

TECHNICAL ADVISORY

CEQA REVIEW OF AFFORDABLE, TRANSITIONAL, INTERIM, AND PERMANENT SUPPORTIVE HOUSING PROJECTS



July 2020

CEQA Review of Affordable, Transitional, Interim, and Permanent Supportive Housing Projects Technical Advisory

This technical advisory is one in a series of advisories provided by the Governor's Office of Planning and Research (OPR) as a service to professional planners, land use officials, and California Environmental Quality Act (CEQA) practitioners. OPR creates and updates technical advisories as needed on current issues in environmental law and land use planning that broadly affect the practice of CEQA and land use planning in California. The purpose of this technical advisory is to provide a list of statutes and regulations related to the CEQA review of affordable housing, supportive housing, transitional housing, or temporary shelters.

For information on CEQA provisions on other types of housing projects, please see OPR's Technical Advisory on CEQA Review of Housing Projects, available at https://opr.ca.gov/docs/20190208-TechAdvisory-Review_of_Housing_Exemptions.pdf and on Site Check, a mapping and analysis tool available at sitecheck.opr.ca.gov.

This document offers guidance and is not be construed as legal advice.

This technical advisory covers the following statutes and regulations:

- Health & Safety Code, section 50675.1.2
- Public Resources Code, section 21159.23
- Public Resources Code, sections 21163-21163.4
- Public Resources Code, section 21080.50
- CEQA Guidelines, section 15267
- CEQA Guidelines, section 15301
- CEQA Guidelines, section 15302
- CEQA Guidelines, section 15303
- CEQA Guidelines, section 15311

Affordable Housing

Public Resources Code, Section 21159.23 – Low Income Housing

CEQA does not apply to any development project that consists of the construction, conversion, or use of residential housing consisting of 100 or fewer [units] that [are] affordable to low-income households if both of the following criteria are met:

- The developer of the development project provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for lower income households, as defined in Section 50079.5 of the Health and Safety Code, for a period of at least 30 years, at monthly housing costs, as determined pursuant to Section 50053 of the Health and Safety Code.
- The development project meets all of the following requirements:
 - The project satisfies the criteria described in Section 21159.21.
 - The project site meets one of the following conditions:
 - Has been previously developed for qualified urban uses as defined by Public Resources Code, section 21072.
 - The parcels immediately adjacent to the site are developed with qualified urban uses, or at least 75 percent of the perimeter of the site adjoins parcels that are developed with qualified urban uses and the remaining 25 percent of the perimeter of the site adjoins parcels that have previously been developed for qualified urban uses, and the site has not been developed for urban uses and no parcel within the site has been created within 10 years prior to the proposed development of the site.
 - The project site is not more than five acres in area.
 - The project site is located within an urbanized area or within a census-defined place with a population density of at least 5,000 persons per square mile or, if the project consists of 50 or fewer units, within an incorporated city with a population density of at least 2,500 persons per square mile and a total population of at least 25,000 persons.
 - If the urbanized criteria above is not met, the project can still qualify if it is located within either an incorporated city or a

census defined place with a population density of at least 1,000 persons per square mile.

- However, CEQA would apply if there is a reasonable possibility that the project would have a significant effect on the environment or the residents of the project due to unusual circumstances or due to the related or cumulative impacts of reasonably foreseeable projects in the vicinity of the project.

Definitions:

- “Residential” means a use consisting of either of the following:
 - Residential units only.
 - Residential units and primarily neighborhood-serving goods, services, or retail uses that do not exceed 15 percent of the total floor area of the project.

CEQA Guidelines, Section 151267 – Financial Assistance to Low or Moderate Income Housing

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

Transitional, Interim, and Permanent Supportive Housing

Health & Safety Code, Section 50678.1.2 – Project HomeKey

CEQA does not apply to a project funded by Project HomeKey (HSC Section 50675.1.2) if the city, county, or city and county where the project is located submits an application on or before April 30, 2021 and all of the following requirements, if applicable, are satisfied:

- No units were acquired by eminent domain.

- The units will be in decent, safe, and sanitary condition at the time of their occupancy.
- The project proponent shall require all contractors and subcontractors performing work on the project to pay prevailing wages for any rehabilitation, construction, or alterations in accordance with Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.
- The project proponent obtains an enforceable commitment that all contractors and subcontractors performing work on the project will use a skilled and trained workforce for any rehabilitation, construction, or alterations in accordance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code.
- The project proponent submits to the lead agency a letter of support from a county, city, or other local public entity for any rehabilitation, construction, or alteration work.
- Any acquisition is paid for exclusively by public funds.
- The project provides housing units for individuals and families who are experiencing homelessness or who are at risk of homelessness.
- Long-term covenants and restrictions require the units to be restricted to persons experiencing homelessness or who are at risk of homelessness, which may include lower income, and very low income households, as defined by HSC Section 50079.5, for no fewer than 55 years.
- The project does not increase the original footprint of the project structure or structures by more than 10 percent. Any increase to the footprint of the original project structure or structures shall be exclusively to support the conversion to housing for the designated population, including, but not limited to, both of the following:
 - Achieving compliance with local, state, and federal requirements.
 - Providing sufficient space for the provision of services and amenities.

Noticing Requirements:

If this exemption is used, a Notice of Exemption must be filed with the Office of Planning and Research and the county clerk of the county in which the project is located in the manner specified in subdivisions (b) and (c) of Section 21152 of the Public Resources Code.

Expiration:

This exemption will be repealed on July 1, 2021.

Public Resources Code, Section 21080.50 – Interim Motel Housing Project

CEQA does not apply to an interim motel housing project (the conversion of a structure with a certificate of occupancy as a motel, hotel, residential hotel, or hostel to supportive or transitional housing) if one or both of the following conditions is met:

- It does not result in the expansion of more than 10 percent of the floor area of any individual living unit in the structure.
- It does not result in any significant effects relating to traffic, noise, air quality, or water quality.

Definitions:

- *“Residential hotel”* has the same meaning as defined in Section 50519 of the Health and Safety Code.
- *“Supportive housing”* means housing linked to onsite or offsite supportive services and with no limit on length of stay for persons with low incomes who have one or more disabilities and may include, among other populations, adults, emancipated minors, families with children, elderly persons, young adults aging out of the foster care system, individuals exiting from institutional settings, veterans, and homeless people.
- *“Supportive services”* means services that are provided on a voluntary basis to residents of supportive or transitional housing, including, but not limited to, a combination of subsidized and permanent housing services, intensive case management, medical and mental health care, substance abuse treatment, employment services, benefits advocacy, and other services or service referrals necessary to obtain and maintain housing.
- *“Transitional housing”* means temporary housing linked to supportive services that is offered, usually for a period of up to 24 months, to facilitate movement to permanent housing for persons with low incomes who may have one or more disabilities, and may include, among other populations, adults, emancipated minors, families with children, elderly persons, young adults aging out of the foster care system, individuals exiting from institutional settings, veterans, and homeless people.

Noticing Requirements:

If this exemption is used, a Notice of Exemption must be filed with the Office of Planning and Research in the manner specified in subdivisions (b) of Section 21152 of the Public Resources Code.

Expiration:

This exemption will be repealed on January 1, 2025.

Public Resources Code, Section 21163-21163.4 – No Place Like Home Project

CEQA does not apply to a decision by a public agency to seek funding from, or the Department of Housing and Community Development's awarding of funds pursuant to, the No Place Like Home Program (Part 3.9 (commencing with Section 5849.1) of Division 5 of the Welfare and Institutions Code).

Definition of "No Place Like Home" Project:

"No Place Like Home project" means a permanent supportive housing project that meets the criteria for funding pursuant to the No Place Like Home Program (Part 3.9 (commencing with Section 5849.1) of Division 5 of the Welfare and Institutions Code) and for which a public agency applies for, or receives, funding from the Department of Housing and Community Development.

Administrative Record:

If a No Place Like Home Project is not eligible for approval as a use by right pursuant to Article 11 (commencing with Section 65650) of Chapter 3 of Division 1 of Title 7 of the Government Code and is subject to this division, the development applicant may request, within 10 days after the lead agency determines the type of environmental documentation required for the project pursuant to this division, that the lead agency prepare and certify the record of proceeding for the environmental review of the No Place Like Home Project in accordance with PRC Section 21186.

Noticing Requirements and Statute of Limitations:

- If CEQA applies, the local agency shall file notice of that approval or determination in accordance with the requirements of subdivision (a) of Public Resources Code, section 21152, except that the notice shall be filed within two working days after the approval or determination becomes final.
- IF CEQA does not apply, the local agency shall file a notice of exemption in accordance with the requirements of subdivision (b) of Public Resources Code, section 21152, except that the notice shall be filed within two working days after the approval or determination becomes final.

- The statute of limitations is 30 days from the date of the filing of the notice or 90 days from the date that the notice was required to be filed, whichever is earlier.

Expiration:

- These provisions expire on January 1 of the year following the full allocation and disbursement of the funds in the No Place Like Home Program.
- The Department of Housing and Community Development shall notify the Legislature and post a copy on its website when the funds are fully allocated and disbursed.

Rehabilitation and Construction of Small Structures

CEQA Guidelines, Section 15301 (Class 1 Categorical Exemption) – 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 existing or former use. 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 use.

Examples include but are not limited to:

- Interior or exterior alterations involving such things as interior partitions, plumbing, and electrical conveyances;
- 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;
- 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 structures before the addition, or 2,500 square feet, whichever is less; or

- 10,000 square feet if:
 - The project is in an area where all public services and facilities are available to allow for maximum development permissible in the General Plan and
 - The area in which the project is located is not environmentally sensitive.
- Addition of safety or health protection devices for use during construction of or in conjunction with existing structures, facilities, or mechanical equipment, or topographical features including navigational devices;
- New copy of existing on and off-premise signs;
- Maintenance of existing landscaping
- Division of existing multiple family or single-family residences into common-interest ownership and subdivision of existing commercial or industrial buildings, where no physical changes occur which are not otherwise exempt;
- Demolition and removal of individual small structures listed in this subdivision:
 - One single-family residence. In urbanized areas, up to three single-family residences may be demolished under this exemption.
 - A duplex or similar multifamily residential structure. In urbanized areas, this exemption applies to duplexes and similar structures where not more than six dwelling units will be demolished.
 - A store, motel, office, restaurant, or similar small commercial structure if designed for an occupant load of 30 persons or less. In urbanized areas, the exemption also applies to the demolition of up to three such commercial buildings on sites zoned for such use.
 - Accessory (appurtenant) structures including garages, carports, patios, swimming pools, and fences.

CEQA Guidelines, Section 15302 (Class 2 Categorical Exemption) – 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.

CEQA Guidelines, Section 15303 (Class 3 Categorical Exemption) – 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. Examples of this exemption include, but are not limited to:

- Outside Urbanized Areas:
 - One single-family residence, or a second dwelling unit in a residential zone.
 - A duplex or similar multi-family residential structure totaling no more than four dwelling units.
 - A store, motel, office, restaurant or similar structure not involving the use of significant amounts of hazardous substances and not exceeding 2,500 square feet in floor area.
- In Urbanized Areas:
 - Up to three single-family residences may be constructed or converted.
 - Apartments, duplexes and similar structures designed for not more than six dwelling units.
 - Up to four commercial buildings not involving the use of significant amounts of hazardous substances and not exceeding 10,000 square feet in floor area on sites zoned for such use where all necessary public services and facilities are available and the surrounding area is not environmentally sensitive.
- Accessory (appurtenant) structures including garages, carports, patios, swimming pools, and fences.

CEQA Guidelines, Section 15311 (Class 11 Categorical Exemption) – Accessory Structures

Class 11 consists of construction, or placement of minor structures accessory to (appurtenant to) existing commercial, industrial, or institutional facilities, including but not limited to:

- On-premise signs;
- Small parking lots;
- Placement of seasonal or temporary use items such as lifeguard towers, mobile food units, portable restrooms, or similar items in generally the same locations from time to time in publicly owned parks, stadiums, or other facilities designed for public use.

Note: Categorical exemptions are limited by the exceptions contained in CEQA Guidelines, section 15300.2.

CEQA Guidelines, Section 15300.2 – Exceptions to Categorical Exemptions

- *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 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.
- *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.
- *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.
- *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.
- *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.
- *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.