Fwd: Council File 18-1156 and Council File 18-1156-S1 (PLUM Committee 6/25/19 agenda items 12 and 13)

1 message

Gloria Pinon <gloria.pinon@lacity.org> Tue, Jun 25, 2019 at 9:32 AM
To: Clerk-Council Public Services <clerk-councilpublicservices@lacity.org>

---------- Forwarded message ---------
From: **John A. Henning, Jr.** <jhenning@planninglawgroup.com>
Date: Tue, Jun 25, 2019 at 8:26 AM
Subject: Council File 18-1156 and Council File 18-1156-S1 (PLUM Committee 6/25/19 agenda items 12 and 13)
To: <councilmember.harris-dawson@lacity.org>, <councilmember.blumenfield@lacity.org>, <councilmember.smith@lacity.org>, <councilmember.cedillo@lacity.org'>, <councilmember.price@lacity.org>
Cc: <CityClerk@lacity.org>, Jack Chiang <jack.chiang@lacity.org>, Tony Russo <tony@crestrealestate.com>, Paul M. Porter <pporter@hfbllp.com>, Oscar Medellin <oscar.medellin@lacity.org>, Parissh Knox <parissh.knox@lacity.org>

[SENT AT 8:25 A.M. ON TUESDAY, JUNE 25, 2019]

To:

Councilmember Marqueece Harris-Dawson, Chair

Councilmember Bob Blumenfield

Councilmember Curren D. Price, Jr.

Councilmember Gilbert A. Cedillo

Councilmember Greig Smith

cc:

City Clerk

Jack Chiang, Associate Zoning Administrator

Tony Russo (applicant's representative)

Paul Porter, Esq. (applicant's attorney)

Oscar Medellin, Esq., Deputy City Attorney

Parissh Knox, Esq., Deputy City Attorney

Honorable Councilmembers:

I am the appellant's attorney on the above appeals, which is scheduled for PLUM today. Presently these items toward the end of a lengthy agenda. Nonetheless, I wish to request that you commence the hearing by 3:00 p.m. and, if necessary, to take the items out of order, so that we can provide my testimony in support of the appeal. I will be in attendance when the meeting begins at 2:30 p.m., but regrettably I must leave the council chambers no later than 3:30 p.m. I just learned late last night that my attendance is required at a meeting in Malibu at 5:00 p.m. today, and this meeting cannot feasibly be rescheduled.

We will present our full position in writing by way of a letter to be delivered before the meeting. In the event you are unable to grant my request, our written comments will be our testimony on the matter.

Thank you for your kind consideration of my request.

Best Regards,

John Henning

John A. Henning, Jr.

Attorney at Law

125 N. Sweetzer Ave. Unit 202

Los Angeles, CA 90048

Ph. (323) 655-6171

Fax (323) 655-6109

jhenning@planninglawgroup.com

Fwd: Council File 18-1156 and Council File 18-1156-S1 (PLUM Committee 6/25/19 agenda items 12 and 13)

1 message

Anna Martinez <anna.martinez@lacity.org> Tue, Jun 25, 2019 at 3:15 PM
To: Clerk Council and Public Services <Clerk.CPS@lacity.org>

---------- Forwarded message ---------
From: **John A. Henning, Jr.** <jhenning@planninglawgroup.com>
Date: Tue, Jun 25, 2019 at 1:33 PM
Subject: Council File 18-1156 and Council File 18-1156-S1 (PLUM Committee 6/25/19 agenda items 12 and 13)
To: <councilmember.harris-dawson@lacity.org>, <councilmember.blumenfield@lacity.org>, <councilmember.smith@lacity.org>, <councilmember.cedillo@lacity.org'>, <councilmember.price@lacity.org>
Cc: <CityClerk@lacity.org>, Jack Chiang <jack.chiang@lacity.org>, Tony Russo <tony@crestrealestate.com>, Paul M. Porter <pporter@hfbllp.com>, Oscar Medellin <oscar.medellin@lacity.org>, Parissh Knox <parissh.knox@lacity.org>

[SENT AT 1:30 P.M. ON TUESDAY, JUNE 25, 2019]

To:

Councilmember Marqueece Harris-Dawson, Chair

Councilmember Bob Blumenfield

Councilmember Curren D. Price, Jr.

Councilmember Gilbert A. Cedillo

Councilmember Greig Smith

cc:

City Clerk

Jack Chiang, Associate Zoning Administrator

Tony Russo (applicant's representative)

Paul Porter, Esq. (applicant's attorney)

Oscar Medellin, Esq., Deputy City Attorney

Parissh Knox, Esq., Deputy City Attorney

Honorable Councilmembers:

Attached please find a letter from appellant's attorney John Henning, as well as a copy of a portion of the City CEQA Guidelines. We will provide copies of the letter to the committee members at today's hearing. We will provide the CEQA Guidelines to staff for inclusion in the record.

Best Regards,

John Henning

John A. Henning, Jr.

Attorney at Law

125 N. Sweetzer Ave. Unit 202

Los Angeles, CA 90048

Ph. (323) 655-6171

Fax (323) 655-6109

jhenning@planninglawgroup.com

---

2 attachments

LUC ltr Henning to City Council 6-25-19 - Council File 18-1156 and 18-1156-S1.pdf
299K

LUC LA CEQA Guidelines - Council File 18-1156 and 18-1156-S1.pdf
75K

JOHN A. HENNING, JR.
ATTORNEY AT LAW
125 N. SWEETZER AVENUE
LOS ANGELES, CALIFORNIA 90048

TELEPHONE: (323) 655-6171
E-MAIL: jhenning@planninglawgroup.com

June 25, 2019

APPELLANT NEIGHBOR'S RESPONSE TO PROPOSED CATEGORICAL EXEMPTION RE: 1888 N. Lucile Ave. / 3627 W. Landa St.

VIA HAND DELIVERY

City Council
City of Los Angeles
c/o Department of City Planning
201 N. Figueroa Street
Los Angeles, CA 90012

Re: Council File 18-1156 and Council File 18-1156-S1 (PLUM Committee 6/25/19 agenda items 12 and 13) (1888 N. Lucile Ave. / 3627 W. Landa St.)

Honorable Councilmembers:

These appeals concern two proposed single-family homes on adjacent parcels in the Silverlake neighborhood. My client is Barry Greenfield, Trustee of the Landa Street Trust, which owns the home at 3623 W. Landa Street. My client's property is immediately adjacent to the Landa Street site to the east, and is diagonally adjacent to the Lucile Avenue site.

This letter supplements the arguments made in our previous letters filed with each of the respective appeals on November 16, 2019 entitled "*Appellant Neighbor's Grounds for Appeal Re: 3627 Landa St.*" We offer the following additional comments, and we refer you specifically to the accompanying noise report dated June 25, 2019, prepared by Dale La Forest and Associates, which describes the unusual and extreme levels of noise that the construction of this project would impose on its neighbors. Some of these neighbors – including my client – are *less than 10 feet away from the construction site*.[1]

[1] The La Forest letter cites in numerous places to the "L.A. CEQA Thresholds Guide" prepared by the City. A portion of this document, from page 1 through the end of the noise section (page I.4-8), is enclosed with this letter.

1. City Staff Has Suddenly Changed the Proposed CEQA Compliance From a Mitigated Negative Declaration (MND) to a Categorical Exemption.

The CEQA decision appealed here is the determination by the ELAAPC that a Mitigated Negative Declaration, or "MND," is proper. The ELAAPC made that determination on October 10, 2018, more than 8 months ago. After numerous delays requested by the applicant, the City Council's PLUM Committee is finally hearing the appeal. On June 19, 2019, just 6 days before the PLUM Committee hearing, Associate Zoning Administrator Jack Chiang issued a memorandum to the City Council recommending that the Council "take no action on the Mitigated Negative Declaration," and adopt instead a so-called "categorical exemption" from CEQA, known as the "Class 3" exemption. On the basis of this newly asserted "Class 3" categorical exemption, staff contends that the project requires no environmental review at all.

2. The City Council Cannot Change the Form of CEQA Compliance at the Hearing on The Appeal.

By approving a categorical exemption now, in the context of an appeal, the City Council would deprive the appellant of due process. The City's MND was dated February 2016. It was considered during a duly noticed public hearing held by the Zoning Administrator on the combined projects in April 2016, and a second noticed public hearing held on the substantially revised projects in February 2017. Had the Zoning Administrator considered a categorical exemption instead, the appellant would have had an opportunity at that time to challenge the grounds for an exemption. He was deprived of that opportunity.

When the Zoning Administrator issued his written determination letters in July 2018, they were each based upon a finding that the 2016 MND was adequate, and were completely silent on the possible application of any categorical exemption. Then, after the appeals, the ELAAPC held a public hearing in October 2018. At that hearing, neither Mr. Chiang, nor the applicant, made any argument that a categorical exemption applied. Had they done so, the appellant would have had an opportunity to challenge the grounds for such an exemption at that time. He was deprived of that opportunity.

The ELAAPC's written decision was issued on November 7, 2018. It, too, said nothing about a categorical exemption. Instead, it reiterated and affirmed the finding of the Zoning Administrator that an MND was proper.

The City Council lacks the authority, in the context of an appeal, and literally years after the public hearings on the project, to change the form of CEQA compliance from an MND to a categorical exemption. To do so would be a deprivation of the appellant's due process right to have the projects and their CEQA compliance heard at all levels of the City's decision making process.

3. Staff Waited Until the Last Minute to Propose a Categorical Exemption.

Even if the City Council could consider a categorical exemption for the first time on appeal, City staff and the applicant have improperly waited until the last possible moment to present the grounds for that determination, thereby depriving the appellant of a meaningful opportunity to review and challenge the grounds for the exemption.

The appeal from the ELAAPC decision was filed on November 16, 2019, more than 6 months ago. The applicant requested multiple continuances of the PLUM Committee hearing, nominally to "respond to" the assertions of the appellant and his noise expert. The appellant opposed most of these continuances on the ground that the injected needless delay into the appeal. Between November and early May 2019 – a period of almost 6 months – neither staff nor the applicant gave any indication that there would be any change to the form of CEQA compliance in any respect, much less that there would be a major shift from an MND to a categorical exemption.

Finally, on May 8, 2019, the applicant presented to City staff an "initial study" that was nominally prepared by a private consultant (Dudek) "for the City" as required by CEQA, but which of course was paid for, and entirely orchestrated by, the applicant and his expediters. The May 8 Initial Study stated, in the Introduction section, that "This IS has been completed to support the findings that the Project is consistent with the definition and parameters of a Class 32 (Infill Development) Categorical Exemption (CEQA Guidelines Section 15332) and that none of the exceptions listed in Section 15300.2 of the CEQA Guidelines apply to the Project."

Therefore, on May 8, appellant learned for the first time that the City might be considering a change from an MND to a categorical exemption – although the exemption was a "Class 32," or "Infill Development" exemption rather than the "Class 3" exemption for "construction and location of limited numbers of new, small facilities or structures." Moreover, even though Dudek had prepared an Initial Study at the behest of the applicant, and even though City staff had transmitted this document from the appellant, there was no communication from City staff at that time to the effect that it would recommend that the City Council abandon its MND and pivot to a Class 32 categorical exemption.

Then, on June 4, 2019, just 3 weeks before the PLUM Committee hearing, Mr. Chiang transmitted to the appellant another, different, initial study – one which contained new information and assertions, and which, for the first time, declared that "This IS has been completed to support the findings that the Project is consistent with the definition and parameters of a Class 3 Categorical Exemption ..." This initial study was accompanied by a memorandum from Dudek (dated June 4, 2019), which appeared to be designed to buttress an argument that the prior MND had been in error, and that despite the MND's finding that there were numerous potentially significant impacts which required mitigation measures to reduce the potential impacts below the level of significance, in fact no "mitigation measures" were necessary to reduce the project's impacts below the level of significance. Specifically, in an attempt to satisfy the strict legal standard for the application of a categorical exemption the June 4 Dudek memo

meticulously (though not at all convincingly) parsed various mitigation measures and redefined them as "existing regulatory/statutory requirements," "standard condition of approvals [sic]," and/or "project design features."

The blizzard of last-minute documents did not subside with the June 4 Initial Study. On June 19, 2019, just six days before the PLUM Committee hearing, City staff for the first time set forth its position on the original MND and the subsequent initial studies and the memorandum prepared by Dudek. In a memo to the City Council, Mr. Chiang finally stated staff's recommendation that the MND be ignored and a Class 3 categorical exemption be granted instead.

And it did not even end there. On June 24, 2019, the day before the PLUM Committee hearing, Mr. Chiang transmitted to appellant yet another version of the Initial Study from Dudek – which contained, according to Mr. Chiang, "just a few minor revisions." (In fact, these revisions were not at all mintor.) This put the total number of initial studies at three.[2]

By presenting appellant with an avalanche of last-minute memoranda and multiple (and in many respects inconsistent) Initial Studies, the applicant and City staff have presented appellant with a constantly moving target. The City Council should not facilitate this strategy. It should reject staff's recommendation to find there is a categorical exemption, and consider the 2016 MND on its merits.

4. The City Has Improperly Deprived Appellant of an Appeal From the Underlying Decisions Approving the Project.

The ELAAPC approved the Lucile project and in its written decision stated that the approval was not further appealable, even though its approval of the project included a finding as to the adequacy of the MND. In addition, the City approved the Landa project with the caveat in the written decision that only the variance could be appealed and that other approvals (known as "Zoning Administrator Determinations," or "ZADs,") were not further appealable, even though the approval of the ZADs included a finding as to the adequacy of the MND. Under CEQA, the appellant has a statutory right to appeal any CEQA decision to the elected decisionmaking body (here, the City Council). In an attempt to satisfy this requirement while still maintaining that the underlying decisions were final, the City then engaged in the fiction that there could be a separate "CEQA appeal" for the combined projects, in which CEQA compliance was severed from the approval of the projects generally. Appellant, in an abundance of caution and in the interest of exhausting all of his administrative remedies before filing suit, has filed such a "CEQA appeal." Nonetheless, the City should have allowed an appeal from the entire underlying decision, not just the CEQA findings made in the underlying decision. By depriving appellant of the right to file such an appeal, the City has deprived the appellant of due process.

[2] Mr. La Forest is an outside consultant and is simply incapable of responding to an initial study received the day before the PLUM Committee hearing. Therefore, his comments are on the previously released Initial Studies dated May 8 and June 4.

5. The City Council Cannot Retroactively Cure the ELAAPC's Defective Decision Approving the Lucile Project and a Portion of the Landa Project Without Proper CEQA Compliance.

The City appears to believe that it can retroactively cure the ELAAPC's defective decision approving the Lucile project and the ZADs for the Landa project, and specifically the associated findings that the MND was adequate to satisfy CEQA, by simply redoing its CEQA compliance in the context of the subsequent "CEQA appeal." In fact, it cannot. The Lucile project and the Landa ZADs have been approved and are final, at least in the eyes of the City. Therefore, the appellant's remedy to challenge those underlying projects was to file suit against the City, which it did on February 4, 2019. The appellant's petition asserted that the City's findings regarding the adequacy of the MND were not supported by substantial evidence. The City Council cannot retroactively cure that decision by making new findings in the context of the "CEQA appeal" that has been severed from the underlying decision approving the project.

6. The City is Bound By the Statements in the MND.

The Zoning Administrator and the ELAAPC made numerous determinations in the MND that there were potentially significant impacts (and specifically as to aesthetics, air quality, geology/soils, hazards/hazardous materials, noise, public services, and transportation/traffic). In accordance with this finding, the MND proposed certain mitigation measures as to each impact, which measures would mitigate those impacts below the threshold of significance. The new, last-minute Initial Studies and the June 19 memo by City staff essentially boil down to a contention that the previous determinations of both City staff and the ELAAPC were wrong. The City Council should not enable staff to find one thing after a purportedly thorough study of the project pursuant to CEQA, and then later find something else entirely – especially when the only purpose of doing so is patently to evade the necessary CEQA review and to build a phony defense against an appeal. Instead, the City Council should grant this appeal and require staff and the applicant to do the CEQA review now that it did not do before.

7. The City Cannot Redefine Mitigation Measures as Something Else.

The applicant is caught in a trap. In finally considering the real impacts of the project on this appeal, and particularly as to construction noise, he realized that the MND did not mitigate these impacts below the threshold of significance. However, he did not want to revise the MND to include additional measures, or to recirculate it to the public for comments. Instead, the applicant devised a strategy by which he would argue that a categorical exemption applied.

Yet the initial problem with a categorical exemption is that in order to approve one, the City must make a finding that the project would not have significant impacts due to unusual circumstances, and in making such a finding "mitigation measures" cannot be considered. (See Salmon Protection & Watershed Network v. County of Marin (2004) 125 Cal.App.4th 1098, 1106 (citing to Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster (1997) 52 Cal.App.4th 1165, 1199–1200).)

Undoubtedly aware of this legal standard, in the last-minute Initial Studies the City's consultant, Dudek, sought to avoid this rule by (1) eliminating numerous mitigation measures set forth in the MND; (2) redefining other measures as "existing regulatory/statutory requirements," "standard condition of approvals [sic]," and/or "project design features"; and (3) by substituting new measures that in some cases are less stringent than the original measures. Yet in order to even be considered for purposes of determining the application of a categorical exemption, a measure must have pre-existed the project and must have been imposed on projects generally (i.e., standard conditions or regulatory/statutory requirements), or it must have been part of the project design as originally proposed by the applicant (i.e., a project design feature). In fact, as will be discussed in greater detail below, and as further elaborated in the accompanying report by appellant's noise expert, Dale La Forest, most of the noise measures undergirding City staff's finding of insignificant impact were devised long after the project was proposed (and in fact very recently), and specifically to deal with noise alleged by appellant's noise expert. Indeed, the May 8 Initial Study essentially acknowledges this. It defines several of the measures as "applicant-proposed" measures, rather than as standard conditions or regulatory/statutory requirements, and since there is no evidence that any of them were part of the project design as originally proposed by the applicant, they were clearly "applicant-proposed" long after the project was proposed. (In a bald-faced attempt to avoid the legal standard, this "applicant-proposed" language was removed in the subsequent versions of the Initial Study.) These measures are, of course, the paradigm of "mitigation measures" and thus they cannot be used to support a finding that a categorical exemption is proper.

8. The City Should Not Eliminate or Dilute the Mitigation Promised by the MND.

By eliminating mitigation measures and substituting other, less stringent measures for purposes of establishing the application of a categorical exemption, City staff essentially proposes a project that is less mitigated than the original project as considered by the Zoning Administrator and the ELAAPC. For example, as to construction times of day, the MND provided a measure that required construction activities to cease at 6 p.m. Now, the June 20 Initial Study provides for construction to end at 9 p.m., which is three hours later. Similarly, the MND included as a noise mitigation: "*The project contractor shall use power construction equipment with state-of-the-a t noise shielding and muffling devices*." The Initial Study however abandons this noise mitigation and replaces it with this ineffective measure: "All heavy construction equipment that is able to use mufflers will do so." Finally, the MND provided that "Demolition and construction activities shall be scheduled so as to avoid operating several pieces of equipment simultaneously, which causes high noise levels." The Initial Study has simply deleted this condition and replaced it with *nothing at all*.

Perhaps most importantly, the June 20 study now provides an important qualification that eviscerates all of the various measures: "*Construction of the Project may incorporate the measures above and/or utilize any other technically feasible measures it identifies*." The use of the word "may," rather than "shall" or "will," is essentially a blank check to ignore any particular measure for any reason. Similarly, the statement that the applicant "may" incorporate the

specified measures "and/or any other technically feasible measures it identifies" is a direct invitation for the applicant to utilize "other technically feasible measures it identifies" rather than the specified measures. Of course, it is impossible to know what these technically feasible measures even are. Therefore, the use of this phrase in itself destroys the efficacy of any of the cited mitigation measures.

The City Council should not facilitate this systematic dilution of the original mitigation, even if City staff might believe that this would facilitate a categorical exemption and thereby help to fend off this appeal. Instead, the City should decline the invitation to apply a categorical exemption, and require a new MND that identifies clear, enforceable mitigation that would actually mitigate impacts below the threshold of significance.

9. <u>The "Class 3" Exemption Cannot Be Applied to Two Structures Being Built Simultaneously.</u>

The CEQA Guideline authorizing a Class 3 exemption provides numerous examples, including "(a) One single-family residence, or a second dwelling unit in a residential zone. In urbanized areas, up to three single-family residences may be constructed or converted under this exemption." On its face, this example allows for "one single-family residence, or a second dwelling unit in a residential zone." The project here is for two single family residences. City staff and/or the applicant may contend that the second sentence of this example, which states that "up to three single-family residences may be constructed or converted under this exemption," changes the number of residences that may be built simultaneously, and thereby overrides the first sentence. However, the Guideline does not limit the application of the first sentence, such as, for example, by using the word "except" between the first and second sentences. Instead, it is a basic rule of statutory construction that all of the language must be considered to have a purpose, and, where possible, to harmonize what may appear on their face to be conflicting provisions. Apply this principle, the Guideline is properly understood to limit the use of the exemption by one proponent to a maximum of three residences built <u>in series</u> (such as over a period of years). When, as here, the project as proposed is multiple residences, the first sentence precludes the use of the exemption.

Moreover, regardless of the state Guidelines, the City has its own CEQA Guidelines, which are more restrictive on this point, and preclude the use of an exemption even if otherwise allowed under the state Guidelines.[3] The City Guidelines define the first example as follows: "1) Single family residences *not in conjunction with the building of two or more units*. In urbanized areas, up to three single family residences may be constructed under this exemption." (City CEQA Guidelines at Article III(1)(c), page 12 (emphasis supplied).) The first sentence clearly precludes use of the exemption for multiple single family residences concurrently, while potentially allowing the exemption for multiple residences built as separate projects at separate times.

[3] City of Los Angeles Environmental Quality Act Guidelines, Adopted July 31, 2002, Council File 02-1507. A copy of these Guidelines is attached.

10. The "Class 3" Exemption Does Not Apply to this Project Because There are Unusual Circumstances Giving Rise to Significant Noise Impacts.

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*." (CEQA Guidelines § 15300.2(c).) As the California Supreme Court has held:

> "A party invoking the exception may establish an unusual circumstance without evidence of an environmental effect, *by showing that the project has some feature that distinguishes it from others in the exempt class, such as its size or location*. In such a case, to render the exception applicable, the party need only show a *reasonable possibility* of a significant effect due to that unusual circumstance. Alternatively, under our reading of the guideline, a party may establish an unusual circumstance with evidence that the project *will* have a significant environmental effect. That evidence, if convincing, necessarily also establishes "a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances." (Berkeley Hillside Preservation v. City of Berkeley (2015) 60 Cal.4th 1086, 1105 (emphasis supplied).)

In Voices for Rural Living v. El Dorado Irrigation Dist. (2012) 209 Cal.App.4th 1096, an irrigation district applied the Class 3 categorical exemption for "new, small facilities or structures" to the water supply for a casino and hotel project. (Id. at 1105-1106.) The court held that "unusual circumstances" precluded the use of the exemption, because it was typically applied to smaller construction projects, and noted that "[t]he sheer amount of water to be conveyed under the MOU" was itself an unusual circumstance:

> "[A]n unusual circumstance refers to 'some feature of the project that distinguishes it' from others in the exempt class. In other words, 'whether a circumstance is "unusual" is judged relative to the typical circumstances related to an otherwise typically exempt project. . . . We do not look only to the project's possible environmental effects. Rather, we determine as a matter of law whether "the circumstances of a particular project ... differ from the general circumstances of the projects covered by a particular categorical exemption." (Voices for Rural Living, supra, 209 Cal.App.4th at 1109-10.)

Here, as discussed in more detail in Mr. La Forest's letter, there are numerous unusual circumstances. These include, but are not limited to (1) the unusually steep terrain (2:1) of the project site[4]; (2) the necessity of unusual construction techniques, such as caisson drilling; and (3) the inability to properly shield nearby residences from construction noise due to the surrounding topography. "[W]hen there are 'unusual circumstances,' it is appropriate for agencies to apply the fair argument standard in determining whether "there is a reasonable

[4] As discussed in Mr. La Forest's letter (at pg. 7 and footnote 14) and as confirmed by the applicant's own survey map, the project site has a slope of up to 60%.

possibility of a significant effect on the environment due to unusual circumstances." (Berkeley Hillside, supra, 60 Cal.4th at 1115.) As discussed in greater detail in this letter and in Mr. La Forest's letters, appellant has presented a *fair argument* that there is a "*reasonable possibility"* that the project will have a significant impact relating to construction noise as a result of these unusual circumstances.

Moreover, even if the aforementioned circumstances do not qualify as "unusual circumstances," the court in Berkeley Hillside nonetheless found that "a party may establish an unusual circumstance with evidence that the project *will* have a significant environmental effect. That evidence, if convincing, necessarily also establishes 'a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.'" (Berkeley Hillside, supra, 60 Cal.4th at 1105; see also Citizens for Environmental Responsibility v. State ex rel. 14th Dist. Ag. Assn. (2015) 242 Cal.App.4th 555, 576.) Here, the La Forest reports provide convincing (indeed, overwhelming) evidence that the project "will have" a significant effect on construction noise in numerous respects. This is an independent basis for finding "unusual circumstances" and thereby precludes the use of the Class 3 categorical exemption.

11. A "Class 3" Exemption is Not Allowed Because the Inconsistency With the Zoning is an Unusual Circumstance Giving Rise to a Significant Impact on Land Use.

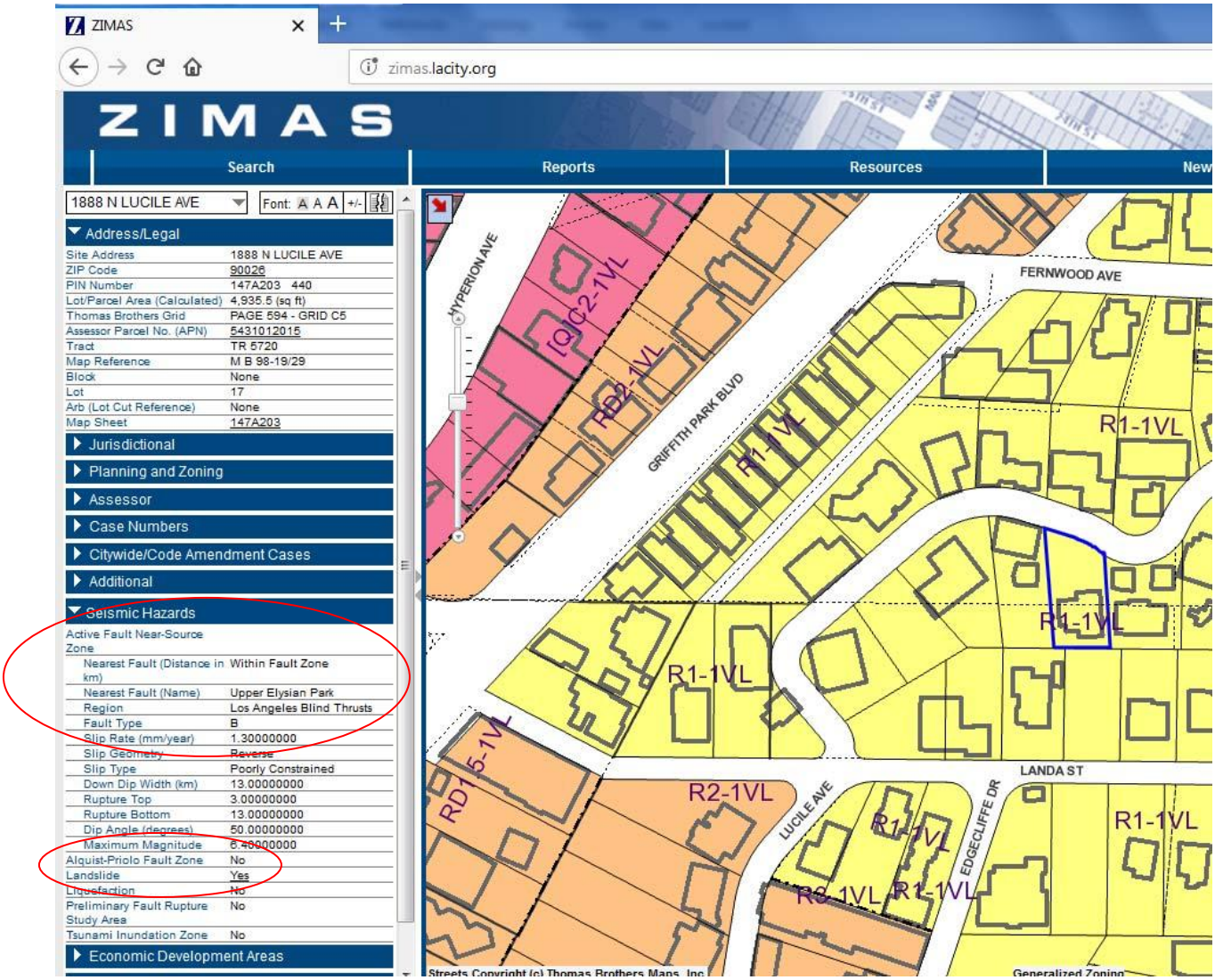
There is a significant impact on the Land Use category under CEQA, because the project is inconsistent with the zoning in numerous respects. (See CEQA Guidelines Appendix G (question whether the project would "b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?") Clearly, the zoning ordinance provisions regarding the provision of on-site parking, minimum road width, and proper site access were all adopted for the purposes of avoiding or mitigating various environmental effects, such as on traffic (including parking), aesthetics, and fire and emergency access. Since the project is inconsistent with the zoning code in all of these respects, there is "convincing evidence" that there will be a significant impact on Land use. This significant impact in itself is an unusual circumstance precluding the application of a categorical exemption. (See Berkeley Hillside Preservation v. City of Berkeley (2015) 60 Cal.4th 1086, 1105.)

The project's inconsistency with the zoning is not cured by the variance, adjustments and other discretionary relief granted by the City. A discretionary act at the time of project approval may satisfy the City's code, but it does render a project consistent with the zoning for purposes of determining whether there is a significant impact on land use.[5]

[5] This inconsistency may explain why Dudek abandoned its original strategy to use a "Class 32" "Infill Development" exemption, as reflected in the May 8 Initial Study; the Class 32 exemption specifically requires a finding that the project be consistent with zoning, and this project violates the zoning in numerous respects, requiring a variance, as well as various "adjustments" and "determinations" which are akin to variances.

12. <u>The "Class 3" Exemption Does Not Apply Because the Project is Located in a Landslide Zone and an Active Fault Zone.</u>

The geological study attached to the May 8 Initial Study states: "The site appears to lie within a Zone of Required Investigation (potential seismically induced landslide) defined by the State of California per the Seismic Hazards Mapping Act of 1990." (See May 8 Initial Study, Appendix B, page 8.) In addition, according to the City's ZIMAS mapping system, and as depicted below, the site is also in an "Active Fault Near" zone, and specifically within the Upper Elysian Park fault zone.



ZIMAS Map from City website

The state CEQA Guidelines and the City Guidelines each contain an express exception from any Class 3 categorical exemption when the project is located in a "particularly sensitive environment" where an "environmental resource of hazardous or critical concern" is involved. Section 15300.2 of the Guidelines states:

> **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 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.

Here, the presence of the project within a fault zone and a landslide area is sufficient to trigger the section 15300.2 exception. Therefore, a Class 3 exemption cannot be used.

13. <u>Even if the "Class 3" Exemption Applies to the Construction of the Houses, the Grading of the Site Does Not Qualify For a Categorical Exemption.</u>

The Class 3 exemption applies only to "construction" of small structures. It is silent as to grading. Here, the grading associated with the project is substantial, given its location on a steep hillside. Moreover, this grading is to be performed on unusually steep slopes: As discussed in Mr. La Forest's letter (at pg. 7 and footnote 14) and as confirmed by the applicant's own survey map, the project site has a slope of up to 60%. Such grading does not qualify for a categorical exemption under CEQA. Therefore, the project generally does not qualify for an exemption. (<u>See</u> <u>Association for a Cleaner Environment v. Yosemite Community College District</u> (2004) 116 Cal.App.4th 629, 640; <u>California Farm Bureau Federation v. California Wildlife Conservation Bd.</u> (2006) 143 Cal.App.4th 173, 191 (exemptions can be combined only when, taken together, they exempt the "whole of the action.")

Indeed, the lack of any exemption for the grading portion of the project is emphasized by the Guidelines themselves. The very next categorical exemption in the Guidelines, known as a "Class 4" exemption for "minor alterations to land," is only available for grading up to 10% in slope. The relevant section of the Guidlines states, in relevant part:

> **15304. Minor Alterations to Land**
>
> Class 4 consists of minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees except for forestry or agricultural purposes. Examples include, but are not limited to:

> (a) Grading on land with a slope of less than 10 percent, except that grading shall not be exempt in a waterway, in any wetland, in an officially designated (by federal, state, or local government action) scenic area, or in officially mapped areas of severe geologic hazard such as an Alquist-Priolo Earthquake Fault Zone or within an official Seismic Hazard Zone, as delineated by the State Geologist.

City staff and/or the applicant may contend that grading related to a construction project may be subsumed under the Class 3 exemption. However, such an interpretation is utterly inconsistent with existence of the Class 4 exemption, which only allows grading to be categorically exempt only in specified, narrow circumstances. It makes no sense that grading on land steeper than 10% would not qualify for a Class 4 categorical exemption, but if grading on such a slope were performed pursuant to construction of a house it would be categorically exempt under Class 3. (See California Farm Bureau Federation v. California Wildlife Conservation Bd. (2006) 143 Cal.App.4th 173, 187 ("exemptions are construed narrowly and will not be unreasonably expanded beyond their terms.")

The City's own CEQA Guidelines also contain a Class 4 categorical exemption. As to Class 4 in particular, there is confusing language in the City Guidelines (likely a drafting error) that erroneously implies that the Class 4 exemption may apply to grading of land of "fifteen percent (15%) or more," i.e., land steeper than 15%, under certain circumstances. However, while the City Guidelines can be *more restrictive* than the state Guidelines (i.e., by further limiting the application of the exemptions), the City Guidelines cannot be *less restrictive* than the state Guidelines, and thereby allow an exemption where it is not warranted by the state Guidelines. Categorical exemptions are a creature of state law and cannot be expanded upon by local agencies.

14. The City's CEQA Guidlines Forbid the Use of a Categorical Exemption Because it Can Be "Readily Perceived" That the Project "May" Have a Significant Impact.

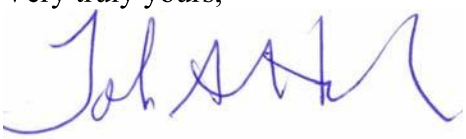
In addition to being precluded under state law, an exemption is forbidden under the City's own CEQA Guidelines. Under Article III(1) of the City CEQA Guidelines, "categorical exemptions are not used for projects where it can be readily perceived that such projects may have a significant effect on the environment." This provision is not tethered to a finding of "unusual circumstances" or to anything at all. Rather, it is a simple prohibition against the use of categorical exemptions whenever it can be "*readily perceived*" that the project "*may*" have a significant impact. The use of the term "may" rather than "will" means that the inquiry to be made is akin to the "fair argument" standard commonly applied in CEQA. In drafting the City CEQA Guidelines in this way, the City has set a threshold for the use of categorical exemptions that is more stringent than the state law requires, as it is entitled to do.

Here, as set forth in the 2016 MND, the project would have potentially significant impacts on numerous categories, including aesthetics, air quality, geology/soils, hazards/hazardous materials, noise, public services, and transportation/traffic. As to construction

noise in particular, these impacts have been described in great detail by Mr. La Forest in his letters. Since, in light of this evidence it can be "*readily perceived*" that the project "*may*" have a significant effect on noise and/or one of the other categories specified in the 2016 MND, no categorical exemption can apply under the City CEQA Guidelines.

The City Council should grant the appeal and reverse the decision of the ELAAPC.

Very truly yours,



John A. Henning, Jr.

Attachments:

1. City of Los Angeles Environmental Quality Act Guidelines
2. City CEQA Thresholds Guide [partial], page 1 through page I-4.8

CITY OF LOS ANGELES
ENVIRONMENTAL QUALITY ACT GUIDELINES

Adopted : July 31, 2002 - **CF# :** 02-1507

Section 1. Articles II, IV through VI, and VIII through X of the 1981 City CEQA Guidelines are hereby repealed.

Section 2. Article I of the City CEQA Guidelines is hereby amended to read as follows:

"Article I. INCORPORATION OF STATE CEQA GUIDELINES

The City hereby adopts as its own City CEQA Guidelines all of the State CEQA Guidelines, contained in title 15, California Code of Regulations, sections 15000 et seq, and incorporates all future amendments and additions to those guidelines as may from time to time be adopted by the State."

Section 3. Article III of the City CEQA Guidelines is hereby renumbered as Article II and is amended to read as follows:

"ARTICLE II: EXEMPTIONS

1. General Rule and General Exemption.

These Guidelines apply generally to discretionary actions by City agencies which may have a significant effect on the environment. However, where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not covered by CEQA and these Guidelines do not apply.[1]

2. Exempt Activities.

The following activities are exempt from the requirements of CEQA and these Guidelines:

a. Emergency projects, such as:

1) Projects undertaken, carried out, or approved by a City agency to maintain, repair, restore, demolish or replace property or facilities damaged or destroyed as a result of a disaster in a disaster-striken area for which a state of emergency

[1] A form that may be used for this general exemption is attached as Exhibit J.

has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1, Title 2 of the Government Code.

2) Emergency repairs to public service facilities necessary to maintain service.

3) Specific actions necessary to prevent or mitigated an emergency.

b. Ministerial projects,[2] such as,

1) Issuance of building permits, [3] including:

a) Demolition permits except those involving the demolition or removal of buildings or structures of historical, archaeological or architectural consequence as officially designated by federal, State or local government action.

b) Electrical permits.

c) Heating, ventilating, air-conditioning and refrigeration permits.

d) Elevator permits.

e) Boiler and pressure vessel permits.

f) Plumbing permits.

g) Relocation permits.

2) Issuance of business licenses.

3) Approval of final subdivision maps.

4) Issuance of Fire Department permits necessary for the safeguarding of life and property from the hazards of fire, explosion or panic.

5) Approval and installation of individual utility service connections and disconnections, including:

---

[2] Where a project involves an approval that contains elements of both a ministerial action and a discretionary action, the project will be deemed to be discretionary and will be subject to the requirements of CEQA. (State CEQA Guidelines, Section 15268 (d).)

[3] A building permit will not be ministerial if the parcel in question is covered by a specific plan that gives discretion to a City official or Decision-Making Body regarding the design of the project for which the permit is sought.

a) Water and electrical facilities to serve approved projects of public agencies, including, but not limited to, street lighting systems, fire hydrants, etc.

b) Utility extensions of reasonable length to serve projects for which permits have been issued.

6) Permits issued by the Department of Public Works as follows:

a) Class "A" permits for construction or repair of sidewalks, driveways and curbs.

b) Excavation permits except those involving areas of archaeological consequence as officially designated by federal, State or local government action

c) House-moving permits.

d) Permits for house numbers on curbs.

e) Manhole cover permits.

f) Overload permits (height, width and weight).

g) Permit for lease dump truck (personal).

h) Sewer permits (special connections).

i) Storm drain connection permits.

j) Permits for private rubbish trucks.

7) Projects requiring the approval of the City Planning Department:

a) Parcel Maps – determination that existing regulations do not apply.

b) Airport Approach Zoning Regulations – Planning Director authority to determine airport hazard area boundaries.

c) Change of Zone or Height District (Ordinances implementing change): Removal of "F" Funded Improvement – removal of designation from map; "Q" and "T" Classification – removal of designation from map; and "Q" plot plan approval pursuant to precise instructions from City Council leaving no discretion.

d) Office of Zoning Administration – plot plan approvals pursuant to precise instructions or conditions leaving no discretion.

e) Conditional Uses – plot plan approvals pursuant to precise instructions from the Decision-Making Body.

8) Engineering permits issues in accordance with an entitlement for use previously granted.

9) Permits issued by the Department of Traffic as follows:

a) Searchlight permits.

b) Bicycle rack permits.

c) Vendors' permits.

10) Permits issued by the Police Commission as follows:

a) Café and entertainment shows.

b) Equine license.

c) Breeders license.

d) Sentry dog trainer license.

c. Categorical Exemptions, as set forth in Article VII of these Guidelines.

d. Feasibility and planning studies for possible future action, although such studies shall include consideration of environmental factors.

e. Proposals for legislation to be enacted by the State Legislature.

f. Continuing administrative, maintenance and personnel-related activities.[4]

g. The submission of proposals to a vote of the people of the City of Los Angeles.

h. Any activity specifically exempted from the requirements of CEQA by State Law.

[4] This subsection should not be construed by City Agencies to exempt their ongoing programs that may have significant impacts on the environment.

i. Any activity (approval of bids, execution of contracts, allocation of funds, etc.) for which the underlying project has previously been evaluated for environmental significance and processed according to the requirements of these Guidelines.

j. Projects which are rejected or disapproved.[5]

k. Actions undertaken by the City of Los Angeles relating to any thermal power plant site or facility, including the expenditure, obligation or encumbrance of funds for planning, engineering or design purposes, or for the purchase of equipment, fuel, water, (except ground water), steam or power for such a thermal power plant, if the thermal power plant site and related facility will be the subject of an EIR or Negative Declaration or other document or documents prepared pursuant to Public Resources Code Section 21080.5, which will be prepared by:

1) The State Energy Resources Conservation and Development Commission,

2) The Public Utilities Commission, or

3) The City or County in which the power plant and related facility would be located.

The EIR, Negative Declaration, or other document prepared for the thermal power plant site or facility shall include the environmental impact, if any, of the action described in this Subsection.

l. Activities or approvals necessary to the bidding for, hosting or staging of, and funding or carrying out of, Olympic Games under the authority of the International Olympic Committee (IOC), except for the construction or enlargement of facilities necessary for such Olympic Games. If such facilities are required by the IOC as a condition of being awarded the Olympic Games, the Lead City Agency need not discuss the "no project" alternative in the EIR with respect to those facilities.

m. The adoption of ordinances that do not result in impacts on the physical environment.

n. General policy procedure making, except if applied to a specific "project" as defined in State CEQA Guidelines section 15378.

o. The establishment, modification, structuring, restructuring, or approval of rates, tolls, fares or other charges by the City of Los Angeles which the Decision-Making Body finds are for the purpose of:

---

[5] This Subsection is intended to allow an initial screening of projects on the merits for quick disapprovals prior to the initiation of the environmental review process where the Lead City Agency can determine that the project cannot be approved. This Subsection shall not be construed to relieve an applicant from paying the costs of an EIR or Negative Declaration prepared for his project prior to a disapproval after normal project evaluation and processing.

1) Meeting operating expenses, including employee wage rates and fringe benefits,

2) Purchasing or leasing supplies, equipment or materials,

3) Meeting financial reserve needs and requirements,

4) Obtaining funds for capital projects, necessary to maintain service within existing service areas, or

5) Obtaining funds necessary to maintain such intra-city transfers as are authorized by city charter.

The Decision-Making Body shall incorporate written findings in the record of any proceeding in which an exemption under this section is claimed setting forth with specificity the basis for the claim of the exemption.

p. Actions taken prior to January 1, 1982, by the City of Los Angeles to implement the transition from the property taxation system in effect prior to June 1, 1978, to the system provided for by Article XIII A of the California Constitution. This exemption is limited to projects directly undertaken by a person which are supported in whole or in part through contracts, grants, subsidies, loans, or other forms of assistance from the City of Los Angeles where the projects:

1) Initiate or increase fees, rates, or charges charged for any existing public service, program, or activity, or

2) Reduce or eliminate the availability of an existing public service program, or activity, or

3) Close publicly owned or operated facilities, or

4) Reduce or eliminate the availability of an existing publicly owned transit service, program, or activity.

q. Activities and proposals by the City of Los Angeles necessary for the preparation and adoption of a local coastal program pursuant to the California Coastal Act, (commencing with Section 30000 of the Public Resources Code). CEQA shall apply to the certification of a local coastal program by the California Coastal Commission pursuant to Chapter 6 of the California Coastal Act.

r. Projects for the institution or increase of passenger or commuter service on rail lines already in use, including the modernization of existing stations and parking facilities.

s. Projects for the development of a regional transportation improvement program or the state transportation improvement program.

t. Zone change ordinances initiated by the City for the purpose of complying with Section 65860 (d) of the California Government Code, provided that the zone change provides for the least intensive use category allowed by the applicable provisions of the General Plan of the City of Los Angeles."

Section 4. Article VII of the City CEQA Guidelines is hereby renumbered as Article III and reads as follows:

"ARTICLE III: CATEGORICAL EXEMPTIONS ARTICLE III CATEGORICAL EXEMPTIONS

1. Classes of Categorical Exemptions.

The Secretary for Resources has provided a list of classes of projects which he has determined do not have a significant effect on the environment and which are therefore exempt from the provisions of CEQA. The following specific categorical exemptions within such classes are set forth for use by Lead City Agencies, provided such categorical exemptions are not used for projects where it can be readily perceived that such projects may have a significant effect on the environment.

a. 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.

1) Interior or exterior alterations involving remodeling or minor construction where there be negligible or no expansion of use.

2) Operation, repair, maintenance or minor alteration of existing facilities of both investor and publicly owned utilities, electrical power, natural gas, sewage, water, and telephone, and mechanical systems serving existing facilities, including alterations to accommodate a specific use.

3) Operation, repair, maintenance or minor alteration of existing highways and streets, sidewalks, gutters, bicycle and pedestrian trails, storage areas, parking lots, aircraft parking areas, wharves, railroads, runways, taxiways, navigable waterways, bridle trails, service roads, fire lanes and golf-cart paths, except where the activity will involve removal of a scenic resource including but not limited to a stand of trees, a rock outcropping or an historic building.

4) Restoration or rehabilitation of deteriorated or damaged structures, facilities or mechanical equipment and systems to meet current standards of public health, safety and environmental protection.

5) Additions to existing structures provided that the addition will not result in an increase of more than:

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

   b) 10,000 square feet of:

      i. 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
      ii. The area in which the project is located is not environmentally sensitive.

6) Addition of safety, security, health or environmental protection devices for use during construction of or in conjunction with existing structures, facilities or mechanical equipment, or topographical features (including navigational devices).

7) New copy on existing on and off-premise signs.

8) Maintenance of existing landscaping, native growth, water supply reservoirs; and brush clearance for weed abatement and fire protection (excluding the use of economic poisons as defined in Division 7, Chapter 2, California Agricultural Code).

9) 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, lakes and reservoirs.

10) Division of existing multiple family rental units into condominiums or stock cooperatives.[6]

11) Demolition and removal of individual small structures listed in this subdivision except where the structures are of historical, archaeological or architectural significance:

   a) Single-family residences not in conjunction with the demolition of two or more units;

   b) Motels, apartments, and duplexes designed for not more than four dwelling units of not in conjunction with the demolition of two or more such structures;

[6] A multiple family rental unit is "existing" when the Department of Building and Safety has issued a certificate of occupancy.

c) Stores, offices, and restaurants of designed for an occupant load of 20 persons or less, if not in conjunction with the demolition of two or more such structures;

d) Accessory (appurtenant) structures including garages, carports, patios, swimming pools, and fences.

12) Outdoor lighting and fencing for security and operations.

13) Interior or internal modifications to established and discrete areas which are fully developed within the larger environment of parks or recreation centers, where such interior or internal modification is essentially a rearrangement (rather than an additive function) such as might occur at a zoo, outdoor museum, arboretum, formal garden, or similar display area.

14) Issuance, renewal or amendment of any lease, license or permit to use an existing structure or facility involving negligible or no expansion of use.

15) Installation of traffic signs, signals and pavement markings, including traffic channelization using paint and raised pavement markers.

16) Installation of parking meters.

17) Operation, repair, maintenance or minor alteration of surface pipelines serving industrial or commercial facilities and all subsurface pipelines.

18) Issuance of permits, leases, agreements, berth and space assignments, and renewals, amendments or extensions thereof, or other entitlements granting use of the following existing facilities and land and water use areas involving negligible or no expansion of use and/or alteration or modification of the facilities or its operations beyond that previously existing or permitted:

a) Municipal Warehouses and Transit Sheds.

b) Municipal Wharves.

c) Municipal Airports.

d) Storage areas for domestic shipment-receipt and foreign import-export commodities.

e) Office Space.

f) Surface or subsurface pipelines serving industrial or commercial facilities in the Harbor District.

g) Municipal Utility Rights-of-Way.

19) The granting of variances by the Board of Police Commissioners from the requirements of Section 41.40 of the L.A.M.C., where the activity permitted will be completed within 30 days after the variance is granted.

20) Modernization of an existing highway, street, alley, walk, mall or minor drainage channel by construction of improvements, resurfacing, reconstruction, eliminating jut-outs, widening less than a single lane width, adding shoulders or parking lanes, adding auxiliary lanes for localized purposes (turning, passing, and speed change), correcting substandard curves and intersection, bottleneck bridge widenings not to exceed the width of the adjacent existing roadway approaches, and other bridge widenings less than an additional lane on the bridge. This exemption shall not be used where extensive tree removal will be involved.

21) Modifications to existing storm drain systems for collection of local water at alternate points within an existing local drainage area unless impact on a park is anticipated.

22) Granting or renewal of a variance or conditional use for a nonsignificant change of use in an existing facility.

23) Granting of a variance to permit continued operation of a non-conforming essential service or retail convenience after the mandated Zoning Code removal date.

24) Relocation of an existing use within a publicly owned facility.

25) Installation of fire hydrants on existing water mains.

26) Construction of erosion control facilities.

27) Zoning Administrator approval of foster care and day care homes pursuant to L.A.M.C. Section 12.27 E.

28) Zoning Administrator approval to use existing dwelling units as model homes.

29) Minor repairs and alterations to existing dams and appurtenant structures under the supervision of the Department of Water Resources.

30) Actions of the Board of Building and Safety Commissioners on Appeals of Determinations of the Superintendent of Building, except actions of the Commission taken pursuant to L.A.M.C. Sections 91.3002(f)-4-e.

31) Establishment or modification of any rate, fee or charge for the use of existing municipal facilities and services involving negligible or no expansion of use.

32) Installation, maintenance or modification of mechanical equipment and public convenience devices and facilities which are accessory to the use of the existing structures or facilities and involve the negligible or no expansion of use.

33) The issuance, modification or relocation of police permits for antique shops, auto parks, auto rental, bath and massage, card club, card school, dancing academy, dance (public one night), escort bureau, figure studios, game arcade, games of skill and science, identification card, jewelry auction, locksmith, messenger service, nudist colony, pawnbroker, pool table (single), pool tables, poolroom, billiard room, family billiard room, private patrol, rides/merry-go-round, rummage sale, sales (closing out and removal), secondhand (auto parts, books, jewelry, and general), seller of concealable firearms, shooting gallery, towing operation, social clubs, and proprietor or subscriber alarm system.

34) Federally funded programs for revitalization of deteriorating urban areas for purposes of correcting building code violations and making other improvements to existing dwelling units, including coordinating those public improvements necessary to improve public facilities in connection with such revitalization. This exemption does not include the construction of new public facilities.

35) Minor extensions of, and connections between, existing taxiways which permit alternative aircraft ground maneuvering operations and involve negligible or no expansion of use.

36) The issuance, modification or relocation of animal regulation permits for impounding stray animals declared to be a nuisance, disposal of old, crippled or infected dogs, neighborhood retail pet shops, animal trapping, keeping or wild animals as pets, and keeping of carrier or homing pigeons which are to be liberated for exercise or racing.

37) Crushing of cement concrete, asphalt concrete, masonry and other related materials resulting from demolition work when the crushing activity occurs on industrial zoned land, is in compliance with L.A.M.C. Secs. 112.04 and 112.05 , and includes dust suppression measures sufficient to meet the requirements of the Southern California Air Quality Management District.

38) Conversion of a single family residence to office use.

39) The conversion of existing commercial or industrial units in one structure from single to condominium type ownership.

40) Federally funded programs for the provision of public services that result in negligible or no impact on the physical environment and that do not involve the construction of new public or private facilities.

b. Class 2. Replacement or Reconstruction.

Class 2 consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced.

1) Replacement or reconstruction of existing schools, hospitals, recreation buildings and libraries to provide earthquake resistant structures which do not increase capacity more than fifty percent (50%).

2) Replacement of a commercial or industrial structure with a new structure of substantially the same size, purpose and capacity.

3) Replacement or reconstruction of existing utility systems and/or facilities involving negligible or no expansion of capacity.

4) Conversion of overhead electric utility distribution system facilities to underground including connection to existing overhead electric utility distribution lines where the surface is restored to the condition existing prior to the undergrounding.

5) Replacement or reconstruction of surface or subsurface pipelines involving negligible or no expansion of use beyond that previously existing.

6) Replacement or reconstruction of existing heating and air-conditioning systems.

7) Replacement of existing pedestrian stairways, including such additional rights of way as needed to bring the stairways up to current standards of length and width, providing that the project does not impact cultural resources of remove mature trees.

c. Class 3. New Construction 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 within a two year period. Examples of this exemption include but are not limited to:

1) Single family residences not in conjunction with the building of two or more units. In urbanized areas, up to three single family residences may be constructed under this exemption.

2) Apartments, duplexes and similar structures, designed for not more that four dwelling units of not in conjunction with the building of two or more such structures. In urbanized areas, the exemption applies to single apartments, duplexes and similar structures designed for not more than six dwelling units of not constructed in conjunction with the building of two or more such units.

3) Stores, motels, offices, restaurants, and similar small commercial structures not involving the use of significant amounts of hazardous substances, designed for an occupant load of 30 persons or less, if not in conjunction with the building of two or more structures. In urbanized areas, the exemption also applies to commercial buildings on sites zoned for such use, if designed for an occupant load of 30 persons or less, of not constructed in conjunction with the building of 4 or more such structures and of not involving the use of significant amounts of hazardous substances.

4) Installation of new equipment and/or industrial facilities involving negligible or no expansion of use if required for safety, health, the public convenience, or environmental control.

5) Water main, sewage, electrical, gas and other utility extensions of reasonable lengths to serve already approved construction.

6) Accessory (appurtenant) structures including garages, carports, patios, swimming pools, fences, game courts (including tennis courts accessory to residential developments), play areas and retaining walls.

7) Installation of scientific measuring, monitoring and testing devices.

8) Additions to underground electric and water utility distribution system facilities such as cables, conduits, pipelines, manholes, vaults and appurtenances, including connections to existing overhead electrical utility distribution lines.

9) Installation of surface and subsurface pipelines and equipment in industrial facilities involving negligible or no expansion of use beyond that previously existing.

10) Street lighting projects, with the exception of those systems where illumination levels would materially exceed minimum levels of illumination recommended in the current edition of the "American National Standard Practice for Roadway Lighting" as approved by the American National Standards Institute.

11) Sewers constructed to alleviate a high potential or existing public health hazard. Such sewers shall be of a size and capacity to serve only the area of need.

12) Storm drains constructed to collect low flow or alleviate other local drainage problems unless impact on a park is anticipated.

13) Offsite sewers as described in Section 64.11.2 of the L.A.M.C., of no greater diameter than 10 inches, that will serve an area local in nature.

14) Authorizations by the Department of Public Utilities and Transportation for the installation, relocation and/or replacement of police and fire boxes, and poles, guys and antennas external to existing buildings.

15) Recommendations by the Department of Public Utilities and Transportation for improved crossing protection.

16) Issuance by the Department of Public Utilities and Transportation of permits for ambulance driver or attendant, auto-for-hire, public service vehicle, or school bus.

17) Projects involving less than 35 dwelling units or 15,000 square feet of commercial, industrial, governmental or institutional floor space where, as determined by the appropriate City department, the project is not in a designated hillside ("H") area or in an officially mapped area of severe geologic hazard, conforms with or is less intensive than the adopted plan, is a fill-in rather than an initial intrusion into an established pattern of development, is not in an officially designated Paleontological. Historical, Archaeological or Seismic Study Area, and, of residential, is more that 1,000 feet from a freeway, railway, or airport, except where the mitigation of potentially significant noise and air quality impacts to an insignificant level is ensured. If any grading is required in connection with such projects, this Categorical Exemption shall not apply unless the grading is also exempted by Subsection d of Subsection 1 of this Article.

d. Class 4. Minor Alterations to Land.[7]

Class 4 consists of minor public or private alterations to the condition of land, water and/or vegetation which do not involve removal of mature, scenic trees except for forestry and agricultural purposes:

1) Grading on land with a slope of less than ten percent (10%), except where it is to be located in a waterway, in any wetland, in an officially designated (by federal, State, or local governmental action) scenic area or in an officially mapped areas of severe geologic hazard.

2) Grading on land with a slope of fifteen percent (15%) or more, and/or involving grading in excess of 20,000 cubic yards. This exemption will not apply to grading located in a waterway, in any wetland, in an officially designated (by federal, State, or local action) scenic area, or in officially mapped areas of severe geologic hazard, or contains scenic trees.

3) New gardening, tree planting, or landscaping, but not including tree removal except dead, damaged or diseased trees or limbs.

[7] See "Exemption by Location," Section 4a of this Article.

4) Filling of earth into previously excavated land, and maintenance and preservation of land elevation in areas of land settlement and subsidence with material compatible with the natural features of the site.

5) Minor alterations in land, water and vegetation on existing officially designated wildlife management areas of fish production facilities which result in improvement of habitat for fish and wildlife resources or greater fish production.

6) Temporary uses of land having no permanent effects on the environment, including but not limited to carnivals, parades, temporary location filming, sales of Christmas trees, building materials storage on street or sidewalk during job, construction offices and tract sales offices.

7) The issuance, renewal or amendment of any lease, license or permit to use land involving minor alterations to the condition of the land.

8) The renewal or amendment of any lease which allows for a minor increase in leased acreage.

9) Watercourse permits.

10) Grading and/or paving of existing rights of way for parking where zoning laws permit such use, street access exists, and the project does not significantly impact local drainage patterns, cultural resources, or trees.

11) Zoning Administrator approval to erect and maintain temporary subdivision directional signs.

12) Minor trenching and backfilling where the surface is restored.

13) The creation of bicycle lanes on existing rights-of-way.

14) Relocation of residential structures located on lands acquired for a public use to a new site.

15) Maintenance dredging where the spoil is deposited in a spoil area authorized by all applicable State and federal regulatory agencies.

16) Corrective grading to repair slope failures and for restoration of previously graded areas to their original configurations.

e. Class 5. Alterations in Land Use Limitations.[8]

Class 5 consists of minor alterations in land use limitations in areas with less than a 20% slope, which do not result in any changes in land use pr density, including but not limited to:

1) Minor lot line adjustments, side yard and setback variances not resulting in the creation of any new parcel nor in any change in land use or density.

2) Issuance of minor encroachment permits.

3) Minor street, alley and utility easement vacations where the vacated property does not constitute a buildable site that would allow a commercial or industrial development of more that 10,000 square feet or a residential development of more than 25 units.

4) Conveyances of minor miscellaneous easements, including street, alley or walkway easements.

5) Acquisition of public street easements and the construction of street improvements required pursuant to Section 12.37 of the L.A.M.C. including minor modifications and minor waiver requirements.

6) Minor modifications of the conditions of previously approved tentative tract maps involving improved design features when no increase in the number of lots or parcels is proposed.

7) Changes in Council instructions related to a change of zone or height district.

8) Extensions of time to utilize "Q" provisions imposed upon changes of zone or height district, to utilize a variance or conditional use grant, or to record a final tract.

9) Interpretations and minor adjustments to the boundaries of zones or height districts limited by the existing provisions of Section 12.30 of the L.A.M.C.

10) Minor area variances, building location and configuration variances, yard variances, or slight modifications which do not result in any change in land use or additional dwelling units.

11) Department of Building and Safety Orders and Zoning Administrator Interpretations and appeals therefrom which do not result in change in land use or additional dwelling units.

12) Zone changes that reduce the maximum intensity of use of the land, but do not change the nature of the use.

[8] See "Exemption by Location," Section 4a of this Article.

13) Zone changes or variances that merely conform zoning to an existing use where the existing use was legally commenced.

14) Zone changes from residential to P-1 on connection with an already developed commercial or industrial use.

15) Acceptance of future streets to provide windows for sewer house connections.

16) Removal of minor vehicular access restrictions.

17) Dedication of easements for streets, alleys and walkways over City-owned property already improved as streets, alleys or walkways.

18) Conveyance of easements between public agencies for streets, alleys or walkways over properties already improved as streets, alleys or walkways.

19) Acquisition of easements for drainage and sanitary sewers for the conveyance of local drainage and sewage flow into existing outlet facilities.

20) Acquisition of easements for future streets, alleys and walkways.

21) Acceptance of future streets, alley and walkways which are already improved as streets, alley and walkways, as public streets, alley and walkways.

22) Release of agreements on property involving lot ties, public easements, dedications, and submittals of plans.

23) Granting or renewal of a variance or conditional use for a non-significant change of use of land.

24) Reversion to acreage in accordance with the Subdivision Map Act.

25) Establishment, change or removal of building lines.

26) Consolidation of contiguous properties into a lesser number of parcels which may involve the vacation of unimproved paper streets or alleys.

27) Termination of City Council approved zone changes or height district files if not implemented after three (3) years, including "T" removals and seven (7) step subdivisions subject to a withholding ordinance for dedication and improvements, if in conflict with the most recent City Council adopted community plan.

28) Acquisition of land for the purpose of acquiring fee title underlying an existing easement.

29) Acquisition of tax delinquent property where no use other than the existing use is contemplated.

30) Granting easements to other local agencies, utilities or private persons to accomplish activities that are categorically exempted by these Guidelines.

31) Transfer of jurisdiction of a portion of the Los Angeles City Street System to the County of Los Angeles to allow the County to improve the street.

32) Reduction of a conditional use site pursuant to Section 12.24 G. 2. of the L.A.M.C.

33) Zone variances to convert guest rooms into apartments.

34) Granting of a conditional use for the on-site consumption of alcoholic beverages pursuant to L.A.M.C. Sections 12.21 and 12.24, as amended by Ordinance No. 148,994 (effective March 1, 1977), beverages will be dispensed and consumed do not exceed an occupant load of 200 persons, and provided that the premises will not also require an original dancehall, skating rink or bowling alley permit from the Los Angeles Police Commission.

35) Granting of Zone Boundary Adjustments or Zone Changes incident to Subdivision pursuant to L.A.M.C. Section 12.32F.

36) Approval of Private Street Maps pursuant to Article 8, Chapter I of the L.A.M.C. to provide access to existing legal lots.

37) Approval of Reversion to Acreage Maps pursuant to L.A.M.C. Section 17.10.

38) Height District changes that reduce the intensity of development of land (L.A.M.C. Section 13.05).

39) Modification or removal of a "K" Horsekeeping Supplemental Use District (L.A.M.C. Section 13.05).

40) Acceptance of future streets and alleys dedicated pursuant to tract map procedures.

f. Class 6. Information Collection[9]

Class 6 consists of basic date collection, research, experimental management and resource evaluation activities which do not result in a serious major disturbance to an environmental

[9] See "Exemption by Location," Section 4a of this Article.

resource. These may be for strictly information gathering purposes, or as part of a study leading to an action which a public agency has not yet approved, adopted, or funded.

1) Permits for test holes in public areas which will be used for engineering evaluations for street, sewer, storm drain, buildings or utility installations.

2) Basic data collection, field testing, research, experimental management and resource activities of City Departments, bureaus, divisions, sections, offices or officers which do not result in serious or major disturbances to an environmental resource.

3) Permits to drill test holes in navigable waters or submerged lands which will be used for chemical and biological engineering evaluations for marine facilities, and for chemical and biological analysis of sediments.

g. Class 7. Actions by Regulatory Agencies for Protection of Natural Resources.

Not applicable at the present time in the City of Los Angeles.

h. Class 8. Actions by Regulatory Agencies for Protection of the Environment.

Class 8 consists of actions taken by regulatory agencies as authorized by State or local ordinance to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. Construction activities are not included in this exemption.

1) Industrial waste permits.

2) Design approvals by the Municipal Arts Commission pursuant to Charter Section 165 and Section 91.4509 (a) of the L.A.M.C.

3) Renewals of permits by the Bureau of Street Maintenance for operation of existing sanitary landfills. (This exemption shall not be used where a new sanitary landfill site is to be established.)

4) Acquisition of lands for the purpose of preserving flood plains and/or open space where no increase in use is proposed.

i. Class 9. Inspections.

Class 9 consists of activities limited entirely to inspection, to check for performance of an operation, or the quality, health or safety of a project, including related activities such as inspection for possible mislabeling, misrepresentation or adulteration of products:

1) Inspection of private refuse disposal sites.

2) Activities of City departments, bureaus, divisions, sections, offices or officers limited entirely to inspection, to check for performance of an operation, or the quality or safety of a project.

j. Class 10. Loans.

Not applicable at the present time in the City of Los Angeles.

k. Class 11. Accessory Structures.[10]

Class 11 consists of construction or placement of minor structures accessory to (appurtenant to) existing commercial, industrial, or institutional facilities.

1) On-premise signs.

2) Parking lots under 110 spaces where no decking or undergrounding is involved.

3) Game courts, play equipment, drinking fountains, restrooms, fences, walks, visual screens, or single tennis courts constructed in residential areas.

4) 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.

5) Signs located on City property managed by a City department which has a sign policy adopted by the City Council or, in the case of a proprietary department, by its Board of Commissioners.

6) Construction or placement of minor structures accessory to (appurtenant to) existing commercial, industrial or institutional facilities.

7) Construction or placement of buildings, or additions to buildings, involving the addition of less than 15,000 square feet, which additions are accessory to existing commercial, industrial or institutional facilities.

8) Authorizations by the Department of Airports for the installation, maintenance, relocation, replacement and/or removal of: structures; lighting, fencing and security facilities; noise and

[10] See "Exemption by Location," Section 4a of this Article.

environmental monitoring systems and facilities; storage tanks and facilities; utility, sewer and drainage system facilities; mechanical and electrical equipment; and, other facilities which are accessory to the use of existing or approved airport structures, facilities, or operations, and involve negligible or no expansion of airport operations beyond that previously existing or permitted.

l. Class 12. Surplus Government Property Sales.

Class 12 consists of sales of surplus government property except for parcels of land located in an area of statewide interest or potential area of critical concern as identified in the Governor's Environmental Goals and Policy Report, prepared pursuant to Government Code Section 65041, et. seq. However, if the surplus property to be sold is located in those areas identified in the Governors' Environmental Goals and Policy Report, its sale is exempt if:

1) The property does not have significant values for wildlife habitat or other environmental purposes, and

2) Any of the following conditions exist:

a) The property is of such size or shape that it is incapable of independent development or use, or

b) The property to be sold would qualify for an exemption under any other class of categorical exemption in Article VII of these Guidelines, or

c) The use of the property and adjacent property has not changed since the time of purchase by the public agency.

m. Class 13. Acquisition of Lands for Wildlife Conservation Purposes.

Not applicable at the present time to the City of Los Angeles.

n. Class 14. Minor Additions to Schools.

Class 14 consists of minor additions to existing schools within existing school grounds where the addition does not increase original student capacity by more than 25% or five classrooms, whichever is less. The addition of portable classrooms is included in this exemption.

1) Minor additions to City operated training facilities within existing facility grounds where the addition does not increase original trainee capacity of the facility by more than 25% or five classrooms is included in this exemption.

o. Class 15. Minor Land Divisions

Class 15 consists of the division or property in urbanized areas zoned for residential, commercial, or industrial use into four or fewer parcels when the division is in conformance with the General Plan and zoning, no variances or exceptions are required, all services and access to the proposed parcels to local standards are available, the parcel was not involved in a division of a larger parcel within the previous 2 years, and the parcel does not have a slope greater than 20%.

p. Class 16. Transfer of Ownership in Land in order to Create Parks.

Class 16 consists of the acquisition or sale of land in order to establish a park where the land is in a natural condition or contains historic sites or archaeological sites and either:

1) The management plan for the parks has not been prepared, or

2) The management plan proposes to keep the area in a natural condition or preserve the historic or archaeological site. CEQA will apply when a management plan is proposed that will change the area from its natural condition or significantly change the historic or archaeological site.

q. Class 17. Open Space Contracts or Easements.

Class 17 consists of the establishment of agricultural preserves, the making and renewing of open space contracts under the Williamson Act, or the acceptance of easements or fee interests in order to maintain the open space character of the area. The cancellation of such preserve, contracts, interests of easements is not included.

r. Class 18. Designation of Wilderness Areas.

Class 18 consists of the designation of wilderness areas under the California Wilderness System.

s. Class 19. Annexations of Existing Facilities and Lots for Exempt Facilities.

Class 19 consists of only the following annexations:

1) Annexations to the City of Los Angeles of areas containing existing public or private structures developed to the density allowed by the current zoning or pre-zoning of either the gaining of losing governmental agency whichever is more restrictive, provided, however, that the extension of utility services to the existing facilities would have a capacity to serve only the existing facilities.

2) Annexations of individual small parcels of the minimum size for facilities exempted by Subsection c of this Section, New Construction of Small Substructures.

t. Class 20 Changes in Organization of Local Agencies.

Class 20 consists of changes in the organization or reorganization of local governmental agencies where the changes do not change to geographical area in which previously existing powers are exercised. Examples include but not limited to:

1) Establishment of a subsidiary district.

2) Consolidation of two or more districts having identical powers.

3) Merger with a city of a district lying entirely within the boundaries of the City.

u. Class 21. Enforcement Actions by Regulatory Agencies.

Class 21 consists of actions by regulatory agencies to enforce or revoke a lease, permit, license, certificate or other entitlement for use which is issued, adopted or prescribed by the regulatory agency or a law, general rule, standard or objective which is administered or adopted by the regulatory agency. Such actions include, but are not limited to, the following:[11]

1) The direct referral of a violation of a lease, permit, license, certificate or other entitlement for use or of a general rule, standard of objective to the Attorney General, District Attorney or City Attorney, as appropriate for judicial enforcement.

2) The adoption of an administrative decision or order enforcing or revoking the lease, permit, license, certificate or other entitlement for use or enforcing the general rule, standard or objective.

v. Class 22. Educational or Training Programs Involving No Physical Changes.

Class 22 consists of the adoption, alteration or termination of educational or training programs which involve no physical alteration in the area affected or which involve physical changes only in the interior of existing school or training structures. Examples include, but are not limited to the following:

1) Development of or changes in curriculum or training methods.

[11] Construction activities undertaken by the public agency taking the enforcement or revocation action are not included in this exemption.

2) Changes in the grade structure of a school which do not result in changes in student transportation.

w. Class 23. Normal Operations of Facilities for Public Gatherings.

Class 23 consists of the normal operations of existing facilities designed for public gatherings where there is a history pf the use of the facility for that purpose. Facilities included within this exemption include, but are not limited to, racetracks, stadiums, convention centers, auditoriums, amphitheaters, planetariums, swimming pools and amusement parks.

x. Class 24. Regulation of Working Conditions.

Class 24 consists of actions taken by regulatory agencies, including the Industrial Welfare Commission as authorized by statute, to regulate any of the following:

1) Employee wages.

2) Hours of work.

3) Working conditions where there will be no demonstrable physical changes outside the place of work.

y. Class 25. Transfers of Ownership of Interests in Land to Preserve Open Space.

Class 25 consists of the transfers of ownership of interests in land in order to preserve open space. Examples include but are not limited to:

1) Acquisition of areas to preserve existing natural conditions.

2) Acquisition of areas to allow continued agricultural use of the areas.

3) Acquisitions to allow restoration of natural conditions.

4) Acquisition to prevent encroachment of development into flood plains.

z. Class 26. Acquisition of Housing for Housing Assistance Programs.

Class 26 consists of actions by a redevelopment agency, housing authority, or other public agency to implement an adopted Housing Assistance Plan by acquiring an interest in housing units. The housing units may be either in existence or possessing all required permits for construction when the agency makes its final decision to acquire the units.

aa. Class 27. Leasing New Facilities.

Class 27 consists of the leasing of a newly constructed or previously unoccupied privately-owned facility by a local or state agency where the local governing authority determined that the building was exempt from CEQA. To be exempt under this section, the proposed use of the facility shall be in conformance with existing State plans and policies and with general, community, and specific plans for which an EIR or Negative Declaration has been prepared, shall be substantially the same as that originally proposed at the time the building permit was issued, shall not result in a traffic increase of greater than 10% of front access road capacity, and shall include the provision of adequate employee and visitor parking facilities. Examples of Class 27 include but are not limited to:

1) Leasing of administrative offices in newly constructed office space.

2) Leasing of client services offices in newly constructed retail space.

3) Leasing of administrative and/or client services offices in newly constructed industrial parks.

2. Procedures for Adding Categorical Exemptions.

a. New Classes.

Requests for new classes of categorical exemptions must be submitted to the State Office of Planning and Research. All such requests by the Lead City Agencies shall be first submitted to the City Council for approval.

b. New Exemptions Under Existing Classes.

A Lead City Agency may petition the City Council to add a categorical exemption under an existing class. The Lead City Agency must provide the City Council with detailed information supporting its contention that the type of project in question does not significantly effect the environment. Where such projects may potentially be carried out in substantially different environments, specific mention should be made as to the type of environment in which the exemption may be applied.

3. Relation to Ministerial Projects.

The categorical exemptions listed above include classes of projects which in the City of Los Angeles are already exempted from the requirements of CEQA as ministerial. It is not necessary to refer to a project as categorically exempt if it is already exempt as ministerial.

4. 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 effect on the environment may in a particularly sensitive environment be significant. Therefore, these classes may not be utilized 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.

The categorical exemption may not be used when the cumulative impact of successive projects of the same type in the same place may be significant. For example, annual additions to an existing building under Class 1."