No. S201116

IN THE SUPREME COURT OF CALIFORNIA

BERKELEY HILLSIDE PRESERVATION
and SUSAN NUNES FADLEY,

Plaintiffs and Appellants
v.

CITY OF BERKELEY and CITY COUNCIL
OF THE CITY OF BERKELEY,

Defendants and Respondents,

DONN LOGAN, *et al.*,

Defendants and Respondents.

From a Published Decision by The Court of Appeal
First Appellate District, Division Four
Civil Number A131254

Reversing the Ruling by the Honorable Frank Roesch
Alameda County Superior Court Case No. RG10517314

ANSWER TO PETITION FOR REVIEW

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Introduction

The public-interest appellants Berkeley Hillside Preservation *et al.* seek environmental review for a decidedly atypical residence: a combined 10,000 square-foot home/10-car garage that requires special use permits. The home is proposed on a steep slope along a narrow roadway in the East Bay hills and would be one of the two largest out of 17,000 in Berkeley.

Both the trial court and the appellate court acknowledged expert evidence that the house/garage may have significant environmental impacts. Dr. Lawrence B. Karp, a geotechnical engineer and architect with fifty years of Bay Area construction experience (he "taught foundation engineering at [UC] Berkeley and at Stanford") conducted an on-site independent engineering study. Dr. Karp's fact-based technical report concluded that the proposed mansion *in the context of its constrained site* "... in my professional opinion ... is likely to have very significant environmental impacts not only during construction, but in service ..." (Administrative Record (AR)2:449, 530; Slip Opinion at 5.)

Based on Dr. Karp's analysis, the First District's Division Four ruled that Berkeley's consideration of three discretionary use permits was not categorically exempt from the California Environmental Quality Act, because environmental review must always precede approval of discretionary projects that have potentially significant impacts.

In navigating CEQA's evolving categorical exemption landscape, the scholarly Slip Opinion now provides cogent guidance for agencies, project applicants, and the public. The Petition for Review, on the other hand, misrepresents the state of the law and the facts and urges this Court to address new issues not raised in either of the lower courts.

The Petition does not meet criteria for review and should be denied.

Summary of Answer

Appellants' goal has always been to effect the City of Berkeley's compliance with the mandates of CEQA, a citizen-enforced statute.

Respondents City of Berkeley and Mitchell Kapor and Freada Kapor-Klein (the Kapors) contend that no environmental review is required for the 10,000 square foot mansion proposed on its steep Rose Street site. After reviewing fact-based expert opinion of potentially significant environmental impacts, the Court of Appeal correctly found to the contrary and reversed the trial court based on well-settled authority.

"CEQA compels process. It is a meticulous process designed to ensure that the environment is protected ... the EIR is the heart and soul of CEQA." (*Planning and Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892, 911.) Following remand to the trial court, environmental review for the Kapors' project can expeditiously occur as is routine for thousands of California projects each year. The Kapors may then build their substantial new home on Rose Street in Berkeley — with its environmental issues publicly addressed and mitigated.

The Public Resources Code allows "categorical exemption" from CEQA for classes of projects that "do not have a significant effect on the environment." (Pub. Resources Code § 21084(a).) Decades ago there was a split in judicial authority as to the standard of review applicable to the enumerated "exceptions" to such exemptions. However, while recent cases continue to note the prior split, CEQA's "fair argument" standard has been applied to categorical exemption exceptions since 1990. The last case to rely on the substantial evidence standard to uphold an exemption was *Centinela Hospital Association v. City of Inglewood* (1990) 225 Cal.App.3d 1586 — over twenty years ago. And *Centinela* did not discuss *why* the

substantial evidence standard applied; it was not at issue. (*Id.* at 1601.)

Post-*Centinela*, in *Banker's Hill v. City of San Diego* (2006) 139 Cal.App.4th 249, the Court of Appeal explained why the fair argument standard must be applied to consider exceptions to proposed categorical exemptions: it is because the underlying statutory authority limits such exemptions to projects without any potentially significant environmental effects. (Pub. Resources Code § 21084(a).) *Banker's Hill* explained that

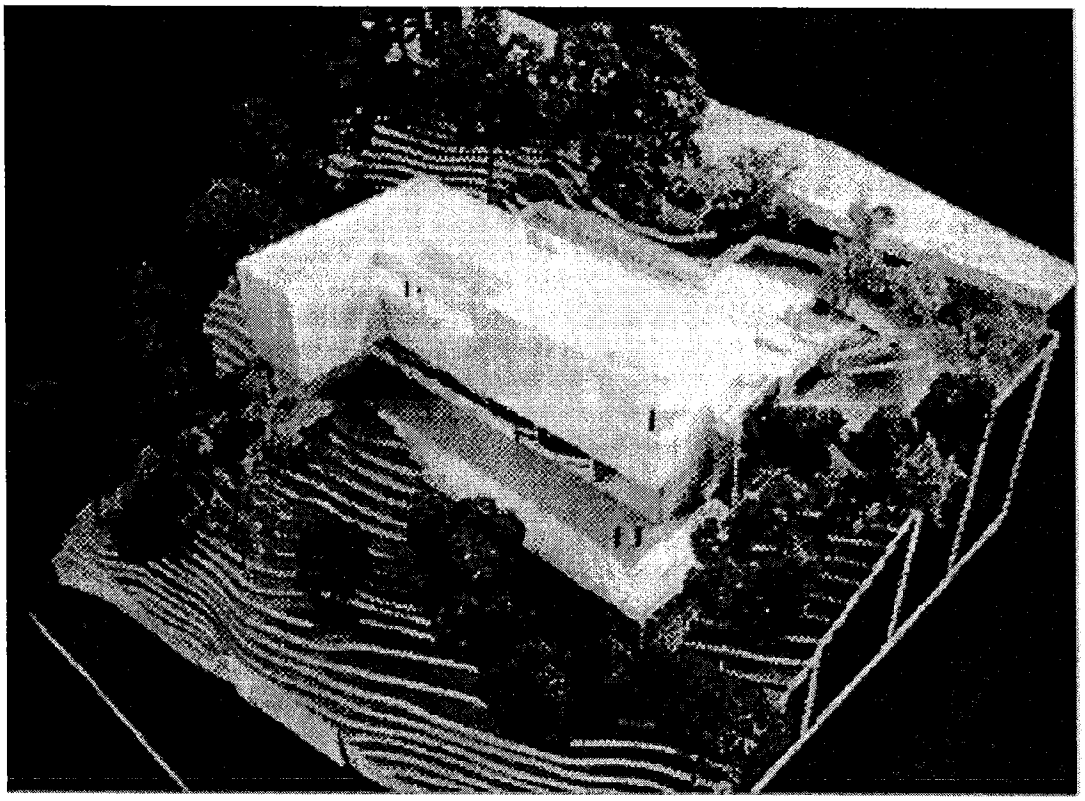
> ... where there is *any reasonable possibility* that a project or activity may have a significant effect on the environment, an exemption would be improper." (*Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 205-206 ...) This important limitation ... is best upheld by disallowing an exemption ... where the record reflects a fair argument that there may be a significant effect on the environment due to unusual circumstances.

(*Id.* at 265-266, italics added; *see* Pub. Resources Code § 21084(a).)

Banker's Hill reiterated that the statutory authority *only* allows categorical exemptions from CEQA for projects that have no significant environmental effects, and "no statutory policy exists in favor of applying categorical exemptions where a fair argument can be made that a project will create a significant effect on the environment." (*Id.* at 266.)

Appellants have provided the Court of Appeal with the Resources Agency's rule-making file relevant to the adoption of the categorical exemption exception in CEQA Guidelines [14 Cal.Code Regs. §§ 15000 *et. seq*] section 15300.2 (c). The rule-making file reflects that the categorical exemption exception that is now codified in Guideline section 15300.2(c) was solely grounded in Public Resources Code section 21084 and *Wildlife*

Alive v. Chickering, supra, 18 Cal.3d 190, 205-206. (Slip Opinion at 12, n.9, Appellants' Opening Brief at 18-19, 40-41, Appellants' Reply Brief at 18-19, Appellants' Request for Judicial Notice, Ex. 4 at 18; *attached.*)



Kapor-Klein House, Zoning Submittal (AR1:169.)

Here, the First District correctly applied the fair argument standard based on unambiguous statutory authority, the rulings of this Court, and other consistent precedent. (*E.g., Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 129; Slip Opinion at 12, 14-15.) In doing so, the Court provided helpful guidance in the application of exceptions to categorical exemptions from CEQA. The inquiry turns on evidence of potentially significant environmental impacts.

Issues Presented by the Petition

1. For a project that is categorically exempt from review under [CEQA], does the significant effects exception to the exemption in CEQA Guideline section 15300.2 require both a finding that there is a reasonable possibility of significant effect and a finding that the potentially significant effect is due to "unusual circumstances"?

Answer: ***No.*** Neither the relevant statutory authority nor the Supreme Court case upon which Guideline section 15300.2 subdivision (c) was directly based references "unusual circumstances." (Pub. Resources Code § 21084(a); *Wildlife Alive v. Chickering, supra,* 18 Cal.3d 190, 205-206.) Unusual circumstances are inherent in a project that may have significant environmental impacts despite fitting into a generic categorical exemption class. (Slip Opinion at 13-15.)

2. What is the appropriate standard of review of [sic] whether the significant effects exception to a categorical exemption applies?

Answer: The "fair argument" standard of review applies, consistent with categorical exemption cases decided during the last twenty years. (Slip Opinion at 15-16; Appellants' Reply Brief at 11-14.) There is no current conflict among the appellate districts.

3. When determining whether the significant effect [sic] exception applies, must a public agency consider alleged effects of activities that are not included in the project as proposed and approved?

Answer: ***N/A***. This question assumes facts not present and so cannot trigger review. The proposed Kapor residence is well-defined as to its size and placement on the steep slope of its Rose Street site, but geotechnical experts disagree both about the amount of fill required to build the 10,000 square-foot structure and whether significant environmental effects may result. (Slip Opinion at 4-6, 18-19; Appellants' Reply Brief at 23-40.)

Statement of Facts

Appellants adopt the Factual and Procedural Background in the published opinion of the Court of Appeal. (Slip Opinion at 1-8; *Berkeley Hillside Preservation v. City of Berkeley* (2012) 203 Cal.App.4th 656, 661-667; California Rule of Court 8.500 (c)(2).)

A few clarifications are in order. As in the trial court and the Court of Appeal, the City and the Kapors (collectively, the City) do not fairly describe the Kapors' proposed project. While it would be a single building that includes living space and a 10-car garage totaling 9870 square feet (referred to as 10,000 square feet), the City describes the project as if two separate structures. (AR1:3; Petition for Review at 8.)

Also, the analysis by Dr. Lawrence Karp supporting the categorical exemption exception is not based on a misconception of "what the project was in the first instance." (Petition for Review at 27.) The Slip Opinion accurately recounts the various opinions and reports prepared by Dr. Karp, along with the Kapors' experts' contrary opinions. (Slip Opinion at 4-7.)

The City contends in vain that Dr. Karp's opinions should be disregarded because Kapors' experts contended that Dr. Karp misread the architectural plans. (Respondents' Opposition Brief at 36.) But all that is demonstrated is a dispute among experts that requires resolution in an EIR.

Dr. Karp had an opportunity to review all of the letters critiquing his opinions before the City Council appeal meeting on April 27, 2011, and so testified. (AR4:1089, 2:530-531 [transcript].) He explained to the Council that he had *not* misread the plans. Further, based on his independent analysis he continued to disagree with the Kapors' engineers' opinions:

> I conducted an independent feasibility study. I now conclude that there is potential for very significant environmental impacts from construction and seismic lurching in service. *I reviewed the City Planning's index and the entire file, including all plans* ... The structure seemed inappropriate for the steep site so I did a reality check of the architectural drawings. The recent reports from the applicants' experts say I do not know how to read architectural drawings, but I have been a licensed architect for many years and I do know. Their reports have not changed my opinion. I cut and matched prints and conclude that the depicted elevations typically misrepresent the relationships between the steep site and the floor plans ... Project grading and tree removal, including removal of significant protected oak trees, will therefore be much more extensive than represented by the City, just as noted in my letter-reports and shown graphically on the Grading Section drawing you now have. This project has potential for very significant environmental impacts that should be studied and mitigated.

(AR4:1089; 2:530-532 [transcript of Karp testimony before the Council.])

The City contends that "although [Dr.] Karp protested that he did not misread the plans, *the City disagreed and properly disregarded his opinion*." (Respondents' Opposition Brief at 36, italics added.) But the City Council did not disregard Dr. Karp's opinion. The Council never questioned his credibility, as would indeed have been pointless to do so in light of his stellar credentials. The City Council's discussion at the appeal meeting never even touched on geotechnical issues. (AR2: 541-591.)

Dr. Karp has unassailable professional credentials as an eminent geotechnical engineer and architect who has taught at Stanford and Cal. His assertion that he reviewed the criticisms of the Kapors' engineers and disagreed with their opinions that he misread the plans was never refuted. Kapors' attorney Rena Rickles acknowledged Dr. Karp's "excellent credentials." And *unlike* the Kapors' engineers, Dr. Karp has "been a licensed architect for many years." (AR2:531.) The Kapors' architects that drew the mansion plans never expressed an opinion regarding Dr. Karp's interpretation of their plans.

The Kapors' geotechnical expert, Alan Kropp, provided a conflicting opinion that although both he and Dr. Karp had reviewed the same architectural plans and he did not question Dr. Karp's credentials, he "*believe[d]* there has been a misunderstanding of the plans" and "does not *believe* there will be grading necessary downhill of the lower backyard." (AR2:538.) Such statements were couched as Mr. Kropp's "beliefs" and he underscored that he was offering opinions, not stating facts. (*Ibid.*)

As a basis for Dr. Karp's opinion, he visited the Rose Street site on several occasions, reviewed all of the plans, reviewed the outdated 2009 geotechnical report prepared for the separate house and carport as well as the later Planning Department submittals on the project as finally

conceived, and created his own grading section drawing to determine the extent of earthwork and excavation necessary to support the 10,000 square foot house on its hillside site. (AR2:448-449.)

Those professional tasks were well within Dr. Karp's extensive education and decades of experience in the Berkeley Hills. From those efforts, Dr. Karp developed a fact-based professional opinion as to the excavation and grading required for an adequate foundation and anchorage for the proposed large building. His independent evaluation provided the basis for his opinions regarding significant environmental impacts. (AR2;448-449; 4:1085,1089.)

As was discussed at the trial court hearing on the writ, plans for the massive Kapor house show it perched on a steep hillside "like a little hat." (RT:46.) Appellants summarized Dr. Karp's opinion that the building

> ... *can't* just sit there. They'll have to do benches and fills and all kinds of retaining wall to do that work ... he did his own evaluation of this house on this site and indicated where he thought the benched-fill locations would need to be. He said the slopes were different than had been represented ... there would be significantly more fill required. The ... trees [would need to be] removed to get the equipment in to do that ... *no one refuted this* ...

(RT:46-47, italics added.)

Dr. Karp also explained that "although the site as now configured appears stable, the Rose Steps and the concrete of the elevated part of La Loma [overpass] are cracked from fault creep ..." (*Ibid.*) He recommended "an alternative project ... to avoid grading with massive excavations and

fills as well as the shoring and retaining walls necessary" for the project, concluding that in his professional opinion the 10,000 square-foot project had potentially significant impacts. (AR2:448-449.)

Dr. Karp did not assume that every home in the Berkeley Hills presents significant geotechnical hazards. He concluded that this particular home at the size proposed on its sloped lot required excavation for side-hill fills resulting in a "probability of seismic lurching." (AR2:448-449.)

Why Review Should Be Denied

There is no need for this Court's review to "secure uniformity of decision or to settle an important question of law." (Rule of Court 8.500 (b)(1).) The City's "sky is falling" rhetoric is without substance. As explained in the Summary of Answer, *infra* at 2-5, the applicability of the "fair argument" standard of review to consider an exception to a claimed categorical exemption is widely-accepted in the case law and there is no justification for a different standard.

Ironically, what *would* have caused conflict in case law would have been a different result in the Slip Opinion. No case has ever upheld a categorical exemption when there *is* evidence of a project's potentially significant environmental impacts. (Appellants' Opening Brief at 45-51 [catalogue of cases].)[1] Here, the trial court recognized that the fair argument standard should be applied but nonetheless upheld the exemption because of confusion about "unusual circumstances" as an independent step. (Slip Opinion at 12-13.) The Slip Opinion's scholarly discussion of the statutory, regulatory, and Supreme Court case underpinnings of categorical

[1] Not "all courts" addressing the 15300.2 (c) exception "conducted the two-part inquiry employed by the trial court." (Petition at 3.)

exemptions will prevent such a result in the future, explaining why the "2-step" approach can be helpful but is not required. (*Id.* at 10-15.) If potentially significant environmental impacts are present, categorical exemption is insupportable. It is simple.

Appellants will not here try to improve on the Slip Opinion's excellent analysis, and note that cases applying the so-called two-step test did not yet have the benefit of the legislative history judicially noticed by the Court of Appeal. (Slip Opinion at 12, n.9.) Division Four's earlier ruling in *Wollmer v. City of Berkeley* (2011) 193 Cal.App.4th 1329 was consistent with an integrated approach to unusual circumstances/significant impacts, as the Court considered unusual circumstances to be inextricably tied to the potential for significant effect. In *Wollmer*, no unusual circumstances triggered any potentially significant environmental impacts and so a categorical exemption was upheld. (*Id.* at 1352.)

The City's odd reliance on the separate "commonsense exemption" reviewed by this Court in *Muzzy Ranch v. Solano County Airport Commission* (2007) 41 Cal.4th 372 (a case that this Court modified following a request by the undersigned counsel and other non-parties regarding its references to the substantial evidence standard inapplicable to categorical exemptions) is improper and irrelevant.

First, the claimed relevance of the commonsense exemption and the *Muzzy Ranch* case have only now surfaced in the Petition for Review. The commonsense exemption was not even raised in the City's recent Petition for Rehearing. Rule of Court 8.500 (c)(1) provides as a policy matter that review is limited to issues timely raised on appeal.

Second, the analogy is without merit. There is a material difference between Guideline section 15061(b)(3)'s commonsense exemption, where

it "can be *seen with certainty that there is no possibility* that an activity in question may have a significant effect on the environment," and its converse: Guideline section 15300.2 (c)'s exceptions to categorical exemptions for projects with a "*reasonable possibility*" of significant effect. (Italics added.) Projects described by the 33 classes of categorical exemptions are not equivalent to commonsense exemption projects that have "no possibility" of impacts. They instead encompass minor projects that are generally not expected to have significant impacts. Projects within the 33 classes are not "seen with certainty" to have no impacts; in fact, when competent evidence of potentially significant impacts surfaces, the categorical exemption fails.

Finally, the City rationalizes that "unusual circumstances" must be assessed as an independent criterion of section 15300.2 (c) because otherwise "no project that satisfies the criteria under the exemption could ever be found to be exempt." (Respondents' Opposition Brief at 20.) This is illogical. To meet the exception, *substantial evidence* must support a fair argument that a project may have a significant environmental impact. This is the same low-threshold standard that applies to overturn negative declarations and mitigated negative declarations in favor of environmental impact reports. (Guideline § 15064 (f).)

While the City essentially presumes that it is always possible to meet the fair argument standard, if that were true no negative declaration or mitigated negative declaration could withstand challenge.[2] After 40 years

[2] A "single neighbor who complained that he did not like the look of a new house or that it would increase traffic" as posited by the City below would not qualify as substantial evidence defeating categorical exemption and would also be insufficient to defeat a negative declaration.

with CEQA, we know better. Negative declarations exponentially outnumber EIRs. The simple premise to both categorical exemptions *and* negative declarations is that they are *disallowed* by CEQA in the presence of a qualified fair argument of potentially significant environmental effects.

To summarize, the "unusual circumstances" referenced in Guideline section 15300.2 (c) inform the quality of evidence required to except a project from an exemption category. But they do not rise to the level of a separate-but-equal criterion. It cannot be overstated that CEQA's statutory authority does not allow categorical exemptions for any project that *may have a significant impact on the environment*; that simple premise remains the overarching rule and allows no separate unusual circumstances inquiry.

This Court ruled in *Wildlife Alive*, *supra*, 18 Cal.3d 190, that

- The Public Resources Code empowers the Secretary of the Resources Agency to adopt regulations to categorically exempt projects from CEQA *only* for projects that will not have a significant environmental effect.

- No regulation may exceed the scope of the enabling statute.
- Use of a categorical exemption is improper for any project that may have a significant impact, since otherwise the subject regulations (the CEQA Guidelines for categorical exemptions) would exceed the statutory authority of the Public Resources Code.

(*Id.* at 205-206; *see also Mountain Lion Foundation v. Fish and Game Commission* (1997) 16 Cal.4th 105, 124.)

We now know that when adopted in 1980 the categorical exemption exception Guideline cited only four elements as its underlying authority:

1. Public Resources Code section 21083
2. Public Resources Code section 21084
3. Public Resources Code section 21085
4. *Wildlife Alive v. Chickering*

(Request for Judicial Notice, Ex.4 at 18, Slip Opinion at 12, n.9; *attached.*)

First, Public Resources Code sections 21083 and [former] section 21085 provide *general authority* for the adoption of regulations (aka the CEQA Guidelines) to implement CEQA.

Next, Public Resources section 21084 is specific to categorical exemptions: it allows CEQA guidelines to be prepared and adopted to "include a list of classes of projects which have been determined not to have a significant effect on the environment and which shall be exempt."

The last authority relied upon for adoption of section 15300.2 (c) is the *Wildlife Alive* case, which disallows categorical exemption for any project that may have a significant impact.

With all of this authority in hand, the Slip Opinion is the very opposite of the "sea change" decried by the City and the Kapors in an attempt to gain this Court's review. (Petition at 7.) It will not "eviscerate the very concept of categorical exemptions." (*Id.* at 4.) It will not "vitiate the whole concept of categorical exemption." (*Id.* at 20.) And it will not require EIRs in matters not previously required. There is no "long-standing split in the standard of review" that remains unresolved. (*Id.* at 7.)

The City worries that an agency may not be able to rely on a categorical exemption from CEQA "when faced with any reasonable possibility of a significant impact – even an impact typical of an exempt class of projects." (Petition at 21.) Yet in creating classes of projects eligible for categorical exemptions, the power of the Secretary of the

Resources Agency is restricted to projects that have no environmental impacts. (Pub. Resources Code §21084 (a).) A typical project within the class necessarily has no significant environmental impacts, and projects that have such impacts are inherently unusual. The City appears to argue that some of the 33 categorical exemption classes include projects that typically may have significant environmental impacts. At best, such a stance would concede that the class is overly broad and exceeds its statutory authority.

Appellants concede no such thing. Many thousands of California homes are approved each year throughout the state without need for environmental review nor even any permits except for ministerial building permits. The exemption class for single-family homes is appropriate. However, the proposed 10,000 square foot Kapor residence/garage is not a typical run-of-the-mill single-family home appropriate for categorical exemption. It requires three use permits. And while one could imagine a comparably-sized home on a less-constrained site without adverse effects, the Kapor project has potentially significant environmental impacts relating to its size in the context of its steep site on a narrow roadway in the seismically active Berkeley Hills. Such a project warrants environmental analysis and mitigation in a prescribed and public CEQA process.

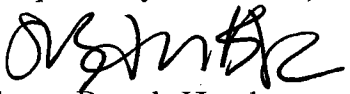
The Slip Opinion brilliantly follows *Wildlife Alive* and other Supreme Court precedent interpreting the statutory authority for CEQA categorical exemptions. It clarifies the application of the significant effects exception *based on substantial evidence that supports a fair argument of significant environmental effects*. No separate finding of "unusual circumstances" is authorized by any statutory or regulatory authority.

The Petition should be denied.

Counsel's Certificate of Word Count per **Word**:mac[2011]: 3768

April 16, 2012

Respectfully submitted,



Susan Brandt-Hawley
Attorney for Appellants

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 environmental documents.

HISTORY:

1. Amendment filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15100.1. Relation to Ministerial Projects.

Section 21080 of the Public Resources Code exempts from the application of CEQA those projects over which public agencies exercise only ministerial authority. Since ministerial projects are exempt under Section 15073 of these guidelines, Categorical Exemptions should be applied only where a project is not ministerial under a public agency's statutes and ordinances. The inclusion of activities which may be ministerial within the classes and examples contained in this article shall not be construed as a finding by the Secretary for Resources that such an activity is discretionary.

NOTE: Authority cited: Sections 21083 and 21088, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

HISTORY:

1. New section filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15100.2. 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.

NOTE: Authority cited: Sections 21083 and 21088, Public Resources Code. Reference: Sections 21000–21174, Public Resources Code and *Wildlife Alive* v. *Chickering*, 18 Cal. 3d 190.

HISTORY:

1. New section filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).
2. New subsection (c) filed 5-8-80; effective thirtieth day thereafter (Register 80, No. 19).

15100.3. Revisions to List of Categorical Exemptions.

Any public agency may, at any time, request that a new class of Categorical Exemptions be added, or an existing one amended or deleted. This request must be made in writing to the Office of Planning and Research and shall contain detailed information to support the request. The granting of such request shall be by amendment to these guidelines.

NOTE: Authority cited: Sections 21083 and 21088, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

HISTORY:

1. New section filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

15100.4. Application by Public Agencies.

Each public agency shall, in the course of establishing its own procedures, list those specific activities which fall within each of the exempt classes, subject to the qualification that these lists must be consistent with both the letter and the intent expressed in the classes. Public agencies may omit from their implementing procedures classes and examples that do not apply to their activities, but they may not require EIR's for projects described in the classes and examples in this article except under the provisions of Section 15100.2.

NOTE: Authority cited: Sections 21083 and 21088, Public Resources Code. Reference: Sections 21000 through 21174, Public Resources Code.

HISTORY:

1. New section filed 1-3-75; designated effective 4-1-75 (Register 75, No. 1).

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 provide electric power, natural gas, sewerage, or other public utility services;

(c) Existing highways and streets, sidewalks, gutters, bicycle and pedestrian trails, and similar facilities except where the activity will involve removal of a scenic resource including a stand of trees, a rock outcropping, or an historic building.

(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:

(1) 50 percent of the floor area of the structures before the addition or 2,500 square feet, whichever is less; or

(2) 10,000 square feet if:

(A) 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

(B) The area in which the project is located is not environmentally sensitive.

(f) 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;

(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, wildlife habitat areas, artificial wildlife waterway devices, streamflows, springs and waterholes, and stream channels (clearing of debris) to protect fish and wildlife resources;

15300.1. RELATION TO MINISTERIAL PROJECTS. Section 21080 of the Public Resources Code exempts from the application of CEQA those projects over which public agencies exercise only ministerial authority. Since ministerial projects are already exempt, Categorical Exemptions should be applied only where a project is not ministerial under a public agency's statutes and ordinances. The inclusion of activities which may be ministerial within the classes and examples contained in this article shall not be construed as a finding by the Secretary for Resources that such an activity is discretionary.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Section 21084, Public Resources Code.

Discussion of Section 15300.1

This section is renumbered with only a technical, clarifying change.

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.

NOTE: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Section 21084, Public Resources Code; Wildlife Alive v. Chickering (1977) 18 Cal. 3d 190.

Discussion of Section 15300.2

The only changes with this section are the numbering and the addition of titles for the subparagraphs.

15300.3. REVISIONS TO LIST OF CATEGORICAL EXEMPTIONS. Any public agency may, at any time, request that a new class of Categorical Exemptions be added, or an existing one amended or deleted. This request must be made in writing to the Office of Planning and Research and shall contain detailed information to support the request. The granting of such request shall be by amendment to these guidelines.

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Court of Appeal No. A131254
Supreme Court No. S201116

PROOF OF SERVICE

I am a citizen of the United States and a resident of the County of Sonoma. I am over the age of eighteen years and not a party to the within entitled action; my business address is P.O. Box 1659, Glen Ellen, CA 95442.

On April 16, 2012, I served one true copy of:

Answer to Petition for Review

X By placing a true copy enclosed in a sealed envelope with prepaid postage in the United States mail in Glen Ellen, California, to addresses listed below.

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Laura McKinney
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Meyers Nave
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Oakland CA 94607
Attorney for Defendants & Respondents

X Alameda County Superior Court
Attention: Clerk of the Court
1225 Fallon Street
Oakland CA 94612

X California Court of Appeal
First Appellate District, Division 4
Attention: Clerk of the Court
350 Mc Allister Street
San Francisco CA 94102

I declare under penalty of perjury that the foregoing is true and correct and is executed on April 16, 2012, at Glen Ellen, California.

Susan Brandt-Hawley