

Filing CEQA Exemption for Municipal LED Streetlight Projects

For cities electing to complete municipal streetlight projects, a recent concern has been the threat of a lawsuit under CEQA. Of the many dozens of LED streetlight projects in the San Francisco Bay Area there is only one known case of litigation which is occurring in the City of Monterrey. The first line of defense is a well-designed installation. This includes considering technical factors in the planning process such as color temperature of the luminaires, directionality of the light, and shielding in residential areas to prevent light scatter. It also highly recommended do include community engagement in the planning process: increase public awareness and consider signage of new fixtures in a pilot project; soliciting feedback on the pilot project and adjusting the project design where appropriate. Taking these steps will minimize negative reception upon large-scale deployment and thereby significantly reduce the likelihood of a lawsuit.

Streetlight projects are discretionary actions potentially subject to environmental review because replacement of existing luminaires with a different kind of luminaire involves discretion. Therefore, it is advisable to file a “Notice of Exemption (“NOE”) under CEQA for municipal streetlight projects. Below is an overview of the process, including how to choose and file an exemption, what to do if the exemption is challenged, how to move forward after the exemption, examples of cities handling the process in the Bay Area, and a sample filing form. *Consult with your legal counsel regarding your specific needs.*

Choosing an exemption

Under CEQA Guidelines Article 19, there are three categorical exemption options pertinent to streetlight projects.¹ Class 1 exemption (§15301) allows for the repair, maintenance or minor alteration of existing facilities, a good choice for retrofit projects. Class 2 (§15302) applies to replacement or reconstruction of existing facilities, useful in one-to-one fixture replacement projects. Class 3 (§15303) allows new construction or conversion of small structures (“small” meaning as large as a single-family home) and is a viable option for installation of new fixtures where there were none prior. In addition, §15061(b)(3), allows for exemptions where “it can be seen with certainty” that there is no environmental impact. It is of course best to consult the City Attorney to determine the most applicable exemption for a given project.

Filing an exemption

Once an exemption is chosen, the planning department should file a one-page “Notice of Exemption” with the County Clerk.² This will remain on file for 35 days, after which any lawsuit under CEQA will be barred.³ The City need not wait for completion of the period to move forward with the project.

¹ The CERES site is an excellent resource for navigating CEQA: <http://ceres.ca.gov/ceqa/>. For text of the categorical exemptions, see <http://ceres.ca.gov/ceqa/guidelines/art19.html>. Of particular note are §15300-§15303.

² See p.3 for a sample Notice of Exemption. Alternatively: http://ceres.ca.gov/ceqa/guidelines/pdf/appen_e.pdf.

³ Note: citywide projects are generally approved by the City Council, though if the project is not structured as a council action, the Public Works Director can sign and submit the Notice of Exemption directly.

If the exemption is challenged

Again, the likelihood of this can be substantially minimized by requesting public feedback from a pilot project and tailoring the project concept to minimize complaints. Though if the exemption is challenged within the 35-day period it is on file, a Petition for a Writ of Mandate is filed with the Court. At this point you will be working closely with the City Attorney to defend the case. To aid in defense, prior to approval of the project the City should prepare supporting documents for a formal record of the project to be used by the Court.⁴ These documents should offer a comparative analysis of environmental impacts between existing fixtures/technology (e.g., HPS luminaires) and LED fixtures. The benefits of LED technology should be highlighted, as should clear evidence that the City has taken environmental impacts of the project into account; address not only the energy aspect, but also changes to ambient lighting levels, nighttime visibility, public safety, etc.

Case study: Berkeley Marina

The City of Berkeley's Marina LED Streetlight Replacement Pilot Project is an example of how to prepare a project that incorporates public opinion and minimizes negative reception for a future citywide deployment.⁵ The pilot project installed a small number of fixtures of different color temperatures (4100K – more red vs. 6000K – more blue) and carefully assessed technical factors including state standards for luminosity in roadway illumination, leading to the decision for a one-to-one replacement under CalTrans Standard.⁶ Further, the City requested community feedback to determine which lights residents prefer overall and in specific sectors (e.g., residential, commercial). The City is incorporating its technical findings and community response in a citywide deployment project and is preparing to file a CEQA exemption.⁷

Case study: Monterey citywide LED conversion

The City of Monterey recently pursued a one-to-one replacement of HPS to LED streetlights across nearly the entire city, including residential areas. In March 2012, a petition for Writ of Mandate was filed by a group of approximately 45 citizens referring to themselves as “Turn Down the Lights.” Their complaints include safety hazards caused by excess glare from the LED lights and light scatter into individual homes. The City of Monterey is now facing litigation⁸ and attempting to mitigate the concerns through non-judicial means. While the benefits of LED streetlights in Monterey have been substantial, measures such as raising public awareness and garnering feedback via a pilot project, conducting a formal city review, and even filing an exemption may have prevented such a lawsuit. Careful planning, assessment of technical factors, and community engagement are important aspects of any project, even one with such straightforward benefits as streetlight conversion.

⁴ For an organized & interactive flowchart of steps to be taken by the City, see <http://ceres.ca.gov/ceqa/flowchart/index.html>.

⁵ For an overview of the project, see http://www.ci.berkeley.ca.us/uploadedFiles/Clerk/Level_3_-_City_Council/2011/06Jun/2011-06-28_Item_51_Marina_LED_Streetlight_Replacement.pdf.

⁶ For CalTrans Standard Plans, see http://www.dot.ca.gov/hq/esc/oe/project_plans/HTM/10_plans_disclaim_US.htm.

⁷ To learn more about the Berkeley Marina project, contact [Neal DeSnoo](#), Division Manager at the Office of Energy and Sustainable Development.

⁸ <http://en.china-led.net/daily-information/monterey-residents-sue-over-new-led-streetlights.html>

Notice of Exemption

To: Office of Planning and Research
1400 Tenth Street, Room 121
Sacramento, CA 95814

From: (Public Agency) _____

(Address)

County Clerk
County of _____

Project Title: _____

Project Location - Specific: _____

Project Location - City: _____ Project Location - County: _____

Description of Nature, Purpose, and Beneficiaries of Project:

Name of Public Agency Approving Project: _____

Name of Person or Agency Carrying Out Project: _____

Exempt Status: (check one)

- Ministerial (Sec. 21080(b)(1); 15268);
- Declared Emergency (Sec. 21080(b)(3); 15269(a));
- Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- Categorical Exemption. State type and section number:**
- Statutory Exemptions. State code number:

Reasons why project is exempt: _____

Lead Agency

Contact Person: _____ Area Code/Telephone/Extension: _____

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project? Yes No

Signature: _____ Date: _____ Title: _____

- Signed by Lead Agency Date received for filing at OPR:
- Signed by Applicant