

**Case No. S287414**

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**IN THE SUPREME COURT OF CALIFORNIA**

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SUNFLOWER ALLIANCE,

*Plaintiff and Respondent,*

v.

CALIFORNIA DEPARTMENT OF CONSERVATION et al.,

*Defendants,*

REABOLD CALIFORNIA, LLC,

*Real Party in Interest and Appellant.*

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After a Decision by the Court of Appeal  
First Appellate District, Division Five, Case No. A167698

Appeal from Judgment of the Superior Court of California  
for the County of Contra Costa, Honorable Edward G. Weil  
Case No. N22-1503

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**PLAINTIFF'S REQUEST FOR JUDICIAL NOTICE  
IN SUPPORT OF OPENING BRIEF ON THE MERITS**

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## REQUEST FOR JUDICIAL NOTICE

Pursuant to California Rule of Court rules 8.520(g) and 8.252(a) and California Evidence Code sections 452 and 459, Plaintiff Sunflower Alliance respectfully requests that the Court take judicial notice of the documents identified below (Exhibit A through Exhibit H) in support of Plaintiff's Opening Brief on the Merits. Exhibits A through H are attached to and authenticated by the supporting Declaration of Theresa M. Trillo.

- Exhibit A:** Order Adopting Regulations of the California Resources Agency (February 3, 1973)
- Exhibit B:** Letter from Imperial Irrigation District to the Secretary for Resources Re: Guidelines for Environmental Impact Reports (January 23, 1973)
- Exhibit C:** Final Statement of Reasons for CEQA Guidelines Revisions (September 1998)
- Exhibit D:** Final Text – CEQA Guidelines Revisions (October 26, 1998)
- Exhibit E:** Summary and Response to Comments to Section 15301: Existing Facilities (October – December 1997)
- Exhibit F:** Final Statement of Reasons for post-1994 CEQA Guidelines Update
- Exhibit G:** Final Statement of Reasons for Regulatory Action, Amendments to

the State CEQA Guidelines  
(November 2018), *available at*  
[https://resources.ca.gov/CNRALegalFiles/ceqa/docs/2018\\_CEQA\\_Final\\_Statement\\_of%20Reasons\\_111218.pdf](https://resources.ca.gov/CNRALegalFiles/ceqa/docs/2018_CEQA_Final_Statement_of%20Reasons_111218.pdf)

**Exhibit H:** CalGEM CEQA Rework  
Exemptions Process Guidance to  
Operators (December 2023),  
*available at*  
<https://www.conservation.ca.gov/calgem/CEQA/Documents/CalGEM%20CEQA%20Rework%20Exemptions%20Process%20Guidance%20to%20Operators.pdf>

This Request for Judicial Notice is made pursuant to the above authorities, the accompanying memorandum of points and authorities, supporting declaration of Theresa M. Trillo, proposed order, and Plaintiff's Opening Brief on the Merits.

Dated: March 20, 2025

Respectfully submitted,

*/s/ Jason R. Flanders*

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*Attorneys for Plaintiff and  
Respondent, SUNFLOWER  
ALLIANCE*

## MEMORANDUM OF POINTS AND AUTHORITIES

California Rules of Court rules 8.520 and 8.252, and California Evidence Code section 459, govern judicial notice in the Supreme Court.

Exhibits A through G are documents from the regulatory history of the CEQA Guidelines. They are directly relevant to interpreting section 15301 of the CEQA Guidelines, which is key to answering the Court’s certified question, “Does the term ‘negligible’ in CEQA’s Class 1 existing facilities exemption (CEQA Guidelines [Cal. Code Regs., tit.14], § 15301) pertain to a *negligible change in use* or to a change that presents a *negligible risk* of environmental harm?”

In general, appellate courts “may take judicial notice of any matter specified in Section 452” (Evid. Code § 459), including “[o]fficial acts of the legislative, executive, and judicial departments of the United States and of any state of the United States.” (Evid. Code § 452(c).) Specifically, legislative history is an “indisputably proper subject[] of judicial notice.” (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal. 4th 260, 279 n.9.) Indeed, this Court has granted judicial notice of legislative history on numerous prior occasions. (*See, e.g., Elsner v. Uveges* (2004) 34 Cal. 4th 915, 929 n.10, citing Evid. Code § 452(c); *Planning and Conservation League v. Dept. of Water Resources* (1998) 17 Cal. 4th 264, 274 n.4, citing Evid. Code §§ 452, 459.) Importantly, this Court has granted judicial notice of a similar regulatory history document from the California Natural Resources Agency in a case interpreting a different CEQA

Guidelines categorical exemption. (*Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 Cal. 4th 165, 186 n.15.) Thus, Exhibits A through G are also judicially noticeable.

Exhibit H is a document issued by CalGEM that provides guidance to operators regarding CEQA exemptions for rework of existing oil and gas wells. It includes specific analysis of CEQA Guidelines section 15301 as it applies to rework of these wells. CalGEM's interpretation is especially applicable to this case, which involves applying section 15301 to rework of an existing oil and gas well. And it is directly relevant to answering the Court's certified question cited above.

The Court may take judicial notice of CalGEM's guidance document per Section 452(h) because it is publicly available and is "not reasonably subject to dispute." (*People v. Miami Nation Enterprises* (2016) 2 Cal. 5th 222, 231, citing Evid. Code § 452(h).) Indeed, it is made publicly available by CalGEM on its own website and "provide[s] general information" from CalGEM itself. (RJN Exhibit H, *infra*, at 1.) Exhibit H is therefore judicially noticeable.

Exhibits A through H were not presented to the trial court or Court of Appeal. They do not concern proceedings that occurred after the trial court or appellate proceedings.

Based on the foregoing, Plaintiff Sunflower Alliance respectfully requests that this Court take judicial notice of Exhibits A through H.

Dated: March 20, 2025

Respectfully submitted,

*/s/ Jason R. Flanders*

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JASON R. FLANDERS  
(SBN 238007)  
THERESA M. TRILLO  
(SBN 349989)  
ATA LAW GROUP  
8 Rio Vista Ave.  
Oakland, CA 94611

*Attorneys for Plaintiff and  
Respondent, SUNFLOWER  
ALLIANCE*

## DECLARATION OF THERESA M. TRILLO

I, Theresa Trillo, declare as follows:

1. The facts set forth in this declaration are based on my personal knowledge; if called to testify as a witness, I could and would competently testify thereto under oath.
2. As to those matters that reflect a personal opinion, they reflect my personal opinion and judgment on the matter.
3. I am more than eighteen years old and am competent to testify as to the matters set forth herein.
4. I am an attorney licensed to practice law in the State of California, and I am admitted to practice law before all the courts of the State. I am an associate attorney at Aqua Terra Aeris (ATA) Law Group, representing Plaintiff Sunflower Alliance in the above captioned matter.
5. I make this Declaration in support of the Plaintiff's Request for Judicial Notice in Support of its Opening Brief on the Merits.
6. On November 17, 2023, I called and left a voice message with the California Natural Resources Agency requesting the regulatory history of Cal. Code Regs. tit. 14, § 15301.
7. On November 21, 2023, the California Natural Resources Agency responded to my request and, via email, provided me with a Box link containing documents related to CEQA rulemakings (hereinafter "CNRA CEQA Files").
8. Attached hereto as **Exhibit A** is a true and correct copy of excerpts of the Order Adopting Regulations of the

California Resources Agency promulgated on February 3, 1973, which my law firm obtained from the CNRA CEQA Files.

9. Attached hereto as **Exhibit B** is a true and correct copy of a letter from Imperial Irrigation District to the Secretary for Resources sent on January 23, 1973, which my law firm obtained from the CNRA CEQA Files.

10. Attached hereto as **Exhibit C** is a true and correct copy of excerpts of the Final Statement of Reasons for CEQA Guidelines Revisions dated September 1998, which my law firm obtained from the CNRA CEQA Files.

11. Attached hereto as **Exhibit D** is a true and correct copy of excerpts of the Final Text of CEQA Guidelines Revisions dated October 26, 1998, which my law firm obtained from the CNRA CEQA Files.

12. Attached hereto as **Exhibit E** is a true and correct copy of the Summary and Response to Comments to Section 15301 dated October – December 1997, which my law firm obtained from the CNRA CEQA Files.

13. Attached hereto as **Exhibit F** is a true and correct copy of excerpts of the Final Statement of Reasons for post-1994 CEQA Guidelines Update which my law firm obtained from the CNRA CEQA Files.

14. Attached hereto as **Exhibit G** is a true and correct copy of excerpts of the Final Statement of Reasons for Amendments to CEQA Guidelines dated November 2018, which my law firm downloaded from the publicly accessible website at [https://resources.ca.gov/CNRALegacyFiles/ceqa/docs/2018\\_CEQA](https://resources.ca.gov/CNRALegacyFiles/ceqa/docs/2018_CEQA)

[Final Statement of%20Reasons 111218.pdf](#) (last accessed March 20, 2025).

15. Attached hereto as **Exhibit H** is a true and correct copy of the CalGEM CEQA Rework Exemptions Process Guidance to Operators dated December 2023, which my law firm downloaded from the publicly accessible website at <https://www.conservation.ca.gov/calgem/CEQA/Documents/CalGEM%20CEQA%20Rework%20Exemptions%20Process%20Guidance%20to%20Operators.pdf> (last accessed March 20, 2025).

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed March 20, 2025, at Los Gatos, California.

Dated: March 20, 2025

Respectfully submitted,

*/s/ Theresa M. Trillo*

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THERESA M. TRILLO  
ATA LAW GROUP

**[PROPOSED] ORDER GRANTING  
REQUEST FOR JUDICIAL NOTICE**

Good cause appearing, the request for judicial notice filed by Plaintiff Sunflower Alliance in support of its Opening Brief on the Merits is hereby granted pursuant to California Rule of Court rules 8.520(g) and 8.252(a) and California Evidence Code Sections 452 and 459.

IT IS SO ORDERED.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Justice of the Supreme Court  
of California

**PROOF OF ELECTRONIC SERVICE**

I, Ana Villanueva, hereby certify that at the time of service, I was at least 18 years of age and not a party to this action. My business address is 559 Nathan Abbott Way, Stanford, California 94305.

I declare that on March 20, 2025, pursuant to California Rules of Court, rule 8.212(c)(1), I served the following document(s):

**PLAINTIFF’S REQUEST FOR JUDICIAL NOTICE  
IN SUPPORT OF OPENING BRIEF ON THE MERITS**

By U.S. Mail: By placing the document(s) listed above in a sealed envelope addressed to the Superior Court of California, as shown below, and depositing the sealed envelope with the United States Postal Service, with postage fully paid.

Clerk of the Court  
Attn: Hon. Edward G. Weil  
Dept. 39  
Superior Court of California  
County of Contra Costa  
725 Court Street  
Martinez, CA 94553

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 20, 2025, at Stanford, California.

*/s/ Ana Villanueva*

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Ana Villanueva

## ELECTRONIC SERVICE LIST

*Electronic Service via TrueFiling on the Following Parties*

<p>Navi Singh Dhillon Christopher J. Carr Dylan J. Crosby Paul Hastings LLP 101 California Street, 48th Floor San Francisco, CA 94111 navidhillon@paulhastings.com chriscarr@paulhastings.com dylancrosby@paulhastings.com</p> <p><i>Attorneys for Real Party in Interest and Appellant Reabold California, LLC</i></p>	<p>Leena Mary Sheet Dept. of Justice 300 S. Spring Street, Suite 1702 Los Angeles, CA 90013 Leena.sheet@doj.ca.gov</p> <p><i>Attorneys for Defendant California Department of Conservation, Geologic Energy Management Division</i></p>
<p>CALIFORNIA COURT OF APPEAL First Appellate District, Division Five 350 McAllister Street San Francisco, California 94102</p>	<p>SUPREME COURT OF CALIFORNIA 350 McAllister Street Room 1295 San Francisco, CA 94102</p>

**Exhibit A**

Excerpt from Order Adopting Regulations  
of the California Resources Agency  
(February 3, 1973)

FACE SHEET  
FOR FILING ADMINISTRATIVE REGULATIONS  
WITH THE SECRETARY OF STATE  
(Pursuant to Government Code Section 11320.1)

Copy below is hereby certified to be a true and correct copy of regulations adopted, or amended, or an order of repeal by:

California Resources Agency  
(Agency)

Date of adoption, amendment, or repeal:

February 3, 1973

By: *H. B. Livermore Jr.*

Secretary for Resources  
(Title)

DO NOT WRITE IN THIS SPACE

DO NOT WRITE IN THIS SPACE

ORDER ADOPTING REGULATIONS OF THE CALIFORNIA  
RESOURCES AGENCY

Pertaining to the Environmental Quality Act of 1970

After proceedings had in accordance with the provisions of the Administrative Procedure Act (Gov. Code, Title 2, Div. 3, Part 1, Chapter 4.5) and pursuant to the authority vested by Section 21083 of the Public Resources Code, and to implement, interpret, or make specific Sections 21000 through 21174 of the Public Resources Code, the California Resources Agency hereby adopts its regulations in Division 6, Title 14, California Administrative Code as follows:

CHAPTER 3. GUIDELINES FOR IMPLEMENTATION OF THE  
CALIFORNIA ENVIRONMENTAL QUALITY ACT OF 1970

ARTICLE 1. General

15000. Authority. The regulations contained herein are prescribed by the Secretary for Resources pursuant to authority granted in Public Resources Code Section 21083 to be followed by all state agencies, boards, and commissions, all counties, cities and counties, cities including charter cities, regional agencies, public districts, redevelopment agencies, and all other political subdivisions of the State in the implementation of the Environmental Quality Act of 1970 dealing with environmental quality, the evaluation of projects, and the preparation and evaluation of environmental impact reports. These Guidelines have been developed by the Office of Planning and Research for adoption by the Secretary for Resources in accordance with Section 21083. Additional information may be obtained by writing:

DO NOT WRITE IN THIS SPACE

CONTINUATION SHEET  
**FOR FILING ADMINISTRATIVE REGULATIONS  
 WITH THE SECRETARY OF STATE**

(Pursuant to Government Code Section 11380.1)

ARTICLE 8. Categorical Exemptions

15100. Categorical Exemptions. Section 21084 of the Public Resources Code requires these Guidelines to include a list of classes of projects which have been determined not to have a significant effect on the environment and which shall, therefore, be exempt from the provisions of the Environmental Quality Act of 1970.

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

15101. Class 1: Existing Facilities. Class 1 consists of the operation, repair, maintenance or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that previously existing, including but not limited to:

- (a) Interior or exterior alterations involving such things as interior partitions, plumbing, and electrical conveyances;
- (b) Existing facilities of both investor, and publicly owned utilities used to convey or distribute electric power, natural gas, sewage, etc.;
- (c) Existing highways and streets (within already established rights-of-way) sidewalks, gutters, bicycle and pedestrian trails, and similar facilities;
- (d) Restoration, or rehabilitation of deteriorated or damaged structures, facilities or mechanical equipment to meet current standards of public health and safety, unless it is determined that the damage was substantial and resulted from an environmental hazard such as earthquake, landslide or flood;
- (e) Additions to existing structures provided that the addition will not result in an increase of more than 50 percent of the floor area of the structure before the addition or alteration, or 2500 square feet, whichever is less;
- (f) Addition of safety or health protection devices for use during construction of or in conjunction

DO NOT WRITE IN THIS SPACE

CONTINUATION SHEET  
**FOR FILING ADMINISTRATIVE REGULATIONS  
 WITH THE SECRETARY OF STATE**

(Pursuant to Government Code Section 11380.1)

with existing structures, facilities or mechanical equipment, or topographical features (including navigational devices) where these devices do not have or result in an adverse environmental impact;

- (g) New copy on existing on and off-premise signs;
- (h) Maintenance of existing landscaping, native growth and water supply reservoirs (excluding the use of economic poisons, as defined in Division 7, Chapter 2, California Agricultural Code);
- (i) Maintenance of fish screens, fish ladders, wild-life habitat areas, artificial wildlife waterway devices, streamflows, springs and waterholes, and stream channels (clearing of debris) to protect fish and wildlife resources.
- (j) Fish stocking by the California Department of Fish and Game.
- (k) Division of existing multiple family rental units into condominiums.
- (l) Demolition and removal of buildings and related structures except where they are of historical, archaeological or architectural consequence as officially designated by Federal, State or local governmental action.

15102. Class 2: Replacement or Reconstruction. Class 2 consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced, including but not limited to:

- (a) Replacement or reconstruction of existing schools and hospitals to provide earthquake resistant structures which do not increase capacity more than 50%.
- (b) Replacement of a commercial structure with a new structure of substantially the same size and purpose.

15103. Class 3: New Construction of Small Structures. Class 3 consists of construction and location of single, new facilities or structures listed in this notice and installation of new equipment and facilities including but not limited to:

- (a) Single family residences not in conjunction with the building of two or more such units.
- (b) Motels, apartments, and duplexes designed for not more than four dwelling units if not in conjunction with the building of two or more such structures.

DO NOT WRITE IN THIS SPACE

CONTINUATION SHEET  
FOR FILING ADMINISTRATIVE REGULATIONS  
WITH THE SECRETARY OF STATE

(Pursuant to Government Code Section 11380.1)

This regulation shall become effective on the date  
of filing pursuant to Government Code Section 11422(a)  
as provided by Public Resources Code Section 21083.

DO NOT WRITE IN THIS SPACE

## **Exhibit B**

Letter from Imperial Irrigation District to the Secretary for  
Resources Re: Guidelines for Environmental Impact Reports  
(January 23, 1973)



# IMPERIAL IRRIGATION DISTRICT

EXECUTIVE OFFICE • 1284 MAIN STREET • P. O. BOX 1809 • EL CENTRO, CALIFORNIA 92243

January 23, 1973

Office of the Secretary for Resources  
 Room 1311  
 1416 Ninth Street  
 Sacramento, California 95814

Re: Guidelines for Environmental Impact Reports

Gentlemen:

The Imperial Irrigation District requests that consideration be given to amend the draft dated January 11, 1973, of the Categorical Exemptions, as follows:

**"Class 1: The operation, repair, maintenance, replacement, or minor alteration of existing public or private structures, facilities or mechanical equipment, involving no expansion of use or capacity beyond that previously existing, including but not limited to:"**

It is felt that with the addition of the word "existing" as indicated above, and striking out the words "involving no expansion of use or capacity beyond that previously existing" makes the Class 1 Categorical Exemptions more meaningful.

The limitations that are recommended to be stricken appear in the subparagraphs where needed, and therefore we respectfully request that your draft of Categorical Exemptions dated January 11, 1973, be amended accordingly.

Respectfully submitted

CARL BEVINS, President  
 Board of Directors

STATEMENT

Re: Guidelines for Environmental Impact Reports

My name is James H. Carter and I am Assistant Counsel for the Imperial Irrigation District.

I have been requested to appear and request consideration be given to amend the draft of your Categorical Exemptions dated January 24, 1973 as follows:

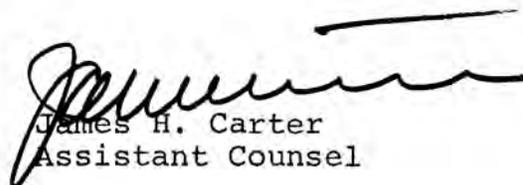
"Class 1: The operation, repair, maintenance, replacement or ~~minor~~ alteration <sup>of</sup> existing public or private structures, facilities, mechanical equipment, or topographical features, ~~involving-trivial-or-no expansion-of-use-or-capacity-beyond-that-previously existing,~~ including but not limited to:

The limitations that we suggest be stricken makes Class 1 Categorical Exemption more meaningful in that it allows our District to operate, repair and maintain, replace or alter our existing facilities. It is our understanding that the purpose of the underlying law is to review new distinguished from existing facilities.

In the operations of our District in concrete lining of canals, replacement of structures and the maintenance of our drains, that many times the size of the canal, the structure or drain is changed to provide a better service within the District's service areas.

If the suggested amendment to Class 1 as indicated above is not satisfactory, perhaps an additional class could be created which would accomplish the same result that is to allow public agencies such as ours to continue to operate, maintain and improve our existing facilities.

It is respectfully requested that your draft of Categorical Exemptions dated January 24, 1973 be amended accordingly.

  
James H. Carter  
Assistant Counsel

JHC:nc

## **Exhibit C**

Excerpt from Final Statement of Reasons for  
CEQA Guidelines Revisions  
(September 1998)

# FINAL STATEMENT OF REASONS

## September 1998

### INTRODUCTION

Since the last update to the California Environmental Quality Act (CEQA) Guidelines in 1997, and the last comprehensive update in 1994, new legislation and caselaw have altered CEQA's requirements for practitioners. The updated Guidelines, as revised during the public review process, will provide greater clarity to public agencies and project applicants in complying with CEQA's requirements.

No technical, theoretical and/or empirical studies, reports, or documents were relied on in the preparation of this proposal. The Resources Agency has determined that no alternatives considered would be more effective in carrying out the purpose of the proposed amendments to the Guidelines or would be as effective and less burdensome to affected private parties that the proposed changes and amendments to the Guidelines.

The following amendments are proposed:

### **SECTION 15003                      POLICIES**

#### **Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Amendment to the Regulation is Intended to Address**

Section 15003 is intended to give additional definition to the policies declared by the Legislature concerning environmental protection and the administration of CEQA by citing to key interpretive holdings by courts that have addressed this issue. The most recent holding/interpretation cited, however, is over 22 years old; more than 300 decisions regarding CEQA have been published since then. An updating of this section is necessary to reflect more recent court opinions in this area.

#### **Specific Purpose of the Regulation**

This proposed change is specifically intended to place key holdings of courts in recent CEQA decisions into the California Code of Regulations (CCR), thereby making them more accessible to those researching and applying CEQA law.

#### **Necessity and Explanation**

The courts of this state frequently interpret and clarify the application of CEQA statutory and regulatory provisions. As published, they establish binding authority on

less burdensome to affected private persons than the proposed regulations.

**Alternatives to the Proposed Regulatory Action that Would Lessen any Adverse Economic Impact on Business**

The proposed new text for this section provides clarification of existing law, as enacted by the Legislature. They will result in no adverse economic impact on businesses in the state.

**SECTION 15300.2 EXCEPTIONS**

**Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Amendment to the Regulation is Intended to Address**

Article 19 of the Guidelines provides reference to agencies and the public regarding categorical exemptions from CEQA, those projects which have been found by the Secretary for Resources not to have a significant effect on the environment. In some cases, however, statute or caselaw has modified these categorical exemptions and carved out areas of projects which are subject to CEQA, notwithstanding their inclusion in a larger class of projects that fall within the categorical exemption. Section 15300.2 contains a list of such exceptions, but recent statutory modifications and judicial interpretations have rendered the list incomplete.

**Specific Purpose of the Regulation**

The proposed amendments to section 15300.2 are intended to update this section and to provide more complete guidance to both agencies and the public regarding certain types of projects which must be reviewed under CEQA, notwithstanding their apparent coverage by a categorical exemption.

**Necessity and Explanation**

Amendments to Public Resources Code Sections 21084 and 21084.1 qualified the ability of the Secretary for Resources to identify classes of projects which have been determined to have no significant effect on the environment. Among these qualifications were the categories of projects which might damage an official state scenic highway, a project located on a hazardous waste site, and a project which may cause substantial adverse effect to a historical resource.

To ensure that section 15300.2 is clear and complete as to exceptions from the categorical exemptions contained in Article 19 of the Guidelines, the proposed amendments itemize the three additional classes of exceptions, as contained in PRC Sections 21084 and 21084.1. Proposed subdivision (f) is also consistent with recent

caselaw regarding CEQA and historical resources (see, e.g., League for the Protection of Oakland's Architectural and Historic Resources v. City of Oakland (1997) 52 Cal.App.4th 896).

### **Alternatives to the Proposed Regulatory Action that Would be as Effective and Less Burdensome to Private Persons**

The Agency finds that no alternatives it has considered would be more effective in carrying out the purpose of the proposed amendments or would be as effective and less burdensome to affected private persons than the proposed regulations.

### **Alternatives to the Proposed Regulatory Action that Would Lessen any Adverse Economic Impact on Business**

The proposed amendments to this section provide clarification of existing law, as enacted by the Legislature and as interpreted by the courts of California. They will result in no adverse economic impact on businesses in the state.

## **SECTION 15301 EXISTING FACILITIES**

### **Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Amendment to the Regulation is Intended to Address**

Under existing law, projects or existing facilities involving negligible or no expansion of use are exempt from CEQA because as a class they do not have a significant effect on the environment. **This section, however, is in need of updating.**

### **Specific Purpose of the Regulation**

**The proposed amendments to this section provide greater clarity as to the nature of projects that fall within this class of exempt projects and provide greater focus to lead agencies in determining whether a project fits the criteria of this class.**

### **Necessity and Explanation**

The proposed amendments clarify that "permitting, leasing, and licensing" of a project which will involve negligible or no expansion of use beyond that previously existing, are included in this exemption.

**The proposed amendments clarify that the focus on the applicability of this exemption shall be the measure of "negligible or no expansion of use" of an existing facility. This change is necessary to identify for lead agencies exactly when the application of the categorical exemption should occur.**

The proposed amendments add one additional example of a project that might fall within Class 1.

**Alternatives to the Proposed Regulatory Action that Would be as Effective and Less Burdensome to Private Persons**

The Agency finds that no alternatives it has considered would be more effective in carrying out the purpose of the proposed amendments or would be as effective and less burdensome to affected private persons than the proposed regulations.

**Alternatives to the Proposed Regulatory Action that Would Lessen any Adverse Economic Impact on Business**

The proposed amendments to this section provide clarification of existing law, as implemented through findings by the Secretary of the Resources Agency. They will result in no adverse economic impact on businesses in the state.

**SECTION 15303 NEW CONSTRUCTION OR CONVERSION OF SMALL STRUCTURES**

**Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Amendment to the Regulation is Intended to Address**

Under existing law, new construction or conversion of small structures are exempt from CEQA because as a class of projects, they do not have a significant effect on the environment. The provisions of this section are in need of minor modifications.

**Specific Purpose of the Regulation**

The amendments will provide greater clarity as to the nature of projects that fall within this class.

**Necessity and Explanation**

The proposed revisions are necessary to give better definition to the types of projects meeting the criteria of the Class 3 exemption.

The proposed amendments will update references to various types of multi-family residential structures and street improvements, where such activities meet certain overall criteria for Class 3. The proposed amendments will also make other minor, clarifying changes.

### **Necessity and Explanation**

As noted, the need for this Appendix is simple: once it is determined that an EIR is necessary for a particular project, the participants in the CEQA process need some type of a starting point for deciding which of the many types of EIRs will be the best to use in that situation. The proposed Appendix J provides an initial "at a glance" guide to the types of EIRs currently permitted by statute. Once a particular type is identified, further reference to the statute and Guidelines may proceed.

### **Alternatives to the Proposed Regulatory Action that Would be as Effective and Less Burdensome to Private Persons**

The Agency finds that no alternatives it has considered would be more effective in carrying out the purpose of the proposed amendments or would be as effective and less burdensome to affected private persons than the proposed regulations.

### **Alternatives to the Proposed Regulatory Action that Would Lessen any Adverse Economic Impact on Business**

The proposed new text for this Appendix provides clarification of existing law regarding the use tiering in preparation of EIRs. It will result in no adverse economic impact on businesses in the state.

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## **Exhibit D**

Excerpt from Final Text – CEQA Guidelines Revisions  
(October 26, 1998)

# FINAL TEXT - CEQA Guidelines Revisions

October 26, 1998

Revisions to existing Guidelines text are marked as follows: additions are underlined; deletions are indicated by ~~strikeout~~.

## SECTIONS AFFECTED

- 15003 - Policies
- 15004 - Time of Preparation
- 15041 - Authority to Mitigate
- 15045 - Fees
- 15060 - Preliminary Review
- 15061 - Review for Exemption
- 15062 - Notice of Exemption
- 15063 - Initial Study
- 15064 - Determining the Significance of the Environmental Effects Caused by a Project
- 15064.5 - Determining the Significance of Impacts on Historical and Unique Archeological Resources [new section]
- 15064.7 - Thresholds of Significance [new section]
- 15065 - Mandatory Findings of Significance
- 15073.5 - Recirculation of a Negative Declaration Prior to Adoption [new section]
- 15075 - Notice of Determination on a Project for which a Proposed Negative or Mitigated Negative Declaration has been Approved
- 15085 - Notice of Completion
- 15086 - Consultation Concerning Draft EIR
- 15088.5 - Recirculation of an EIR Prior to Certification
- 15091 - Findings
- 15093 - Statement of Overriding Considerations
- 15097 - Mitigation Monitoring or Reporting [new section]
- 15107 - Completion of Negative Declaration for Certain Private Projects
- 15111 - Projects with Short Time Periods for Approval
- 15120 - General
- 15124 - Project Description
- 15125 - Environmental Setting
- 15126 - Consideration and Discussion of Environmental Impacts
- 15126.2 - Consideration and Discussion of Significant Environmental Impacts [new section]
- 15126.4 - Consideration and Discussion of Mitigation Measures Proposed to Minimize Significant Effects [new section]
- 15126.6 - Consideration and Discussion of Alternatives to the Proposed Project

- [new section]
- 15130 - Discussion of Cumulative Impacts
- 15152 - Tiering
- 15162 - Subsequent EIRs and Negative Declarations
- 15164 - Addendum to an EIR or Negative Declaration
- 15183 - Projects Consistent with a Community Plan, General Plan or Zoning
- 15186 - School Facilities [new section]
- 15201 - Public Participation
- 15202 - Public Hearings
- 15204 - Focus of Review
- 15205 - Review by State Agencies
- 15206 - Projects of Statewide, Regional, or Areawide Significance
- 15231 - Adequacy of EIR or Negative Declaration for Use by Lead and Responsible Agencies *WITHDRAWN*
- 15269 - Emergency Projects
- 15276 - ~~State and Regional~~ Transportation Improvement and Congestion Management Programs
- 15283 - Housing Needs Allocation [new section]
- 15284 - Pipelines [new section]
- 15285 - Transit Agency Responses to Revenue Shortfalls [new section]
- 15300.2 - Exceptions
- 15301 - Existing facilities
- 15303 - New Construction or Conversion of Small Structures
- 15304 - Minor Alterations to Land
- 15307 - Actions by Regulatory Agencies for Protection of Natural Resources  
*WITHDRAWN*
- 15316 - Transfer of Ownership of Land in Order to Create Parks
- 15325 - Transfers of Ownership in Land to Preserve ~~Open Space~~ Existing Natural Conditions
- 153304 - Minor Actions to Prevent, Minimize, Stabilize, Mitigate or Eliminate the Release or Threat of Release of Hazardous Waste or Hazardous Substances. [new section]
- 153312 - Historical Resource Restoration/Rehabilitation [new section]
- 153323 - In-Fill Development Projects [reserved]
- 15378 - Project
  
- Appendix G ~~Significant Effect~~ Environmental Checklist
- Appendix I ~~Environmental Checklist~~ [delete entire appendix]
- Appendix J Notice of Preparation [no change to text]
- Appendix K ~~J~~ Archaeological Impacts Guide to Tiering

(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.

Authority: Sections 21083 and 21087, Public Resources Code.

References: Sections 21080 and 21080.32, Public Resources Code.

## 15300.2. Exceptions.

(a) Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located -- a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply in all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.

(b) Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant -- ~~for example, annual additions to an existing building under Class 1~~

(c) Significant Effect. A categorical exemption shall not be used for an activity

where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

(d) Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements which are required as mitigation by an adopted negative declaration or certified EIR.

(e) Hazardous Waste Sites. A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code.

(f) Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.

Authority: Sections 21083 and 21087, Public Resources Code.

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

#### 15301. Existing Facilities.

Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that previously existing at the time of the lead agency's determination. The types of "existing facilities" itemized below are not intended to be all-inclusive of the types of projects which might fall within Class 1. The key consideration is whether the project involves negligible or no expansion of an existing use.

Examples include including but are not limited to:

- (a) [no change]
- (b) [no change]

(c) Existing highways and streets, sidewalks, gutters, bicycle and pedestrian

trails, and similar facilities (this includes road grading for the purpose of public safety). ~~except where the activity will involve removal of a scenic resource including a stand of trees, a rock out cropping, or an historic building;~~

(d) - (k) [no change]

(l) Demolition and removal of individual small structures listed in this subsection ~~except where the structures are of historical, archaeological, or architectural significance;~~

(1) - (4) [no change]

(m) [no change]

(n) [no change]

(o) Installation, in an existing facility occupied by a medical waste generator, of a steam sterilization unit for the treatment of medical waste generated by that facility provided that the unit is installed and operated in accordance with the Medical Waste Management Act (Section ~~25015~~ 117600, et seq., of the Health and Safety Code) and accepts no offsite waste.

(p) Use of a single-family residence as a small family day care home, as defined in Section 1596.78 of the Health and Safety Code.

Authority: Sections 21083 and 21087, Public Resources Code.

References: Sections 21084 and 21084.2, Public Resources Code; *Bloom v. McGurk* (1994) 26 Cal.App.4th 1307.

#### 15303. New Construction or Conversion of Small Structures.

Class 3 consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. The numbers of structures described in this section are the maximum allowable on any legal parcel ~~or to be associated with a project within a two-year period~~. Examples of this exemption include, but are not limited to:

(a) ~~Single-family residences not in conjunction with the building of two or more such units~~ 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.

**15332. In-Fill Development Projects. [reserved]**

**Note:** Changes to Section 15332 severed, pending opportunity for public comment on modified text.

**15378. Project**

(a) [no change]

(b) Project does not include:

~~(1) Anything specifically exempted by state law;~~

~~(2) (1) Proposals for legislation to be enacted by the State Legislature;~~

~~(3) (2) Continuing administrative or maintenance activities, such as purchases for supplies, personnel-related actions, general policy and procedure making (except as they are applied to specific instances covered above);~~

~~(4) (3) The submittal of proposals to a vote of the people of the state or of a particular community. (*Stein v. City of Santa Monica* (1980) 110 Cal.App.3d 458);~~

~~(5) (4) The creation of government funding mechanisms or other government fiscal activities, which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment.~~

(5) Organizational or administrative activities of governments which are political or which are not physical changes in the environment (such as the reorganization of a school district or detachment of park land).

(c) [no change]

(d) [no change]

Authority: Sections 21083 and 21087, Public Resources Code.

Reference: Section 21065, Public Resources Code; *Kaufman and Broad-South Bay, Inc. v. Morgan Hill Unified School District* (1992) 9 Cal.App.4th 464; and *Fullerton Joint Union High School District v. State Board of Education* (1982) 32 Cal.3d 779; *Simi Valley Recreation and Park District v. Local Agency Formation Commission of Ventura County* (1975) 51 Cal.App.3d 648.

## **Exhibit E**

Summary and Response to Comments to Section 15301:  
Existing Facilities (October – December 1997)

## **SECTION 15301: Existing Facilities**

**Barbara Biles - Western States Petroleum Association**

Summary:

Commentor supports the proposed changes. The changes merely clarify that the exemption for existing facilities applies also to the issuance of a permit, lease, or license for an existing facility as long as there is no expansion in use, and it does not exempt new projects that previously were subject to CEQA.

Response:

Agency agrees.

**Debra Bowen - Assembly Natural Resources Committee**

Summary:

The extension of this category to permitting, leasing, and licensing is not consistent with the other activities described in this section and creates a loophole in CEQA. The other activities described in this section are meant to be minor in scale, whereas no such restriction appears to apply to permitting, leasing, or licensing, potentially permitting a repermitting of an existing facility where ongoing, unmitigated significant impacts were occurring. This expansion should be limited to situations where the facility is demonstrably operating under the same basic conditions it was when it received the initial approval.

Response:

Agency disagrees. Under existing law and are 'not consistent' with CEQA. First, one could make a compelling argument that under existing law, the term 'operation' includes permitting, leasing, and licensing provided there is negligible or no expansion of use. (Bloom v. McGurk (1994) 26 Cal.App.4th 1307) The proposed amendments merely make this clear, are declaratory of existing law and resolve current debate and uncertainty about the application of this exemption. It is neither an expansion of the guidelines nor inconsistent with the Statute for the Agency to do so. In fact, the Agency is required by Public Resources Code §21083 to state in the Guidelines, "objectives and criteria for the orderly evaluation of projects." The uncertainty in existing law regarding the term 'operation' precludes the orderly evaluation of projects necessitating this amendment to the guidelines.

Second, commentors incorrectly assert that there is no restriction on permitting, leasing, and licensing. This flatly ignores the second clause of the first sentence of

## SECTION 15301: Existing Facilities

the section, "... involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination." This clearly limits application of the section to just the circumstances desired by the Commentor, where the facility is operating under the same basic conditions it was when it received the initial approval. Any expansion of use beyond a negligible level would not allow application of this section to a permitting, licensing, or leasing of a project. To further reiterate this point, the last sentence of the opening paragraph was added in this rulemaking. It states: "[t]he key consideration [in determining whether or no the exemption applies] is whether the project involves negligible or no expansion of an existing use."

Finally, there is existing case law on point. The Bloom Court held that renewal of certain medical waste permits were exempt from CEQA under Section 15301 since there had been no change in the facility's operation incident to renewal of the permits. The court held that the term, "existing facility" in the exemption means a facility as it exists at the time of the agency's determination, rather than a facility existing at the time CEQA was enacted. "[T]he time at which the exemption logically operates is the time at which the responsible agency must determine whether or not to require the affected person to file an environmental impact report." (Bloom at 1315) Further, the Court held, pursuant to Supreme Court directive, that the 15300.2 exception for use of a categorical exemption (reasonable possibility that the activity will have a significant effect on the environment) only applies if there would be a change in the environment as a result of the Agency's determination, as opposed to a change after 1970, when CEQA was enacted and the changes are due to unusual circumstances. Since neither of the requisite findings could be made in that case, the Court upheld the use of the 15301 exemption to a repermitting activity.

### Ann Broadwell - CA Pipe Trades Council et al.

#### Summary:

Currently, a refinery may apply for an extension of its use permit or lease from the State Lands Commission. If the extension is not granted, the refinery will cease polluting the environment; if granted, the operation and pollution will continue. Under this proposal, the granting of the extension may have a significant effect, therefore this proposal violates CEQA and the Secretary is not permitted to list such types of projects under a categorical exemption.

#### Response:

Agency disagrees that CEQA is violated by this proposal.

First, an activity which involves no physical change in the environment does not meet the definition of "project" under CEQA. The definition of project includes permitting,

## **SECTION 15301: Existing Facilities**

leasing and licensing activities to the extent that they have the potential to result in a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. (PRC §21065; 14 CCR §15378). Public Resources Code §21068 defines "significant effect on the environment" as substantial adverse change. The emphasis in the statute is on change and the requirements for analysis are for physical change.

Secondly, assuming the re-permitting or re-leasing is a "project", this exemption with or without these revisions would not apply unless the permitting, leasing, or licensing activity involved "negligible or no expansion of use." Further, Section 15300.2 prohibits the application of a categorical exemption in any given case where there is a reasonable possibility that the activity will have a significant effect on the environment. However, 'effects' analyzed under CEQA must be related to a physical change. If the status quo is continued, there is no physical change, no "project", no "significant effect" under the defined terms of CEQA.

**Richard Charter**

**Hal Levin**

**Gary Patton - Planning & Conservation League (12/2 letter)**

**Ted Smith - Silicon Valley Toxics Coalition**

### **Summary:**

1. A decision whether or not to issue or renew a permit, license, or lease is often a major decision with potentially huge effects on the environment. Saying there is no effect doesn't make it so. There is no authority to add this exemption.
2. The language stricken from subdivision (c), added within the past year, provides guidance as to the "negligible" nature of this category of activities and should be retained. The same is true of the deleted provisions of subdivision (l), regarding historically significant structures.
3. The deletion of subdivision (o) would delete an exemption for the conversion of certain commercial properties to condominium ownership, and it is not clear why this elimination is proposed.

### **Response:**

1. The decision of whether or not to issue a permit would be unaffected by this section as it only applies to existing facilities and existing uses which meet the limitation of negligible or no expansion of use beyond that existing at the time of the lead agency's determination. Regarding renewal of permit, license, or

## **SECTION 15301: Existing Facilities**

lease, see generally the responses to Commentors Bowen and Broadwell, above.

2. The provisions deleted from this section are moved to Section 15300.2. Section 15300.2 alerts the reader to exceptions to all the categorical exemptions which is a better location for itemizing such exceptions. Keeping these provisions in 15301(c) and (l) creates the possibility of interpreting those exceptions as only applying to Class 1, when in fact they are applicable to any of the categorical exemptions. The new proposed location for these exceptions in 15300.2(d) and (f) will ensure that there is no confusion on this issue.
3. The change to (o) is merely to update the code reference. No other change is contemplated for this section.

As a note, perhaps commentors are unaware that (o) was revised in 1996 and the commercial buildings sentence moved to subsection (k).

### **Jack Coffey - Chevron**

#### Summary:

These revisions will help assure that CEQA is properly applied to the renewal of permits or leases on existing facilities where the renewal maintains the status quo. The proposal is consistent with the CEQA directive that an environmental analysis examine the potential for changes from the existing physical environment.

#### Response:

Agency concurs.

### **Bonnie Gendron - Back Country Coalition**

#### Summary:

The deletion of the language in subdivision (l) regarding historical resources invites reduction in integrity or outright destruction of these resources.

#### Response:

See response to Charter, et al., above.

## **SECTION 15301: Existing Facilities**

**Lori Hubbart - California Native Plant Society**

Summary:

This section should define "existing highways and streets" as meaning those present in substance, and not "paper streets" that exist only on old tract maps. The latter should not receive an exemption.

Response:

The meaning of "existing" in this regulation has the same meaning as generally understood in the American lexicon. Webster's Dictionary defines "existing" as "to have actual being ... to have being in a specified place." No further definition is necessary.

**Jim Moose - Remy, Thomas & Moose**  
**Peter Weiner - Paul, Hastings, Janofsky & Walker**

Summary:

Because the Commentor does not like *Bloom v. McGurk* (1994) 26 Cal.App.4th 1307, he would resist the proposed changes. Commentor notes that Agency will probably disagree on this issue.

Response:

Until the Legislature or another court finds differently, the *Bloom* case is current law and needs to be reflected in the Guidelines for lead agencies applying this exemption.

**Tara Mueller - Environmental Law Foundation**

Summary:

A categorical exemption is entirely inappropriate for projects which will remove scenic resources along highways. This section may be in conflict with Public Resources Code Section 21084(a) and is inconsistent with Section 15304, which precludes the removal of mature, scenic trees under a categorical exemption.

Response:

See response to Charter et al., above.

## **SECTION 15301: Existing Facilities**

**Gary Patton - Planning and Conservation League (12/1 letter)**

**Byron Sher - Senate Environmental Quality Committee**

Summary:

1. How will the Secretary for Resources find that this broad expansion of categorical exemptions do not have a significant effect on the environment?
2. Who requested this change?
3. Does the revision comply with the APA?
4. This section conflicts with Public Resources Code Section 21084(a) (categorical exemptions only for projects which do not have a significant effect) and Section 21065 (definition of "project" includes issuance of a "lease, permit, or license . . .").

Response:

1. Agency disagrees that this proposal represents a broad expansion of Class 1. This section currently permits its application to the operation, repair or maintenance of an existing facility, activities which already cover virtually the entire extent of a facility's operation. Since the added areas of permitting, leasing, and licensing are also subject to the restriction that they constitute a negligible or no expansion of existing use, this proposal represents no expansion. It merely clarifies that continuing "operation" of an existing facility includes "leasing, licensing and permitting".
2. In response to our October 1994 solicitation for comments on the CEQA Guidelines, the University of California suggested this revision.
3. The Agency has made every effort to ensure that the provisions of the APA have been complied with and is confident that such compliance has been achieved.
4. Agency disagrees that there is a conflict with Section 21084(a), since any leasing, permitting, or licensing that meets the limitations in this section (negligible or no expansion of existing use) will not, as a class of activity, have a significant effect. (See the responses to Commentors Bowen and Broadwell).

With regard to Section 21065, the determination of whether an activity is a "project" or not, and then whether a categorical exemption applies, are two distinct steps in the CEQA process. Most permits will be found to be projects

## **SECTION 15301: Existing Facilities**

but only when it is determined that a permit is a project will the agency go on to ascertain whether a categorical exemption applies. There is simply no inconsistency between the proposed text and the statute since the interrelationship of "project" determination and applicability of an exemption is not altered. See also, response to Broadwell, above.

### **Pete Price - California League of Conservation Voters**

#### Summary:

1. This proposal would exempt permitting, leasing, and licensing of facilities such as oil terminals from any environmental review, even though in some cases the facilities were sited and built before any such review was done. The limitation of "negligible or no expansion" ignores the fact that the project's continuance could have significant impacts. The fact that leases and permits are granted for only a limited period of time suggests that their impacts are to be periodically reviewed.
2. Subdivision (c) expands the exemption to include alterations to existing roads, etc., even if the alteration would remove a "scenic resource including a stand of trees, a rock outcropping, or an historic building." Such activities should not be exempted.

#### Response:

1. See the response to Commentor Broadwell, supra.
2. Commentor's concerns are entirely unfounded. The provisions to which he refers have not been proposed to be entirely deleted from the Guidelines but are moved to Section 15300.2. Section 15300.2 alerts the reader to exceptions to all the categorical exemptions and, in the opinion of the Agency, is a better location for itemizing such exceptions. Keeping these provisions in 15301(c) and (l) creates the possibility of interpreting those exceptions as only applying to Class 1, when in fact they are applicable to any of the categorical exemptions. The new proposed location for these exceptions in 15300.2(d) and (f) will ensure that there is no confusion on this issue.

Further, pursuant to section 15300.2, this section, like all categorical exemptions is inapplicable if there is a reasonable possibility that the activity will have a significant effect on the environment.

The Secretary is able to make the requisite finding of Public Resources Code

## **SECTION 15301: Existing Facilities**

§21084 (a) for proposed section 15301 given the restrictions of the existing guidelines language (e.g. that the project involves negligible or no expansion of an existing use) and the additional safeguard measures of section 15300.2

### **Sheila Hughes Rodriguez - Animal Protection Institute**

Summary:

In subdivision (c), why are the specific examples (stand of trees, rock outcropping, etc.) being deleted? They should remain.

Response:

See response to Charter, et al, above.

### **Andrew Schiffrin - County of Santa Cruz**

Summary:

1. The proposed revisions weaken environmental protection by removing the exception in subdivision (c) which protects scenic resources and historical buildings, and the exception in subdivision (l) for historical and archaeological structures.
2. Why has the provision in subdivision (o) regarding existing commercial units been deleted?

Response:

1. See response to Charter et al, above.
2. See response #3 to Charter et al., above.

### **Robert Smithfield**

Summary:

1. The changes in subdivision (c) should not be dropped since they would remove CEQA protections.
2. The proposed addition of permitting, leasing and licensing should be dropped since it violates the intent of CEQA and restricts the public's right to monitor and

## **SECTION 15301: Existing Facilities**

choose acceptable resource commitments.

Response:

1. See response to Charter et al, above.
2. See, generally, the responses to Commentors Bowen and Broadwell, above.

**Peter Weiner - Paul, Hastings, et al.**

Summary:

This proposal is inappropriate in that it is not credible to make a finding that, as a class, permitting, leasing, and licensing will not have a significant effect on the environment. Many decisions on permitting, leasing, or licensing of existing facilities have significant effects on the environment, when compared to the effects of failing to approve such permit, leases, or licenses.

Response:

Agency disagrees that there can be no such finding, since any leasing, permitting, or licensing that meets the limitations in this section (negligible or no expansion of existing use) will not, as a class of activity, have a significant effect. (See, generally, the responses to Commentors Bowen and Broadwell, above.)

**Ken Welch - Union Pacific Railroad Company**

Summary:

Commentor recommends that "railroads" be added to the list of facilities currently contained in subdivision (c).

"(c) Existing highways and streets, sidewalks, gutters, bicycle and pedestrian trails, railroads, and similar facilities ...."

Response:

The proposed change exceeds the scope of this rulemaking. The current subdivision (c) provides examples of publicly constructed, owned, and maintained facilities.

## **SECTION 15301: Existing Facilities**

### **J. William Yeates - Mountain Lion Foundation**

#### Summary:

The clarifying exception language, which is proposed to be deleted from subdivision (c), should be retained.

#### Response:

See response to Charter, et al., above.

### **Michael H. Zischke - Landels, Ripley & Diamond**

#### Summary:

The Commentor disagrees with the assertions of Commentors Patton and Sher.

1. With respect to Public Resources Code Section 21084, the Secretary can and should find that permitting or licensing an existing facility is properly included within this categorical exemption. In fact, a new permit or license for an existing facility is the same as the continuing operation of the facility.
2. With respect to Public Resources Code Section 21065, the definition of "project" and a categorical exemption are two different steps in the CEQA process. Most permits are projects but once it is determined that a permit is a project, the agency should go on to determine if it is exempt. There is no inconsistency between this proposal and the statute.

#### Response:

1. Agency concurs.
2. Agency concurs.

## **Exhibit F**

Excerpt from Final Statement of Reasons for  
post-1994 CEQA Guidelines Update

## FINAL STATEMENT OF REASONS

### INTRODUCTION

Since the last update to the California Environmental Quality Act (CEQA) Guidelines in 1994, and the last comprehensive update in 1983, new legislation and case law have altered CEQA's requirements for practitioners. The updated Guidelines, as revised during the public review process, will provide greater certainty to public agencies and project applicants in complying with CEQA's requirements.

No technical, theoretical and/or empirical studies, reports, or documents were relied on in the preparation of this proposal. The Resources Agency has determined that no alternatives considered would be more effective in carrying out the purpose of the proposed amendments to the Guidelines or would be as effective and less burdensome to affected private parties than the proposed changes and amendments to the Guidelines.

The following amendments are proposed:

### **SECTION 15060.5. PREAPPLICATION CONSULTATION [New Section]**

#### **Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Regulation is Intended to Address.**

Section 15060.5 adds to the Guidelines the Preapplication Consultation option for project applicants. This consultation provision was added to the Public Resources Code in 1993. In order for the Guidelines to be complete, it needs to reflect all procedural elements within CEQA. This new option for project applicants within the CEQA structure must be added to the Guidelines so that the Guidelines to accurately reflect the statutory structure.

#### **Specific Purpose of the Regulation**

The proposed addition is intended to update the procedural elements and options available to project applicants within the CEQA Guidelines.

#### **Necessity and Explanation**

Upon the request of a project applicant, lead agencies shall provide for a preapplication consultation to discuss the potential significant effects, potential alternatives and possible mitigation measures for the proposed project. This consultation shall include responsible agencies, trustee agencies and other public agencies that may have an interest in the project. Only public agencies are included

Proposed section 15281 is being added to bring the Guidelines into conformity with the statute.

**Necessity and Explanation.**

Section 21080.24 creates a new statutory exemption from CEQA's requirements for certain air quality permits where no physical or operational change to a source of facility is being authorized. Proposed section 15281 is being added in order to make the guideline congruent with the statute.

**Alternatives to the Proposed Regulatory Action that Would Lessen Any Adverse Economic Impact on Business.**

The proposed new section provides clarification of existing requirements of law and imposes no new burdens on business.

**SECTION 15282. Other Statutory Exemptions**

**Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Regulation Is Intended to Address.**

Over the years, various exemptions from CEQA have been passed by the Legislature for certain types of projects. The Guidelines have not been updated in many years to comprehensively include all of the available statutory exemptions.

**Specific Purpose of the Regulation.**

The proposed regulation is designed to provide a quick list of statutory exemptions that are not currently included in the Guidelines. The quick list references the applicable statutory section which creates the exemptions. It is intended as a reference and is not to be used by Lead Agencies in place of the actual statutory language that creates the exemption.

**Necessity and Explanation.**

In order for the Guidelines to be comprehensive, there needs to be at least a short reference to the statutory exemptions that have been created by the Legislature. However, it is unnecessary to fully recite the statutory language if the Lead Agency is given the appropriate statutory cite so they can further review the applicable statutory exemption. An appropriate disclaimer has been added to direct land agencies to use this list as a tool for finding the statutory provisions.

**Overview of Subsection (m)**

Subsection (m) gives better clarification to what is contained in Public Resources

Code section 29763.

**Alternatives to the Proposed Regulatory Action that Would Lessen any Adverse Economic Impact on Business.**

The proposed new section reflects existing requirements of law and imposes no new burdens on business.

**SECTION 15301. EXISTING FACILITIES**

**Public Problem, Administrative Requirement or Other Condition or Circumstances that the Regulation is Intended to Address.**

Chapter 736 of the Statutes of 1994 requested that the Guidelines be amended to exempt grading along existing road shoulders undertaken for safety purposes. Public Resources Code section 21084.2, added in 1995, directs the Office of Planning and Research to examine whether facilities for the treatment of medical waste by steam sterilization should be exempt from CEQA and, if so, to recommend the necessary amendments to the Guidelines. Adoption of the Davis-Stirling Common Interest Development Act (Civil Code section 1350 et seq.) has amended the application of the term "condominium" as used in this section of the Guidelines. Guidelines section 15301 currently exempts certain types of residential and commercial development projects from CEQA, however, the language of this section is confusing.

**Specific Purpose of the Regulation.**

The proposed amendments to section 15301 are intended to comply with the legislative directives embodied in Chapter 736, Stats. 1994 and Public Resources Code section 21084.2. Other amendments are undertaken to clarify the intent of this exemption and to utilize nomenclature consistent with the Common Interest Development Act.

**Necessity and Explanation.**

**Overview of Subsection (c)**

Subsection (c) of section 15301 exempts projects involving the operation, repair, maintenance, and minor alteration of existing highways, streets, sidewalks, gutters, bicycle, and pedestrian trails and similar facilities. The proposed amendment would, consistent with the direction of Chapter 736, Stats. 1994, include road grading for the purpose of public safety in this exemption. This clarifies that road grading is one aspect of operation, repair, maintenance or minor alteration of existing roads. Subsection (c) gives better clarification to what exemption is contained in Public Resources Code section 21080.17.

### **Overview of Subsection (k)**

Subsection (k) exempts the subsection of multifamily rental units into condominiums. The proposed amendment would clarify that the accepted technical term for condominiums is now "common interest subsections." The amendment would also combine this subsection with the contents of subsection (o), placing the exemptions for both residential and commercial common-interest subsections in a single subsection. Subsection (k) is currently limited to multifamily rental units. The phrase "rental units" is being deleted as unnecessary in that whether the units are rentals or not has no bearing on the potential environmental effects of the activity. The amendment would recognize that the conversion of existing single-family residences to common interest ownership is no more environmentally significant than the already exempt conversion of existing multiple units.

The phrase "where no physical changes occur" is added to subsection (k) to clarify that the exemption is limited to the subsection of existing residential, commercial, or industrial facilities for the purposes of, but not limited to, zoning, planning or the Subdivision Map Act, and does not include activities which would lead to physical changes in the facility. Pursuant to Public Resources Code section 21065, as amended in 1994, "project" under CEQA is limited to activities which result in a physical change to the environment. Therefore, the amendments to subsection (k) would not result in activities which may have a significant effect. The phrase "which are not otherwise exempt" is added to indicate that nothing in this section prevents physical changes from being exempt from CEQA by statute or another section of the Guidelines.

### **Overview of Subsection (l)**

Subsection (l) exempts the demolition and removal of individual small structures. As written, it is confusing. For example, the phrase "single-family *residences* not in conjunction with the building demolition of two or more such units" (emphasis added) may be interpreted to mean that more than one residence may be demolished under the exemption (e.g., "residences"). The proposed amendments clarify that the exemption applies to one single-family residence (three residences in urbanized areas), a duplex or similar multifamily residence (up to six dwelling units in urbanized areas), or a commercial structure (up to three structures in an urbanized area). This will assist lead agencies in applying the exemption consistently.

### **Overview of Subsection (o)**

Subsection (o) provides for the conversion of existing commercial structures to condominium ownership. As noted above, its provisions are proposed for combination with subsection (k). The proposed amendment would delete the current language of this subsection and substitute an exemption for medical waste steam sterilization units, pursuant to the direction of Public Resources Code section 21084.2. To qualify for this exemption, the sterilization unit would have to be installed at an existing facility which generates medical waste, would be limited in use to the

waste generated by that facility, and would be required to be installed and operated in accordance with the Medical Waste Management Act (Health and Safety Code section 25015, et seq.). Under these conditions, a steam sterilization unit would not have a significant effect on the environment.

**Alternatives to the Proposed Regulatory Action that Would Lessen Any Adverse Economic Impact on Business.**

CEQA exemptions are enacted pursuant to Public Resources Code section 21084 for the purpose of exempting from review certain classes of projects which the Resources Secretary has found do not have a significant effect on the environment. Exemptions have a positive economic impact on business by excepting classes of projects from the environmental process, thereby saving time and money for the project proponent. The proposed amendments to section 15301 provide clarification of existing requirements of law, as well as existing exemptions, and impose no new burdens on business.

**SECTION 15303. NEW CONSTRUCTION OR CONVERSION OF SMALL STRUCTURES**

**Public Problem, Administrative Requirement or Other Condition or Circumstances that the Regulation is Intended to Address.**

Public Resources Code section 21084.2, added in 1995, directs the Office of Planning and Research to examine whether facilities for the treatment of medical waste by steam sterilization should be exempt from CEQA and, if so, to recommend the necessary amendments to the Guidelines.

**Specific Purpose of the Regulation.**

The proposed amendment to section 15303 is intended to comply with the legislative directive embodied in Public Resources Code section 21084.2.

**Necessity and Explanation.**

Guidelines section 15303 addresses the construction and location of new, small facilities or structures, the installation of small, new equipment and facilities in small structures, and the conversion of existing small structures from one use to another where only small exterior modifications are made. Proposed subsection (f) would allow medical waste steam sterilization units, pursuant to the direction of Public Resources Code section 21084.2, as an accessory to an existing medical waste generating facility. To qualify for this exemption, the sterilization unit would be limited in use to the waste generated by that facility, and would be required to be installed and operated in accordance with the Medical Waste Management Act (Health and Safety Code section 25015, et seq.). This differs from the exemption proposed under

subsection (o) of section 15301 by applying to new small accessory facilities, rather than changes to an existing facility. Under the specified conditions, a steam sterilization unit would not have a significant effect on the environment.

**Alternatives to the Proposed Regulatory Action that Would Lessen Any Adverse Economic Impact on Business.**

CEQA exemptions are enacted pursuant to Public Resources Code section 21084 for the purpose of exempting from review certain classes of projects which the Resources Secretary has found do not have a significant effect on the environment. Exemptions have a positive economic impact on business by excepting classes of projects from the environmental process, thereby saving time and money for the project proponent. The proposed amendments to section 15303 provide clarification of existing requirements of law, as well as existing exemptions, and impose no new burdens on business.

**SECTION 15328. SMALL HYDROELECTRIC PROJECTS AT EXISTING FACILITIES**

**Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Regulation Is Intended to Address.**

The California Endangered Species Act, as well as the Federal Endangered Species Act, uses the terms "threatened" and "endangered" species. Guidelines section 15380, the definition of rare and endangered species within the Guidelines, is proposed for revision to incorporate the use of these terms. As a result, all references to these terms within the Guidelines must be amended to recognize the proposed addition of "threatened" species to the Guidelines.

**Specific Purpose of the Regulation.**

The proposed revision is to provide consistency between the terms used in the Guidelines definition of rare and endangered species and throughout the Guidelines.

**Necessity and Explanation.**

Since the definition section for the applicable terms is proposed for revision, other references to the same terms throughout the Guidelines must be revised to reflect the proposed change. Subsection (i) of Guidelines section 15328 refers to rare or endangered species. The term threatened needs to be added to properly reflect the addition of threatened species to Guidelines section 15380.

**Alternatives to the Proposed Regulatory Action that Would Lessen any Adverse Economic Impact on Business.**

C of CEQA review. This engages agencies in a multi-disciplinary approach to assessing and minimizing environmental impacts. It also lays the groundwork for later permitting of the project by those agencies. To ensure that this consultation is not compromised, the proposal would require the applicant to have already consulted with the applicable State agencies prior to applying for shortened review. It also would prohibit OPR's granting of shortened review without the lead agency showing that it has contacted and obtained the approval for a shortened review from the applicable State responsible and trustee agencies.

**Significant Projects**

In conformance with Public Resources Code Section 21091(e), Appendix L would prohibit the grant of a shortened review to any project of statewide, regional, or areawide significance, as defined in guidelines section 15206.

**Alternatives to the Proposed Regulatory Action that Would Lessen Any Adverse Economic Impact on Business.**

The proposed new Appendix L provides clarification of existing requirements of law, assures consistency in State Clearinghouse determinations, and provides an opportunity for reducing the processing time for some projects. It imposes no new burdens on business.

## **Exhibit G**

Excerpt from Final Statement of Reasons for Regulatory Action,  
Amendments to the State CEQA Guidelines (November 2018)

CALIFORNIA NATURAL RESOURCES AGENCY



FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

AMENDMENTS TO THE STATE CEQA GUIDELINES

OAL NOTICE FILE No. Z-2018-0116-12

NOVEMBER 2018

# Final Statement of Reasons

## Update to the Initial Statement of Reasons

The California Natural Resources Agency (the “Natural Resources Agency” or “Agency”) proposes to amend the Guidelines Implementing the California Environmental Quality Act (Pub. Resources Code section 21000, et seq.) (“CEQA Guidelines”). The proposed amendments address legislative changes to the California Environmental Quality Act (CEQA), clarify certain portions of the existing CEQA Guidelines, and update the CEQA Guidelines to be consistent with recent court decisions.

CEQA generally requires public agencies to review the environmental impacts of proposed projects, and, if those impacts may be significant, to consider feasible alternatives and mitigation measures that would substantially reduce significant adverse environmental effects. Section 21083 of the Public Resources Code requires the adoption of guidelines to provide public agencies and members of the public with guidance about the procedures and criteria for implementing CEQA. The guidelines required by section 21083 of the Public Resources Code are promulgated in the California Code of Regulations, title 14, sections 15000-15387, plus appendices. Public agencies, project proponents, and third parties, who wish to enforce the requirements of CEQA, rely on the CEQA Guidelines to provide a comprehensive guide on compliance with CEQA. Subdivision (f) of section 21083 requires the Agency, in consultation with the Office of Planning and Research (“OPR”), to certify, adopt, and amend the CEQA Guidelines at least once every two years.

The Natural Resources Agency has made the following changes to the CEQA Guidelines:

Add sections: 15064.3 and 15234.

Amend sections: 15004, 15051, 15061, 15062, 15063, 15064, 15064.4, 15064.7, 15072, 15075, 15082, 15086, 15087, 15088, 15094, 15107, 15124, 15125, 15126.2, 15126.4, 15152, 15155, 15168, 15182, 15222, 15269, 15301, 15357, 15370, and Appendix G, Appendix M and Appendix N.

The CEQA Guidelines are unique among administrative regulations. They provide a carefully organized, step-by-step guide to the environmental review process. As a result, rather than turning to the statute and case law, many agency staff and planners look to the CEQA Guidelines as a comprehensive source of information regarding CEQA’s requirements.

## Background

The last comprehensive update to the CEQA Guidelines occurred in the late 1990s. Since 2011, the Governor’s Office of Planning and Research (“OPR”) and the Natural Resources Agency have informally collected ideas on possible improvements to the CEQA Guidelines. In 2013, OPR and the Agency distributed a formal [Solicitation for Input](#) on possible improvements. Specifically, the solicitation asked for suggestions on efficiency improvements, substantive improvements, and technical improvements. Stakeholders offered many ideas. After considering this input, OPR developed a [possible list of topics](#) to

## 15269. EMERGENCY PROJECTS.

### **Specific Purposes of the Amendment**

This section identifies the emergency exemptions from CEQA. The Natural Resources Agency amended subdivisions (b) and (c) of Section 15269. Currently, subdivisions (b) and (c) state that emergency repairs may be exempt under CEQA and that this exemption does not apply to long-term projects undertaken for the purpose of preventing or mitigating an emergency. The Agency added a sentence to subdivision (b) clarifying that emergency repairs may require planning and qualify under this exemption. Further, the Agency added two subsections under subdivision (c) clarifying how imminent an emergency must be to fall within the statutory exemption. (See *CalBeach Advocates v. City of Solana Beach* (2002) 103 Cal.App.4th 529, 537 (emergency repairs need not be “unexpected” and “in order to design a project to prevent an emergency, the designer must anticipate the emergency”).

### **Necessity**

These additions are necessary to clarify the application of this emergency exemption and to maintain consistency with a Court of Appeal decision stating that an emergency repair may be anticipated and to ensure that the CEQA Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

### **Reasonable Alternatives to the Regulations, Including Alternatives that Would Lessen Any Adverse Impact on Small Business, and the Resources Agency’s Reasons for Rejecting Those Alternatives**

The Natural Resources Agency considered reasonable alternatives to the proposed action and determined that no reasonable alternative would be more effective in carrying out the purpose for which the action is proposed or would be as effective as, and less burdensome to affected private persons than, the proposed action. This conclusion is based on the Agency’s determination that the proposed action is necessary to update the CEQA Guidelines to clarify current case law. The proposed action adds no new substantive requirements. The Agency rejected the no action alternative because it would not achieve the objectives of the proposed revisions. There are no alternatives available that would lessen any adverse impacts on small businesses as the change is a clarifying change only.

### **Evidence Supporting an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business**

The proposed action implements and clarifies existing law. Because the proposed action does not add any substantive requirements, it will not result in an adverse impact on businesses in California.

## 15301. EXISTING FACILITIES

### Specific Purposes of the Amendment

Section 15301 of the CEQA Guidelines exempts ongoing operations and minor alterations of existing facilities from CEQA. The key in determining whether the exemption applies is whether the project involves an expansion to an existing use. Projects that involve no or only a negligible expansion may be exempt. This exemption plays an important role in implementing the state's goal of prioritizing infill development.

The Natural Resources Agency made two changes to Section 15301.

The first change appears in the first sentence of the exemption. It deletes the phrase "beyond that existing at the time of the lead agency's determination." Stakeholders noted that this phrase could be interpreted to preclude use of the exemption if a facility were vacant "at the time of the lead agency's determination," even if it had a history of productive use, because compared to an empty building, any use would be an expansion of use. (See, Comments of the Building Industry Association, August 30, 2013.) Such an interpretation is inconsistent with California's policy goals of promoting infill development.

It would also not reflect recent case law regarding "baseline." Those cases have found that a lead agency may look back to historic conditions to establish a baseline where existing conditions fluctuate, again provided that it can document such historic conditions with substantial evidence. (See *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 327-328 ("Environmental conditions may vary from year to year and in some cases it is necessary to consider conditions over a range of time periods") (quoting *Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 125); see also *Cherry Valley Pass Acres & Neighbors v. City of Beaumont* (2010) 190 Cal.App.4th 316.)

The phrase at issue was apparently added in response to *Bloom v. McGurk* (1994) 26 Cal.App.4th 1307. The court in that case was asked to decide whether the fact that the facility in question had never undergone CEQA review triggered an exception to the exemption. In analyzing that question, the court in *Bloom* relied on the analysis of a prior Supreme Court decision. It explained:

Under *Wine Train's* analysis, the term "existing facility" in the class 1 exemption would mean a facility as it exists at the time of the agency's determination, *rather than a facility existing at the time CEQA was enacted.* For purposes of the exception to the categorical exemptions, "significant effect on the environment" would mean a change in the environment existing at the time of the agency's determination, rather than a change in the environment that existed when CEQA was enacted.

(*Id.* at p. 1315 (citing *Napa Valley Wine Train, Inc. v. Public Utilities Com.* (1990) 50 Cal.3d 370, 378, fn. 12) (emphasis added).) Nothing in that decision indicates, however, that a lead agency could not consider actual historic use in deciding whether the project would expand beyond that use.

The second change appears in subdivision (c). The purpose of this change is to clarify that improvements within a public right of way that enable use by multiple modes (i.e., bicycles, pedestrians, transit, etc.) would normally not cause significant environmental impacts. This change is consistent with the Complete Streets Act of 2008, which requires cities and counties to plan for the needs of all users of their streets. In this regard, because such improvements involve operation of public rights of way, they may be similar to the imposition of water conservation requirements for existing water facilities (see, *Turlock Irrigation Dist. v. Zanker* (2006) 140 Cal. App. 4th 1047,1065), or the regulation of the right of way for parking (see, *Santa Monica Chamber of Commerce v. City of Santa Monica* (2002) 101 Cal.App.4th 786, 793 (“it is clear that the Class 1 exemption applies to the legislation/project here[; it] involves adjusting the particular group of persons permitted to use ‘existing facilities,’ in other words, the existing, unmetered, curbside parking on residential streets”)). **Improvements to the existing right of way have long been understood to fall within the category of activities in subdivision (c), provided that the activity does not involve roadway widening. (See, *Erven v. Board of Supervisors* (1975) 53 Cal. App. 3d 1004.)**

### **Necessity**

These additions are necessary to maintain consistency between this CEQA Guideline section and current case law. These additions are also necessary to ensure that the CEQA Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

### **Reasonable Alternatives to the Regulations, Including Alternatives that Would Lessen Any Adverse Impact on Small Business, and the Resources Agency’s Reasons for Rejecting Those Alternatives**

The Natural Resources Agency considered reasonable alternatives to the proposed action and determined that no reasonable alternative would be more effective in carrying out the purpose for which the action is proposed or would be as effective as, and less burdensome to affected private persons than, the proposed action. This conclusion is based on the Agency’s determination that the proposed action is necessary to update the CEQA Guidelines to clarify current case law. The proposed action adds no new substantive requirements. The Agency rejected the no action alternative because it would not achieve the objectives of the proposed revisions. There are no alternatives available that would lessen any adverse impacts on small businesses as the change is a clarifying change only.

### **Evidence Supporting an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business**

The proposed action implements and clarifies existing law. Because the proposed action does not add any substantive requirements, it will not result in an adverse impact on businesses in California.

## 15357. DISCRETIONARY PROJECT

### **Specific Purposes of the Amendment**

The Natural Resources Agency has amended Section 15357 to clarify that a discretionary project is one in which a public agency can shape the project in any way to respond to concerns raised in an environmental impact report. This addition reflects various cases distinguishing the term “discretionary” from the term “ministerial.” (See, e.g., *Friends of Westwood, Inc. v. City of Los Angeles* (1987) 191 Cal.App.3d 259, 267 (“[T]he touchstone is whether the approval process involved allows the government to shape the project in any way that could respond to any of the concerns ... in an environmental impact report”).) The California Supreme Court and Fourth District Court of Appeal have consistently followed this interpretation. (See, e.g., *Mountain Lion Foundation v. Fish & Game Comm.* (1997) 16 Cal.4th 105, 177; *San Diego Navy Broadway Complex Coalition v. City of San Diego* (2010) 185 Cal.App.4th 924, 933; *Friends of Juana Briones House v. City of Palo Alto* (2010) 190 Cal.App.4th 286, 299.) This clarification is necessary to maintain consistency in determining “discretionary” projects and to improve practitioners’ ability identify when a project is required to complete environmental review under CEQA.

The Natural Resources Agency also added the words “fixed standards” to the end of the first sentence in the definition to be consistent with the holding in *Health First v. March Joint Powers Authority* (2009) 174 Cal. App. 4th 1135. Notably, the definition of “discretionary” in these Guidelines should be read in context with other statutes. For example, Government Code sections 65583(a)(4) and 65583.2(h) require that local governments zone specified areas for specified uses for “use by right.” In those circumstances, local government review cannot be considered discretionary pursuant to CEQA.

### **Necessity**

This clarification is necessary to maintain consistency in determining “discretionary” projects and to improve practitioners’ ability identify when a project is required to complete environmental review under CEQA. This change is necessary to ensure that the CEQA Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

### **Reasonable Alternatives to the Regulations, Including Alternatives that Would lessen Any Adverse Impact on Small Business, and the Resources Agency’s Reasons for Rejecting Those Alternatives**

The Natural Resources Agency considered reasonable alternatives to the proposed action and determined that no reasonable alternative would be more effective in carrying out the purpose for which the action is proposed or would be as effective as, and less burdensome to affected private persons than, the proposed action. This conclusion is based on the Agency’s determination that the proposed action is necessary to update the CEQA Guidelines to clarify current case law as well as other statutory law. The proposed action adds no new substantive requirements. The Agency rejected the no action alternative because it would not achieve the

alternative. (See also Standardized Regulatory Impact Analysis, at pp. 24-27.) No other amendments or additions created any impacts to small business.

## H. ALTERNATIVES DETERMINATION

The Agency has determined that no alternative it considered or that was otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The amendments adopted by the Agency, by and through the Secretary are the only regulatory provisions identified by the Agency that accomplish the goal of providing accurate and efficient environmental metrics for public agencies legally tasked with applying CEQA.

Except as set forth and discussed in the summary and responses to comments, no other alternatives have been proposed or otherwise brought to the Agency's attention.

## **Exhibit H**

CalGEM CEQA Rework Exemptions Process Guidance to Operators  
(December 2023)

# CalGEM CEQA Rework Exemptions Process Guidance to Operators

December 2023

## Purpose

This document provides guidance regarding review of Notices of Intent (NOIs) for the reworking of wells (Reworks) by the California Geologic Energy Management Division (CalGEM) CEQA Program. Its purpose is to provide general information about the process when CalGEM is conducting an initial review of a Notice of Intention or preparing a Preliminary Review (PR)<sup>1</sup> of a proposed project that includes the rework of an existing oil and gas well(s). This document provides general guidance that applies to the review of all proposed reworks and more details on certain groups of reworks, including sample outcomes that tend to apply in typical situations. The guidance concludes with a summary of information operators may include in NOI submissions to facilitate efficient environmental review. Scenarios described in this document are for illustrative purposes only, and are not determinative of any expected outcome, and should not be relied on by rework permit applicants as a guarantee of the sufficiency of an application prior to the issuance of a permit. CalGEM disclaims any responsibility for any such reliance. The guidance herein is not exhaustive and subject to revision and modification. Review of projects will proceed on a project-by-project basis.

## General Guidance

The reworking of a well can generally be described as any operation subsequent to drilling that involves deepening, re-drilling, plugging, or permanently altering in any manner the casing of a well or its function.<sup>2</sup> This may include many different operations. Reworks, including those that are not listed in groups below or those that require the use of a drilling rig, may require additional analysis by CalGEM and/or additional documentation by the operator before a categorical exemption may be considered. Proposed reworks that are not recommended as exempt upon initial review undergo additional preliminary review. All preliminary reviews consider the specifics of a proposed project. Statements should be supported by quantifiable data, as well as references and citations.

Considerations for all rework projects:

1. The presence or absence of existing roads and well pads. A proposed project that involves the disturbance or clearing of habitat for road(s) or well pad expansion may be less likely to fit a categorical exemption. Operators can best facilitate this review by providing aerial maps of the proposed work location that clearly delineate the project area, including existing roads, well pads, and staging areas.
2. The quantity and type of equipment that will be used in the rework project. Operations that require larger equipment, more equipment, or staging multiple types of equipment may be less likely to fit operations with the existing footprint of the project. Operators can best facilitate review by clearly listing equipment

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<sup>1</sup> Cal. Code of Regs., tit. 14., (14 CCR) §§ 15060-15062

<sup>2</sup> 14 CCR § 1720(b)

that will be used and providing aerial maps of the work and equipment staging areas for the proposed work in their submission.

3. A rework of a deep well, a well that branches, or a dog-legged well generally requires more time and more extensive operations to complete than a rework of a shallow or vertical well. Rework activities of longer duration may have increased impacts, for example noise, vibration, or air pollution and increase the potential that a well may not meet the criteria for a categorical exemption.
4. A single rework project proposal may combine multiple types of rework, such as setting a bridge plug in addition to adding perforations or addition of well head repairs to a rework that modifies the well casing; this may increase the duration of the work and therefore sound, vibration, and disturbance inherent to the operation. CalGEM will consider the proposed duration and timing of all proposed work during review.

Key questions to apply to all reworks:

CalGEM may consider the following key questions during review of reworks. Operators can facilitate review by ensuring information to address these questions are clearly included in their submissions:

1. Does the proposed project include increasing the depth of an existing well?
  - a. A project that increases the depth of a well is less likely to fit within a categorical exemption than one where the depth is not changed. In many situations, increasing the depth of a well may result in an increase in production capacity. This may represent a non-negligible expansion of use, and therefore be less likely to be categorically exempt.
2. What are the types of equipment and the number of each that will be used to complete the project?
  - a. The number and types of equipment is considered prior to application of certain exemptions (i.e. Class 1 Existing Facilities or Class 4 Minor Alteration to Land exemptions)<sup>3</sup>. Operators can best facilitate review by clearly listing equipment required for the proposed work in their submission.
  - b. The grouping of typical reworks in this guidance includes samples based on purpose and equipment used. Reworks that are not specifically named in this guidance, but have substantially the same purpose and equipment, may have similar outcomes. Operators can best facilitate review by clearly describing proposed work in their project descriptions and avoiding or clearly defining abbreviations when listing rework operations.
3. How many days will the rework take to complete and what time of year will the work be conducted?
  - a. CalGEM considers the length of time the proposed work will take to complete, including both the type of operation and number of such operations, if grouped. The potential impacts to biological resources, sensitive receptors<sup>4</sup>, and cumulative impacts will be considered. Prolonged

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<sup>3</sup> 14 CCR § 153304, 14 CCR § 1684.2

<sup>4</sup> 14 CCR § 1765.1

operations in a localized area may result in a significant cumulative impact and may weigh against reliance upon a categorical exemption. Categorical exemptions are generally not appropriate for projects with significant impacts. Operators can facilitate review by including the duration of the proposed work and indicating if work will avoid seasonal concerns, for example migratory bird nesting season, when applicable.

4. Will the rework result in a change in purpose or capacity of the well?
  - a. A rework that isolates formations, modifies an existing well bore, or otherwise maintains the safety or effectiveness of previously approved operations, or is a removal of an existing permitted use, is more likely to be exempt than one that changes operations.
  - b. A rework that changes the purpose or capacity of a well is less likely to be categorically exempt than one that does not as some exemptions may not apply when the proposed work expands the capacities of the well or field beyond those previously approved or constitutes a change in existing facilities.
  - c. In many situations, increasing the depth of a well may result in an increase in production capacity. This may represent a non-negligible expansion of use, and is therefore less likely to be categorically exempt
  - d. CalGEM will verify the proposed project's purpose, intent, and clarify potential impacts prior to completing preliminary review.

#### **Samples of Typical Reworks Grouped by Exemptions that may Apply.**

The samples that follow are typical reworks that do not require the use of a drilling rig to complete the work. Other types of reworks, including those that are not listed below or those that require the use of a drilling rig, may require additional analysis and or documentation before a categorical exemption is considered.

- A. Group A. Reworks where a Class 1 exemption may apply based on CEQA Guidelines<sup>5</sup> and CalGEM regulations.<sup>6</sup> Unless the general considerations or key questions above cause concern, CalGEM may find it appropriate for a Class 1 exemption to apply to a proposed rework. If a Class 1 exemption may apply to the proposed project, a Class 2 or 4 exemption may also apply.

Reworks within this category utilize a workover rig or smaller equipment which is expected to fit within an existing facility's footprint with active work contained on the well pad that was created for larger equipment used to drill the original well. Expansion of the well pad or facility is unlikely. Use of equipment which is contained within existing facilities *involving negligible or no expansion of existing or former use* is a requirement for application of the Class 1 exemption.

Reworks with Group A are not expected to change or expand the existing use of a well. This includes reworks that are modifications of an existing liner or bridge plug intended to optimize, maintain, or restore the prior production capacity of a well.

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<sup>5</sup> 14 CCR § 15301

<sup>6</sup> 14 CCR § 1684.1

Reworks within this category are expected to be short duration activities within existing facilities unlikely to have significant impacts. Short duration activities within existing facilities tend to be less likely to have significant impacts than ones of longer duration and outside the existing facility. However, CalGEM will consider the key questions listed above and if proximity of biological resources, proximity to sensitive receptors, seasonality, or cumulative impacts could result in significant impacts. Categorical exemptions are generally not appropriate for projects with significant impacts. Operators can best facilitate review by providing survey data for sensitive species when available, or current written species information from the California Department of Fish and Wildlife. If the project has a federal nexus, US Fish and Wildlife service should also provide written species information indicating the distance for the proposed work from facilities that house sensitive receptors<sup>11</sup> such as hospitals, schools, convalescent facilities, and residential areas.

Sample reworks in Group A where a Class 1 exemptions may apply include:

1. Adding perforations within existing completion interval; also known as adding pay,
2. Setting a bridge plug to isolate perforations or removing a bridge plug,
3. Milling out cement,
4. Run or scab inner slotted liner, and
5. Add a Steel Seal Adapter (SSA).

- B. Group B. Reworks where a Class 1 Exemption may be applied based on CEQA Guidelines <sup>7</sup> and CalGEM regulations<sup>8</sup> but further clarification of the proposed project footprint may be needed.

Reworks within Group B utilize workover rigs which are expected to fit within existing facilities with the addition of other equipment such as cement trucks, pumps, or piping racks which may not fit within existing well pads or roadways in some situations. Prior to considering a categorical exemption CalGEM will verify, either in the record or by requesting clarification from the operator, that all equipment can be placed without expanding the facility. The need for expansion of the well pad, roads or facility is likely to be location dependent. Use of equipment which is contained within existing facilities makes it more likely the proposed project involves *negligible or no expansion of existing former use*, as required for application of the Class 1 exemption. If a Class 1 exemption may apply to the proposed project, a Class 2 or 4 exemption may also apply.

Reworks within Group B are not expected to change or expand the existing use provided the project footprint is within the existing facility. The included reworks

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<sup>7</sup> 14 CCR § 15301

<sup>8</sup> 14 CCR § 1684.1

are modifications of an existing liner or bridge plug intended to optimize, maintain, or restore prior production capacity. Reworks within Group B are expected to be short duration activities within existing facilities unlikely to have significant impacts. However, CalGEM will consider proximity of biological resources and facilities that house sensitive receptors<sup>9</sup>. Categorical exemptions are not appropriate for projects with significant impacts. Operators can best facilitate review by providing site survey data for sensitive species, clearly listing equipment required for the proposed work, providing aerial maps that delineate the proposed work area, and responding to inquiries from CEQA staff when they are verifying equipment and facility footprints.

Sample reworks in Group B where a Class 1 exemption may apply after proposed project footprint is confirmed include:

1. Isolate or cement squeeze perforations within existing completion,
2. Plugback and recomplete to new zone, provided that the well depth is not increased in the process,
3. Run and cement in inner casing string,
4. Plugback and convert to an observation well, and
5. Pull and replace slotted liner.

C. Group C. Reworks where a Class 30 exemption, Minor Actions to Prevent, Minimize, Stabilize, Mitigate, or Eliminate a Release of Hazardous Substances<sup>10</sup> may include repairs needed to halt a release or reduce the risk of a release. For these reworks the typical equipment is smaller than drilling equipment used to establish the original well. If a Class 30 exemption is applied, unless the general considerations or questions above cause concern, than a Class 1 exemption<sup>11</sup> may also apply. Class 30 may be appropriate for a part of the proposed project but inappropriate for the whole project. For example, combining a wellhead repair, which may be exempt under Class 30, with a conversion of an observation well to production well, which is less likely to be categorically exempt under Class 30, would not result in an overall project that is appropriate for the application of a Class 30 exemption.

Sample reworks in Group C were Class 30 and Class 1 exemptions may apply are:

1. Repair casing holes (patch or squeeze), and
2. Repair wellhead (if rig or comparable equipment is not required)

D. Group D. Reworks in Group D have special considerations and CalGEM will likely request clarification from the operator prior to considering a categorical exemption. These reworks are not grouped based on common equipment usage or characteristics. In many cases reworks in Group D will require case-specific

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<sup>9</sup> California Safety Code § 43705.5(a)(5))

<sup>10</sup> 14 CCR § 15330

<sup>11</sup> 14 CCR § 15301, 14 CCR § 1684.1

consideration. CalGEM will verify the proposed project's purpose, intent, and clarify potential impacts prior to completing preliminary review. Operators can best facilitate review by responding promptly to inquiries by CalGEM and providing information on previously approved uses of a well in their submission when applicable.

Sample reworks in Group D where reliance upon categorical exemption requires special consideration:

1. Conversion of an injecting well to producing well: Conversions of well type may not be categorically exempt due to changes in existing use. Special considerations include whether there is negligible, or no expansion of use based on preexisting and previously approved uses. For example, if the injection well has been previously used as a production well, a Class 1 Existing Facilities Exemption may apply. Where conversion may result in new production that deviates significantly from the baseline or an increase in regulatory control by CalGEM, categorical exemption may not be appropriate.
2. Plugback LS (long string) or SS (short string) only in dual string injection well: Special considerations include confirming impact on both strings and potential overlap of CalGEM programs. This is a type of abandonment but if only one string is abandoned it is submitted as a rework; in that case remaining string is an active well and must be considered.
3. **Conversion of a producing well to an injecting well: Unlikely to be exempt as a standalone project due to the change in existing use.** Special considerations include producing well reworked as injector within a larger approved project may not involve alteration of casing (i.e. may not trigger permitting event). Typically, only approved with existing PAL using non-expansion (infill) process; needs UIC program approval.
4. Convert an observation well to a producing well: As with conversion from an injection well to a production well, categorical exemption for approval of a conversion of an observation well to a production well calls for special consideration. The conversion may result in an increase in production and capacity and, in most situations, should receive similar analysis to a new drill. Special considerations include if the observation well has previously been used as a production well, a Class 1 Existing Facilities<sup>12</sup> exemption may apply.
5. Conversion of an observation well to an injection well: Typically, only approved with existing PAL in place or as a non-expansion (infill) project; needs UIC program approval.

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<sup>12</sup> CEQA Guidelines 14 CCR § 153301, California Geologic Energy Management Oil and Gas Regulation as 14 CCR §1684.1

## Summary

CalGEM CEQA review of proposed reworks will proceed on a project-by-project basis. This guidance provides a general overview of CalGEM's process during review of reworks, samples outcomes for some groups of common reworks, and information operators may provide to facilitate efficient review. Scenarios described in this document are for illustrative purposes only, and are not determinative of any expected outcome, and should not be relied on by rework permit applicants as a guarantee of the sufficiency of an application prior to the issuance of a permit. CalGEM disclaims any responsibility for any such reliance. The guidance herein is not exhaustive and subject to revision and modification. Review of projects will proceed on a project-by-project basis.

To summarize that information operators may facilitate efficient review by:

1. Proposing potential grouping of Rework NOIs when appropriate. Operators may indicate in project descriptions if NOIs may be grouped. Reworks where grouping is likely appropriate are those within a localized area, including the same field and UIC approval if applicable, which propose similar types of work, and a part of a larger project. Grouped NOIs can move through the CEQA review process together as a package rather than receiving multiple separate reviews.
2. Providing aerial maps which clearly delineate the proposed work area which support potential impact areas described in the submission.
3. Clearly listing equipment required for the proposed work in their submission.
4. Clearly describing proposed work in their project descriptions and avoiding or defining abbreviations when listing proposed rework operations.
5. Providing survey data for sensitive species when available
6. Indicating the distance of proposed work from sensitive receptors such as housing in project descriptions and providing aerial maps
7. If repairs are needed to mitigate a release include supporting information in the project description and communicate the need to CalGEM District staff
8. When submitting proposed reworks that include conversions of well type provide information on any previously approved uses of the well

STATE OF CALIFORNIA  
Supreme Court of California

**PROOF OF SERVICE**

STATE OF CALIFORNIA  
Supreme Court of California

Case Name: **SUNFLOWER ALLIANCE v. CALIFORNIA DEPARTMENT OF  
CONSERVATION (REABOLD CALIFORNIA)**

Case Number: **S287414**

Lower Court Case Number: **A167698**

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