

Failure to Exhaust Administrative Remedies by Appealing a CEQA Determination as Provided by Agency Regulations Precludes Later CEQA Suit

Plaintiffs failed to exhaust administrative remedies because they did not appeal the challenged CEQA decision by the Historic Preservation Commission to the Board of Supervisors. *Schmid v. City and County of San Francisco*, 60 Cal. App. 5th 470 (2021). The plaintiffs sued San Francisco asserting a "potpourri of claims" challenging removal of a bronze sculpture from the "Pioneer Monument" in the Civic Center area of the city. Among these claims was an allegation that the San Francisco Historic Preservation Commission violated CEQA by authorizing removal of the sculpture based on a categorical exemption from CEQA. The court of appeal affirmed the trial court's ruling that the plaintiffs failed to state a cognizable claim under CEQA because they did not exhaust administrative remedies by appealing the Commission's exemption determination to the Board of Supervisors. The court noted that CEQA requires, as a precondition to a lawsuit challenging a public agency's noncompliance with CEQA, that the grounds for objection be presented to the agency before the close of the public hearing at which the CEQA decision is made. Compliance with this statutory exhaustion of remedies requirement is not required, however, if adequate public notice of the hearing is not provided. The court found that the plaintiffs were excused from presenting their objections to the Commission, because no notice was given in advance of the Commission's hearing that an exemption from CEQA would be on the agenda. The court explained that was not the end of the matter, however, because the common law requirement that all available administrative remedies be exhausted prior to filing suit also applies in CEQA cases. The plaintiffs presented their CEQA objections to the city's Board of Appeals, but that board did not have jurisdiction; under the city's administrative code, any appeal of a CEQA determination must be presented to the Board of Supervisors. The plaintiff failed, however, to appeal the Commission's decision to the Board, which resulted in a fatal failure to exhaust administrative remedies. Finally, the court rejected the plaintiffs' argument that an appeal to the Board of Supervisors would have been futile because the Board had agreed that the Commission should authorize removal of the sculpture. The court concluded that even if the Board had agreed with the Commission on removal as a policy matter, it might have disagreed with the Commission's reliance on a categorical exemption and opted for the more robust and transparent public disclosure that would be provided by an EIR.

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