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County's Blanket Classification of All Well Permits As Ministerial Under CEQA Was Improper

Where a county ordinance allowed for exercise of discretion in some circumstances regarding issuance of well construction permits, such permits could not categorically be classified as ministerial and hence exempt from CEQA review. *Protecting Our Water and Environmental Resources v County of Stanislaus*, 10 Cal.5th 470 (2020). Stanislaus County adopted an ordinance which categorically classified the issuance of all well construction permits as ministerial projects under CEQA unless the county health officer granted a variance. Plaintiffs filed an action alleging that the County had been improperly approving well construction permits without performing CEQA review. Plaintiffs asserted that such permit issuance decisions were discretionary projects because the County could either deny the permit or require project modifications to address environmental concerns as a condition of permit approval.



Under CEQA, purely ministerial projects are exempt from environmental review. Ministerial projects are those in which the agency determines whether fixed standards in applicable statutes, ordinances, or other regulations have been satisfied. These determinations must involve little to no personal judgment by the public official as to the wisdom or manner of carrying out the project. Agencies may classify ministerial projects on either a categorical or individual basis. The CEQA guidelines provide, however, that an agency may categorically classify approvals as ministerial only when the authority to issue them is solely ministerial. Where a project involves an approval that contains elements of both a ministerial action and a discretionary action, the project must be deemed discretionary. The California Supreme Court determined that while many of the County's well permitting decisions were ministerial, the ordinance authorizing the issuance of these permits made at least some of the County's decisions on such permits discretionary. The Court found that a standard under the ordinance regarding the permissible distance between a well and a potential contamination source plainly authorized the county to exercise judgment or deliberation when deciding to approve or disapprove the permit. Although the

standard set out distances generally considered adequate, it made clear that individualized judgment could be required, stating that an "adequate horizontal distance" may depend on many variables; that no set separation distance is adequate and reasonable for all conditions; and that local conditions may require greater separation distances. The Court interpreted these minimum distances to be a starting point, beyond which the ordinance conferred "significant discretion on the county health officer to deviate from the general standards, allowing either relaxed or heightened requirements depending on the circumstances." The permit approval process thus allowed the County to shape a well construction project in response to concerns that could be identified through environmental review. Because the permitting process, at least in some cases, required exercise of independent judgment, well permits could not be categorically classified as ministerial, and the blanket classification of all such permits as ministerial under CEQA was unlawful.

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