

[Blogs](#)

December 06, 2019

Plaintiffs Failed to Exhaust Administrative Remedies When Their Consultant Did Not Expressly Raise Takings Claim

Continuing a trend toward stricter application of the administrative exhaustion doctrine, an appellate court held that plaintiffs could not bring a takings claims against the Coastal Commission because they did not "present the



pp.5th
away to
1.5 feet
iring

At the

Coastal Commission hearing, petitioners' representative (who was not a lawyer) objected to the setback on several grounds but never expressly asserted that the condition resulted in an unconstitutional taking. Instead, the representative's presentation was about the Coastal Commission's historical reliance on the City's zoning to approve a one-foot setback on similar properties. The Coastal Commission approved the permit with the five-foot setback condition. Plaintiffs filed a mandamus action, arguing the Coastal Commission abused its discretion imposing the setback requirement and that the condition resulted in a taking. The court held that the claim was barred for failure to exhaust administrative remedies. The court rejected plaintiffs' argument that the issue was adequately raised through their consultant's general objections regarding the City's legislative action establishing a one-foot setback requirement and the unfairness of imposing a greater requirement in this case. These objections, the court said, did not meet the requirement that plaintiffs must "present the *exact* issue" to the agency in order properly to exhaust administrative remedies.