



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

Article 12.5 Exemptions for Agricultural Housing, Affordable Housing, and Residential Infill Projects

Sections 15191 to 15196

§ 15191. Definitions.

For purposes of this Article 12.5 only, the following words shall have the following meanings:

(a) "Agricultural employee" means a person engaged in agriculture, including: farming in all its branches, and, among other things, includes: (1) the cultivation and tillage of the soil, (2) dairying, (3) the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in Section 1141j(g) of Title 12 of the United States Code), (4) the raising of livestock, bees, furbearing animals, or poultry, and (5) any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market and delivery to storage or to market or to carriers for transportation to market. This definition is subject to the following limitations:

This definition shall not be construed to include any person other than those employees excluded from the coverage of the National Labor Relations Act, as amended, as agricultural employees, pursuant to Section 2(3) of the Labor Management Relations Act (Section 152(3), Title 29, United States Code), and Section 3(f) of the Fair Labor Standards Act (Section 203(f), Title 29, United States Code).

This definition shall not apply, or be construed to apply, to any employee who performs work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work (as these terms have been construed under Section 8(e) of the Labor Management Relations Act, 29 U.S.C. Sec. 158(e)) or logging or timber-clearing operations in initial preparation of land for farming, or who does land leveling or only land surveying for any of the above. As used in this definition, "land leveling" shall include only major land moving operations changing the contour of the land, but shall not include annual or seasonal tillage or preparation of land for cultivation.

(b) "Census-defined place" means a specific unincorporated land area within boundaries determined by the United States Census Bureau in the most recent decennial census.

(c) "Community-level environmental review" means either of the following:

(1) An EIR certified on any of the following:

(A) A general plan.

(B) A revision or update to the general plan that includes at least the land use and circulation elements.

(C) An applicable community plan.

(D) An applicable specific plan.

(E) A housing element of the general plan, if the environmental impact report analyzed the environmental effects of the density of the proposed project.

(2) A negative declaration or mitigated negative declaration adopted as a subsequent environmental review document, following and based upon an EIR on a general plan, an applicable community plan, or an applicable specific plan, provided that the subsequent environmental review document is allowed by CEQA following a master EIR or a program EIR, or is required pursuant to Section 21166.

(d) "Developed open space" means land that meets all of the following criteria:

(1) land that is publicly owned, or financed in whole or in part by public funds,

(2) is generally open to, and available for use by, the public, and

(3) is predominantly lacking in structural development other than structures associated with open spaces, including, but not limited to, playgrounds, swimming pools, ball fields, enclosed child play areas, and picnic facilities.

Developed open space may include land that has been designated for acquisition by a public agency for developed open space but does not include lands acquired by public funds dedicated to the acquisition of land for housing purposes.

(e) "Infill site" means a site in an urbanized area that meets one of the following criteria:

(1) The site has been previously developed for qualified urban uses; or

(2) The site has not been developed for qualified urban uses but all immediately adjacent parcels are developed with existing qualified urban uses; or

(3) The site has not been developed for qualified urban uses, no parcel within the site has been created within the past 10 years, and the site is situated so that:

(A) at least 75 percent of the perimeter of the site is adjacent to parcels that are developed with existing qualified urban uses at the time the lead agency receives an application for an approval; and

(B) the remaining 25 percent of the perimeter of the site adjoins parcels that had been previously developed for qualified urban uses.

(f) "Low- and moderate-income households" means "persons and families of low or moderate income" as defined in Section 50093 of the Health and Safety Code to mean persons and families whose income does not exceed 120 percent of area median income, adjusted for family size by the Department of Housing and Community Development, in accordance with adjustment factors adopted and amended from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937.

(g) "Low-income households" means households of persons and families of very low and low income, which are defined in Sections 50093 and 50105 of the Health and Safety Code as follows:

(1) "Persons and families of low income" or "persons of low income" is defined in Section 50093 of the Health & Safety Code to mean persons or families who are eligible for financial assistance specifically provided by a governmental agency for the benefit of occupants of housing financed pursuant to this

division.

(2) "Very low income households" is defined in Section 50105 of the Health & Safety Code to mean persons and families whose incomes do not exceed the qualifying limits for very low income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937. "Very low income households" includes extremely low income households, as defined in Section 50106 of the Health & Safety Code.

(h) "Lower income households" is defined in Section 50079.5 of the Health and Safety Code to mean any of the following:

(1) "Lower income households," which means persons and families whose income does not exceed the qualifying limits for lower income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937.

(2) "Very low income households," which means persons and families whose incomes do not exceed the qualifying limits for very low income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937.

(3) "Extremely low income households," which means persons and families whose incomes do not exceed the qualifying limits for extremely low income families as established and amended from time to time by the Secretary of Housing and Urban Development and defined in Section 5.603(b) of Title 24 of the Code of Federal Regulations.

(i) "Major transit stop" means a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.

(j) "Project-specific effect" means all the direct or indirect environmental effects of a project other than cumulative effects and growth-inducing effects.

(k) "Qualified urban use" means any residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses.

(l) "Residential" means a use consisting of either of the following:

(1) Residential units only.

(2) 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.

(m) "Urbanized area" means either of the following:

(1) An incorporated city that either by itself or in combination with two contiguous incorporated cities has a population of at least 100,000 persons; or

(2) An unincorporated area that meets the requirements set forth in subdivision (m)(2)(A) and subdivision (m)(2)(B) below.

(A) The unincorporated area must meet one of the following location or density requirements:

1. The unincorporated area must be: (i) completely surrounded by one or more incorporated cities, (ii) have a population of at least 100,000 persons either by itself or in combination with the surrounding incorporated city or cities, and (iii) have a population density that at least equals the population density of the surrounding city or cities; or

2. The unincorporated area must be located within an urban growth boundary and have an existing residential population of at least 5,000 persons per square mile. For purposes of this subparagraph, an "urban growth boundary" means a provision of a locally adopted general plan that allows urban uses on one side of the boundary and prohibits urban uses on the other side.

(B) The board of supervisors with jurisdiction over the unincorporated area must have taken the following steps:

1. The board has prepared a draft document by which the board would find that the general plan, zoning ordinance, and related policies and programs applicable to the unincorporated area are consistent with principles that: (i) encourage compact development in a manner that promotes efficient transportation systems, economic growth, affordable housing, energy efficiency, and an appropriate balance of jobs and housing, and (ii) protects the environment, open space, and agricultural areas.

2. The board has submitted the draft document to OPR and allowed OPR thirty days to submit comments on the draft findings to the board.

3. No earlier than thirty days after submitting the draft document to OPR, the board has adopted a final finding in substantial conformity with the draft finding described in the draft document referenced in subdivision (m)(2)(B)(1) above.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21159.20, 21159.21, 21159.22, 21159.23, 21159.24, Public Resources Code.

§ 15192. Threshold Requirements for Exemptions for Agricultural Housing, Affordable Housing, and Residential Infill Projects.

In order to qualify for an exemption set forth in sections 15193, 15194 or 15195, a housing project must meet all of the threshold criteria set forth below.

(a) The project must be consistent with:

(1) Any applicable general plan, specific plan, or local coastal program, including any mitigation measures required by such plan or program, as that plan or program existed on the date that the application for the project pursuant to Section 65943 of the Government Code was deemed complete; and

(2) Any applicable zoning ordinance, as that zoning ordinance existed on the date that the application for the project pursuant to Section 65943 of the Government Code was deemed complete, unless the zoning of project property is inconsistent with the general plan because the project property has not been rezoned to conform to the general plan.

(b) Community-level environmental review has been adopted or certified.

(c) The project and other projects approved prior to the approval of the project can be adequately served by existing utilities, and the project applicant has paid, or has committed to pay, all applicable in-lieu or development fees.

(d) The site of the project:

(1) Does not contain wetlands, as defined in Section 328.3 of Title 33 of the Code of Federal Regulations.

(2) Does not have any value as an ecological community upon which wild animals, birds, plants, fish, amphibians, and invertebrates depend for their conservation and protection.

(3) Does not harm any species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.) or by the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code.

(4) Does not cause the destruction or removal of any species protected by a local ordinance in effect at the time the application for the project was deemed complete.

(e) The site of the project is not included on any list of facilities and sites compiled pursuant to Section 65962.5 of the Government Code.

(f) The site of the project is subject to a preliminary endangerment assessment prepared by a registered environmental assessor to determine the existence of any release of a hazardous substance on the site and to determine the potential for exposure of future occupants to significant health hazards from any nearby property or activity. In addition, the following steps have been taken in response to the results of this assessment:

(1) If a release of a hazardous substance is found to exist on the site, the release shall be removed, or any significant effects of the release shall be mitigated to a level of insignificance in compliance with state and federal requirements.

(2) If a potential for exposure to significant hazards from surrounding properties or activities is found to exist, the effects of the potential exposure shall be mitigated to a level of insignificance in compliance with state and federal requirements.

(g) The project does not have a significant effect on historical resources pursuant to Section 21084.1 of the Public Resources Code.

(h) The project site is not subject to wildland fire hazard, as determined by the Department of Forestry and Fire Protection, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a wildland fire hazard.

(i) The project site does not have an unusually high risk of fire or explosion from materials stored or used on nearby properties.

(j) The project site does not present a risk of a public health exposure at a level that would exceed the standards established by any state or federal agency.

(k) Either the project site is not within a delineated earthquake fault zone or a seismic hazard zone, as determined pursuant to Section 2622 and 2696 of the Public Resources Code respectively, or the applicable general plan or zoning ordinance contains provisions to mitigate the risk of an earthquake or seismic hazard.

(l) Either the project site does not present a landslide hazard, flood plain, flood way, or restriction zone, or the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a landslide or flood.

(m) The project site is not located on developed open space.

(n) The project site is not located within the boundaries of a state conservancy.

(o) The project has not been divided into smaller projects to qualify for one or more of the exemptions set forth in sections 15193 to 15195.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21159.21, 21159.27,

Public Resources Code.

§ 15193. Agricultural Housing Exemption.

CEQA does not apply to any development project that meets the following criteria.

(a) The project meets the threshold criteria set forth in section 15192.

(b) The project site meets the following size criteria:

(1) The project site is located in an area with a population density of at least 1,000 persons per square mile and is two acres or less in area; or

(2) The project site is located in an area with a population density of less than 1,000 persons per square mile and is five acres or less in area.

(c) The project meets the following requirements regarding location and number of units.

(1) If the proposed development project is located on a project site within city limits or in a census-defined place, it must meet the following requirements:

(A) The proposed project location must be within one of the following:

1. Incorporated city limits; or

2. A census defined place with a minimum population density of at least 5,000 persons per square mile; or

3. A census-defined place with a minimum population density of at least 1,000 persons per square mile, unless a public agency that is carrying out or approving the project determines that there is a reasonable possibility that the project, if completed, would have a significant effect on the environment due to unusual circumstances or that the cumulative impacts of successive projects of the same type in the same area, over time, would be significant.

(B) The proposed development project must be located on a project site that is adjacent, on at least two sides, to land that has been developed.

(C) The proposed development project must meet either of the following requirements:

1. Consist of not more than 45 units, or

2. Consist of housing for a total of 45 or fewer agricultural employees if the housing consists of dormitories, barracks, or other group living facilities.

(2) If the proposed development project is located on a project site zoned for general agricultural use, it must meet either of the following requirements:

(A) Consist of not more than 20 units, or

(B) Consist of housing for a total of 20 or fewer agricultural employees if the housing consists of dormitories, barracks, or other group living facilities.

(d) The project meets the following requirements regarding provision of housing for agricultural employees:

(1) The project must consist of the construction, conversion, or use of residential housing for agricultural employees.

(2) If the project lacks public financial assistance, then:

(A) The project must be affordable to lower income households; and

(B) The developer of the development project must provide sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for lower income households for a period of at least 15 years.

(3) If public financial assistance exists for the project, then:

(A) The project must be housing for very low, low-, or moderate-income households; and

(B) The developer of the development project must provide sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for low- and moderate-income households for a period of at least 15 years.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21159.22, Public Resources Code.

§ 15194. Affordable Housing Exemption.

CEQA does not apply to any development project that meets the following criteria:

(a) The project meets the threshold criteria set forth in section 15192.

(b) The project meets the following size criteria: the project site is not more than five acres in area.

(c) The project meets both of the following requirements regarding location:

(1) The project meets one of the following location requirements relating to population density:

(A) 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.

(B) If the project consists of 50 or fewer units, the project site is located 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.

(C) The project 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 and there is no 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.

(2) The project meets one of the following site-specific location requirements:

(A) The project site has been previously developed for qualified urban uses; or

(B) The parcels immediately adjacent to the project site are developed with qualified urban uses.

(C) The project site has not been developed for urban uses and all of the following conditions are met:

1. No parcel within the site has been created within 10 years prior to the proposed development of the site.
2. At least 75 percent of the perimeter of the site adjoins parcels that are developed with qualified urban uses.
3. The existing remaining 25 percent of the perimeter of the site adjoins parcels that have previously been developed for qualified urban uses.

(d) The project meets both of the following requirements regarding provision of affordable housing.

(1) The project consists of the construction, conversion, or use of residential housing consisting of 100 or fewer units that are affordable to low-income households.

(2) The developer of the 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 for a period of at least 30 years, at monthly housing costs deemed to be “affordable rent” for lower income, very low income, and extremely low income households, as determined pursuant to Section 50053 of the Health and Safety Code.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21159.23, Public Resources Code.

§ 15195. Residential Infill Exemption.

(a) Except as set forth in subdivision (b), CEQA does not apply to any development project that meets the following criteria:

(1) The project meets the threshold criteria set forth in section 15192; provided that with respect to the requirement in section 15192(b) regarding community-level environmental review, such review must be certified or adopted within five years of the date that the lead agency deems the application for the project to be complete pursuant to Section 65943 of the Government Code.

(2) The project meets both of the following size criteria:

(A) The site of the project is not more than four acres in total area.

(B) The project does not include any single level building that exceeds 100,000 square feet.

(3) The project meets both of the following requirements regarding location:

(A) The project is a residential project on an infill site.

(B) The project is within one-half mile of a major transit stop.

(4) The project meets both of the following requirements regarding number of units:

(A) The project does not contain more than 100 residential units.

(B) The project promotes higher density infill housing. The lead agency may establish its own criteria for determining whether the project promotes higher density infill housing except in either of the following two circumstances:

1. A project with a density of at least 20 units per acre is conclusively presumed to promote higher density infill housing.

2. A project with a density of at least 10 units per acre and a density greater than the average density of the residential properties within 1,500 feet shall be presumed to promote higher density infill housing unless the preponderance of the evidence demonstrates otherwise.

(5) The project meets the following requirements regarding availability of affordable housing: The project would result in housing units being made available to moderate, low or very low income families as set forth in either A or B below:

(A) The project meets one of the following criteria, and the project developer provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units as set forth below at monthly housing costs determined pursuant to paragraph (3) of subdivision (h) of Section 65589.5 of the Government Code.

1. At least 10 percent of the housing is sold to families of moderate income, or
2. Not less than 10 percent of the housing is rented to families of low income, or
3. Not less than 5 percent of the housing is rented to families of very low income.

(B) If the project does not result in housing units being available as set forth in subdivision (A) above, then the project developer has paid or will pay in-lieu fees pursuant to a local ordinance in an amount sufficient to result in the development of an equivalent number of units that would otherwise be required pursuant to subparagraph (A).

(b) A project that otherwise meets the criteria set forth in subdivision (a) is not exempt from CEQA if any of the following occur:

- (1) There is a reasonable possibility that the project will have a project-specific, significant effect on the environment due to unusual circumstances.
- (2) Substantial changes with respect to the circumstances under which the project is being undertaken that are related to the project have occurred since community-level environmental review was certified or adopted.
- (3) New information becomes available regarding the circumstances under which the project is being undertaken and that is related to the project that was not known, and could not have been known at the time that community-level environmental review was certified or adopted.

If a project is not exempt from CEQA due to subdivision (b), the analysis of the environmental effects of the project covered in the EIR or the negative declaration shall be limited to an analysis of the project-specific effect of the projects and any effects identified pursuant to subdivisions (b)(2) and (3).

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21159.24, Public Resources Code.

§ 15196. Notice of Exemption for Agricultural Housing, Affordable Housing, and Residential Infill Projects.

(a) When a local agency determines that a project is not subject to CEQA under Section 15193, 15194, or 15195, and it approves or determines to carry out that project, the local agency or person seeking project approval shall file the notice required by Section 21152.1 of the Public Resources Code, pursuant to Section 15062.

(b) Failure to file the notice required by this section does not affect the validity of a project.

(c) Nothing in this section affects the time limitations contained in Section 21167.

Note: Authority cited: Section 21083, Public Resources Code. Reference: 21152.1, Public Resources Code.