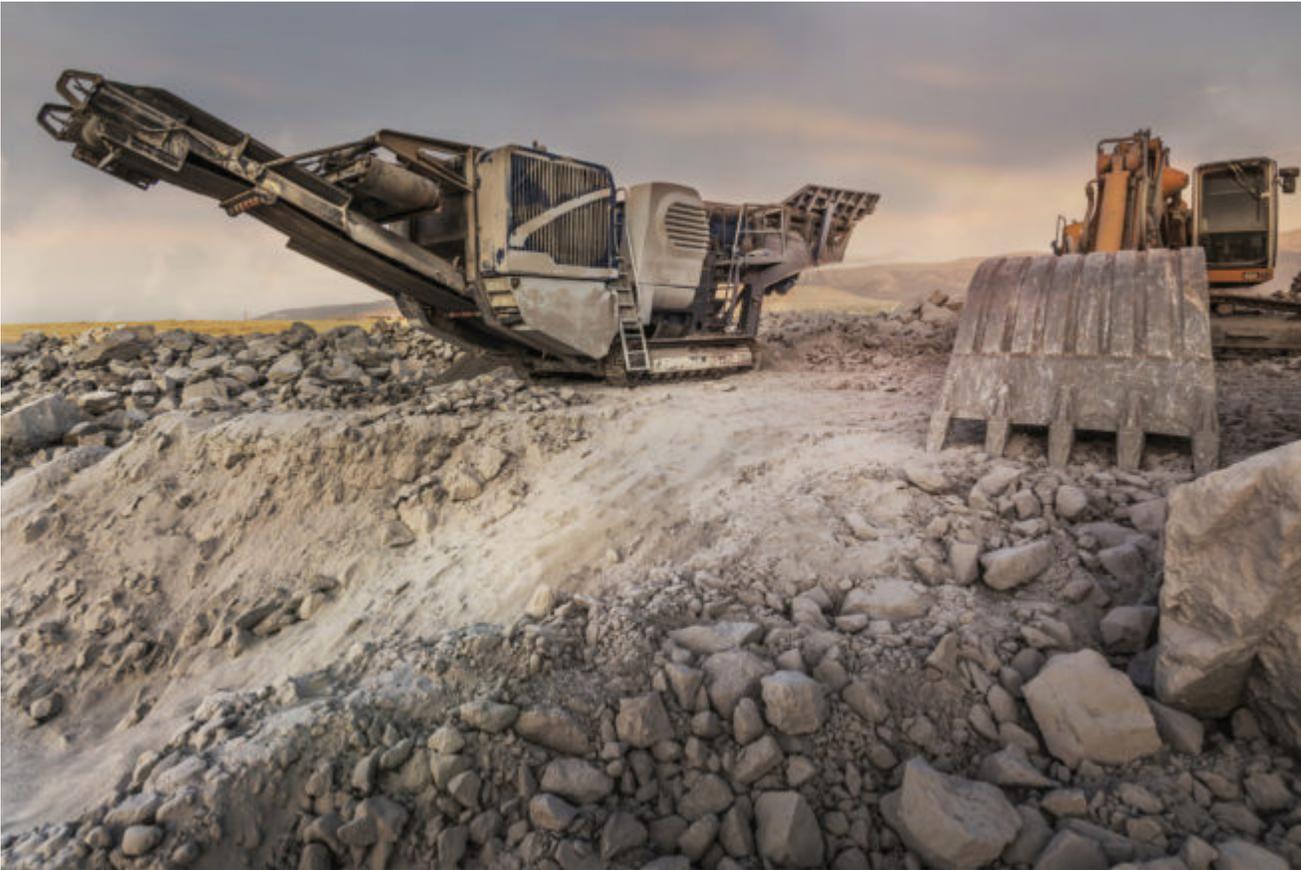


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Court In CEQA Case Applies the Deferential Standard in the Planning and Zoning Law When Determining Whether the Project Is Inconsistent with the Applicable General Plan



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involved a long list of CEQA claims brought by a local organization opposing expansion of an aggregate quarry. In the published portions of a lengthy opinion, the court of appeal reiterated two important CEQA principles. First, an EIR's determination whether the project is inconsistent with the applicable general plan is judged under the deferential standards of the Planning and Zoning Law, which cannot be evaded by claiming there was an informational failure under CEQA. Second, a petitioner's failure to follow local agency rules for exhaustion of remedies is fatal to the claims the petitioner did not properly assert at the agency level. The CEQA Guidelines state that an EIR must discuss any "inconsistencies" between the proposed project and any provisions of the local general plan. The issue addressed in the court's opinion is what standard is applied to determine whether the EIR provided an adequate analysis of this question. A petitioner may file suit against a city or county under the Planning and Zoning Law alleging that it has taken an action that is inconsistent with the requirements of its general plan. In such cases, courts afford great deference to the jurisdiction's interpretation and application of its own general plan. The petitioner did not assert such a claim under the Planning and Zoning Law, but rather alleged that the EIR was deficient because it failed to "inform the public" the quarry expansion project was inconsistent with various provisions of the county's general plan. Citing prior case law, the court held that the petitioner could not evade the Planning and Zoning Law's deference to local agency decision making by framing an inconsistency claim as an informational failure under CEQA. The court also ruled on the effect of local procedures governing administrative appeals on the requirement that remedies be exhausted before a CEQA claim may be raised in court. County ordinances authorized the planning commission to certify an EIR and

approve the project, subject to appeal to the county board of supervisors. An appeal to the Board required an "appeal packet" identifying "the specific factual or legal determination of the approving authority which is being appealed, and the basis for such appeal." The county ordinance also specified that any issue not raised in the appeal packet was waived. The petitioner described several objections in its appeal packet, which the board of supervisors duly addressed in its decision. But then the petitioner attempted to pursue other CEQA claims in the lawsuit it filed. The court of appeal ruled all of the new claims were barred, holding administrative remedies provided by a local agency's ordinances must be fully exhausted as provided in the agency's procedures before an alleged violation of CEQA can be raised in court.

Authors

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