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Judicial Review of Categorical Exemptions from 1997-Present August 2012

This report reviews all California Court of Appeal and Supreme Court decisions that have analyzed categorical exemptions under the California Environmental Quality Act (CEQA) from 1997 through the present. This research was conducted to determine how often the courts uphold agencies' categorical exemption determinations. The database of cases surveyed included all CEQA decisions that mentioned the phrases "categorical exemption," "categorically exempt" or just "categoric" with a root extender in the search term. The report excludes cases that only either mentioned categorical exemptions in dicta or were resolved on other issues (*e.g.*, procedural issues, exempt under a statutory exemption, *etc.*).

For the most part, courts conduct a two-step evaluation to determine if a project is categorically exempt. The first step considers whether the project fits within one of the listed categorical exemptions. 14 California Code of Regulations Sections 15301-15333. If the court finds that the exemption applies, it then considers whether the project triggers any of the exceptions to the exemptions. 14 California Code of Regulations Section 15300.2. If the exceptions to the exemption do not apply, the court upholds the categorical exemption and the agency is not required to perform any further CEQA review of that project.

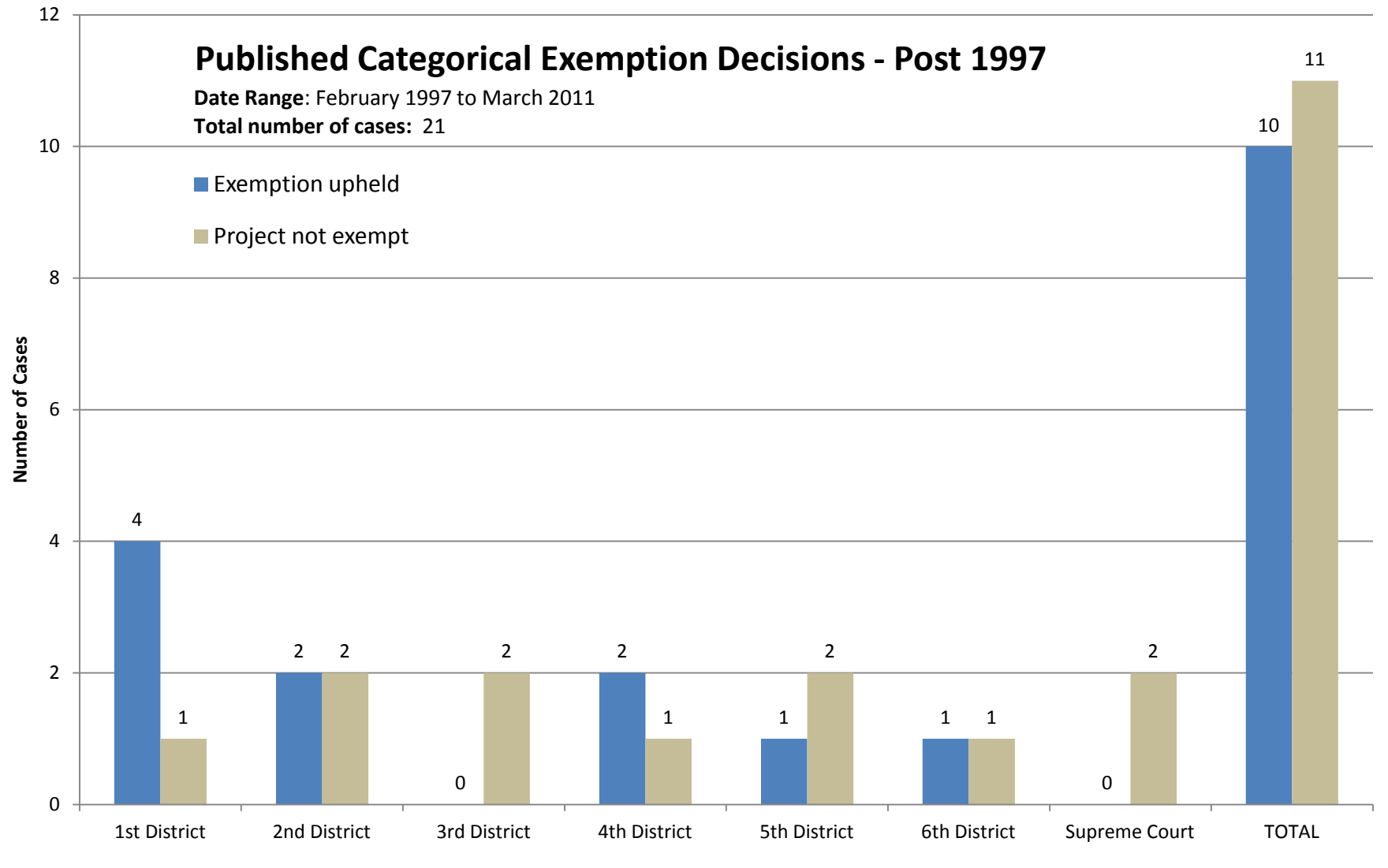
Since CEQA's categorical exemptions were created, a total of 43 cases have addressed categorical exemptions, including 21 cases decided after January 1, 1997. The report found that the courts upheld categorical exemption determinations in 10 out of 21 cases (48%).

Published Categorical Exemption Decisions - Post 1997

Date Range: February 1997 to March 2011

Total number of cases: 21

- Exemption upheld
- Project not exempt



Statistics for Published Categorical Exemption Cases - Post 1997

Court	Number of cases	Exemption applies		Exception precludes use of exemption		Exception not analyzed	Exemption upheld		Project not exempt	
		Count	Percentage	Count	Percentage		Count	Percentage	Count	Percentage
1st District	5	5	100%	1	20%	1	4	80%	1	20%
2nd District	4	3	75%	2	50%	0	2	50%	2	50%
3rd District	2	0	0%	0	0%	2	0	0%	2	100%
4th District	3	2	67%	0	0%	1	2	67%	1	33%
5th District	3	2	67%	1	33%	1	1	33%	2	67%
6th District	2	1	50%	0	0%	1	1	50%	1	50%
Supreme Court	2	0	0%	0	0%	2	0	0%	2	100%
TOTAL	21	13	62%	4	19%	8	10	48%	11	52%

Published Categorical Exemption Cases - Post 1997

Case Name	Citation	Date	Court	Exemption Applies (Yes/No)	Exception Applies Review Required (Yes/No/Not Analyzed)	Exemption Upheld No further review (Yes/No)
Fairbank v. City of Mill Valley	75 Cal.App.4th 1243	Sep-99	1st District	Y	N	Y
Hines v. California Coastal Com'n., Board of Supervisors of Sonoma County	186 Cal.App.4th 830	Jun-10	1st District	Y	N	Y
Martin v. City and County of San Francisco	135 Cal.App.4th 392	Dec-05	1st District	Y	N/A	Y
Salmon Protection and Watershed Network v. County of Marin	125 Cal.App.4th 1098	Dec-04	1st District	Y	Y	N
Wollmer v. City of Berkeley	193 Cal.App.4th 1329	Mar-11	1st District	Y	N	Y
Apartment Ass'n of Greater Los Angeles v. City of Los Angeles	90 Cal.App.4th 1162	Jul-01	2nd District	Y	N	Y
Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster	52 Cal.App.4th 1165	Feb-97	2nd District	N	Y	N
Committee to Save Hollywoodland Specific Plan v. City of Los Angeles	161 Cal.App.4th 1168	Mar-08	2nd District	Y	Y	N
Santa Monica Chamber of Commerce v. City of Santa Monica	101 Cal.App.4th 786	Aug-02	2nd District	Y	N	Y
California Farm Bureau Federation v. California Wildlife Conservation Bd.	143 Cal.App.4th 173	Sep-06	3rd District	N	N/A	N

Case Name	Citation	Date	Court	Exemption Applies (Yes/No)	Exception Applies Review Required (Yes/No/Not Analyzed)	Exemption Upheld No further review (Yes/No)
County of Amador v. El Dorado County Water Agency	76 Cal.App.4th 931	Nov-99	3rd District	N	N/A	N
Banker's Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego	139 Cal.App.4th 249	May-06	4th District	Y	N	Y
California Unions for Reliable Energy v. Mojave Desert Air Quality Management Dist.	178 Cal.App.4th 1225	Oct-09	4th District	N	N/A	N
Madrigal v. City of Huntington Beach	147 Cal.App.4th 1375	Jan-07	4th District	Y	N	Y
Ass'n for a Cleaner Environment v. Yosemite Community College Dist.	116 Cal.App.4th 629	Feb-04	5th District	N	N/A	N
Turlock Irr. Dist. v. Zanker	140 Cal.App.4th 1047	Jun-06	5th District	Y	N	Y
Valley Advocates v. City of Fresno	160 Cal.App.4th 1039	Mar-08	5th District	Y	Y	N
San Lorenzo Valley Community Advocates for Responsible Educ. v. San Lorenzo Valley Unified School Dist.	139 Cal.App.4th 1356	May-06	6th District	Y	N	Y
Save Our Carmel River v. Monterey Peninsula Water Management Dist.	141 Cal.App.4th 677	Jun-06	6th District	N	N/A	N
Mountain Lion Foundation v. Fish & Game Com.	16 Cal.4th 105	Jul-97	Supreme Court	N	N/A	N
Tomlinson v. County of Alameda	S188161	Jun-12	Supreme Court	N	N/A	N