Solar Energy/California Appellate Court Addresses Application of Zoning Laws to Community Services District Project

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The California Court of Appeal (Fourth District) ("Court") addressed in a July 19th opinion whether a solar energy project proposed by a local agency was exempt from certain city zoning ordinances. See City of Hesperia v. Lake Arrowhead Community Services District, et al., 2019 WL 3242974.

The key question was the applicability of a California statutory exemption for solar projects.

The Lake Arrowhead Community Services District ("CSD") owns and uses a portion of a 350-acre area referenced as Hesperia Farm to discharge percolate treated effluent from its water treatment facilities in Lake Arrowhead into the Mojave River groundwater basin. The CSD proposed a solar project which would be located on five to six acres of Hesperia Farms not being utilized for wastewater operations.

The solar project site is located with the City of Hesperia, California ("City"). The project site is zoned "Rural Residential" and:

. . . is designated as "rural Residential 0-0.4 units per acre" under the City's general plan.

The parties agreed that the solar project fit within the scope of the zoning term "solar farm." The relevant section of the zoning provisions states:

Solar farms shall only be allowed on nonresidential and nonagricultural designated properties with approval of a conditional use permit by the planning commission. Solar farms shall not be permitted within six hundred sixty (660) feet of a railway spur, any interstate, highway, or major arterial, arterial, or secondary arterial roadway; or any agricultural or residentially designated property.

The City determined that the project required a general plan amendment and zone change and did not address how the project would avoid being within 660 feet from property to the south which is agriculturally designated (i.e., precludes solar farms within 660 feet of agriculturally designated property).

The Court's analysis begins with determining whether the proposed solar energy project complies with the local agency's zoning requirements. It further notes that California statutory provisions Section 53091, Subdivision (c) and Section 53096, Subdivision (a) each provide an exemption for the location and construction of certain types of facilities. Section 53091 (c) provides an absolute exemption for:

. . . the location of construction of facilities. . . for the production or generation of electrical energy. . . – unless the facilities were for the storage or transmission of electrical energy, in which event the zoning ordinances apply.

Section 53906(a) provides a qualified exemption for an agency's proposed use upon, first, a showing that the development is for facilities related to storage or transmission of water or electrical energy and, second, a resolution by four-fifths of the agency's members that there is no feasible alternative to the agency's proposal.

The CSD adopted a resolution that its proposed solar energy project was both:

1. Absolutely exempt from the City's zoning ordinances under Section 53091(e); and
2. qualifiedly exempt under section 53096(a) (following the requisite determination that there was no feasible alternative to the proposed location of the project).

The City successfully challenged the resolution in the lower court which held the solar project must comply with the City's zoning ordinance.

The Court upholds the lower court's decision based on its finding that the CSD's proposed project includes the transmission of electrical energy. It notes that:

. . . the exemption contained in section 53091(e) does not apply to the project; and because the administrative record does not contain substantial evidence to support the District's board's finding that there is no feasible alternative to the proposed location of the project, the District prejudicially abused its discretion in determining that the exemption contained in section 53096(a) applied to the project.

A copy of the decision can be downloaded here.