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Bond Properly Required for Challenge to Affordable Housing



A local organization appealed the denial of its challenge to the approval of an affordable housing project and disputed the trial court's order requiring it to post a bond. The Court of Appeal rejected plaintiff's contentions on the merits and held that the plaintiff was properly required to post a bond because it was delaying an affordable housing project. *Save Livermore Downtown v. City of Livermore*, No. A164987 (1st Dist., Dec. 28, 2022).



The City of Livermore approved a 130-unit affordable housing project, finding the project exempt from CEQA on multiple grounds, including that it was consistent with a specific plan for which an EIR had been certified. A nonprofit group sued, claiming inconsistency with the specific plan and CEQA violations. The trial court required the nonprofit to post a \$500,000 bond under Code of Civil Procedure section 529.2, which allows courts to order those who challenge affordable housing projects to post bonds to cover damages that may be incurred from delay in carrying out the project.

First, the appellate court found there was substantial evidence that the project complied with the City's Downtown Specific Plan. Inconsistencies between details of the project and standards in the specific plan such as main entrance orientation and window design were not sufficient for a finding that the project would not promote the overarching policies of the plan.

Second, the court agreed with the trial court's finding that plaintiff's CEQA arguments were "almost utterly without merit." The discovery of groundwater and soil contaminants at the site after the certification of the EIR did not constitute "new information" that would trigger reanalysis under CEQA because the EIR had addressed the potential presence of contaminants at the site due to past uses of the property.

Lastly, the court found that both conditions for issuance of a bond under section 529.2. were satisfied: "(1) the action was brought in bad faith, vexatiously, for the purpose of delay, or to thwart the low- or moderate-income nature of the housing development project, and (2) the plaintiff will not suffer undue economic hardship by filing the undertaking." Plaintiff filed its petition at the end of the 30-day statute of limitations period and then delayed preparation of the administrative record, causing the hearing on the merits to be delayed. The court found no undue economic hardship because the record showed that the plaintiff nonprofit group was supported by more than 50 members, had spent "\$37,000 commissioning plans for an alternative and unrealistic location," and had hired a prominent and expensive law firm.

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