CALIFORNIA SUPREME COURT CONFIRMS THAT EXHAUSTION OF ADMINISTRATIVE REMEDIES REQUIRED BEFORE CHALLENGING CEQA EXEMPTION

The California Supreme Court issued an important California Environmental Quality Act decision today, confirming the general rule that project opponents must exhaust administrative remedies by presenting their claims to the lead agency before bringing a lawsuit. Specifically, the Court confirmed that this rule applies when an agency is using a CEQA exemption, just as it applies when an EIR or negative declaration has been prepared. The decision, *Tomlinson v. County of Alameda*, is important to both project proponents and to cities and counties, as it prevents the CEQA process from becoming even more unpredictable. Two Courts of Appeal had ruled that when a project is approved on the basis of a CEQA exemption, the general rule of exhaustion (that project opponents must first present their claims to the agency) did not apply. The decision is also important for in-fill development projects because a variety of in-fill projects are often approved on the basis of categorical exemptions set forth in the CEQA Guidelines.

The *Tomlinson* case arose out of Alameda County's approval of an 11-unit development in an urbanized, but unincorporated part of the County near the City of Hayward. Project opponents had challenged the County's approval of the project on various grounds, but did not assert that the County was not allowed to use the urban in-fill exemption because it can only be used on projects that are within city limits, and counties do not approve projects within city limits. The trial court rejected this ground for challenging the approval, finding that petitioners had failed to exhaust their administrative remedies, but the Court of Appeal reversed.

The Supreme Court reversed the Court of Appeal holding that the exhaustion requirement set forth in the CEQA statute "applies to a public agency's decision that a proposed project is categorically exempt from CEQA compliance as long as the public agency gives notice of the ground for its exemption determination, and that determination is preceded by public hearings at which members of the public had the opportunity to raise any concerns or objections to the proposed project."

Andrew Sabey and Michael Zischke, of Cox Castle & Nicholson LLP, represented the League of California Cities and the California State Association of Counties as friends of the court in this case, and Andrew Sabey argued the case, along with the developer's attorney, before the Supreme Court.

If you have any questions regarding this alert, please contact:

Andrew Sabey at 415.262.5103 or asabey@coxcastle.com
Michael Zischke at 415.262.5109 or mzischke@coxcastle.com