

McCorkle Eastside Neighborhood Group v. City of St. Helena
(Jan. 10, 2019) __ Cal.App.5th __

The City issued demolition and design review permits authorizing the construction of an 8-unit residential building. No use permit or other discretionary approval was needed. The City found that the project was exempt from CEQA under a Class 32 infill exemption.

The Neighborhood Group sued, alleging that this violated CEQA because the City Council failed to consider aspects of the project other than design review and that an EIR should have been approved. The trial court held in favor of the City. The Court of Appeal affirmed that decision.

The Court found that the City properly focused on design review(as required by its ordinance) because no permit with broader considerations (such as a conditional use permit) was involved. Both the demolition and design review permits were ministerial actions that were not subject to CEQA review anyway. The Court summed up the situation as follows:

Appellants argue that because the City had discretion to conduct design review the entire project was discretionary and subject to CEQA. (See CEQA Guidelines § 15268(d).) They rely on authorities stating that where a project involves both discretionary and ministerial approvals, the entire project will be deemed discretionary. (E.g., *Friends of Westwood, supra*, 191 Cal.App.3d at p. 270; *Day, supra*, 51 Cal.App.3d at p. 823; *People v. Department of Housing and Community Dev.* (1975) 45 Cal.App.3d 185, 193–194.) But this rule applies only when the discretionary component of the project gives the agency the authority to mitigate environmental impacts. (See *Sierra Club supra*, 205 Cal.App.4th at p. 179; *San Diego Navy, supra*, 185 Cal.App.4th at p. 934.)

Because of the City’s lack of any discretion to address environmental effects, it is unnecessary to rely on the Class 32 exemption and equally unnecessary to spend much time on appellants’ contention that the proposed project did not qualify for an exemption because it was not consistent with the general plan. (CEQA Guidelines, § 15332(a).) We note the City Council found the proposed project consistent with the general plan and addressed appellants’ arguments to the contrary in great detail. In light of these findings, which are supported by the evidence, it did not abuse its discretion in finding the proposed project was consistent with the general plan. (See *Orange Citizens for Parks & Recreation v. Superior Court* (2016) 2 Cal.5th 141, 154–155 [review as to whether city erred in finding project consistent with general plan limited to abuse of discretion].)