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AB-323 California Environmental Quality Act: exemption: roadway improvement. (2015-2016)

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Assembly Bill No. 323

CHAPTER 52

An act to amend Section 21080.37 of the Public Resources Code relating to the California Environmental Quality Act.

[Approved by Governor July 06, 2015. Filed with Secretary of State July 06, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 323, Olsen. California Environmental Quality Act: exemption: roadway improvement.

The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment.

CEQA, until January 1, 2016, exempts a project or an activity to repair, maintain, or make minor alterations to an existing roadway, as defined, if the project or activity is carried out by a city or county with a population of less than 100,000 persons to improve public safety and meets other specified requirements.

This bill would extend the above exemption to January 1, 2020.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 21080.37 of the Public Resources Code is amended to read:

21080.37. (a) This division does not apply to a project or an activity to repair, maintain, or make minor alterations to an existing roadway if all of the following conditions are met:

(1) The project is carried out by a city or county with a population of less than 100,000 persons to improve public safety.

(2) (A) The project does not cross a waterway.

(B) For purposes of this paragraph, "waterway" means a bay, estuary, lake, pond, river, slough, or a perennial, intermittent, or ephemeral stream, lake, or estuarine-marine shoreline.

(3) The project involves negligible or no expansion of an existing use beyond that existing at the time of the lead agency's determination.

(4) The roadway is not a state roadway.

(5) (A) The site of the project does not contain wetlands or riparian areas and does not have significant value as a wildlife habitat, and the project does not harm any species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code), or the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), and the project does not cause the destruction or removal of any species protected by a local ordinance.

(B) For the purposes of this paragraph:

(i) "Riparian areas" mean those areas transitional between terrestrial and aquatic ecosystems and that are distinguished by gradients in biophysical conditions, ecological processes, and biota. A riparian area is an area through which surface and subsurface hydrology connect waterbodies with their adjacent uplands. A riparian area includes those portions of terrestrial ecosystems that significantly influence exchanges of energy and matter with aquatic ecosystems. A riparian area is adjacent to perennial, intermittent, and ephemeral streams, lakes, and estuarine-marine shorelines.

(ii) "Significant value as a wildlife habitat" includes wildlife habitat of national, statewide, regional, or local importance; habitat for species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531, et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code); habitat identified as candidate, fully protected, sensitive, or species of special status by local, state, or federal agencies; or habitat essential to the movement of resident or migratory wildlife.

(iii) "Wetlands" has the same meaning as in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).

(iv) "Wildlife habitat" means the ecological communities upon which wild animals, birds, plants, fish, amphibians, and invertebrates depend for their conservation and protection.

(6) The project does not impact cultural resources.

(7) The roadway does not affect scenic resources, as provided pursuant to subdivision (c) of Section 21084.

(b) Prior to determining that a project is exempt pursuant to this section, the lead agency shall do both of the following:

(1) Include measures in the project to mitigate potential vehicular traffic and safety impacts and bicycle and pedestrian safety impacts.

(2) Hold a noticed public hearing on the project to hear and respond to public comments. The hearing on the project may be conducted with another noticed lead agency public hearing. Publication of the notice shall be no fewer times than required by Section 6061 of the Government Code, by the public agency in a newspaper of general circulation in the area.

(c) For purposes of this section, "roadway" means a roadway as defined pursuant to Section 530 of the Vehicle Code and the previously graded and maintained shoulder that is within a roadway right-of-way of no more than five feet from the edge of the roadway.

(d) Whenever a local agency determines that a project is not subject to this division pursuant to this section, and it approves or determines to carry out that project, the local agency shall file a notice with the Office of Planning and Research, and with the county clerk in the county in which the project will be located in the manner specified in subdivisions (b) and (c) of Section 21152.

(e) This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.