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General Request for EIR Insufficient to Exhaust Administrative Remedies When Challenging Reliance on Categorical Exemption



Plaintiff did not exhaust administrative remedies when challenging the City's approval of a homeowner's development project on the ground that a Class 1 categorical exemption was inapplicable. *Arcadians for Environmental Preservation v. City of Arcadia*, 88 Cal. App. 5th 418 (2023).



A homeowner applied for approval to expand the first story of her single-family home and add a second story. The City Council approved the project, finding it to be exempt from CEQA under the Class 1 categorical exemption for minor alterations to existing private structures.

The Second Appellate District held that plaintiff failed to exhaust its administrative remedies because it did not properly raise any claims specifically related to the project's Class 1 exemption at the hearings on the project. Instead, plaintiff made only general statements in opposition to the project, which did not apprise the City of its contention that the project fell outside the scope of the Class 1 exemption.

Plaintiff argued that statements in the written administrative appeal were sufficient to fairly apprise the City of the objection to the exemption. These included references to environmental impacts and a request that the City prepare an EIR, which implicitly challenged reliance on the exemption. The court rejected this argument. The cited statements were only general complaints in opposition to the project and were only general references to potential environmental impacts that even when considered together, did not come close to meeting the exhaustion requirement mandated by CEQA. The court noted that the exhaustion requirement is met when the exact issue is presented to the agency or is raised in the administrative proceeding and is sufficiently specific to fairly apprise the agency of the substance of the objection so that it has an opportunity to evaluate and respond to the challenge. Because plaintiff did not make specific challenges to the project's Class 1 exemption and did not raise any other CEQA challenges during the administrative hearings, it failed to meet the exhaustion requirement.

## **Topics**

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