

Protecting Our Water and Environmental Resources v. County of Stanislaus

In general, the issuance of a permit is considered a project for the purposes of the California Environmental Quality Act (CEQA). Unless exempted, discretionary projects require some level of environmental review under CEQA; however, ministerial projects do not. In a recent case, the California Supreme Court ruled that some well construction permits issued by Stanislaus County may not be ministerial because the staff review could involve discretionary actions and therefore those well permits may be subject to review under the CEQA. As a result, agencies should examine local provisions regarding ministerial permits to determine if some portions of the permit review process may be discretionary and consequently subject to CEQA review.

Stanislaus County well construction permit applications not seeking a variance are reviewed and processed as ministerial actions under several provisions of the County code which regulate matters such as maintenance and location of wells. The code also incorporates by reference certain standards issued by the Department of Water Resources. Notably, these standards state that a permit can be denied or modified if the distance between the proposed well and a potential contamination source – such as a septic system – is too small or if the proposed well is located in a flooding area when it could be located somewhere else.

An environmental group called Protecting Our Water and Environmental Resources sued the County arguing that issuing well permits is a discretionary action subject to CEQA review because determining compliance with the County's standards requires the exercise of subjective judgment.

The California Supreme Court agreed holding that the plain language of the County's local standards authorizes the County to exercise judgment or deliberation when deciding to approve or deny a well permit. Although the County's standards establish distances between a well and contamination source that are generally considered adequate, they also contain provisions that require individualized judgment. As a result, the County may not categorically classify the issuance of the well permits as ministerial.

For example, under the County's code, a sufficient separation between the well and a contamination source may depend on several variables

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and no fixed separation distance is adequate and reasonable for all conditions. "The standard does provide a list of minimum suggested distances that are generally considered adequate, but [l]ocal conditions may require greater separation distances. Thus, a shorter or longer distance may be acceptable and can be determined "on a case-by-case basis." The County health officer is given the discretion to depart from the usual specifications and can deny the permit or impose more strict conditions of approval depending on the circumstances.

That said, the Court also noted that just because a local code allows an agency to exercise some level of discretion in certain situations, does not mean that every permit issued under that code is discretionary. If the code provides situations where no level of independent judgment is permissible, then those circumstances may properly be characterized as ministerial. In this case, whether the County's well permit is appropriately described as ministerial or discretionary depends on the facts of each particular well permit application.

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