

**FINAL EXAMINATION**

**3 HOURS**

Please draft a legal memorandum that analyzes the legal issues based on the following facts:

Two dentists, Drs. Kind and Generous (collectively, the “client”) purchased an existing single-family building in the heart of Mayberry, California. The existing single-story building is currently used for medical offices and is surrounded by three or four other medical offices, which are part of a large, upscale, residential area in Mayberry. Drs. Kind and Generous wish to add a second story to the building to expand their dental practice. As initially submitted, the project would expand the existing 3,287-square-foot medical office building by 3,382 square feet by adding 559 square feet to the first floor, and a 2,823 square foot second story. Other than changing the use of the building from a medical office to a dental office, no significant changes are expected to occur. The building is served by existing city services, such as water and sewer. The property where the building and parking lot are located is completely developed and does not contain any environmental features. Traffic on adjacent city streets can be challenging because of a nearby high school. Traffic can be somewhat congested when the high school is starting in the morning or letting out in the afternoon, especially with the number of luxury Escalades, BMWs and Mercedes in the area. Additionally, the adjacent city streets are narrow, which precludes a significant amount of parking on the city streets. However, Drs. Kind and Generous are not concerned about this because they have a 35-space parking lot that they purchased along with the building. The City of Mayberry’s General Plan allows for a medical office building on this property and the City of Mayberry’s Zoning Ordinance allows for a medical office building without any type of permit.

Because Drs. Kind and Generous wish to add a second story to the building, they are required to obtain a “Design Review Approval.” When determining whether or not to issue a Design Review Approval, Mayberry’s Planning Commission looks at purely aesthetic impacts, such as the color of the paint, the height of the building windows, etc.

A group of residents from the nearby upscale neighborhood have organized themselves into the Mayberry Coalition (“Coalition”). The members of the Coalition have opposed the Design Review Approval for Drs. Kind and Generous. The Coalition argues that adding a second story to the building will allow Drs. Kind and Generous and their patients to look into the backyards of four adjacent residences because of the height of the second story on the building. One of the neighbors, Glenda Larsson, a well known Swedish poet, has her weekly book club meetings every Tuesday morning in her backyard. Ms. Larsson feels very strongly about dental patients peering into her backyard during these book discussions. Members of her book club include Atticus Finch, a former member of the Mayberry City Council, and Mary S. Poppins, a former member of the Mayberry Planning Commission. Mrs. Payne, the wife of Dr. Payne, a local neurosurgeon who was one of the doctors in the building prior to Drs. Kind and

Generous' purchase, is also a member of the book club. In response, Drs. Kind and Generous removed all windows from the south facing wall of the second story, reduced the height of the second story by 18 inches; reduced the waiting room from two stories to one; reducing the depth of the waiting room; changed the waiting room exterior materials to wood siding; changed the color of the building; changed the eave details; and added taller trees for better screening. The doctors also reduced the size of a deck on the second story to accommodate privacy concerns from neighbors.

The Coalition further argues that adding a second story to the building will increase the number of patients, which will cause an increase in traffic accidents on already narrow and congested city streets. The Coalition also complains that a dental office is an entirely different use than a medical office and that this is a significant change in use, triggering approvals above and beyond the design review requirement.

The City of Mayberry has determined that the only permit that is required for the second story is the Design Review Approval. The City of Mayberry also found that the project is exempt from CEQA, California's Environmental Quality Act, under an existing infrastructure exemption, CEQA Guideline Section 15301. (14 Cal. Code Regs., §15301.) Drs. Kind and Generous have spent three years and almost \$70,000 attempting to be able to add the second story to their building. The building is heavily mortgaged and the doctors will not be able to continue carrying the costs of this building unless they are able to get these approvals and to begin practicing in the building.

The client has asked us to determine: (i) is the City's determination that this project is exempt from CEQA under CEQA Guideline Section 15301 is accurate, and (ii) are there any "unusual circumstances" that would vitiate the exemption?

Your memo must follow our firm's standard memo format:

I.  
ISSUES

II.  
BRIEF ANSWERS

III.  
FACTS

IV.  
DISCUSSION

V.  
CONCLUSION

Your exam contains the following attachments:

1. Public Resources Code §21084(a)
2. 14 California Code of Regulations §15301
3. 14 California Code of Regulations §15384
4. *Association for Protection of Environmental Values v. The City of Ukiah* (1991) 2 Cal.App. 4<sup>th</sup> 720
5. *Fairbank v. City of Mill Valley* (1999) 75 Cal.App. 4<sup>th</sup> 1243
6. *San Lorenzo Valley Community Advocates for Responsible Education v. The San Lorenzo Valley Unified School District* (2006) 139 Cal.App. 4<sup>th</sup> 1356