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CEQA In-Fill Exemption Inapplicable Where Project Conflicted with General Plan Affordable Housing Policies



The appellate court invalidated the City's reliance on CEQA's Class 32 in-fill exemption to approve construction of a hotel because the project included demolition of affordable housing and thereby conflicted with General Plan policies favoring preservation of such housing. *United Neighborhoods for Los Angeles v. City of Los Angeles*, 93 Cal.App.5th 1074 (2023).



A developer applied for a project that that would demolish 40 apartments subject to the City's rent stabilization ordinance (RSO) and replace them with a 156-room hotel. The City approved the project, determining that it qualified for CEQA's Class 32 in-fill exemption. (Guidelines, § 15332 (a).)

Petitioner challenged the City's reliance on the in-fill exemption, contending the project did not satisfy the requirement of "consisten[cy] with . . . all applicable general plan policies . . ." (§ 15332 (a)). Specifically, it argued that demolition of the rent-controlled apartments conflicted with provisions in the Housing Element of the General Plan calling for the preservation of affordable housing, including "ensur[ing] that demolitions and conversions do not result in the net loss of the City's stock of decent, safe, healthy or affordable housing."

The City contended that Housing Element policies relating to the preservation of affordable housing were inapplicable because (1) the construction of a hotel did not bear on housing production, and (2) RSO housing was not "affordable" housing within the meaning of pertinent Housing Element policies. The court found no merit in either argument.

The City's contention that no conflict existed because Housing Element policies were concerned only with supply of new housing was directly contradicted by the Housing Element's goal of "production and *preservation*" of affordable housing (emphasis added); its objective to "[p]reserve quality rental and ownership housing;" and its policy to "[e]ncourage and incentivize the preservation of affordable housing". The court found nothing in other sections of the Housing Element cited by the City that supported the claim that its sole focus was new affordable housing or that goals, objectives, and policies relating to preservation of existing housing were to be ignored.

The City's alternative contention that "affordable housing" was a term of art that excluded RSO housing failed because nothing in the Housing Element suggested that its use of that phrase differed from its commonly understood meaning, i.e., housing affordable to persons of low or median incomes or housing made available to those on lower incomes at a price below normal market value. Because the RSO prohibited landlords from raising rents to reflect "normal market value" under certain circumstances, RSO housing units were affordable housing within the ordinary meaning of the phrase.

The City argued that it had impliedly considered Housing Element policies and determined that the project was consistent with them, noting that the court was required to accord deference to the City's interpretation of its own General Plan. While agreeing that such deference would ordinarily be appropriate, the court held that it was not warranted here because there was no substantial evidence in the record that the agency had in fact considered and interpreted the applicable policies.

## Topics

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