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CEQA Existing Facilities Exemption Inapplicable to Unlined Landfills and Exhaustion of Administrative Remedies not Required Where Public Notice of Intent to Rely on a CEQA Exemption is Inadequate

A California Court of Appeal held that CEQA's issue-exhaustion requirement did not preclude a challenge to Inyo County's unlined landfills. The court held that public notice of intent to rely on a CEQA exemption does not



(2021).

In

2017, the County initiated condemnation proceedings to acquire fee title to three landfill properties leased from the Los Angeles Department of Water and Power (LADWP). Its notice of intention to adopt resolutions of necessity for condemnation disclosed the County's reasons for condemnation, but neither the notice nor the associated documents proposed for adoption mentioned CEQA. The first disclosure of the County's intent to proceed under a CEQA exemption occurred verbally near the end of the public portion of the County Board of Supervisors' hearing to consider adoption of the Resolution of Necessity. In LADWP's subsequent CEQA suit challenging the County's decisions, the County argued its actions were categorically exempt under the existing facilities exemption in CEQA Guidelines §15301(a). The Court of Appeal affirmed a judgment in favor of LADWP on dual grounds. First, the Court held that the County provided inadequate notice of its intent to rely on a categorical exemption to satisfy CEQA in approving condemnation. Rejecting the County's argument that LADWP had failed to exhaust administrative remedies by failing to object to the use of the exemption during the Board of Supervisors' hearing, the Court ruled that "when an agency holds a hearing *but does not provide adequate notice that a CEQA exemption will be considered*, the requirement to exhaust administrative remedies on the CEQA claim does not apply" (quoting [Kostka & Zischke](#), Practice Under the California Environmental Quality Act). Because the meeting agenda form and other administrative record materials showed no disclosure of the County's intent to rely upon a CEQA exemption before the waning moments of public comment at the Board's hearing, the Court found that notice was inadequate. Additionally, the Court held as a matter of law that

the categorical exemption for existing facilities did not apply based on the Court's determination that "facilities" do not include unlined landfills. The existing facilities exemption applies to "the operation, repair, maintenance, permitting, leasing, licensing or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use." (CEQA Guidelines §15301). Citing case precedent and based on its reading of the CEQA Guidelines, the Court concluded that "it is reasonable to characterize landfill operations as involving an alteration in the condition of land rather than exclusively as the operation of a facility." Looking to sources including legislative history and the rule of construction that categorical exemptions should be read narrowly, the Court further found that "unlined landfills do not constitute a suitable class for a categorical exemption" as a matter of law.

## **Authors**