

CLIENT NEWS BRIEF

Appellate Court Finds That Solar Energy Project Was Not Exempt From City's Zoning Ordinance

November 2019
Number 75

A recent California appellate court ruling has clarified the requirements for a local agency's compliance with city or county zoning ordinances. In *City of Hesperia v. Lake Arrowhead Community Services District*, the Fourth Appellate District held that a community services district did not qualify for zoning compliance exemptions as provided in sections 53091(e) and 53096(a) of the Government Code, after the district had adopted a resolution finding the exemptions applicable in preparation for constructing a solar energy facility.

Background

In *City of Hesperia*, the Lake Arrowhead Community Services District (District), sought to overturn a trial court's decision that construction of a solar energy facility did not qualify for exemption from the City of Hesperia's (City) zoning ordinances. The solar energy facility (Project) was to be constructed on property owned by the District within City limits. The property, which was already in use as a water reclamation facility, was zoned "Rural Residential." The City's municipal code provided that "solar farms" were only allowed on nonresidential and nonagricultural property with a conditional use permit and could not be located within 660 feet of agricultural or residential property. Over the City's objections, the District passed a resolution finding that the City's zoning ordinances did not apply to the Project, as it was both absolutely exempt and qualifiedly exempt under Government Code provisions specific to energy projects. The City filed suit and prevailed at the trial court level, and the District appealed.

Analysis

Government Code section 53091(a) provides generally that a local agency must comply with "all applicable building ordinances and zoning ordinances of the county or city in which the territory of the local agency is situated." This case considers two exemptions from this general rule.

Government Code section 53091(e) provides an *absolute exemption* from local zoning ordinances for the "the location or construction of facilities...for the production or generation of electrical energy" unless the facilities are used for storage or transmission of electrical energy. While the Project was designed to produce energy, that energy was intended to be transmitted to the local utility's electrical grid. The court concluded that because section 53091(e) does not exempt "transmission" of electrical energy from local zoning ordinances, the Project was not exempt from those ordinances under section 53091(e).

Government Code section 53096(a) provides a *qualified exemption* to local zoning regulations for a local agency that holds a public hearing and adopts a resolution determining that "there is no feasible alternative to its proposal." In order to use this exemption, the local agency must properly determine through *substantial evidence* that no feasible alternatives exist for the location of the proposed facility. The court concluded that the District's determination that there was no feasible alternative location for the Project was not supported by substantial evidence, and that the District had failed to provide evidence that it had considered "economic, environmental, social, or technological factors



Claudia P. Weaver
Partner
Monterey Office
cweaver@lozanosmith.com



Jessica A. Mejorado
Associate
Fresno Office
jmejorado@lozanosmith.com



As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.

CLIENT NEWS BRIEF

November 2019
Number 75

associated with an alternative location.” Thus, the Project was not exempt under section 53096(a).

Since the Project did not meet the requirements for exemption from the City’s zoning ordinances under either section 53091(e) or section 53096(a), the court ruled that it was not exempt from the City’s zoning ordinances.

Takeaways

The court in *City of Hesperia* took a narrow view of a local agency’s ability to exempt itself from local zoning ordinances in order to proceed with energy projects. In particular, this ruling makes clear that a local agency’s finding that “there is no feasible alternative to its proposal” must be supported by substantial evidence that the agency had carefully considered alternative locations for its project.

If you have any questions about the *City of Hesperia v. Lake Arrowhead Community Services District* decision or building and zoning issues in general, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our podcast, follow us on [Facebook](#), [Twitter](#), and [LinkedIn](#) or download our [mobile app](#).

As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.