

Second District Addresses CEQA's Class 32 Infill Exemption Criteria

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In its recent decision in [*United Neighborhoods for Los Angeles v. City of Los Angeles*](#) (2023) ____ Cal.App.5th ____, the Second District Court of Appeal affirmed a judgment voiding the City of Los Angeles's reliance on the CEQA Class 32 Infill Exemption for a hotel project in Hollywood that would demolish 40 rent-stabilized units (RSO). In upholding the trial court decision, the appellate court emphasized the City's failure to adequately assess the Project's consistency with all applicable general plan policies, as required by CEQA Guidelines section 15332(a).

This case provides a good reminder of the deference afforded to public agencies when determining which general plan policies apply to a project. Importantly, the Court clarified that this determination must be supported by substantial evidence, and the additional deference afforded to public agencies when weighing *conflicting* general plan policies does not apply. Per the Court, "[t]he principle that the City is uniquely positioned to weigh the priority of competing policies does not extend to the question of which policies are to be placed on the scales." Here, the administrative record included no evidence demonstrating that the City assessed consistency with policies in the Housing Element related to preserving existing affordable housing, even though the hotel project proposed to remove existing rent-stabilized units. As such, the Court could not defer to the City's interpretation of City General Plan policies where there is "no indication the City weighed and balanced all applicable policies."

The Court went on to reject the City's argument that it made the implied determination that the Housing Element policies were not applicable to the Project. "The only conceivable rationale found in the administrative record that would support a conclusion that Housing Element policies are inapplicable to the Project is that the Project is 'not a housing project, and therefore is not expected to satisfy the needs and desires of all economic segments of the community.'" The Court pointed out that the City incorrectly relied on the consistency determination for the Hollywood Community Plan and reiterated that the City made no determination – implied or otherwise – regarding the Housing Element. The Court also stated that the City's "statements mischaracterizes both the Project and applicable Housing Element policies. To say that the Project, which requires demolition of 40 RSO housing units, is not a housing 'project' says nothing about its impact on housing." The Court noted that "express consistency finding[s]" are not required, but there must be "some indication" that the

agency actually considered the applicable policies. Here, the Court could not find any indication in the administrative record that the City did this.

Additionally, the Court affirmed that the petitioner met the criteria for exhausting administrative remedies, refuting the City's assertion that petitioner's argument about the Housing Element's inconsistency was inadequately presented during the administrative stage. Per the Court, by referencing the Housing Element's primary "goal," which spans over 2 pages with 4 objectives and 22 policies, and underscoring the importance of preserving affordable housing, the petitioner effectively communicated its stance to the City.

Implications

Successfully navigating urban development, especially in the realm of CEQA categorical exemptions, requires an informed and multifaceted approach. Below are a few takeaways from *United Neighborhoods for Los Angeles*:

Comprehensive Administrative Record: Applicants and public agencies alike should aim for clear, comprehensive records that not only explain the rationale behind each determination but also whether a general plan policy is or is not applicable to a project.

Avoid Implicit Findings: While the Court stated that an express finding regarding whether a policy applies is not required, it may be prudent for applicants and public agencies to have clear documentation somewhere in the administrative record showing this determination, especially regarding policies that address like housing production and preservation. This is especially the case for projects relying on the Class 32 Infill Exemption because CEQA Guidelines section 15332(a) requires that the project is "consistent with the applicable general plan designation and *all applicable general plan policies* as well as applicable zoning designation and regulations." (Emphasis added.)

Seek Expert Consultation: Given the complexities involved, it can be beneficial to engage with legal experts or consultants who specialize in CEQA regulations and Class 32 infill exemptions. Their insights can provide invaluable guidance, ensuring all possible inconsistencies are identified and addressed proactively.

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