

Land Use and Resource Law Update

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Nuisance

In Re: NC Swine Farm Nuisance Litigation, 2017
WL 5178038 (U.S.D.C. E.D. N.C. 2017). (p. 38)

- ▶ Concerns swine operations
- ▶ Nuisance, negligence alleged
- ▶ Right to farm defense rejected
- ▶ Huge jury verdicts in favor of plaintiffs

Vested Rights in Agriculture

Golden Sands Dairy LLC v. Town of Saratoga, 381 Wis.2d 704 (2018). (p. 38)

Following mandamus action to compel town to issue building permit for farm structures, 2014 WL 3630035, town changed zoning classification of land surround dairy structures. Landowner filed action for declaratory judgment that it had vested right to use land specifically identified in building permit application for agricultural purposes, despite zoning change which sought to prohibit such agricultural uses. The Circuit Court entered judgment for landowner. Town appealed, and the Court of Appeals, 2017 WL 1372507, reversed. Landowner petitioned for review, which was granted. The Wisconsin Supreme Court held that as a matter of first impression, building permit rule applies to all land specifically identified in the building permit application, not merely to structures. Since application specifically identified property landowner sought to use for farm, landowner had vested right to use property for farm. Reversed.

Water- Federal Reserved Water Rights

- ▶ Federal reserved water rights may include groundwater, and are not quantifiable, as the right may expand as needed by the reservation (*Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water District*, 2015 WL 13309103 (U.S.D.C. M.D. Ca. 2015), *aff'd* 849 F.3d 1262 (2017), *cert. den.*, *Coachella Valley Water District v. Agua Caliente Band of Cahuilla Indians*, 138 S.Ct. 468 (2017). (p. 2).
- ▶ Unquantified federal reserved water rights need not be considered in state law determination of adequate and assured water rights *Silver v. Pueblo Del Sol Water Company*, 244 Ariz. 553, 423 P.3d 348 (2018). (p. 4)
- ▶ Unquantified federal reserved water rights defeat takings claim of farmers denied irrigation water *Baley v. United States*, 134 Fed. Cl. 619 (2017). (p. 31)

Water

- ▶ Ag exemption- Provision in regulated riparian statute exempting ag use from permitting system was challenged as a regulatory taking, public trust doctrine violation, and infringement of riparian rights; downstream riparians, who did not show present injury, lacked standing to bring claims and an exception to the standing doctrine did not apply *Jowers v. South Carolina Department of Health and Environmental Control*, 423 S.C. 343, 815 S.E.2d 446 (2018) (on rehearing) (p. 4).
- ▶ Public trust doctrine- impact on navigable water must be considered in granted permits for groundwater withdrawals *Environmental Law Foundation v. State Water Resources Control Board*, 26 Cal. App.5th 844, 237 Cal. Rptr.3d 393 (2018).

Right to Farm

- ▶ Regulatory takings- Iowa Supreme Court discusses *Gacke* and whether as applied the right to farm is unconstitutional under the inalienable rights clause *Honomichi v. Valley View Swine, LLC*, 914 N.W.2d 223 (Iowa 2018). (p. 6).
- ▶ Septage lagoons not part of agricultural operation *Riddle v. Lanser*, 2018 WL 1661600, __ P.3d __ (Supreme Ct. Ak. 2018). (p. 8)
- ▶ Paper mill supports forestry, so covered, but dissent argues persuasively that this is a trespass as well *Georgia Pacific Consumer Products, LP v. Ratner*, 2018 WL 1193299, __ S.E.2d __ (Ct. App. Ga.) (p. 6)

Right to Farm/What is Agriculture?

- ▶ Weddings- Weddings are not agriculture *Gerald P. Zarrella Trust v. Town of Exeter*, 176 A.3d 467 (Supreme Ct. R.I. 2018). (p. 10)
Not enough evidence to tell whether viticulture or holding weddings was primary purpose of building *Litchfield Township Bd. of Trustees v. Forever Blueberry Barn, LLC*, 2018 WL 603970 (Ct. App. Ohio 2018). (p. 10)
- ▶ Shooting range- not agriculture. *Jefferies v. County of Harnett*, 817 S.E.2d 36 (N.C. 2018). (p. 11)
- ▶ Soccer tournaments- although the court did not directly rule, seemed to be inclined to find that “innovative of unique form of agritourism” employed by sod farm- holding soccer tournaments on the farm, was indeed “agritourism”. *In Re the Pinelands Commission’s Consistency Determinations Approving Tuckahoe Turf Farm Inc.’s Application No. 1984-0389.009*, 2018 WL 3384296 (Super. Ct. N.J. 2018).(p. 13).

Marijuana- Preemption

State medical marijuana statute does not preempt local zoning *Hippocratic Growth, LLC v. Board of County Commissioners of Queen Anne’s County*, 2018 WL 3343588 (Ct. Sp. App. Md. 2018) (p. 15). *Brown v. City of Grants Pass*, 291 Or.App. 8 (2018) (p. 16). *Emerald Enterprises, LLC v. Clark County*, 413 P.3d 92 (Ct. App. Wash. 2018). (p. 17).

State medical marijuana statute preempts local zoning *Deruiter v. Township of Byron*, -- N.W.2d --, 2018 WL 3446236 (Ct. App. Mich. 2018) (p. 16).

Marijuana- Misc.

- ▶ Formation of club did not shield sellers from paying sales tax *Green Collar Club v. State Department of Tax Revenue*, 2018 WL 1476313, __ P.3d __ (Ct. App. Wash. 2018) (p. 19)
- ▶ Commercial use or cultivation of plants and crops- Growing of medical marijuana is the latter, so no conditional use permit is required *Filippi v. Board of County Commissioners*, 424 P.3d 658 (Ct. App. N.M. 2018) (p. 15).

Marijuana- Misc.

- ▶ Right to Farm Marijuana? NO! Not for drug dealer. *State v. Shanklin*, 534 S.W.3d 240 (Supreme Ct. Mo. 2017). (p. 20)
- ▶ Not unlawful for local government to regulate church that uses cannabis as sacrament *Harris v. City of Clearlake*, 2018 WL 659015 (U.S.D.C. N.D. Cal. 2018). (p. 21)
- ▶ Medical marijuana dispensaries nuisance per se where prohibited under local zoning *Urgent Care Medical Services v. City of Pasadena*, 2018 WL 1518378 (Ct. App. Calif. 2018). (p. 20)

Wind

- ▶ Wind turbines not “electrical...transmission and regulating facility[y]”, improper to take evidence beyond what is in ordinance *Woods v. Fayette County Zoning Board of Adjustment*, 2018 WL 1099008 (Ct. App. Iowa 2018). (p. 22)
- ▶ Request for special exception and variance denied at local level, appellate court, reversing trial court, finds that uniqueness test improperly applied *Dan’s Mountain Wind Force v. Allegany County Board of Zoning Appeals, LLC* 2018 WL 1611695 (Ct. Special App. Md. 2018). (p. 23).

Energy

Local ordinance prohibits new fossil fuel terminals and caps number of existing terminals within city, ordinance complies with statewide transportation planning goals, but lacks sufficient factual basis-remanded *Columbia Pacific Building Trades v. City of Portland*, 289 Or.App. 739, 412 P.3d 258 (2018).(p. 28)

Regulatory Takings

- ▶ Claim that Corps of Engineers actions caused more flooding on property, 1/3 of plaintiffs proved causation, severity and foreseeability, 1/3 proved causation and foreseeability, 1/3 failed to show causation, damages remain unclear *Ideker Farms, Inc. v. United States*, 2018 WL 1282417 (U.S. Ct. Fed. Cl. 2018). (p. 29).
- ▶ Government effected a taking of grazing permittees' beneficial use of stock water resources by limiting the number of cattle on federal land and cancelling grazing permit *Sacramento Grazing Ass'n, Inc. v. the United States*, 135 Fed. Cl. 168 (2017). (p. 30)

Conservation Easements

“The deed of easement prohibits any activity on the property that is “detrimental to ... soil conservation,” but permits the construction of “any new buildings for agricultural purposes.” The tension between those impermissible and permissible activities is at the heart of the controversy in this case.” 20 acres previously used for crop production leveled to erect hoop houses for flowers; grading and leveling violated state statute and easement, land owners' civil rights not violated *State of New Jersey v. Quaker Valley Farms, LLC*, 2018 WL 3848763 (Supreme Ct. N.J. 2018). (p. 37).