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Articles

Important Developments in Natural Resources and Land Use Law During 2001 - Part 2

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Initiatives and Referenda

1. Initiative Banning Oil Drilling Permissible Exercise Of City's Police Powers Even Though Approved After City Entered Into Oil And Gas Lease

A California Court of Appeal ruled that a voter-approved initiative banning oil drilling within the City of Hermosa Beach was a legitimate exercise of the city's police powers, even though the city had earlier entered into an oil and gas lease of property within the city. In *Hermosa Beach Stop Oil Coalition v. City of Hermosa Beach*, 86 Cal. App.4th 534 (2001), the Second District Court of Appeal overruled a Superior Court decision and held that the voters' rejection of all oil and gas drilling and production within Hermosa Beach was reasonable. The court ruled that the lessee oil company did not have common law vested rights under the lease because it had not yet obtained a building permit, and could have, but did not, enter into a development agreement with the city. The court concluded that the initiative, which served an important public purpose, did not result in an unconstitutional impairment of contract, though the court left open the possibility that the city could be liable for breach of contract.

2. Local Referendum Defeating Prezoning Of Unincorporated Land Not Inconsistent With City's General Plan

The First District Court of Appeal in *Merritt v. City of Pleasanton*, 89 Cal.App.4th 1032 (2001), considered whether the defeat of a referendum ("Measure P") that would have prezoned certain unincorporated land in a city's sphere of influence for "PUD: low-density residential" was invalid because it created an inconsistency with the city's general plan, which designates the property "low-density residential" and includes policies favoring residential development and annexation of unincorporated areas. Petitioners argued that the defeat of Measure P created an inconsistency with the city's general plan by "promulgating an 'unincorporated' zoning designation for the property inconsistent with the city's general plan objectives, policies, general land uses and programs." The court observed that the city's general plan does not require the immediate annexation or prezoning of the property. Moreover, the defeat of Measure P did not result in a rezoning of property, which, the court observed, cannot be zoned by the city until it is annexed. Instead, the defeat of Measure P merely preserved the status quo by maintaining the property as unincorporated territory. Thus, the court held that the failure to prezone the property did not create an inconsistency with the general plan. Additionally, the court rejected the petitioners' arguments that Measure P unfairly discriminated against the property and that the prezoning ordinance was not subject to the referendum process.

CEQA Legislation

1. SB 610: Water Supply Assessments Required As Part Of "Project" (Chapter 643, Statutes Of 2001)

On October 9, 2001, Governor Davis signed SB 610, which requires water suppliers that use groundwater as part of their supplies to provide additional information in urban water management plans, including a description of all water supply projects and programs that may be undertaken to meet total projected water demand. Failure to do so would render the supplier ineligible for drought funding from the Department of Water Resources. In addition, any project that is subject to CEQA will be required to identify any public water system that may supply water for the project and to request of the water supplier a water supply assessment containing certain information. If water supplies are or will be insufficient, the "project" for CEQA purposes must include the preparation of plans by public water systems for acquiring additional waters supplies. (See Client Update entitled "Impact of New Water Laws on Development in California" available on Sheppard Mullin's website, www.sheppardmullin.com.)

2. SB 244: Airport Expansion And Enlargement Approvals Are CEQA "Projects" (Chapter 534, Statutes Of 2001)

This law provides that the "carrying out or approval of a plan for a project that expands or enlarges an existing publicly owned airport by any political subdivision" constitutes a "project" for the purposes of CEQA. Where such projects require the acquisition of any tide and submerged lands or other lands subject to the public trust for commerce, navigation, or fisheries, the public review of the draft EIR may not be less than 120 days. The law also expands the requirement of the State Aeronautics Act for the preparation of an expansion plan for presentation to the local legislative body to include all acquisitions of land in connection with such projects.

3. AB 1532: Transportation Planning Data Submissions (Chapter 867, Statutes Of 2001)

This new law requires that information resulting from the transportation reporting or monitoring program required by CEQA of a public agency be submitted to the regional transportation planning agency and to the Department of Transportation ("DOT"), according to guidelines to be adopted by DOT. In addition, lead agencies under CEQA must call at least one scoping meeting for a project of statewide, regional or areawide significance and provide notice of the scoping meeting to certain entities.

Water Quality and Supply Legislation

1. SB 221: Water Supplies Required For Large Subdivisions (Chapter 642, Statutes Of 2001)

This statute amends the Subdivision Map Act to prohibit the approval of tentative maps (or parcel maps where no tentative map was required) for most large residential subdivisions (more than 500 units), unless a sufficient water supply is available to serve the proposed subdivision. Sufficient water supply means the "total water supplies available during normal, single-dry and multiple-dry years within the 20-year projection that will meet the demand associated with the proposed subdivision, in addition to existing and planned future uses, including, but not limited to, agricultural and industrial uses." In an effort to encourage "infill" development, the new law exempts some residential projects within urbanized areas or housing projects that are exclusively for very low and low-income households. (See Client Update entitled "Impact of New Water Laws on Development in California" available on Sheppard Mullin's website, www.sheppardmullin.com.)

2. AB 599: Coordination Of Groundwater Contamination Quality Monitoring (Chapter 522, Statutes Of 2001)

This law requires the State Water Board to integrate existing groundwater monitoring programs as needed to establish a comprehensive monitoring program capable of assessing each groundwater basin in the state through direct and other statistically reliable sampling approaches. The State Water Board is required to create an interagency task force which must provide the Governor and Legislature by March 1, 2003 with a detailed description of the comprehensive monitoring program and recommendations for the efficient collection of groundwater contamination information.

3. AB 901: Expanded Water Supply Planning (Chapter 644, Statutes Of 2001)

This statute requires urban water management plans adopted pursuant to the Urban Water Management Planning Act to include additional information about the quality of existing sources of water available to an urban water supplier over given time periods and how that affects water management strategies and supply reliability. In some cases it also requires the preparation of plans that describe arrangements for supplementing a water source that may not remain available at a consistent level of use.

4. AB 1664: Enhanced Discharge Penalties Under Porter-Cologne (Chapter 869, Statutes Of 2001)

This amendment to the Porter-Cologne Act enhances the State Water Board's authority to impose administrative civil liability and request injunctions and expands the authority of regional boards to require information from discharging entities outside their regions. It also increases penalties for violations but requires the State Water Board to take into consideration specified factors in determining the amount of liability to be imposed on a violator pursuant to the Porter-Cologne Act, including the economic benefit or savings, if any, realized as a result of the violation.

5. SB 72: Storm Water Monitoring Standards To Be Set (Chapter 492, Statutes Of 2001)

This law requires the State Water Board to develop, before January 1, 2003, minimum storm water monitoring requirements for regulated municipalities that were subject to a storm water permit on or before December 31, 2001 as well as for certain regulated industries. The monitoring requirements will be included in all storm water permits by July 1, 2008.

6. AB 285: Reporting Of Sewage System Overflows (Chapter 498, Statutes Of 2001)

This law requires the State Water Board to develop report forms for spills or overflows from a sanitary sewer system for use by collection system owners or operators to report such spills or overflows. It also directs the State Water Board to develop and maintain a sanitary sewer system overflow database based on information provided by the report forms and to make the information collected in the database available to the general public.

7. SB 672: Additional California Water Plan Requirements (Chapter 320, Statutes Of 2001)

This statute requires the Department of Water
Resources to include in the California Water Plan a report on the development of regional and local water projects within each hydrologic region of the state to improve water supplies to meet municipal, agricultural, and environmental water needs and to minimize the need to import water from other hydrologic regions. It also

requires urban water suppliers to describe in their urban water management plans the water management tools and options they will use to maximize resources and minimize the need to import water.

8. AB 331: 2002 Recycled Water Task Force (Chapter 590, Statutes Of 2001)

This statute creates an interagency task force
responsible for advising the Department of Water Resources on the opportunities for using recycled water in industrial and commercial applications, and identifying constraints to increasing the use of recycled water. It further requires the task force to present the Legislature with a report by July 1, 2003 with recommendations on increasing the use of recycled water.

Land Use Legislation

1. SB 497: Subdivision Map Act – Lot Line (Chapter 873, Statutes Of 2001)

This law permits lot line adjustments among four or fewer adjoining parcels without complying with the Subdivision Map Act's requirements; prior law did not limit the number of parcels that could have their boundaries so adjusted. Further, it limits the scope of the review of an approving local agency or advisory agency to whether or not the parcels resulting from the lot line adjustment will conform to the local general plan, any applicable coastal plan, and zoning and building ordinances. It also expands to all subdividers the requirements to dedicate additional land as may be necessary and feasible to provide bicycle paths for residents, and authorizes cities to enact local ordinances requiring land within subdivisions to be dedicated for local transit facilities.

2. AB 1367: School Siting (Chapter 396, Statutes Of 2001)

This law restricts a school district's ability to render local zoning inapplicable to classroom facilities by requiring school districts to notify local city planning agencies and send them copies of any relevant and available needs analysis, master plan, or other long range plan at least 45 days before determining that local zoning is inapplicable to a school site.

Redevelopment and Housing Legislation

1. SB 975: Expansion Of Prevailing Wage Requirements To All Publicly Assisted Projects (Chapter 938, Statutes Of 2001)

This law expands the scope of "public works" projects on which prevailing wages must be paid to include projects that are receiving "public funds," defined to include the payment of money directly or indirectly, the transfer of assets for less than fair market value, credits, fee reductions or waivers, loans at less than fair market value (including forgivable loans) and the performance of work by public agencies. It exempts private residential projects, affordable housing units and other projects, under certain circumstances.

2. SB 211: Redevelopment Plan Extension (Chapter 741, Statutes Of 2001)

This law allows redevelopment agencies to amend redevelopment plans through an expedited procedure to eliminate the deadline for incurring debt that former law required to be included in plans adopted before 1994. It also allows an agency that has adopted a redevelopment plan on or before December 31, 1993, to extend the plan's effectiveness to pay indebtedness and receive tax increment revenues for up to 10 years if the agency: (1)

no longer has an excess surplus in its Low and Moderate Income Housing Fund; (2) has a state-approved housing element; and (3) makes a finding that significant blight remains in the project area. If such an extension is adopted, the agency must thereafter use at least 30% of its tax increment financing revenue for affordable housing. It also prohibits the adoption of an ordinance declaring that there is no further need for a redevelopment agency and its subsequent termination if the agency has excess surplus funds or has not completed specified obligations.

3. AB 637: Extension Of Flexible Inclusionary Housing Requirements And Affordable Housing Restriction Periods (Chapter 738, Statutes Of 2001)

This statute eliminated the scheduled January 1, 2002 termination (or "sunset") of certain provisions that allow redevelopment agencies flexibility in meeting their inclusionary requirements (i.e., that a certain percentage of housing built in project areas be available to low or moderate income residents). It extends to 55 years the period during which rental housing for very low, low-, and moderate-income residents must be kept available to persons of those income categories. It also prohibits the Low and Moderate Income Housing Fund from being used by redevelopment agencies for new or rehabilitated affordable housing if such projects can be financed in the private sector under reasonable terms. Redevelopment agencies are also required to make affordable housing available for rent or purchase first by the lower-income families originally displaced by the redevelopment project.

4. AB 8: Increased Downtown Rebound Program Loans (Chapter 3, Statutes Of 2001)

This statute increases the amount of assistance provided for loans for adaptive reuse or conversion of commercial or industrial structures into rental housing units by the Department of Housing and Community Development under its Downtown Rebound Program. It raises the limits for such loans, respectively, from $40,000 and $20,000, for units that are, or are not, reserved for specified low-income households, to $55,000 and $35,000. It also requires that the projects for which assistance is provided be located within elementary school areas where 50% or more of the students are eligible for the federal school lunch program.

5. SB 1098: No Interim Zoning Restrictions On Multi-Family Housing Unless Continued Approval Of Housing Threatens Public Health Or Safety (Chapter 939, Statutes Of 2001)

This law prohibits the adoption or extension of an interim ordinance which would deny needed approvals for projects with a "significant component" of multifamily housing (i.e., at least one-third of the total project square footage) unless certain findings are made and supported by substantial evidence. The findings must include a determination that the continued approval of multi-family housing projects would have a specific, adverse impact on public health or safety, that the interim ordinance is necessary to avoid that impact, and that there is no feasible alternative to avoid or mitigate such impact satisfactorily.

6. SB 53: Extension Of Community Redevelopment Disaster Project Law (Chapter 9, Statutes Of 2001)

This statute extends the operation of the Community Redevelopment Disaster Project Law ("Disaster Act") indefinitely by repealing the provision which prohibited a community from adopting a redevelopment plan pursuant to its provisions on or after January 1, 2001. The Disaster Act authorizes a community to expeditiously establish a redevelopment project in an area in which a natural disaster has occurred.

Parks/Coastal Protection Legislation

1. AB 1481: Urban Park Act Of 2001 Establishes Grant Program To Support City Parks (Chapter 876, Statutes Of 2001)

The Urban Park Act of 2001 requires the California Department of Parks and Recreation ("Parks and Recreation") to establish a local assistance program to offer grants on a competitive basis to various local entities and nonprofit organizations for the acquisition and/or development of urban parks and recreational areas and facilities. It authorizes Parks and Recreation to adopt guidelines and criteria in selecting projects and to assign priority for projects that meet specified criteria. A project grant recipient may use a limited portion of grant funds to pay for the cost of cleaning up, removing or remediating any toxic materials or hazardous substances. (For a related article, see "Governor Signs New Park Measure" available on Sheppard Mullin's website, www.sheppardmullin.com.)

2. SB 908: California Coastal Trail Development (Chapter 446, Statutes Of 2001)

This statute requires the State Coastal Conservancy ("Conservancy"), in consultation with Parks and Recreation and the California Coastal Commission, to coordinate development of the California Coastal Trail ("Trail"). The Trail is a proposed 1200-mile hiking trail running along the California coast. Each agency, board, department or commission of the state with property interests or regulatory authority in coastal areas is required to cooperate with the Conservancy in planning and making lands available for the Trail. It also authorizes the Conservancy to award grants and provide assistance to public agencies and nonprofit organizations for inland trail systems that may be linked to the Trail. The Conservancy must complete a plan for the development of the Trail by January 31, 2003.

Environmental Cleanup Legislation

1. AB 1553: "Environmental Justice" Guidelines Set (Chapter 762, Statutes Of 2001)

This law requires the Office of Planning and Research ("OPR") to adopt guidelines for addressing "environmental justice" matters in city and county general plans by July 1, 2003. It also requires the OPR to hold at least one public hearing prior to the release of any draft guidelines, and at least one public hearing after the release of the draft guidelines. The guidelines should include methods for promoting more livable communities by expanding transit-oriented development and locating schools, residential dwellings and public facilities in areas away from industrial facilities.

2. SB 32: Local Government Powers To Compel Contaminated Property Restoration Expanded (Chapter 764, Statutes Of 2001)

This law enacts the California Land Environmental Restoration and Reuse Act which authorizes local governments to adopt programs that compel the investigation and cleanup of certain brownfield sites smaller than five acres. It authorizes local agencies to require the owners or operators of property to provide the local agency with information regarding hazardous materials releases, and permits local agencies to undertake phase I environmental assessments and remedial activities at the owner's or operator's expense. In addition, the local agency may record deed restrictions prohibiting future uses of the property. The California Environmental Protection Agency ("Cal-EPA") is required to establish guidelines for state oversight of these activities by April 1, 2002.

3. SB 468: Insurance Program For Brownfields To Be Established (Chapter 549, Statutes Of 2001)

This law establishes the Financial Assurance and Insurance for Redevelopment ("FAIR") Program, which requires Cal-EPA to solicit proposals for a package of environmental insurance products from insurance companies through a competitive bidding process for the purpose of making environmental insurance available to recipients of the state's "CLEAN Program." The CLEAN Program provides loans for the cleanup of certain contaminated urban properties often referred to as "brownfields."

Part 1 of Important Developments in Natural Resources and Land Use Law During 2001.