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### Grocery Outlet Qualified For CEQA Class 32 Exemption as Infill Development



The Sixth District Court of Appeal held that the undefined terms “in-fill development” and “substantially surrounded by urban uses” in the CEQA exemption for in-fill development were not limited by the definitions of similar terms in other parts of the CEQA statute and guidelines. *Working Families of Monterey County v. King City Planning Commission*, 106 Cal.App.5th 833 (2024).

The King City Planning Commission approved a Grocery Outlet project after determining that it qualified for the CEQA class 32 categorical exemption for projects on infill development. Petitioners challenged the project’s approval arguing that the project did not qualify for an exemption because it was located in a rural area and not “substantially surrounded by urban uses” as required by the CEQA guidelines. Petitioners claimed that because “in-fill development” or “substantially surrounded by urban uses” are not defined, those terms must be interpreted by the definitions for “in-fill site,” “urbanized area,” and “qualified urban uses,” in other sections of the CEQA statute and guidelines. Petitioners reasoned that based on these definitions, the project would not qualify for an exemption because it is located in a rural area.

The Court of Appeal rejected petitioner’s interpretation of the CEQA infill exemption and held that there is no authority for the proposition that the definitions of “infill site,” “urbanized area,” and “qualified urban uses,” should be utilized in interpreting the exemption. First, there was no indication that the Natural Resources Agency intended for these definitions to be applicable to the categorical exemption for infill development when promulgating the CEQA Guidelines. Second, this argument fails as a matter of statutory interpretation because courts cannot read language into a statute that does not appear in it. It would also violate the principle that where different words or phrases are used in connection with different parts of a statute, it is presumed that it has a different meaning. Lastly, there is an express directive in CEQA that prohibits interpreting the guidelines “in a manner which imposes procedural or substantive requirements beyond those the statutes and the Guidelines explicitly state.”

The Court of Appeal also rejected petitioner's argument that the environmental assessment prepared for the project was deficient. CEQA requirements for air quality analyses did not apply because the project qualified for an exemption. The project's location in an "urbanized area" was also supported by the record through aerial photographs.

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