



Neighbor-Led Group Opposing Single-Family Home Expansion Project Failed To Exhaust Administrative Remedies By Making Sufficiently Specific Objections To City's CEQA Class 1 Categorical Exemption Determination

By [Arthur F. Coon](#) on March 13, 2023

In a published decision filed February 16, 2023, the Second District Court of Appeal (Division 7) affirmed a judgment denying a CEQA writ petition challenging approval of a single-family home expansion project because the petitioner group failed to exhaust administrative remedies. *Arcadians for Environmental Preservation v. City of Arcadia (Julie Wu, et al., Real Parties in Interest)* (2023) ___ Cal.App.5th ____. The Court held that the generalized and unelaborated objections, made by a member of petitioner in the City's administrative proceedings, to the City's Class 1 categorical exemption determination for the project failed to fairly apprise the City of petitioner's specific objections so as to preserve them for litigation.

The Project And Administrative Proceedings

Real party Wu wanted to expand the size of her 1,960-square foot single-family residence and add a second story. Next-door neighbor Dr. Huey and others opposed the project, citing privacy and neighborhood compatibility concerns. After numerous public hearings, the architectural review board (ARB) charged with implementing the City's design guidelines denied both the original project, and a revised application, due to massing, height and scale concerns.

Wu appealed to the planning commission, which approved the project – over opposition and subject to conditions intended to ensure compatibility with its surroundings – and found it categorically exempt from CEQA, under the CEQA Guidelines' Class 1 categorical exemption (§ 15301) as an addition to an existing facility involving negligible or no expansion of existing use.

Dr. Huey appealed to the city council, reasserting his privacy intrusion and neighborhood character incompatibility arguments. After a noticed public hearing, preceded by a public notice and agenda that both stated the council would be considering an approval resolution and CEQA Guideline § 15301

categorical exemption, the council voted 4-1 to uphold the planning commission's project approval in all respects.

The Litigation And Court of Appeal's Opinion

Dr. Huey next formed the unincorporated association Arcadians for Environmental Preservation (AEP), which filed a writ petition in superior court alleging that: City's project approval violated CEQA and the Planning and Zoning Law (the latter claim later being abandoned on appeal); the project was not categorically exempt; and AEP had exhausted administrative remedies.

The trial court denied the petition, and the Court of Appeal affirmed that judgment on AEP's appeal, holding AEP had not exhausted its administrative remedies through objections sufficiently specific to preserve the issues for litigation. Exhaustion is a jurisdictional prerequisite to maintaining an action challenging a lead agency's CEQA compliance under Public Resources Code § 21177 and well-established case law, and the requirement applies to challenges to lead agencies' categorical exemption determinations. The exhaustion doctrine's "purpose ... is to afford the public agency the opportunity to hear and respond to articulated factual issues and legal theories before its actions are subject to judicial review." To achieve that purpose, "the exact issue" must be presented to the agency with sufficient specificity so that it is "fairly apprise[d] ... of the substance of the objection" such that "it has an opportunity to evaluate and respond to it." General objections to project approval, bland and general references to environmental matters, and isolated and unelaborated comments thus fail to exhaust. Exhaustion is a legal issue subject to de novo review, and petitioner has the burden of demonstrating the issues raised in the petition were exhausted at the administrative level.

In this case, the Court held AEP's general objections to project approval in the administrative proceedings failed to preserve the specific issues it raised in its petition and sought to litigate. For example, no member of AEP raised the specific claims alleged in its petition that Wu's addition was a "major expansion of an existing use in an environmentally sensitive area" or that it would increase her home's floor space by over 50 percent, thus disqualifying it from the exemption of Section 15301(e)(2). And Huey's generalized complaints about the project, alleged cumulative impacts of "ensuing two story projects," and general and unelaborated references to various environmental matters were insufficient to apprise the City of the substance of the objections, or to articulate why the City's application of the exemption might be incorrect.

The Court also rejected AEP's argument that Huey's request for an EIR, without more, sufficed to apprise the City of the substance of its litigation positions as to why the project allegedly fell outside the Class 1 exemption. Per the Court, no case supported AEP's contention, and "[s]uch a general, implied objection is contrary to the mandate of [Public Resources Code] section 21177, subdivision (a), that the specific grounds be asserted."

Nor was the exhaustion requirement excused due to any lack of opportunity for members of the public to object or due to the City's failure to give the notice of hearing required by law. The notices of public hearing for the planning commission's and council's meetings and related staff reports all mentioned the section 15301 "Class 1" exemption, and minor discrepancies in references to specific subdivisions of that Guidelines section did not restrict the scope of its application or cause any prejudice. No AEP members even referenced the Class 1 exemption section, or any specific subdivision or particulars of it, in the administrative proceedings.

AEP also failed to demonstrate any error in the City's implied-by-law finding that no exception to the exemption applied, and contrary to AEP's arguments no authority holds the finding must be express.

Finally, AEP did not show the City erred in concluding the cumulative effects exception did not apply. Even assuming Dr. Huey's generalized remarks, without more, sufficed to exhaust on the issue, the argument failed on its merits. AEP's burden was to produce *evidence* that the cumulative effects exception precluded application of the exemption; it failed to do so by simply citing or listing other projects occurring in the area without providing any *evidence* of what environmental *impacts* they created. Such speculation is insufficient to negate a categorical exemption.

Conclusion and Implications

The case is probably less notable for its careful application of the exhaustion doctrine to bar the claims at issue than it is for the troublesome nature of the dispute – a next-door neighbor weaponizing CEQA to challenge an exempt single-family house addition. Given the absurd amount of wasteful litigation generated by these meritless CEQA claims, this case is yet another in the ever-lengthening list of published decisions illustrating the need for meaningful CEQA reform.

Questions? Please contact [Arthur F. Coon](#) of Miller Starr Regalia. Miller Starr Regalia has had a well-established reputation as a leading real estate law firm for more than fifty years. For nearly all that time, the firm also has written Miller & Starr, California Real Estate 4th, a 12-volume treatise on California real estate law. "The Book" is the most widely used and judicially recognized real estate treatise in California and is cited by practicing attorneys and courts throughout the state. The firm has expertise in all real property matters, including full-service litigation and dispute resolution services, transactions, acquisitions, dispositions, leasing, financing, common interest development, construction, management, eminent domain and inverse condemnation, title insurance, environmental law and land use. For more information, visit www.mslegal.com.