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LAND USE MATTERS

A PUBLICATION OF ALSTON & BIRD'S LAND USE GROUP

October 2022

Land Use Matters provides information and insights into legal and regulatory developments, primarily at the Los Angeles City and County levels, affecting land use matters and new CEQA appellate decisions.

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City of Los Angeles

Los Angeles City and County Ordinances to Ban Oil and Gas Drilling

There are 26 oil and gas fields and more than 5,000 oil and gas wells (active and idle) across the City of Los Angeles. On September 22, 2022, the City Planning Commission recommended approval of an Oil and Gas Drilling Ordinance to prohibit new oil and gas extractions and to begin the phase-out of existing operations. If adopted by the city council and signed by the mayor, the ordinance would make existing oil extraction activities legal nonconforming uses in all zones and start a 20-year amortization period to end existing operations. The ordinance requires existing operators to abandon their wells after the amortization period but does not include any discretionary process that would allow relief from the prohibition on oil drilling.

On September 27, 2022, the Los Angeles Board of Supervisors unanimously approved an Oil Well Ordinance similar to the city's ordinance banning new oil wells and production and phasing out 1,683 active and idle wells within the county's unincorporated areas.

California Environmental Quality Act

County of Butte v. Department of Water Resources **(CA Supreme Court, August 2022)**

This case involved the intersection of the California Environmental Quality Act (CEQA), Federal Power Act (FPA), and federal preemption in the context of the Department of Water Resources' (DWR) proposed renewal of its 50-year license to operate a hydroelectric dam known as the Oroville Facilities. The FPA requires a license from the Federal Energy Regulatory Commission (FERC) to operate a dam, reservoir, or hydroelectric power plant. In connection with its renewal application, the DWR prepared an environmental impact report (EIR). The DWR also entered into a settlement agreement under FERC regulations, reflecting the proposed terms of a license to operate the Oroville Facilities. The settlement agreement was subject to FERC approval.

Butte and Plumas Counties filed lawsuits challenging the EIR. The supreme court held the counties' claims were preempted to the extent they sought to unwind the settlement agreement or challenge its sufficiency because FERC has sole jurisdiction over the licensing process under the FPA. But the counties' challenges to the adequacy of the EIR were not preempted. This was because the state, as the owner of the Oroville Facilities, was permitted to exercise self-governance over its license application, which the court distinguished from state regulation of private parties. Thus, the DWR was free to use the analysis in the EIR to assess its options going forward, including to propose amendments to or reconsideration of its license from FERC. In turn, the counties were permitted to challenge the adequacy of the EIR because a compliant EIR could inform the DWR's actions without encroaching on FERC's jurisdiction.

County of Mono v. City of Los Angeles **(1st App. Dist., June 2022)**

This case addressed a CEQA challenge to Los Angeles' allocation of water to certain lands the city leases to agricultural operators in Mono County. In 2010, the city approved leases governing about 6,100 acres of land the city owns in Mono County. The city found the leases to be categorically exempt from CEQA. The leases included provisions that the city's allocation of irrigation water to the lessees was subject to the city's paramount right to discontinue or limit water allocation based on the city's water needs.

In 2018, the city sent the lessees proposed new leases in which the city would not provide irrigation water. The city subsequently advised that these new leases would be subject to CEQA review and that the 2010 leases would be in holdover status until that review was complete. The city also informed the lessees that under the terms of the 2010 leases, it would be reducing water deliveries in 2018.

Mono County filed a CEQA lawsuit, contending the reduction failed to comply with CEQA and was effectively an imposition of the newly proposed leases without CEQA review. The dispute centered on whether the 2018 water allocation was a part of the 2010 leases or a "new project." The court concluded that the 2018 allocation was part of the 2010 leases because the 2018 allocation was consistent with the city's water delivery practices under the 2010 leases and the latest in a series of discretionary allocations made by the city under those leases. Accordingly, Mono County's CEQA claim was time-barred because the 2018 allocation did not restart the limitations period that had expired 180 days after the 2010 leases were approved.

New Housing and Climate-Related State Legislation Signed into Law by Governor Newsom Effective January 1, 2023.

AB 2011 – Affordable Housing and High Road Jobs Act of 2022

Assembly Bill (AB) 2011 allows for a housing development to be a "use by right," subject to one of two streamlined ministerial review processes, if the development application conforms to specified objective criteria. The development must meet affordability and site criteria, including being located within a zone where office, retail, or parking are a principally permitted use. In addition, to take advantage of the streamlined ministerial approval, a project proponent must require that certain wage and labor standards are met in all contracts with construction contractors—all construction workers must be paid at least the general prevailing wage. The project proponent must also certify to the applicable local government body that the required standards have been met during project construction.

The Act defines "use by right" such that the development would not be considered a "project" for purposes of CEQA. Thus, the ministerial approval process established in the Act would exempt the approval of an eligible project from the requirements of CEQA.

In addition, the Act expands the crime of perjury to ensure adherence to these rules and vests the labor commissioner with power to enforce obligations to pay prevailing wages. The Act requires developers of approved projects that contain 50 or more housing units to require their construction contractors to participate in an apprenticeship program (or request apprentices from a state-approved program), to make specified health care expenditures for construction craft employees, and to submit monthly reports verifying compliance.

AB 2097 – Residential, commercial, or other development types: parking requirements

AB 2097 eliminates parking requirements for residential, commercial, and other development types within one-half mile of major transit stops. AB 2097 bans local jurisdictions from imposing strict off-street parking requirements. Developers will no longer be required to build any pre-set minimum number of parking spaces per residential unit or spaces per square foot of commercial projects. The bill does not prohibit developers from providing the parking spaces they believe are needed to meet market demand or that lenders will require.

SB 6 – Middle Class Housing Act of 2022

Existing law requires counties and cities to prepare long-term general plans that outline goals, policies, and requirements for development. Senate Bill (SB) 6 requires residential developments to be considered an allowable use on a parcel that is within a zone where office, retail, or parking are a principally permitted use, without requiring rezoning. The proposed residential development must comply with specified criteria, including density, public notice, comment, site location and size, consistency with applicable specific plans or sustainable community strategies, and prevailing wage requirements, in order to qualify for this benefit. The Act allows multiuse development that otherwise meets the criteria under the Planning and Zoning Law for streamlined approval to be proposed on a site zoned for office or retail commercial use. Unlike AB 2011, SB 6 applies only to zoning and does not change any obligations under CEQA or other applicable rules.

AB 1279 – The California Climate Crisis Act

AB 1279 adds Section 38562.2 to the Health and Safety Code, relating to greenhouse gases. AB 1279 was approved by Governor Newsom as part of his climate legislative package. Under the California Global Warming Solutions Act of 2006, the California Air Resources Board (CARB) is charged with monitoring and regulating sources of greenhouse gases (GHG), creating a scoping plan to achieve the maximum technologically feasible and cost-effective reductions in GHGs, and reducing GHGs to 40% below 1990 levels by the year 2030.

AB 1279 establishes a state policy to achieve a reduction in GHG emissions to 85% below 1990 levels and net-zero GHG emissions no later than 2045. In addition, the Act aims to reach and maintain net-negative GHG emissions after 2045 through a variety of policies and strategies that enable carbon dioxide removal solutions and carbon capture, utilization, and storage technologies. AB 1279 was contingent on the enactment of SB 905, which further addresses these carbon capture and storage programs.

SB 905 – Carbon sequestration: Carbon Capture, Removal, Utilization, and Storage Program

SB 905 creates a Carbon Capture, Removal, Utilization, and Storage Program, which aims to evaluate the efficacy, safety, and viability of carbon capture and carbon dioxide removal opportunities and aims to accelerate the deployment of projects that will help the state reach its 2045 net-zero goal (laid out in AB 1279). SB 905 instructs CARB to adopt regulations for a unified permit application for the construction and operation of sequestration and removal projects by 2025 and to create a database to track the deployment of these projects within the state. In addition, SB 905 requires the California Geological Survey to create the Geologic Carbon Sequestration Group to provide independent expertise and regulatory guidance to CARB.

In addition to outlining requirements for project operators (like financial assurance requirements), SB 905 specifies that ownership of a geologic storage reservoir will be vested in the owner of the overlying surface property unless otherwise conveyed. SB 905 charges the Secretary of the Natural Resources Agency (in consultation with CARB) with publishing a framework to govern agreements when two or more tracts of land overlay a single geologic storage reservoir.

SB 1020 – Clean Energy, Jobs, and Affordability Act of 2022

SB 1020 updates and amends certain provisions of the California Global Warming Solutions Act of 2006. First, SB 1020 includes communities in federal extreme nonattainment areas as locations for public meetings related to the required scoping plan under the Global Warming Solutions Act. SB 1020 also adjusts the established schedule for moving retail sales of electricity in California to renewable and zero-carbon resources by 2045 by providing interim targets to meet this goal. Building on the existing law requiring the Public Utilities Commission (PUC) to adopt a strategic plan for electricity generation in the state, SB 1020 also allows the PUC to share confidential information with the Independent System Operator, issue joint reliability reports, and develop a definition of energy affordability to use as a reporting metric.

SB 1137 – Oil and gas: operations: location restrictions: notice of intention: health protection zone: sensitive receptors

SB 1137 adds Article 4.6 to Division 3 of Chapter 1 of the Public Resources Code, relating to oil and gas. This article establishes 3,200-foot setbacks from certain "sensitive receptors." The new setbacks are termed "health protection zones" (HPZ). SB 1137 contains three main components that take effect over time. Beginning in January 2023, the Geologic Energy Management Division in the Department of Conservation (CalGEM) is barred from approving any new notices of intention for oil and gas production activities within an HPZ. In January 2025, existing production facilities within an HPZ will be required to comply with additional health and safety regulations, including regulations of air, water, and noise. Finally, in January 2027, both CalGEM and oil and gas facility operators will be subject to additional reporting requirements for well production facilities within an HPZ.

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