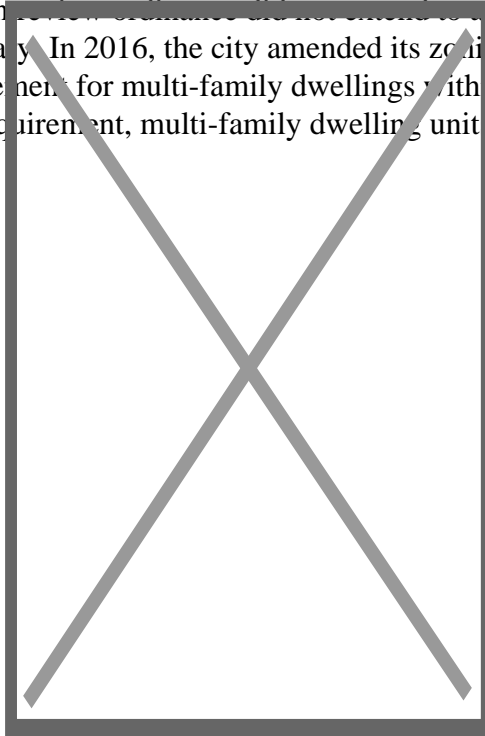


## Court of Appeal Holds CEQA Review Is Not Required for Project That Is Only Subject to Design Review

The court of appeal held that the City of St. Helena did not violate CEQA by approving a demolition permit and design review for a multi-family residential project without preparing an environmental impact report. *McCorkle Eastside Neighborhood Group v. City of St. Helena* (2018) 31 Cal.App.5th 80. The court held that because the city's discretion under its local design review ordinance did not extend to addressing the project's environmental effects, CEQA review was unnecessary. In 2016, the city amended its zoning ordinance to eliminate the conditional use permit (CUP) requirement for multi-family dwellings within the High Density Residential (HR) districts. By eliminating the CUP requirement, multi-family dwelling units are permitted uses by right under the



HR district, subject to design review

. Joe McGrath applied to the city for

a demolition permit and design review for a proposed 8-unit multi-family residential building. The city council approved the permit and design review (conducted by the Planning Commission) and adopted a resolution finding that the Class 32 categorical exemption for infill projects applied and was consistent with the city's limited discretion to consider and address environmental impacts under the city's design review ordinance. The city council resolution stated that "the City's discretion, and thus scope of its CEQA review, [is] limited to design issues such as scale, orientation, bulk, mass materials, and color, and it has no authority or ability to meaningfully address non-design related issues or impacts[.]" The court concluded that the Class 32 exemption was unnecessary and upheld the city's actions, holding that the city properly found that its discretion was limited to design review, given that no use permit was required for multi-family housing in HR districts. It also upheld the city council's determination that the issues addressed during design review did not require the separate invocation of CEQA. The court summarily rejected the petitioner's argument that because the city had discretion to conduct design review, the entire project was discretionary and subject to CEQA. The court explained that CEQA does not apply to "mixed" discretionary/ministerial approvals where the "discretionary component" does not give the agency the authority to mitigate environmental impacts. The court therefore held that "[b]ecause of

the City's lack of discretion to address environmental effects it is unnecessary to rely on the Class 32 exemption and equally unnecessary to spend much time on appellant's contention that the proposed project did not qualify for an exemption because it was not consistent with the general plan."

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