


To: Chair Felder and Planning Commissioners

From: David Storer, AICP, Planning and Community Services Director 

Date: January 9, 2019

Subject: Applicability of the use of Class 32 Categorical Exemption for in-fill development projects

Chair Felder and fellow Planning Commissioners:

I provide the following information to supplement the staff report for the "Mockingbird Lane" VTSM project that is Agenda item No. 7.5 for your consideration tomorrow night.

Earlier this week, I asked the following CEQA questions to Mr. Antero ("Terry") Rivasplata, whom I believe worked as the Chief of both the state clearinghouse and the planning unit at OPR during the time of the creation of the Class 32 Infill Categorical Exemption:

Question 1:

Can it be argued that the CEQA Class 32 Categorical Exemption is only available/applicable to Cities that are considered to be in an "Urbanized Area" - basically not to small cities like Sonoma that are small and not urban in the sense of larger areas that should more appropriately use the infill exemption?

Question 2:

Do you have any guidance on this that you can send me? Again, it is my thought that all cities regardless of size can determine if the exemption works for projects within its jurisdiction.

Regardless of my personal experience, I explained to Terry that my research showed that the Class 32 Exemption is available to all cities - along with the other provisions of the Class 32 Guidelines also in the exemption. However, I referred him to the language in the "Discussion" at the end of the Guidelines for Class 32 below (emphasis added):

Discussion: This section is intended to promote infill development within urbanized areas. The class consists of environmentally benign in-fill projects which are consistent with local general plan and zoning requirements. This class is not intended to be applied to projects which would result in any significant traffic, noise, air quality, or water quality effects. Application of this exemption, as all categorical exemptions, is limited by the factors described in section 15300.2.

I stated in my communication that the current SCH Manager at OPR, Christine Asiata Rodriguez agrees with me - that the only restriction is that infill be in "City limits" - which are generally thought of as urban areas or urbanized areas.

I received the following response from Terry later in the same day:

"I was at OPR at the time and involved in the discussions over the Class 32 exemption.

...the Class 32 applies anywhere within city limits. It's not restricted to "urbanized areas." When the Class 32 exemption language was being drafted the Resources Agency considered and rejected the idea of creating a detailed definition of urban area in favor of simply using city limits as the measure.

The new statutory exemption for multi-family infill in unincorporated areas (Pub. Res. Code Section 21159.25) is limited to urbanized areas, but that does not apply the CEQA Guidelines' separate Class 32 exemption enacted through regulatory action by the Natural Resources Agency".

I hope/trust that this communication is of value to you and the Planning Commission.

*Note: Mr. Rivasplata, while at OPR, co-authored the 1998, 1990, and 1987 editions of General Plan Guidelines, as well being involved in drafting the 1998, 1997, and 1994 revisions to the CEQA Guidelines. He is also a co-author of the many updates of the "CEQA Deskbook" published by Solano Press.