
<p>(d) Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements which are required as mitigation by an adopted negative declaration or certified EIR.</p>	<p>Is the site within a state scenic highway? Yes / No</p> <p>(Tip ▶ Check for scenic highway status here: dot.ca.gov/programs/design/lap-landscape-architecture-and-community-livability/lap-liv-i-scenic-highways)</p>



CLASS 3 CATEGORICAL EXEMPTION, NEW CONSTRUCTION OR CONVERSION OF SMALL STRUCTURES [CEQA Guidelines § 15303](#)

CEQA Guidelines § 15300.2 Exceptions	Applicability
<p>(e) Hazardous Waste Sites. A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code.</p>	<p>Is the site listed as a hazardous waste site? Yes / No</p> <p><i>(Tip ▶ Search the Cortese List here: calepa.ca.gov/sitecleanup/corteselist/section-65962-5a)</i></p>
<p>(f) Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.</p>	<p>Does the site include historical resources? Yes / No</p> <p><i>(Tip ▶ Check for listed historical resources here: www.ohp.parks.ca.gov/ListedResources)</i></p>

Case Law:

Berkeley Hillside Preservation v. City of Berkeley (2015) 60 Cal.4th 1086; *Fairbank v. City of Mill Valley* (1999) 75 Cal.App.4th 1243; *San Francisco Beautiful v. City and County of San Francisco* (2014) 226 Cal.App.4th 1012; *Walters v. City of Redondo Beach* (2016) 1 Cal.App.5th 809; *Berkeley Hills Watershed Coalition v. City of Berkeley* (2019) 31 Cal.App.5th 880

Examples of filed Notices of Exemption for Class 3 Categorical Exemptions:

ceqanet.opr.ca.gov/2016078208 ceqanet.opr.ca.gov/2020030124/2



CEQA NERD SAYS:

KNOW YOUR EXEMPTION EXCEPTIONS

The exceptions to the Class 3 exemption underscore the need to pay attention to critical resource sensitivities and unusual circumstances. The “location” exception applies where the project may result in a significant impact on a particularly hazardous or sensitive environmental resource of critical concern (see *Berkeley Hills Watershed Coalition v. City of Berkeley* 2019). When the court reviews whether a significant effect may occur because of unusual circumstances, it first considers the presence of an unusual circumstance. The court would defer to the lead agency’s judgment based on its substantial evidence. If an unusual condition is present, the court then would apply the fair argument standard about whether the project may result in a significant environmental effect (see *Berkeley Hillside Preservation v. City of Berkeley* 2015).

CLASS 32 – IN-FILL DEVELOPMENT

CLASS 32 CATEGORICAL EXEMPTION, INFILL DEVELOPMENT PROJECTS

[CEQA Guidelines § 15332](#)

The Class 32 categorical exemption is intended to support infill development projects. A project would be disqualified from using this exemption if it would result in any significant effects related to traffic, noise, air quality, or water quality.

The following table lists the requirements to meet a Class 32 categorical exemption. This can be used to help identify if the particular project or site fits this exemption. If there is a potential to result in a significant environmental impact, the project would need to comply with CEQA and the lead agency should prepare an Initial Study. However, if there are no potential significant environmental impacts, this table can provide substantiation to support use of the categorical exemption for the lead agency's administrative record.



CLASS 32 CATEGORICAL EXEMPTION, INFILL DEVELOPMENT PROJECTS [CEQA Guidelines § 15332](#)

CEQA Guidelines § 15332 Requirements	Applicability
<p>(a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.</p>	General Plan Designation: General Plan Policies: Zoning Designation and Regulations: <i>(Are there design exceptions that have no environmental impacts?)</i>
	Yes / No
	Yes / No
<p>(b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.</p>	Site within city limits? Site 5 acres or less? Surrounded by urban development?
	Yes / No Yes / No Yes / No



CLASS 32 CATEGORICAL EXEMPTION, INFILL DEVELOPMENT PROJECTS CEQA Guidelines § 15332

CEQA Guidelines § 15332 Requirements	Applicability
<p>(c) The project site has no value as habitat for endangered, rare or threatened species.</p>	<p>Onsite habitat description: Trees: Vegetation:</p> <p>Wetlands/waters/riparian habitat? Yes / No Special Status Species? Yes / No</p> <p><i>(Tip ► Run a CNDDDB database search at wildlife.ca.gov/Data/CNDDDB/Maps-and-Data)</i></p>
<p>(d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.</p>	<p>Change to roads/ingress/egress? Yes / No New stationary noise source? Yes / No</p> <p><i>(Note ► Stationary noise sources are typically associated with mechanical equipment rather than housing, especially a small housing project.)</i></p> <p>New source of air emissions? Yes / No</p> <p><i>(Note ► Stationary air pollution sources are typically associated with industrial processes rather than housing, especially a small housing project.)</i></p> <p>Change in site drainage? Yes / No</p>
<p>(e) The site can be adequately served by all required utilities and public services.</p>	<p>Is site served by:</p> <p>Water? Yes / No Wastewater? Yes / No Electricity? Yes / No Natural Gas? Yes / No Solid Waste? Yes / No Stormwater drainage? Yes / No</p>

Case Law:

Berkeley Hillside Preservation v. City of Berkeley (2015) 60 Cal.4th 1086; *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98; *Banker's Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego* (2006) 139 Cal.App.4th 249; *Wollmer v. City of Berkeley* (2011) 193 Cal.App.4th 1329

Examples of filed Notices of Exemption for Class 32 Categorical Exemptions:

ceqanet.opr.ca.gov/2020030118/2 ceqanet.opr.ca.gov/2019058199/2



PROCESS TO FILE A NOTICE OF EXEMPTION

Filing a Notice of Exemption is not required for these categorical exemptions; however, it is recommended as it reduces the statute of limitations on legal challenges to the agency's decision that the project is exempt from CEQA from 180 days to 35 days.

NOTICE OF EXEMPTION

[CEQA Guidelines § 15062](#)

When a public agency decides that a project is exempt from CEQA pursuant to Section 15061, and the public agency approves or determines to carry out the project, the agency may file a notice of exemption. The notice shall be filed, if at all, after approval of the project.

Procedural Steps

- 1 Document that the project fits the categorical exemption and that there are no exceptions or potential environmental impacts.
- 2 Fill out the Notice of Exemption form, available here: opr.ca.gov/docs/NOE.pdf
- 3 After the project has been approved, submit one copy of the Notice of Exemption to the State Clearinghouse or County Clerk.



CEQA NERD SAYS: FILE AN NOE

By filing a Notice of Exemption, the posting starts a 35 day statute of limitations period on legal challenges to the agency's decision that the project is exempt from CEQA. If a Notice of Exemption is not filed, a 180 day statute of limitations will apply.