# ARTICLE 12.5 EXEMPTIONS FOR AGRICULTURAL, AFFORDABLE, AND INFILL HOUSING



In addition to the more commonly known Statutory and Categorical Exemptions, CEQA also provides exemptions for **agricultural**, **affordable**, and **infill housing** within Article 12.5. Specific eligibility criteria are provided for agricultural housing, affordable housing, and residential infill projects. In order to qualify for one of these exemptions, a project must first meet a set of threshold requirements.

## Thresholds and Exceptions to Agricultural, Affordable, and Infill Housing Exemptions

(CEQA Guidelines §15192)

These threshold requirements are similar to the exceptions for other types of exemptions including those required by the Class 32 Infill Exemption and the exceptions to use of Categorical Exemptions (CEQA Guidelines §15300.2). For instance, these thresholds require consistency with general plan and zoning, surrounding urban uses, lack of habitat or ecological value, no harm to protected species, and a site served by existing utilities and services. The thresholds also require completion of community-level environmental review, commitment to pay development fees, completion of a preliminary health hazards assessment, and restrictions for hazardous waste sites, historic resources, wildland fire hazards, risk of explosions or health hazards, seismic and other geologic hazards, developed open space, state conservancy lands, and piecemealing into smaller projects.

See <u>Thresholds Worksheet</u> to determine applicability and exceptions.

## Agricultural Housing Exemption

(CEQA Guidelines §15193; PRC §21159.22)

The Agricultural Housing Exemption may be used for up to 45 units or group housing for 45 agricultural workers; however, the limit becomes 20 units or group housing for up to 20 agricultural workers if the site is zoned for agriculture. There are several limitations on the maximum size of the site based on population density, incorporation status, and affordability criteria.

See <u>Agricultural Housing Exemption Worksheet</u> to determine applicability and exceptions.

### Affordable Housing Exemption

(CEQA Guidelines §15194; PRC §21159.23)

The Affordable Housing Exemption allows for a maximum of 100 units on up to 5 acres when specified population density and total population criteria are met; however, in areas with lower population density and smaller total population the limit decreases 50 units The project's units must be affordable to lower-income households for at least 30 years. The site also must have been previously developed with urban uses and surrounded on 75 percent of the perimeter by other urban uses.

See <u>Affordable Housing Exemption Worksheet</u> to determine applicability and exceptions.

#### **Residential Infill Exemption**

(CEQA Guidelines §15195; PRC §21159.24)

The Residential Infill Exemption applies to projects with up to 100 units on sites that are 4 acres or less. Other eligibility criteria include minimum density targets; location within an urbanized area; proximity to a major transit stop; a community level EIR certified within 5 years, and providing a certain amount of affordable housing, either directly or through payment of in-lieu fees.

See Residential Infill Exemption Worksheet to determine applicability and exceptions.

#### Residential Infill Exemption vs. Class 32 Categorical Exemption for Infill Projects

Criteria	Residential Infill	Class 32
Number of units	≤100 units	0
Size of site	≤4 acres	≤5 acres
Limited to sites within city limits	0	•
Community level environmental review completed within 5 years	•1	•
Consistency with general plan and zoning	•	•
Surrounded by urban development	•	•
Located within 0.5 mile of a major transit stop	•	•
Single level building may not exceed 100,000 sf	•	•
Promotes higher density infill housing	•	•
Developer committed to some lower income units or payment of in-lieu fees	•	•
No significant effect due to unusual circumstances	•	• <sup>2</sup>
No substantial changes or new information with respect to project circumstances since community level environmental review certified/adopted	•	•
No value as habitat for special status species	•1	•
No impacts related to traffic, noise, air quality or water quality	O	•
Adequately served by utilities	•1	•
Subject to threshold criteria in §15192	•2	•
Subject to Exceptions in §15300.2	O	•1

Notes: 1 Provisions or similar included in threshold criteria in §15192 2 Provisions or similar included in exceptions in §15300.2

The purpose of this material is to provide guidance, which agencies and other entities may use at their discretion. This guidance does not alter lead agency discretion in decision-making, independent judgment and analysis, and preparing environmental documents for project or governmental action subject to CEQA requirements. This material is for general information only and should not be construed as legal advice or legal opinion.

#### **WORKSHEETS**

## Threshold Requirements for Exemptions for Agricultural Housing, Affordable Housing, and Residential Infill Projects

(CEQA Guidelines §15192)

Requirements	Applicability	Yes	No	N/A
(a) The project must be consistent with:  (1) Any applicable general plan, specific plan, or local coastal program, including any mitigation measures required by such plan or program, as that plan or program existed on the date that the application for the project pursuant to Section 65943 of the Government Code was deemed complete; and	Is the project consistent with General Plan/Specific Plan/Coastal Program Designation and policies?			
(2) Any applicable zoning ordinance, as that zoning ordinance existed on the date that the application for the project pursuant to Section 65943 of the Government Code was deemed complete, unless the zoning of project property is inconsistent with the general plan because the project property has not been rezoned to conform to the general plan.	Is the project consistent with Zoning Designation and Regulations?			
(b) Community-level environmental review has been adopted or certified	Is there a certified EIR on the General Plan/Specific Plan/Coastal Program?			
(c) The project and other projects approved prior to the approval of the project can be adequately served	Is site served by utilities (i.e., water, wastewater, electricity, natural gas, solid waste, and stormwater drainage)?			
by existing utilities, and the project applicant has paid, or has committed to pay, all applicable in-lieu or development fees.	If there are applicable in-lieu/ development fees, has there been a commitment to pay them?			

Requirements	Applicability	Yes	No	N/A
<ul> <li>(d) The site of the project:</li> <li>(1) Does not contain wetlands, as defined in Section 328.3 of Title 33 of the Code of Federal Regulations.</li> <li>(2) Does not have any value as an ecological community upon which wild animals, birds, plants, fish, amphibians, and invertebrates depend for their conservation and protection.</li> <li>(3) Does not harm any species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.) or by the Native Plant Protection Act (Chapter 10 – commencing with Section 1900) of Division 2 of the Fish and Game Code), the California Endangered Species Act (Chapter 1.5 – commencing with Section 2050) of Division 3 of the Fish and Game Code.</li> <li>(4) Does not cause the destruction or</li> </ul>	The site does not contain wetlands/ waters/riparian habitat that can support Special Status Species.  (Tip: Run a CNDDB database search at www.wildlife.ca.gov/Data/CNDDB/ Maps-and-Data)			
removal of any species protected by a local ordinance in effect at the time the application for the project was deemed complete.				
(e) The site of the project is not included on any list of facilities and sites compiled pursuant to Section 65962.5 of the Government Code.	The site is not listed as a hazardous waste site.  (Tip: Search the Cortese List here: calepa. ca.gov/sitecleanup/corteselist/section-65962-5a)			

Requirements	Applicability	Yes	No	N/A
(f) The site of the project is subject to a preliminary endangerment assessment prepared by a registered environmental assessor to determine the existence of any release of a hazardous substance on the site and to determine the potential for exposure of future occupants to significant health hazards from any nearby property or activity. in addition, the following steps have been taken in response to the results of this assessment:	The project site is not subject to a preliminary endangerment assessment, or if one has been prepared has determined that the site would not expose future occupants to significant health hazards.			
(1) If a release of a hazardous substance is found to exist on the site, the release shall be removed, or any significant effects of the release shall be mitigated to a level of insignificance in compliance with state and federal requirements.				
(2) If a potential for exposure to significant hazards from surrounding properties or activities is found to exist, the effects of the potential exposure shall be mitigated to a level of insignificance in compliance with state and federal requirements.				
(g) The project does not have a significant effect on historical resources pursuant to Section 21084.1 of the Public Resources Code.	The site does not include historical resources.  (Tip: Check for listed historical resources here: ohp.parks.ca.gov/ListedResources)			
(h) The project site is not subject to wildland fire hazard, as determined by the Department of Forestry and Fire Protection, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a wildland fire hazard.	The site is not in a high fire hazard severity zone.  (Tip: Check for fire-hazard severity zones here: osfm.fire.ca.gov/divisions/community-wildfire-preparedness-and-mitigation/wildland-hazards-building-codes/fire-hazard-severity-zones-maps)			

Requirements	Applicability	Yes	No	N/A
(i) The project site does not have an unusually high risk of fire or explosion from materials stored or used on nearby properties.	The project site is not subject to risk of fire or explosion from materials stored nearby.			
(j) The project site does not present a risk of a public health exposure at a level that would exceed the standards established by any state or federal agency.	The project site is not subject to public health exposure.			
(k) Either the project site is not within a delineated earthquake fault zone or a seismic hazard zone, as determined pursuant to Section 2622 and 2696 of the Public Resources Code respectively, or the applicable general plan or zoning ordinance contains provisions to mitigate the risk of an earthquake or seismic hazard.	The project is not within a seismic hazard zone and will comply with current building codes for seismic and other geotechnical considerations.  (Tip: Check California Earthquake Hazards Zones here: maps.conservation.ca.gov/cgs/EQZApp/app)  (Note: Compliance with the building			
	code, other regulatory provisions, and geotechnical investigations, addresses site-specific soil conditions and ensures seismic safety.)			
(I) Either the project site does not present a landslide hazard, flood plain, flood way, or restriction zone, or the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a landslide or flood.	The project is not within a landslide hazard or flood hazard zone.  (Tip: Check the FEMA Flood Maps for flood risk here: msc.fema.gov/portal/search?#searchresults)			
(m) The project site is not located on developed open space.	The project site is not developed open space.			
(n) The project site is not located within the boundaries of a state conservancy.	The project is not within a state conservancy.			
(o) The project has not been divided into smaller projects to qualify for one or more of the exemptions set forth in CEQA Guidelines Sections 15193 to 15195.	The site is not divided into smaller projects to qualify for one or more exemptions.  Note: Piecemealing to qualify for exemptions is prohibited PRC § 21159.27.			

#### **Agricultural Housing** (CEQA Guidelines §15193)

Requirements	Applicability	Yes	No	N/A
CEQA does not apply to any development project that meets the following criteria.	Does the project meet the definition of a residential or employment center as defined?			
(a) The project meets the CEQA Guidelines Section 15192 threshold criteria.	(Note: PRC§ 21099 provides the definition of "Employment center project" which means a project located on property zoned for commercial uses with a floor area ratio of no less than 0.75 and that is located within a transit priority area.)			
(b) The project site meets the following size criteria:	Population density:  If at least 1,000 persons/square mile, is			
(1) The project site is located in an area with a population density of at least	the site ≤2 acres?			
1,000 persons per square mile and is two acres or less in area.	or If <b>less than</b> 1,000 persons/square mile is			
(2) The project site is located in an area with a population density of less than 1,000 persons per square mile and is five acres or less in area.	the site ≤5 acres?			
(c) The project meets the following requirements regarding location and number of units.				
(1) The project is located on a site within the city limits or in a census-defined place, it must meet the following requirements:				
(A) The project location must be within <b>one of the following</b> :				
(i) Incorporated city limits.	Is the project within an incorporated city limits?			
(ii) A census defined place within a minimum population density of at least 5,000 persons per square mile.	Is the project within a census defined place within a minimum population density of at least 5,000 persons per square mile?			

Requirements	Applicability	Yes	No	N/A
(iii) A census-defined place with a minimum population density of at least 1,000 persons per square mile, unless a public agency that is carrying out or approving the project determines that there is a reasonable possibility that the project, if completed, would have a significant effect on the environment due to unusual circumstances or that the cumulative impacts of successive projects of the same type in the same area, over time, would be significant.	Is the project within a census-defined place with a minimum population density of at least 1,000 persons per square mile?  If so, is there no reasonable possibility that the project, if completed, would have a significant effect on the environment due to unusual circumstances or that the cumulative impacts of successive projects of the same type in the same area, over time, would be significant?			
(B) The project must be located on a site that is adjacent to land that has been developed, on at least two sides.	Is the project on a site that is adjacent to land that has been developed on at least 2 sides?			
<ul> <li>(C) The project must meet either of the following requirements:</li> <li>(i) Consist of 45 units or less.</li> <li>(ii) Consist of housing for a total of 45 or fewer agricultural employees if the housing consists of dormitories, barracks, or other group living facilities.</li> </ul>	Does the project consist of either: ≤45 units? Group housing for ≤45 employees?			
<ul> <li>(2) If the project is located on a project site zoned for general agricultural use, it must meet either of the following requirements:</li> <li>(A) Consist of 20 units or less.</li> <li>(B) Consist of housing for a total of 20 or fewer agricultural employees if the housing consists of dormitories, barracks, or other group living facilities.</li> </ul>	Is the project site zoned for agricultural uses?  If so, does the project consist of either ≤20 units or group housing for ≤20 employees?			

Requirements	Applicability	Yes	No	N/A
(d) The project meets the following requirements regarding provision of housing for agricultural employees:				
(1) The project must consist of the construction, conversion, or use of residential housing for agricultural employees.	Does the project consist of residential housing for agricultural employees?			
<ul> <li>(2) If the project lacks public financial assistance, then the following requirements must be met: <ul> <li>(A) The project must be affordable to lower income households.</li> <li>(B) The developer of the development project must provide sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for lower income households for a period of at least 15 years.</li> </ul> </li> </ul>	(Note: If the project includes financial assistance, see (3) below.)  Does the developer commit to continued availability and use of housing for lower income households for at least 15 years?  (Note: Lower income households are defined in Section 50079.5 of the Health and Safety Codes.)			
<ul> <li>(3) If public financial assistance exists for the project, then the following requirements must be met: <ul> <li>(A) The project must be housing for very low, low-, or moderate-income households.</li> <li>(B) The developer of the development project must provide sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for low- and moderate-income households for a period of at least 15 years.</li> </ul> </li> </ul>	(Note: if the project lacks public financial assistance, see (2) above.)  Does the developer commit to continued availability and use of housing for very low, low-, or moderate-income households for at least 15 years?  (Note: Very low, low-, or moderate-income households are defined in Section 50079.5 of the Health and Safety Code. Low- and moderate-income households are defined in Section 50079.5 of the Health and Safety Code.)			

#### **Affordable Housing** (CEQA Guidelines §15194)

Requirements	Applicability	Yes	No	N/A
CEQA does not apply to any development project that meets the following criteria:				
(a) The project meets the CEQA Guidelines Section 15192 threshold criteria.	Does the project meet the Thresholds? See separate checklist for Threshold Requirements for Exemptions for Agricultural Housing, Affordable Housing, and Residential Infill Projects (CEQA Guidelines § 15192).			
(b) The project site meets the following size criteria: The project site is not more than 5 acres in area	Is the site ≤5 acres?			
(c) The project meets both of the following requirements regarding location:				
(1) The project meets one of the following location requirements relating to population density:	Population density:			
(A) The project site is located within an urbanized area or within a census-defined place with a population density of at least 5,000 persons per square mile.	Is the site located within an urbanized area or census defined place with a population density of at least 5,000 persons/square mile			
(B) If the project consists of 50 or fewer units, the project site is located within an incorporated city with a population density of at least 2,500 persons per square mile and a total population of at least 25,000 persons.	For projects with ≤50 units, is the site located within an incorporated city with a population density of at least 2,500 persons/square mile and a total population of at least 25,000			

Requirements	Applicability	Yes	No	N/A
(C) The project is located within either an incorporated city or a census defined place with a population density of at least 1,000 persons per square mile and there is no reasonable possibility that the project would have a significant effect on the environment or the residents of the project due to unusual circumstances or due to the related or cumulative impacts of reasonably foreseeable projects in the vicinity of the project.	Is the project located within an incorporated city or a census defined place with a population of at least 1,000 persons/square mile and there no reasonable possibility that the project, if completed, would have a significant effect on the environment due to unusual circumstances or that the cumulative impacts of successive projects of the same type in the same area, over time, would be significant?			
(2) The project meets one of the following site-specific location requirements:				
(A) The project site has been previously developed for qualified urban uses; or	Has the project site been previously developed with urban uses?			
(B) The parcels immediately adjacent to the project site are developed with qualified urban uses.	Are adjacent parcels developed with urban uses?			
(C) The project site has not been developed for urban uses and all of the following conditions are met:	Can the following conditions be met if not previously developed for urban uses:			
i. No parcel within the site has been created within 10 years prior to the proposed development of the site.	No parcel within the site has been created within 10 years prior to the proposed development of the site.			
ii. At least 75 percent of the perimeter of the site adjoins parcels that are developed with qualified urban uses.	At least 75 percent of the perimeter of the site adjoins parcels that are developed with qualified urban uses.			
iii. The existing remaining 25 percent of the perimeter of the site adjoins parcels that have previously been developed for qualified urban uses.	The existing remaining 25 percent of the perimeter of the site adjoins parcels that have previously been developed for qualified urban uses.			

Requirements	Applicability	Yes	No	N/A
(d) The project meets both of the following requirements regarding provision of affordable housing.				
(1) The project consists of the construction, conversion, or use of residential housing consisting of 100 or fewer units that are affordable to lowincome households.	Does the project include ≤100 units affordable to low-income households?			
(2) The developer of the project provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for lower income households for a period of at least 30 years, at monthly housing costs deemed to be "affordable rent" for lower income, very low income, and extremely low income households, as determined pursuant to Section 50053 of the Health and Safety Code.	Does the developer commit to continued availability and use of housing for affordable to lower income, very low income, and extremely low income households for at least 30 years?			

#### **Residential Infill Exemption** (CEQA Guidelines §15195)

Requirements	Applicability	Yes	No	N/A
(a) Except as set forth in subdivision (b), CEQA does not apply to any development project that meets the following criteria:	Does the project meet the Thresholds? See separate checklist for Threshold Requirements for Exemptions for Agricultural Housing, Affordable Housing, and Residential Infill Projects (CEQA Guidelines §15192).			
(1) The project meets the threshold criteria set forth in CEQA Guidelines Section 15192; provided that with respect to the requirement in Section 15192(b) regarding community-level environmental review, such review must be certified or adopted within five years of the date that the lead agency deems the application for the project to be complete pursuant to Section 65943 of the Government Code.	Has the community-level environmental review been certified within 5 years?			
(2) The project site meets both of the following size criteria:				
(A) The project site is not more than four acres in total area.	Is the site ≤4 acres?			
(B) The project does not include any single level building that exceeds 100,000 square feet.	Are all single-level buildings less than 100,000 square feet?			
(3) The project meets both of the following requirements regarding location:				
(A) The project is a residential project on an infill site.	Is the project residential, and is it on an infill site?			
(B) The project is within one-half mile of a major transit stop.	Is the project within 0.5 mile of a major transit stop?			
(4) The project meets both of the following requirements regarding number of units:				
(A) The project does not contain more than 100 residential units.	Does the project contain less than 100 residential units?			

Requirements	Applicability	Yes	No	N/A
(B) The project promotes higher density infill housing. The lead agency may establish its own criteria for determining whether the project promotes higher density infill housing except in either of the following two circumstances:				
(i) A project with a density of at least 20 units per acre is conclusively presumed to promote higher density infill housing.	Does the project have a density of ≥20 du/ac?			
(ii) A project with a density of at least 10 units per acre and a density greater than the average density of the residential properties within 1,500 feet shall be presumed to promote higher density infill housing unless the preponderance of the evidence demonstrates otherwise.	Does the project have a density of ≥10 du/ac and is greater than average of density of residential properties within 1,500 feet?			
(5) The project meets the following requirements regarding availability of affordable housing: The project would result in housing units being made available to moderate, low or very low income families as set forth in either A or B below:				
(A) The project meets <b>one of the following</b> criteria, and the project developer provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units as set forth below at monthly housing costs determined pursuant to paragraph (3) of subdivision (h) of Section 65589.5 of the Government Code.				

Requirements	Applicability	Yes	No	N/A
(i) At least 10 percent of the housing is sold to families of moderate income.	Does the developer commit to continued availability and use of at least 10 percent of the housing to be sold to families of moderate income?			
(ii) Not less than 10 percent of the housing is rented to families of low income.	Does the developer commit to continued availability and use of not less than 10 percent of the housing to be rented to families of low income?			
(iii) Not less than 5 percent of the housing is rented to families of very low income.	Does the developer commit to continued availability and use of not less than 5 percent of the housing to be rented to families of very low income?			
(B) If the project does not result in housing units being available as set forth in subdivision (5A) above, then the project developer has paid or will pay in-lieu fees pursuant to a local ordinance in an amount sufficient to result in the development of an equivalent number of units that would otherwise be required pursuant to subparagraph (5A).	Does the developer agree to pay in-lieu fees pursuant to local ordinance?			
(b) A project that otherwise meets the criteria set forth in subdivision (a) is not exempt from CEQA if any of the following occur:				
(1) There is a reasonable possibility that the project will have a project-specific, significant effect on the environment due to unusual circumstances.	There no unusual circumstances surrounding the project or site that could be triggered.  Consider the following environmental topics:			
	Aesthetics The project would not add substantial light/glare			

Requirements	Applicability	Yes	No	N/A
	Agriculture/Forestry			
	The site does not contain agricultural land or forested land.			
	(Tip: Check for Important Farmland at www.conservation.ca.gov/dlrp/fmmp)			
	Air Quality/GHGs			
	The project does not include a new source of air pollutant emissions			
	(Note: stationary air pollution sources may be associated with even small housing projects and may require air permits.)			
	Biological Resources			
	The site does not contain:			
	• Wetlands			
	Riparian Habitat			
	Special Status Species Habitat			
	(Tip: Run a CNDDB database search at www.wildlife.ca.gov/Data/CNDDB/Maps-and-Data)			
	Cultural Resources			
	The site does not contain historical resources.			
	(Tip: Check for listed historical resources at <a href="https://ohp.parks.ca.gov/ListedResources">ohp.parks.ca.gov/ListedResources</a> )			
	Energy			
	The project will comply with current building code/Title 24 Energy Code.			

Requirements	Applicability	Yes	No	N/A
	Geology/Soils			
	The project is not within a seismic hazard zone and would comply with current building code.			
	(Note: Compliance with the building code, other regulatory provisions, and geotechnical investigations, addresses site-specific soil conditions and ensures seismic safety.)			
	Hazards/Hazardous Materials			
	The site is not listed as a hazardous waste site.			
	(Tip: Search the Cortese List at calepa.ca.gov/sitecleanup/corteselist/section-65962-5a)			
	Hydrology/Water Quality			
	The project would implement best management practices (BMPs) to prevent erosion and construction pollutants from contacting stormwater.			
	Noise			
	The project would not include a new stationary noise sources.			
	(Note: Stationary noise sources are typically associated with mechanical equipment rather than housing, especially a small housing project.)			
	Transportation			
	The project would not include roadway or transportation system changes beyond site ingress/egress.			

Requirements	Applicability	Yes	No	N/A
	Utilities/Public Services			
	The site is served by adequate utilities (i.e., water, wastewater, electricity, natural gas, solid waste, stormwater drainage).			
	(Note: For rural areas without water or wastewater service, check for a codecompliant well and a code-compliant septic system.)			
	Wildfire Hazard			
	The site is not within a high fire hazard severity zone.			
	(Tip: Check for fire-hazard severity zones here: osfm.fire.ca.gov/divisions/community-wildfire-preparedness-and-mitigation/wildland-hazards-building-codes/fire-hazard-severity-zones-maps)			
(2) Substantial changes with respect to the circumstances under which the project is being undertaken that are related to the project have occurred since community-level environmental review was certified or adopted.	Is the project consistent with a General Plan for which an EIR was certified within five years and has the lead agency determined that no substantial changes with respect to project circumstances have occurred since the EIR was certified?  (Note: Consider Section 15162 of CEQA Guidelines for determination of			
	subsequent environmental review)			
(3) New information becomes available regarding the circumstances under which the project is being undertaken and that is related to the project that was not known, and could not have been known at the time that community-level environmental review was certified or adopted.	Has the lead agency determined that no new information is available that was not known at the time regarding the project circumstances have occurred since the EIR was certified?  (Note: Consider Section 15162 of CEQA Guidelines for determination of subsequent environmental review)			