UNITED NEIGHBORHOODS FOR LOS ANGELES v. CITY OF LOS ANGELES
Case Number: 20STCP03844
Hearing Date: December 1, 2021

FILED
Superior Court of California
County of Los Angeles

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Sherri R. Carter, Executive Officer/Clerk of Court
By: D. Cañada, Deputy

ORDER GRANTING PETITION FOR WRIT OF MANDATE

Petitioner, United Neighborhoods for Los Angeles, challenges the decision of Respondent, the City of Los Angeles, to approve the construction of a hotel at 1719-1731 North Whitley Avenue (the Project) in the City. Petitioner contends the City failed to proceed as required by law when it found the Project categorically exempt from environmental review under the California Environmental Quality Act (CEQA), Public Resources Code section 21000 *et seq.*

The City and Real Parties in Interest, Fariborz Moshfegh and Whitley Apartments, LLC, oppose the petition.

The Petition is GRANTED.

The court grants Petitioner's request for judicial notice (RJN) as to Exhibits D, E and G only. The objections to Exhibits A, B, C and F are sustained. (Evid. Code§ 452, subd. (b); *Friends of the Old Trees v. Department of Forestry & Fire Protection* (1997) 52 Cal.App.4th 1383, 1390. ["When an agency's quasi-judicial determination is reviewed by administrative mandamus, judicial review is generally limited to the evidence in the record of the agency proceedings. (See Pub. Resources Code § 21168; Code Civ. Proc., § 1094.5, subd. (c)."]) As noted in the objections, nothing suggests the City considered the documents in connection with the Project, or that the documents were prepared after the City approved the Project. Petitioner also did not move to augment the record. (See Code Civ. Proc.§ 1094.5, subd. (e); Los Angeles County Court Rules 3.231, subd. (g)(3).)

The unopposed RJN by the City and Real Parties is granted as to Exhibit A. (Evid. Code § 452, subd. (c).)

STATEMENT OF THE CASE

The Project is a 10-story, 156-room hotel with 122 parking spaces. The Project's construction will result in the demolition of six multi-family residential buildings containing 40 residential units. (AR 1, 23.) As of October 2019, there were "about 14" tenants remaining in the residential units. (AR 1940-1941.)

On December 22, 2016, the property owner, Whitley Apartments, LLC, submitted applications to the Department of City Planning for a site plan review (SPR) as well as a determination the

Project was categorically exempt from CEQA review as an "in-fill development project" pursuant to section 15332 of the CEQA Guidelines.[1] (AR 2641-2647 [SPR application].) The Department of City Planning ultimately determined the Project qualified for CEQA's Class 32 exemption as an in-fill development project because the Project satisfied all five requirements for the exemption set forth in CEQA Guidelines section 15332. The Department of City Planning also found none of the exceptions set forth in CEQA Guidelines section 15300.2 to the categorical exemption applied to the Project. (AR 31-108 [findings].)

On August 1, 2019, the Department of City Planning issued a letter of determination conditionally approving the SPR to allow the Project with findings the Project was consistent with the City's General Plan and all zoning designations. (AR 7-15, 487.) The letter of determination also reported the Project "is exempt from CEQA . . . and that there is no substantial evidence demonstrating that an exception to the categorical exemption" applied. (AR 487.)

Petitioner and one other party appealed the Department of City Planning's decisions to the Central Area Planning Commission (CAPC). (AR 504.) The CAPC denied the appeals. (AR 1807.)

On November 15, 2019, Petitioner appealed the CAPC's decision to the City Council. (AR 3333-3341.)

The City Council's Planning and Land Use Management Committee (PLUM) considered Petitioner's appeal on October 1, 2020. (AR 1788.) PLUM recommended to the City Council that it deny Petitioner's appeal and find the Project categorically exempt. (AR 1788-1789.)

On October 20, 2020, the City Council adopted PLUM's recommendations. Thus, the City Council denied Petitioner's appeal and approved the Project finding it categorically exempt from CEQA. (AR 1874-1875 [item 6], 2031-2036 [transcript].)

On November 25, 2020, the City filed a Notice of Exemption for the Project. (AR 1.)

This action ensued.

STANDARD OF REVIEW

Petitioner sets forth "the primary issue in this case: whether the City failed to proceed in the manner required by law by approving the project absent any CEQA review." (Opening Brief 5:15-17.) Petitioner asserts the City "abused its discretion by adopting the findings supporting a categorical exemption from CEQA for this project– a project that does not qualify under the law to be wholly exempted from CEQA review." (Opening Brief 5:20-22.)

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[1] The CEQA Guidelines are found at title 14, chapter 3, section 15000 *et seq.* of the California Code of Regulations.

"To achieve its objectives of environmental protection, CEQA has a three-tiered structure." (*Committee to Save the Hollywoodland Specific Plan v. City of Los Angeles* (2008) 161 Cal.App.4th 1168, 1185 [citing CEQA Guidelines§ 15002, subd. (k)].)

> "First, if a project falls into an exempt category, or 'it can be seen with certainty that the activity in question will not have a significant effect on the environment, [citation] no further agency evaluation is required.' [Citation.] Second, if there is a possibility the project will have a significant effect on the environment, the agency must undertake an initial threshold study; if that study indicates that the project will not have a significant effect, the agency may issue a negative declaration. Finally, if the project will have a significant effect on the environment, an Environmental Impact Report (EIR) is required." (*Id.* at 1185-1186.)

There are 33 classes of projects that are categorically exempt from CEQA. (CEQA Guidelines §§ 15301-15333. See also Pub. Resources Code § 21084.) Such classes of projects are "declared to be categorically exempt from the requirement for the preparation of environmental documents." (CEQA Guidelines§ 15300.) "The determination whether a project is exempt under one of these classes is made as part of the preliminary review process prior to any formal environmental evaluation of the project." (*Save Our Carmel River v. Monterey Peninsula Water Management Dist.* (2006) 141 Cal.App.4th 677, 688.)

To review an agency's determination a project is categorically exempt from CEQA, the court must determine whether, *as a matter of law,* the project falls within the exemption. (*Fairbank v. City of Mill Valley* (1999) 75 Cal.App.4th 1243, 1251.) To the extent this contention "turns only on an interpretation of the language of the Guidelines or the scope of a particular CEQA exemption, this presents 'a question of law subject to de novo review . . . .' " (*Save Our Carmel River v. Monterey Peninsula Water Management Dist., supra,* 141 Cal.App.4th at 693.)

However, "[w]here the record contains evidence bearing on the question whether the project qualifies for the exemption, such as reports or other information submitted in connection with the project, and the agency makes factual determinations as to whether the project fits within an exemption category, [the courts] determine whether the record contains substantial evidence to support the agency's decision." (*Id.* at 694.)

The lead agency has the burden to demonstrate that a project falls within a categorical exemption and the agency's determination must be supported by substantial evidence. (*California Farm Bureau Federation v. California Wildlife Conservation Bd.* (2006) 143 Cal.App.4th 173, 185.) Once the agency establishes the project is exempt, the burden shifts to the party challenging the exemption to show that the project is not exempt because it falls within one of the exceptions listed in CEQA Guidelines section 15300.2. (*Id.* at 186; *Fairbank v. City of Mill Valley, supra,* 75 Cal.App.4th at 1259 [party advocating for application of unusual circumstances exception bears burden of demonstrating project falls within exception].)

If the agency determines an exemption applies, and no exception forecloses the exemption's application, the project is exempt from CEQA and no further environmental review is required. (*Tomlinson v. County of Alameda* (2012) 54 Cal.4th 281, 286; *World Business Academy v. California State Lands Commission* (2018) 24 Cal.App.5th 476, 491.)

As recognized by Petitioner, the City's "determination of the applicability of a categorical exemption to a project is subject to the substantial evidence standard of review; the lead agency's factual determination of whether a project falls within a categorical exemption will be upheld if supported by substantial evidence." (Opening Brief 9:4-7.)

To the extent Petitioner contends the unusual circumstances exception to the categorical exemption applies, Petitioner must demonstrate unusual circumstances exist and those unusual circumstances create a reasonable possibility of a significant environmental impact. (See Opening Brief 8:7-12.)

Judicial review of a claim the unusual circumstances exception applies is therefore a two-step analysis:

> "[W]hen a party seeks to establish that the unusual-circumstances exception applies, it must prove to the [city] that two elements are satisfied: (1) the project presents unusual circumstances and (2) there is a reasonable possibility of a significant environmental effect due to those circumstances. A court then assesses the entity's determinations on these elements by applying different standards of review: a deferential standard applies in reviewing the first element and a nondeferential standard applies in reviewing the second." (*Respect Life South San Francisco v. City of South San Francisco* (*Respect Life*) (2017) 15 Cal.App.5th 449, 457.)

ANALYSIS

<u>The Project Is Not Categorically Exempt</u>

> ***a. The City's Finding the Project Qualifies as Categorically Exempt Is Not Supported by Substantial Evidence:***

The parties initially engage in a factual dispute. Petitioner argues the Class 32 in-fill development project exemption does not apply to the Project. The City and Real Parties contend otherwise.

As noted earlier, the City "has the burden to demonstrate . . . substantial evidence" supports the exemption. (*California Farm Bureau Federation v. California Wildlife Conservation Bd., supra,* 143 Cal.App.4th at 185.) The court must "review the administrative record to see that substantial evidence supports each element of the exemption. There must be substantial evidence that the [activity is] within the exempt category of projects. That evidence may be

found in the information submitted in connection with the project, including at any hearings that the agency chooses to hold." (*Concerned Dublin Citizens v. City of Dublin* (2013) 214 Cal.App.4th 1301, 1311 [*cleaned up*]. See *Great Oaks Water Co. v. Santa Clara Valley Water Dist.* (2009) 170 Cal.App.4th 956, 973.)

CEQA Guidelines section 15332 sets forth the requirements for the in-fill development project exemption:

> "Class 32 consists of projects characterized as in-fill development meeting the conditions described in this section.
>
> (a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.
>
> (b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.
>
> (c) The project site has no value, as habitat for endangered, rare or threatened species.
>
> (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
>
> (e) The site can be adequately served by all required utilities and public services."

Petitioner contends the City failed to consider one of the required elements for a Class 32 exemption for the Project. Specifically, the City, according to Petitioner, did not consider any of the policies and requirements found in the Housing Element of the City's General Plan. (CEQA Guidelines§ 15332, subd. (a).) Petitioner does not question or challenge the City's findings as to the other requirements for the exemption.

i. Consistency with City's General Plan

"A project is consistent with the general plan' "if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment." ' [Citation.] A given project need not be in perfect conformity with each and every general plan policy. [Citation.] To be consistent, a subdivision development must be 'compatible with' the objectives, policies, general land uses and programs specified in the general plan." (*Families Unafraid to Uphold Rural El Dorado County v. El Dorado County Bd. of Sup'rs* (1998) 62 Cal.App.4th 1332, 1336.) A project cannot be consistent with the general plan if it violates a "fundamental, mandatory and specific land use policy." (*Id.* at 1341-1342.)

A local government's decision a project is consistent with its general plan is subject to great deference and is ordinarily reviewed for abuse of discretion: "The [local government's] determination that [a project] is consistent with the . . . General Plan carries a strong presumption of regularity. [Citation.] This determination can be overturned only if the [local government] abused its discretion—that is, did not proceed legally, or if the determination is not supported by findings, or if the findings are not supported by substantial evidence. [Citation.] As for this substantial evidence prong, it has been said that a determination of general plan consistency will be reversed only if, based on the evidence before the local governing body, '. . . a reasonable person could not have reached the same conclusion.' " (*Id.* at 1338.)

The court's review includes determining "whether the city officials considered the applicable policies...." (*Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4hh 704, 720.)

Petitioner reports the City's Housing Element prioritizes the preservation of affordable housing in the City. (Pet.'s RJN Ex. D, p. 15.) Petitioner argues preserving affordable housing is key to obtaining the City's primary goal in its Housing Element—ensuring an adequate supply of ownership and rental housing that is safe, healthy and affordable to people of all income levels, races, ages and suitable for their various needs. (Pet.'s RJN Ex. D, p. 228-230.) Petitioner notes the City's Housing Element prioritizes the preservation of existing rent-stabilized units, or replacement of such housing units demolished resulting from new development. (RJN Exh. D, p. 250-251 ["Objective: Preserve more than 638,000 RSO units"].)

Petitioner contends despite the City's Housing Element's goals and priorities, the City nonetheless allowed the demolition of 40 rent-stabilized housing units by approving the Project—a result seemingly inconsistent with the City's General Plan—without any CEQA review.[2] The City's approval of the Project permitted residential housing units to be destroyed and families displaced during "the nation's recent housing and economic crisis" in favor of hotel accommodations. (Pet.'s RJN Ex. D, p. 13.) Such a result "is demonstrably inconsistent with a number of the Housing Element's objectives and policies and will result in a direct loss of existing, affordable, rent-stabilized housing units." (Opening Brief 13:11-13.) These facts

[2] The City and Real Parties note Petitioner's "affordable housing" label is misleading and not supported by the record. (Opposition: 14, fn. 3. ["The distinction between 'affordable' units versus 'rent-stabilized' units is critical. 'Affordable units' are identified by the Housing and Community Investment Department, and governed by specific conditions and a government-imposed regulatory agreement. (AR 2110; Los Angeles Mun. Code [LAMC], § 47.73.) In contrast, 'rent-stabilized' units, e.g., those at the Project site, are governed by the City's Rent Stabilization Ordinance (RSO), which does not restrict the initial rent for market rate units, but rather only limits the annual rent increases. (AR 1113; LAMC, § 151.01.) As indicated in the application, the RSO governs the Project site's units, which are not statutorily 'affordable.' (AR 2110.)"]) While the City and Real Parties are correct, the units' characterization does not affect the substantive analysis herein.

demonstrate, according to Petitioner, the City "blatantly and impermissibly" ignored its Housing Element when it found consistency with the General Plan. (Opening Brief 11:25.)

During the approval process and before the court, the City (and Real Parties) contend the City's Housing Element is irrelevant here because the Project "is not a housing project." (AR 512.) Therefore, according to the City, nothing required it to consider the Housing Element of the City's General Plan. The City and Real Parties argue only "*applicable* General and Community Plan objectives and policies" need be considered.[3] (Opposition 14:7.)

The City and Real Parties are correct about the City's obligation—the City must consider "all applicable general plan policies" when determining whether a project qualifies for a Class 32 exemption. The City and Real Parties fail to explain, however, why the City's Housing Element polices are not "applicable" here. That the Project is a hotel, does not address whether the demolition of rent stabilized residential units as part of the Project is consistent with the Housing Element of the City's General Plan.[4] The elimination of housing stock within the City to facilitate the Project would seemingly fall directly within the scope of the City's Housing Element policies to preserve housing. (See, e.g., Housing Element objective 1.2 and policy 1.2.2, Pet. RJN, Ex. D, p. 229 ["[p]reserve quality rental and ownership housing for households of all income levels" and "[e]ncourage and incentivize the preservation of affordable housing...to ensure demolitions and conversions do not result in the net loss of the City's stock of . . . affordable housing].)

As persuasively argued by Petitioner, it appears the City did not consider the City's Housing Element when it found the Class 32 exemption applied to the Project because the City decided the Housing Element was inapplicable and not relevant.[5] The administrative record demonstrates as much. At the appeal hearing, the City's planner explained to the City Council the City did not need to consider consistency with the Housing Element because the Project

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[3] During the hearing, the City suggested Petitioner failed to exhaust this issue. A CEQA challenge is not preserved "unless the alleged grounds for noncompliance with [CEQA] were presented to the public agency orally or in writing by any person during the public comment period provided by this division or prior to the close of the public hearing . . . ." (Pub. Resources Code§ 21177, subd. (a).)"Exhaustion of administrative remedies is a jurisdictional prerequisite to maintenance of a CEQA action." (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1199.) The City and Real Parties did not raise the exhaustion issue in their briefing. Nonetheless, the court finds Petitioner sufficiently raised the issue with the City. Petitioner advised the City the findings in the letter of determination were "incomplete" and "ignore[d] the first goal of the City's 2013 Housing Element." (AR 3326.) Petitioner specifically cited the City's Housing Element and suggested its goals were not advanced by the Project. (AR 3327.)

[4] It is undisputed the Project requires the demolition of rent-stabilized housing units.

[5] During the hearing, the City noted it implicitly determined "that the Housing Element and these several policies aimed at developing housing and preserving housing are not relevant."

was "not intended to or wouldn't be expected to be providing for housing which would satisfy the needs of the community." (AR 1933.)

The references to the administrative record by the City and Real Parties to "the wealth of substantial evidence" the City met its obligations in its decision making are not persuasive—the citations do not in any manner address the City's Housing Element or explain its inapplicability beyond the Project's label—a hotel. (Opposition 14:21-22.) The City's findings, for example, make no reference to the Housing Element. The Director of Planning's findings discuss only the General Plan's Framework Element, Land Use Element, Mobility Element, Air Quality Element and Sewerage Facilities Element. (AR 7-11.) The City's findings supporting the Class 32 exemption and the Department of City Planning's appeal report are similar and do not discuss the City's Housing Element. (See AR 39-43, 511-512.) Citations to the administrative record during argument prove no more helpful. The City was silent about the Housing Element's policies throughout the approval process.

While the court recognizes, as explained by the City's counsel during argument, that it is "impossible for a project to fulfill every single goal and policy in any general plan," the issue raised by Petitioner does not concern how the City exercised its discretion and balanced competing policies and concerns. Instead, the issue is whether the City even considered the City's Housing Element and how those policies might be balanced against other General Plan policies. Where, as here, the City did not consider its Housing Element, the City could not have decided other competing General Plan policies took priority over those (not considered) Housing Element policies. Given the City planner's statements at the appeal hearing and the City's failure to demonstrate substantial evidence otherwise, the court finds the City failed to consider the consistency of all applicable General Plan policies and the Project.

The court agrees with the City that nothing requires a "soup-to-nuts kid of exhaustion" on General Plan consistency. The law does not require the City to conduct an exhaustive analysis of every General Plan objective and policy. The court is also mindful of Real Parties' concern a project challenger should not be permitted after project approval to select one General Plan provision and argue inconsistency. Nonetheless, the City's disregard of the Housing Element in its evaluation of General Plan consistency—under these circumstances—is not consistent with CEQA.

Accordingly, the court finds the City failed to proceed as required by law when it found the Project qualified for a Class 32 exemption.

Petitioner also contends the City's Framework Element is inconsistent with the Project. (AR 2821.) More specifically, Petitioner argues the City's findings the Project is consistent with Policy 3.2.4, Objective 3.4 and Policy 3.4.1 of the Framework Element are erroneous. Petitioner focuses on the Framework Element's Land Use chapter that "includes as a goal the 'conservation of existing residential neighborhoods' and the 'assurance of environmental justice and a healthful living environment.' (RJN Exh. E, p. 37-38.)" (Opening Brief 13:20-22.)

Framework Element Policy 3.2.4 provides:

- Provide for the siting and design of new development that maintains the prevailing scale and character of the City's stable resident al neighborhoods and enhance the character of commercial and industrial districts. (AR 2823.)

As to this policy in relation to the Project, the City found:

> "The Project would not materially impact the character of the existing residential uses in the area of the Project Site, as the Project Site is adjacent to seven-story residential buildings to the north and south and as the block is currently developed with residential, commercial, and hotel uses." (AR 2823.)

Petitioner contends the City focused solely on the prevailing scale of the neighborhood and ignored the prevailing character of the neighborhood when it considered the policy.[6] Petitioner argues, "[t]his analysis is entirely insufficient and ignores that the reduction in affordable, long-term, rent-stabilized housing, to be replaced by a hotel, and will inevitably alter the character of the residential neighborhood." (Opening Brief 14:7-9.) Petitioner "ignores the separate requirement of maintenance of a neighborhood's character . . . ." (Opening Brief 14:10-11.) For this reason, Petitioner asserts "the City's finding that the project is consistent with the Framework Element is not supportable." (Opening Brief 14:11-12.)

The City's finding, however, directly addresses the character of the neighborhood. The block is currently developed with residential, commercial and hotel uses. The City's finding notes the Project is adjacent to seven-story residential buildings on the north and south. Thus, the character of the neighborhood is residential and commercial. Moreover, there are hotels in the block. This evidence is undisputed.

Thus, Petitioner presents no evidence the Project will "inevitably alter" the residential and commercial character of the neighborhood—it will remain just that. Petitioner's claim is speculative. Nothing suggests the Project will transform the character of the neighborhood; residential and commercial uses will remain. The evidence does not support this court finding "no reasonable person could have reached the same conclusion" about general plan consistency and Framework Element Policy 3.2.4 based on the evidence. (*Holden v. City of San Diego* (2019) 43 Cal.App.5th 404, 412.) Petitioner has not demonstrated why the City's finding is unreasonable. (*Id.* at 413.)

Framework Element Objective 3.4 provides:

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[6] There is no dispute the Project site's zoning includes a Q condition specifically authorizing hotel use. There is an existing hotel on Whitley Avenue directly across the street from the Project site. (AR 2672.) There is also motel immediately adjacent the existing hotel on its north side. (AR 2672.)

- Encourage new multi-family residential, retail commercial, and office development in the City's neighborhood districts, community, regional, and downtown centers as well as along primary transit corridors/boulevards, while at the same time conserving existing neighborhoods and related districts. (AR 2823.)

As to this objective in relation to the Project, the City found:

> "The Long Range Land Use Diagram identifies the area of the Project Site as a Regional Center, defined as 'a focal point of regional commerce, identity and activity and containing a diversity of uses such as corporate and professional offices, residential, retail commercial malls, government buildings, major health facilities, major entertainment and cultural facilities and supporting services.' The Project would provide a hotel in an area served by transit, including two Major Transit Stops within a half-mile of the Project Site. The Project is complementary with existing land uses in the Hollywood community, which includes residential and commercial land uses." (AR 2823.)

Petitioner argues the objective's goal is to conserve existing neighborhoods while encouraging other development. Petitioner contends the City's finding "blatantly ignores the actual language of the policy requiring the City encourage specific types of development that are explicitly not hotels and that Cityconserve existing neighborhoods." (Opening Brief 14:18-20.)

First, as noted by the City and Real Parties, the objective is a goal not a mandate. That 40 rent-stabilized units (occupied in 2019 by about 14 tenants) will be destroyed to build the Project does not demonstrate inconsistency—or a lack of compatibility—with the City's General Plan objectives and policies. The City's response demonstrates a competing policy here related to the Project site's status as a Regional Center and a balance of those competing policies.

Moreover, as noted with Framework Element Policy 3.2.4, the Project does not transform existing uses in the neighborhood. The neighborhood's character with residential and commercial uses will remain. In addition, the City's goals of creating Regional Centers with close proximity to transportation and a diversity of uses is promoted through the Project. The City's finding the Project is "complimentary with existing land uses in the Hollywood community" has not been challenged.

Again, the evidence does not support this court finding "no reasonable person could have reached the same conclusion" about general plan consistency and Framework Element Objective 3.4 based on the evidence. (*Holden v. City of San Diego* (2019) 43 Cal.App.5th 404, 412.) Petitioner has not demonstrated why the City's finding is unreasonable. (*Id.* at 413.)

Framework Element Policy 3.4.1 provides:

- Conserve existing stable residential neighborhoods and lower intensity commercial districts and encourage the majority of new commercial and mixed-

use (integrated commercial and residential) development to be located (a) in a network of neighborhood districts, community, regional, and downtown centers, (b) in proximity to rail and bus transit stations and corridors, and (c) along the City's major boulevards, referred to as districts, centers, and mixed-use boulevards, in accordance with the Framework Long-Range Land Use Diagram. (AR 2823-2824.)

As to this policy in relation to the Project, the City found:

As discussed above, the Long Range Land Use Diagram identifies the area of the Project Site as a Regional Center. The Project would develop a hotel within the Regional Center area and within proximity of two Major Transit Stops (rail) as well as several bus lines. (AR 2823-2824.)

The court's discussion concerning Framework Element Objective 3.4 is equally appliable here.

The City's response to Petitioner's claims concerning the Framework Element makes clear the City balanced competing policy considerations when it considered General Plan consistency with the Project. The City's balance does not demonstrate General Plan inconsistency. While 40 units of rent-stabilized housing stock may be eliminated because of the Project, the loss of units does not demonstrate a lack of compatibility with the City's General Plan. As the City explained:

"When considering the various goals, objectives, and policies of the General Plan Elements and the Hollywood Community Plan, it [is] appropriate to put into context the City's long-term vision for the particular area. As such, the Director found that while the proposed project may not be n conformance with all purposes, intent and provisions of the General Plan and [the] Hollywood Community Plan, the project was in substantial conformance with the General Plan and Hollywood Community Plan." (AR 512.)

Furthermore,

"the City has identified Hollywood as a Regional Center and therefore has planned for greater density and intensity of development for the subject property as well as the surrounding neighborhood. As a result of this vision for greater density and intensity of development, the City, along with Los Angeles County Metro have invested heavily into the public transportation infrastructure in the area. It is through this coordinating of development with public transportation infrastructure that projects, including the proposed project, would result in less single-occupancy vehicle trips, less vehicle-miles travelled and greater public transportation ridership. Therefore, the proposed project is consistent with the General Plan Elements, the Hollywood Community Plan and the Hollywood Redevelopment Plan." (AR 512.)

It is well established the City is entitled to deference as to whether the Project is consistent with its own General Plan. The court's review must consider "whether the . . . officials considered the applicable policies and the extent to which the proposed project conforms with those policies." (*Holden v. City of San Diego, supra,* 43 Cal.App.5th at 412.) While Petitioner may not agree with the City's consistency finding and the manner in which the City balanced competing policies and considerations, Petitioner has not demonstrated "no reasonable person could have reached the same conclusion" about General Plan consistency and Framework Element Policy 3.2.4 based on the evidence. (*Id.* at 412.) Petitioner has not demonstrated why the City's finding is unreasonable. (*Id.* at 413.)

Based on the foregoing, the court finds substantial evidence does not support the City's finding the Project qualifies as a Class 32 in-fill development project. The court finds the City failed to fully consider the qualifications for the exemption when it did not consider whether the Project was consistent with the City's Housing Element policies.

b. Petitioner Has Not Met its Burden of Demonstrating an Exception to the Exemption Applies:

While the court finds the Project does not qualify as a Class 32 in-fill development, the court nonetheless addresses Petitioner's claim an exception to the exemption applies.

The categorical exemptions are not absolute; even if a project falls within the description of one of the exempt classes, it may nonetheless have a significant effect on the environment based on factors such as location, cumulative impact, or unusual circumstances. (*Save Our Carmel River v. Monterey Peninsula Water Management Dist., supra*, 141 Cal.App.4th at 689.) "[W]here there is any reasonable possibility that a project or activity may have a significant effect on the environment, an exemption would be improper." (*Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 205-206.)

Unlike statutory exemptions, categorical exemptions such as the infill development project exemption are subject to exceptions enumerated in CEQA Guidelines section 15300.2.

1. Usual Circumstances Exception

Petitioner argues the Class 32 exemption is not applicable due to unusual circumstances. Petitioner correctly notes "[a] categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances." (CEQA Guidelines§ 15300.2, subd. (c).)

Neither the Public Resources Code nor the CEQA Guidelines define "unusual circumstances." (*Walters v. City of Redondo Beach* (2016) 1 Cal.App.5th 809, 820; CEQA Guidelines§§ 15350-15387 [definitions].) "Whether a particular project presents circumstances that are unusual for projects in an exempt class is an essentially factual inquiry, founded on the application of the

fact-finding tribunal's experience with the mainsprings of human conduct." (*Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1114 [*cleaned up*].)

The City specifically found the unusual circumstances exception inapplicable when it considered the Project. The City found:

> "There are no unusual circumstances with the Project Site or the proposed Project that would create a reasonable possibility of significant effects to the environment. The Project Site is located within a highly urbanized setting, and the site would be redeveloped from a multi-family residential development to a hotel development, which is a typical urban land use appropriate for the area. Moreover, the Lead Agency has not determined an unusual circumstance is applicable to the Project.
>
> In addition, the Project Site is located with a designated High Quality Transit Area ('HQTA') per SCAG's 2016 RTP/SCS. HQTAs are areas within one-half mile of a fixed guideway transit stop or a bus transit corridor where buses pick up passengers at a frequency of every 15 minutes or less during peak commuting hours. While HQTAs account for only three percent of total land area in the SCAG region, they are planned and projected to accommodate 46 percent of the region's future household growth and 55 percent of the future employment growth. Development within HQTAs reflects SCAG's preferred scenario for the RTP/SCS as it provides future regional growth that is well coordinated with existing and planned transportation systems; incorporates best practices for increasing transportation choices; reduces dependence on personal automobiles; allows future growth in walkable, mixed-use communities; and further improves air quality. Additionally, as in Condition (a), above, the Project would be consistent with the City's underlying zoning and land use designation.
>
> Moreover, as analyzed in Exception (b), above, the Project would not result in any Project specific or cumulative traffic, noise, air quality, or water quality impacts. The proposed land uses are consistent and compatible with the Project Site's urban setting and are typical for an infill development located near transit and on a major City thoroughfare. Therefore, as there are no unusual circumstances regarding the proposed Project or Project Site, the exception is not applicable to the Project." (AR 103-104; see also AR 2892.)

Petitioner contends the Project does not meet the definition of an infill development project.[7] Petitioner—citing *Covina Residents for Responsible Development v. City of Covina* (2018) 21 Cal.App.5th 712, 717 n.2 and Public Resources Code section 21099, subdivision (a)(4)—argues

[7] Petitioner has included this argument in its discussion of the unusual circumstances exception. The court has therefore included the discussion here. It appears, however, the argument is distinct from whether the unusual circumstances exception applies.

an infill project is one that "develops vacant or under used parcels within urban areas that are already largely developed." (Opening Brief 16:7-9.)

Petitioner argues the Project site is neither vacant nor underutilized—the hallmarks of an infill development project. Instead, Petitioner reports, the site for the Project is presently being used to satisfy "one of the most pressing issues facing the City of Los Angeles: housing its residents in a safe, affordable manner. This development clearly falls outside the intended use of the infill exemption, which is to most efficiently utilize underutilized land." (Opening Brief 16:9-14.)

The City contends Public Resources Code section 21099, subdivision (a)(4) does not apply to the Project. That is, the Project is not a transit-oriented infill project. (See generally Pub. Resources Code § 21099.)

The court notes the term "infill site" is specifically defined by the Legislature in Public Resource Code section 21061.3.[8] The statute specifies an infill site includes "a site in an urbanized area" where "[t]he site has been previously developed for qualified urban uses." (Pub. Resources Code § 21061.3, subd. (b).) A " 'qualified urban use' means any residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses." (Pub. Resources Code § 21072.)

There can be no dispute the Project site "is located entirely within the City limits . . . [in] a highly urbanized setting characterized by a mix of commercial and residential uses. Land uses surrounding the Project Site include residential uses to the north and south, a three-story Parking structure to the west, and multi-structure office bungalow development as well as two hotels immediately north of the office bungalows and surface parking and retail uses fronting Hollywood Boulevard immediately south of the office bungalows across Whitley Avenue to the east." (AR 634.) Further, given this highly urbanized setting, the City found the "redevelop[ment] from a multi-family residential development to a hotel development...is a typical urban land use appropriate for the area." (AR 694.)

The court finds substantial evidence supports the City's finding the Project site satisfies the Public Resources Code's definition of an infill site.[9] It is clear from the administrative record "[t]he site has been previously developed for qualified urban uses." (Pub. Resources Code § 21061.3, subd. (b).)

Petitioner has failed to meet its burden of showing substantial evidence does not support the City's finding "[t]here are no unusual circumstances with the Project Site or the proposed Project that would create a reasonable possibility of significant effects to the environment." (AR 103.) Moreover, Petitioner has failed to identify any unusual circumstances that would suggest

[8] The CEQA Guidelines would necessary rely on the Legislature's statutory definition.
[9] Petitioner argues the City made no express finding about the Project's site as an in-fill site. As the City found the Project is exempt as a Class 32 in-fill development project, the finding is necessarily implied.

there is something about the Project—a hotel located in a densely urbanized area with residential, commercial and hotel uses—making it unusual. For example, Petitioner does not argue the Project's size or other some other characteristic renders it unusual for the area. Rather, Petitioner's focus centers entirely on the housing crisis, which does not create an unusual circumstance.

Despite having failed to demonstrate the City's finding of no unusual circumstance is not supported by substantial evidence and/or not identifying something about the Project rendering it unusual, Petitioner contends there is a "fair argument" the Project may have a significant impact on the environment. Here, Petitioner claims "the City ignored a plethora of evidence that this project, in light of the City's affordable housing crisis, <u>may</u> have a significant effect." (Opening Brief 16:21-22 [emphasis added].)

As a preliminary matter, the fair argument standard is not relevant unless there are unusual circumstances. That is, the court does not address a fair argument where unusual circumstances have not been demonstrated. (*Respect Life*, *supra*, 15 Cal.App.5th at 457.) The exception creates a two-step judicial inquiry—where step one is not satisfied (i.e., a finding there are unusual circumstances), the court does not address fair argument. (*Id.*)

Petitioner has not met its burden of showing the City's finding there were no unusual circumstances was not support by substantial evidence. Thus, Petitioner cannot prevail even by attempting to show there is *fair argument* the Project *may* result in significant impacts *resulting from the unusual circumstances* because there are no unusual circumstances. (*Berkeley Hillside Preservation v. City of Berkeley*, *supra*, 60 Cal.4th at 1102. ["Thus, construing the unusual circumstances exception as requiring more than a showing of a fair argument that the proposed activity may have a significant environmental effect is fully consistent with the Legislature's intent."]) The fair argument alone is insufficient to meet the exception to this exemption. (*Id.* at 1115. ["While evidence of a significant effect may be offered to prove unusual circumstances, circumstances do not become unusual merely because a fair argument can be made that they might have a significant effect."])

Alternatively, under *Berkeley Hillside Preservation v. City of Berkeley*, *supra*, 60 Cal.4th at 1106, Petitioner could satisfy the unusual circumstance showing by identifying through record "evidence that the project *will* have a significant effect [which] *does* tend to prove that some circumstance of the project is unusual." (Emphasis in original.) It is Petitioner's "burden of producing evidence" in support of the exception. (*Id.* at 1105.)

Petitioner's evidence to demonstrate the project will have a significant effect on the environment (thereby suggesting some circumstance of the Project is unusual) focuses entirely on the generalized concern over the City's current housing crisis and rising rents.[10] This impact

[10] As an aside, even the "general effects of an operating business such as noise, parking and traffic, cannot serve as unusual circumstances in and of themselves." (*Walters v. City of Redondo Beach*, *supra*, 1 Cal.App.5th at 821.)

does not qualify as an environmental impact under CEQA where Petitioner cites no evidence that "housing loss and displacement" will adversely affect the *physical environment* of persons. (*Friends of Davis v. City of Davis* (2000) 83 Cal.App.4th 1004, 1019 ["CEQA addresses physical changes in the environment, and under CEQA '[e]conomic and social changes resulting from a project shall not be treated as significant effects on the environment.'"]; *Topanga Beach Renters Assn. v. Department of General Services* (1976) 58 Cal.App.3d188, 194-195.)

While Petitioner cites the City's 2006 CEQA Threshold Guidelines and its consideration of the number of residential units to be demolished as relevant to environmental significance (Pet.'s RJN Ex. A, pp. 64-65), the City reports its Department of City Planning discarded its reliance on the City's 2006 CEQA Threshold Guidelines as its default thresholds of significance in 2019. Instead, as of 2019, the City relies on the State's CEQA Guidelines and Appendix G for its default thresholds of significance. (City's RJN Ex. A, pp. 3-5.)

CEQA Guidelines Appendix G inquires whether a "substantial number of existing people or housing" will be displaced "necessitating the construction of replacement housing elsewhere." (CEQA Guidelines, App. G, Section XIV.) Petitioner has cited nothing in the record evidence supporting the notion *substantial* numbers of people will be displaced *requiring* the construction of replacement housing elsewhere. In fact, the record reveals only "about 14 tenants" were living in the residential units on the Property site as of October 22, 2019. (AR 1940-1941.) For those 14 remaining tenants, Ellis Act relocation protections are required. (AR 1940.)

Accordingly, Petitioner's argument and evidence are insufficient to show "project *will* have a significant environmental effect on the [area]." (*Walters v. City of Redondo Beach, supra*, 1 Cal.App.5th at 823.)

Petitioner has not met its burden of demonstrating the unusual circumstances to the categorical exemption applies under these facts.

CONCLUSION

Based on the foregoing, the petition is granted. The City failed to proceed as required by law when it determined the Project qualified as a Class 32 infill development project and was exempt from CEQA.

IT IS SO ORDERED.

February 14, 2021

Hon. Mitchell Beckloff
Judge of the Superior Court