

Court Rejects Claim That New General Plan Housing Element Requires New EIR

Affordable housing advocates have lost a claim that Napa's new General Plan Housing Element required a new environmental impact report. [Latinos Unidos de Napa v. City of Napa](#), No. A134959 (1st Dist., Oct. 10, 2013, publication ordered Nov. 5, 2013). The court upheld the city's decision that its 2009 Housing Element was not a new project, but rather a modification of the General Plan the city had adopted, and studied in a 1998 EIR. Therefore, in examining the Housing Element under CEQA, the city needed to ask only whether the Housing Element would cause new or substantially more severe environmental impacts than those found in the 1998 General Plan EIR. The plaintiff failed to demonstrate that such impacts would occur. The 2009 Housing Element increased minimum and maximum residential densities in certain areas of the city, permitted single-family detached homes at the same densities as single-family attached homes, and provided for co-housing, among other changes. The city prepared an initial study and determined, under Public Resources Code § 21166, that implementation of the Housing Element would not cause impacts that would require a supplement to the city's 1998 General Plan EIR. Citing *Save Our Neighborhood v. Lishman*, plaintiff argued that whether the Housing Element was a new project or a modification of the 1998 General Plan project was a question of law for the court. The court declined to follow this precedent, agreeing instead with *Mani Brothers Real Estate Group v. City of Los Angeles* that the "question-of-law" approach would inappropriately undermine the deference courts owe to a city's decisionmaking. Following *Mani*, the court ruled that the city's decision to treat the Housing Element as a modification of the General Plan rather than as a new project would be upheld if substantial evidence supported it. The court found such substantial evidence. First, the 1998 General Plan EIR addressed the city's then-existing Housing Element. Second, every 2009 Housing Element feature to which the plaintiff objected represented a change to density standards that were included in the Land Use Element of the 1998 General Plan and analyzed in the General Plan EIR. Finally, substantial evidence supported the city's conclusion that the 2009 Housing Element would not cause new or substantially more severe impacts than those shown in the 1998 General Plan EIR. The record showed the City had, in fact, added housing at a substantially slower rate than the 1998 General Plan EIR anticipated. Plaintiff did not meet its burden of showing that the increased residential density allowed under the 2009 Housing Element would be inconsistent with the residential growth impacts anticipated in the 1998 EIR. *Latinos Unidos* provides useful guidance in two respects. First, the case follows the *Mani* rule affording deference to a lead agency's decision whether a project is new or rather represents a modification to a previously studied project. Second, the case supports the point that EIRs do not automatically go "stale" after some period of years; the plaintiff failed in its effort to characterize a 1998 EIR as too old to support the City's 2009 Housing Element.

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