Legal Backdrop - Well Ordinance Policy Development

Public Trust Doctrine

The Public Trust Doctrine is a legal doctrine, reflected in Article X, section 4 of the California Constitution, that provides that the government holds certain natural resources 'in trust' for the benefit of current and future generations. The resources Include tidelands, submerged land and land underlying inland navigable waters.

Public trust purposes or uses include commerce, recreation, fishing, wildlife habitat and preservation of trust lands in their natural state.

In 1983, the California Supreme Court in *National Audubon Society v. Superior Court* held that the Public Trust Doctrine "protects navigable waters from harm caused by diversion of nonnavigable tributaries."

In 2018, *Environmental Law Foundation (ELF) v. State Water Resources Control Bd.,* the California Court of Appeals found that the Public Trust Doctrine applies to permitting of groundwater wells if extraction of groundwater adversely impacts a navigable waterway.

Groundwater is not a public trust resource. However, extraction of groundwater that is interconnected with a stream or river may result in reduced streamflow and impact public trust resources of a navigable waterway.

Navigable waters in Sonoma County include the main stem of the Russian River from Jenner to the Sonoma/Mendocino County line and waterways identified as navigable by the U.S. Army Corp of Engineers survey Navigable Waterways as of 2 August 1971.

Under the *ELF* decision, impacts to public trust resources must be considered and mitigated, if feasible, when a county issues a permit for a well that may reduce flows and adversely impact public trust resources of navigable waters.

Neither the *ELF* decision nor case law generally details exactly how a county must consider and mitigate impacts to public trust resources when permitting groundwater wells. Yet the "how" is the technical and policy task at hand. The technical and policy working groups can best support the Director by developing recommendations and options for *how* the County may best meet that legal obligation and articulating the reasons for those recommendations and options.

CEQA & Ministerial vs. Discretionary Approvals

Review under the California Environmental Quality Act only applies to discretionary approvals, unless otherwise exempt. It does not apply to ministerial approvals.

An application for a ministerial permit is one that the County has essentially no discretion to deny or condition if the facts of the application satisfy certain objective codified standards. For ministerial permits, staff can determine satisfaction of the standards with little to no deliberation. Ministerial permits may not be conditioned.

An application for a discretionary permit is one that the County has discretion to deny, approve, or approve with conditions if the application satisfies established code requirements. For discretionary permits, staff weighs, deliberates over, and analyzes facts to determine if the application meets established code requirements.

Where a proposal requires both ministerial and discretionary approvals, the entire proposal is considered a discretionary project that is subject to CEQA unless an exemption applies.