

No Exception to the Exemption -- Installation of Small Wireless Telecom Equipment on Existing Utility Poles Throughout City is Exempt from CEQA

After obtaining the necessary permit, T-Mobile installed wireless equipment on an existing utility pole in a residential neighborhood in San Francisco. The installation was part of a larger project to install similar equipment on existing utility poles scattered throughout the city. Residents living nearby sought to have the city's decision to issue the permit overturned, claiming that the city should have conducted an environmental review to consider the cumulative impact of all of the telecommunications equipment that T-Mobile and others had installed, or could install in the future, throughout the city. **Categorical Exemption from CEQA.** The appellate court in [Robinson v. City and County of San Francisco \(T-Mobile West Corporation\)](#) (August 21, 2012) disagreed with the residents and upheld the city's determination that the T-Mobile project fell squarely within a categorical exemption to CEQA which applies to the construction, installation, or conversion of a limited number of small facilities, structures or equipment. (14California Code of Regulations § 15303(d)) When a project is categorically exempt, the court confirmed, no environmental review is necessary and the project may proceed without any CEQA analysis or compliance whatsoever. **Cumulative Impact Exception Does Not Apply.** The court acknowledged that the exemption must be denied if a "fair argument" can be made that the cumulative impact of successive installations "of the same type in the same place" will result in a significant adverse environmental impact. However, that was not the case here. Residents argued that the exemption should be denied because the cumulative visual and auditory impacts of existing and potential future installations throughout the city would result in environmental damage. On the contrary, the court said, since the existing and proposed T-Mobile installations were or would be placed separately at different locations, it was not foreseeable that there would be any cumulative impacts. The residents' argument amounted to nothing more than "speculation" that future installations *may* occur within the auditory or visual range of the T-Mobile project. However, speculation that potential future projects *could* cause a cumulative adverse impact is not enough. Unless there is a fair argument that future installations will be located within the "sensory range" of other similar equipment, the court said, "the categorical exemption here is not negated by the cumulative impact exception."

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