



# 2020 Update for the *CEQA Deskbook*, 3<sup>rd</sup> Edition

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## 2020 Revisions to the CEQA Deskbook

**Add the following to the discussion under Definition of a Project on page 33.**

CEQA only applies to discretionary actions. Failure to act or inaction is not an activity subject to CEQA. (*Lake Norconian Club Foundation v. Department of Corrections* (2019) 39 Cal.App. 5<sup>th</sup> 1044 [“... the failure to act is not itself an activity, even if, as may commonly be true, there are consequences, possibly including environmental consequences, resulting from the inactivity.”]).

**Insert the following into Figure 2-2 Statutory Exemptions under “Housing-Related Projects” on page 42:**

Type of Action	Exempt Activities	Statutory Provision
Housing-Related Projects	Qualifying multi-family or multi-family mixed-use residential infill projects of at least 6 dwellings in an unincorporated area.	Pub. Res. Code §21159.25
	Aesthetic effects of refurbishment, conversion, repurposing, or replacement of an existing building that is abandoned, dilapidated, or has been vacant for more than 1 year (other limitations apply)	Pub. Res. Code §21081.3

	<p>Closure of a railroad grade crossing by order of the Public Utilities Commission if the commission finds the crossing to present a threat to public safety. This statute expires January 1, 2025.</p>	<p>Pub. Res. Code §21080.14</p>
	<p>Supportive housing and emergency shelter projects within the City of Los Angeles and several other agencies in the region. The exemption applies to supportive housing funded in whole or in part by general obligation bonds issued pursuant to the City's 2016 Measure HHH that qualify as a use by right under California law, and emergency shelters funded by the Homeless Emergency Aid Program (Health and Safety Code Section 50211) during a declared homeless crisis. This statute expires on January 1, 2025.</p>	<p>Pub. Res. Code §21080.27</p>
	<p>Conversion of a structure with a certificate of occupancy as a motel, hotel, residential hotel, or hostel to supportive or transitional housing where the conversion does not result in the expansion of more than 10 percent of the floor area of any individual living unit in the structure and does not result in any significant effects relating to traffic, noise, air quality, or water quality. This statute expires January 1, 2025.</p>	<p>Pub. Res. Code §21080.50</p>
	<p>Certain multi-family residential projects in cities and counties that have not met their Regional Housing Needs Allocation for all income classes (these are considered ministerial projects). In addition, CEQA does not apply to actions taken by a state agency, local government, or the San Francisco Bay Area Rapid Transit District to: (1) lease, convey, or encumber land owned by the local government or BART or to facilitate the lease, conveyance, or encumbrance of land owned by the local government, or for the lease of land owned by BART in association with an eligible TOD project (defined under Public Utilities Code Section 29010.1), nor to any decisions associated with that lease, or to provide financial assistance to a development that receives streamlined approval pursuant to this section that is to be used for housing for persons and families of very low, low, or moderate income; or (2) approve improvements located on land owned by the local government or BART that are necessary to implement a development that receives streamlined approval pursuant to this section that is to be used for housing for persons and families of very low, low, or moderate income.</p>	<p>Gov. Code §65913.4</p>
	<p>Residential projects exempt under Gov. Code 65913.4 include certain multi-family residential projects located within a specialized residential planning area identified in the general plan of, and adjacent to existing urban development within the cities of Biggs, Corning, Gridley, Live Oak, Orland, Oroville, Willows, and Yuba City. This statute expires January 1, 2026.</p>	<p>Gov. Code §65913.15</p>
	<p>Establishes a ministerial exemption upon declaration of a shelter crisis by the cities of Berkeley; Emeryville; Los Angeles; Oakland; San Diego; San Francisco; San Jose; any city located within the Counties of Alameda and Orange; and the Counties of Alameda, Orange and Santa Clara. CEQA does not apply to actions taken by a</p>	<p>Gov. Code §8698.4</p>

	state agency or a city, county, or city and county, to lease, convey, or encumber land owned by a city, county, or city and county, or to facilitate the lease, conveyance, or encumbrance of land owned by the local government for, or to provide financial assistance to, a homeless shelter constructed or allowed by this section. This statute expires January 1, 2023	
	Qualifying employee housing projects for agricultural employees that does not contain dormitory-style housing and where the development consists of no more than 36 residential units.	Health and Safety Code §17021.8
<b>Land Transfer</b>	<p>Acquisition, sale, or other transfer of interests in land by a public agency for the following purposes:</p> <p>(A) Preservation of natural conditions existing at the time of transfer, including plant and animal habitats.  (B) Restoration of natural conditions, including plants and animals.  (C) Continuing agricultural use of the land.  (D) Areas for the prevention of encroachment of development into flood plains.  (E) Areas for the preservation of historical resources.  (F) Areas for the preservation of open space or lands for park purposes.</p> <p>The exemption extends to the granting or acceptance of funding by a public agency for these purposes. The exemption applies even if physical changes to the environment or changes in the use of the land are a reasonably foreseeable consequence of the acquisition, sale, or other transfer of the interests in land, or of the granting or acceptance of funding, provided that environmental review otherwise required by CEQA occurs before any project approval that would authorize physical changes being made to that land.</p>	Pub. Res. Code §21080.28

**Add the following after the amendments to the second paragraph under “Exceptions to Categorical Exemptions” on page 47 made by the 2016 update:**

The Court of Appeal found in *Berkeley Hills Watershed Coalition v. City of Berkeley* (2019) 31 Cal.App.5<sup>th</sup> 880 that the two part test also applies to the “location” exception, such that an exemption does not apply “where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted” (Guidelines Section 15300.2[a]). This broadens the scope of the California Supreme Court’s two-part test to include both unusual circumstances and location.

**Add the following at the end of the discussion under Project EIR on page 96.**

A project EIR is generally expected to examine the project at a greater level of detail than a program EIR or other form of first-tier EIR, and accordingly would have a more detailed project description. This may be particularly important when the project EIR is the only CEQA document that is expected to be prepared for the project. The Appellate Court decision in *Stophthemillenniumhollywood.com v. City of Los Angeles* (2019) 39 Cal.App.5<sup>th</sup> 1 held inadequate a project EIR that examined the project from the point

of view of maximum development and conceptual scenarios rather than a description of “the siting, size, mass, or appearance of any building proposed to be built at the project site.” The large mixed-use project at issue included a development agreement that would limit the potential for future discretionary approvals and subsequent CEQA analyses. The Court concluded that the EIR’s “failure to present any concrete project proposal” obstructed informed public participation and therefore was a prejudicial error.

**Add the following at the end of the discussion of Projects Consistent with a General Plan, a Community Plan, or Zoning on page 103.**

A development project approved in conjunction with a community plan has certain protections from CEQA litigation over the EIR prepared for that community plan. Government Code Section 65458.1 prohibits a court from invalidating approval of a development project based on a community plan when the development project was approved or its application was deemed complete before the presiding court “issues a stay in connection with the action or proceeding or an order or writ requiring the challenged environmental impact report or community plan update to be rescinded or set aside.”

**Add the following to the discussion of Sustainable Communities Environmental Assessment on page 110. Subsequent Documents**

In *Sacramentans for Fair Planning v. City of Sacramento* (2019) 37 Cal.App.5<sup>th</sup> 698 the Court of Appeal gave deference to the lead agency’s determination that a development project was a transit priority project consistent with the applicable Sustainable Communities Strategy. The plaintiffs unsuccessfully argued that the Sustainable Communities Strategy was too vague to be used for site-specific land use decisions. The Court disagreed, pointing out that a Sustainable Communities Strategy is not expected to be site-specific, but nonetheless can be the basis for site-specific land use decisions under the SCEA statute. In the Court’s words:

Nothing in SB 375 required the strategy to establish building intensity standards any more specific than what it did. The strategy identified the general location of uses, residential densities, and building intensities in the region, and it forecast where and how future development of those uses could best achieve greenhouse gas emission reductions. It based its forecast in part on the planning assumptions of each SACOG member’s local general plans. (Gov. Code, § 65080, subd. (b)(2)(B).) Its policies and recommendations were supported by review in an environmental impact report that confirmed emissions would be reduced under the plan’s land use assumptions. The Air Resources Board accepted the strategy, determining it met the state-mandated greenhouse gas emission reduction target.

**Replace the insert after the first full paragraph on page 176 from the 2018 update with the following:**

When the lead agency chooses to examine alternatives at an equal level of detail, it should identify the project or preferred alternative in the Draft EIR and Final EIR. Analyzing a range of substantially different alternatives at an equal level of detail without identifying either a project or a preferred alternative in the Draft EIR has been held to be inadequate in a Court of Appeal decision. (*Washoe Meadows Community v. Department of Parks and Recreation* (2017) 17 Cal.App.5<sup>th</sup> 277).

The *Washoe Meadows* decision should not be seen as a prohibition on reviewing the project and alternatives at equal level of detail. Its EIR can be distinguished from most CEQA documents because it failed to identify a project in the Draft EIR. By waiting until the Final EIR to identify the project the Court concluded that the analysis failed to include the requisite “stable and finite” project description. This was because the alternatives examined in the EIR were very different from one another. In *South of Market Community Action Network v. City and County of San Francisco* (2019) 33 Cal.App.5<sup>th</sup> 321 the Court of Appeal upheld an EIR that examined a project and two options at equal level of detail. The clear existence of a project in the Draft EIR and comprehensive analysis seemed to be determinative.

Thus, the record reveals the EIR in this case described one project—a mixed-use development involving the retention of two historic buildings, the demolition of all other buildings on the site, and the construction of four new buildings and active ground floor space—with two options for different allocations of residential and office units. The analysis was not curtailed, misleading, or inconsistent. If anything, it carefully articulated two possible variations and fully disclosed the maximum possible scope of the project. The project description here enhanced, rather than obscured, the information available to the public.