

erned by Rule 1. This would mean that judges will have to do some of the work normally delegated to court clerks. Some superior courts may delegate authority to their clerks to enter defaults and default judgments or set the trial date after making an initial finding of necessity on the record at the summons stage of the proceedings. Others may strictly construe Rule 1. Still others may delegate even more authority to their clerks. As Chief Justice Cantil-Sakauye pointed out when adopting Emergency Rule 1, the Judicial Council had to proceed “with no guidance in history, law, or precedent,” and “to say that there is no playbook is a gross understatement of the situation.” Stay tuned for future updates and always check with your local superior court for its own local rules and guidance.

Finally, by its broad language, note that Emergency Rule 1 likely preempts newly amended Pen C §396(f), which regulates evictions following (1) the proclamation of a state of emergency by the President of the United States or the Governor or (2) the declaration of a local emergency by an official, board, or other governing body vested with such authority in any city or county.

CROSS-REFERENCES: On prosecuting and defending eviction actions, see California Landlord-Tenant Practice, chaps 8–13 (2d ed Cal CEB). On defending eviction actions, including details of and attorney-drafted forms for pretrial motions mentioned in this article, see California Eviction Defense Manual, chaps 11, 12, 13, 25, 26 (2d ed Cal CEB).

Land Use Litigation Deadlines Extended by Judicial Council’s COVID-19 Emergency Rules

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Introduction

The California Judicial Council adopted 11 emergency rules (“Emergency Rules”) on April 6, 2020, to address the COVID-19 pandemic’s impact on California residents and the judicial branch. The Judicial Council acknowledges that operations of the California superior courts have been disrupted and delayed, and the Emergency Rules are necessary to protect the rights of litigants and to address the long-term backlog of civil actions that is likely to occur.

The focus of this article is on the Emergency Rules that developers and public agencies should be aware of because they result in a significant extension of the deadlines for filing CEQA and other claims challenging land use projects and approvals. Overall, the Emergency Rules address civil and criminal proceedings, unlawful detainers and foreclosures, juvenile proceedings, and temporary restraining orders. The Emergency Rules temporarily toll deadlines for civil matters, encourage adoption of technology to conduct

remote proceedings, prevent eviction proceedings, and extend timeframes for certain temporary restraining orders.

Land Use Matters Impacted by New Rules for Civil Proceedings

Statute of Limitations

Emergency Rule 9 tolls the statute of limitations for all civil causes of action from April 6, 2020, to 90 days after California’s state of emergency related to the COVID-19 pandemic is lifted. By adoption of this Emergency Rule, the running of time in statutes of limitations is tolled or suspended. The time to bring the action will begin to run again when this tolling period ends (*i.e.*, 90 days from the end of the state of emergency). Emergency Rule 10 extends by 6 months the 5-year deadline for bringing a civil action to trial, and the 3-year deadline for bringing a new trial. Emergency Rule 11 allows depositions through remote means.

Critically, Emergency Rule 9 results in a substantial extension of the typically short statutes of limitation that apply to CEQA lawsuits and other actions challenging the approval of new land use projects. CEQA actions generally need to be brought within 30 days after the filing of a notice of adoption of an environmental impact report (EIR) or a mitigated negative declaration (MND). This short deadline is intended to provide developers and agencies with certainty that they can move forward with implementing a project without fear of future lawsuits. The Emergency Rules eliminate that certainty, in an effort to address the inconsistent manner in which courts around the state were allowing new lawsuits to be filed, as well as the resulting confusion for lawyers and litigants.

Temporary Restraining Orders

Land use challenges may also be impacted by provisions in other Emergency Rules. For example, Emergency Rule 8 extends the effect of any temporary restraining order set to expire during the state of emergency. That rule also requires courts to provide a means for filing new *ex parte* requests for temporary restraining orders, which are often used by project opponents to prevent a project from moving forward while a litigation challenge is pending.

Remote Proceedings

Emergency Rule 3 allows judicial proceedings and court operations to be conducted remotely until 90 days after the state of emergency is lifted. By allowing court proceedings to be conducted through video, audio, and telephonic means, this provision should allow for resumption of many legal cases that were thrown into limbo by the near-complete shut-down of many courts around the state.

Next Steps

In adopting the Emergency Rules, the Judicial Council implores courts to “responsibly, carefully, stringently and strategically determine which urgent court services take priority.” Several of the rules require implementation by the California courts. The results of this implementation, there-

fore, might differ in different parts of the state. Anyone litigating in California—as well as developers and agencies moving forward with land use projects—should carefully consider the Emergency Rules and evaluate their potential effects on existing or potential litigation.

CROSS-REFERENCES: For detailed discussion of land use law, see California Land Use Practice (Cal CEB) and The California Municipal Law Handbook, chap 10 (Cal CEB). On CEQA, see Practice Under the California Environmental Quality Act (2d ed Cal CEB), Land Use Practice, chap 13, and Muni Law, chap 11.

DEVELOPMENTS

Condemnation

Inverse Condemnation

County had not expressly or implicitly accepted drainage easement that would have required it to maintain property owner's pipe, nor was county unreasonable in its actions involving pipe, so owner's inverse condemnation action against county failed.

Ruiz v County of San Diego (2020) 47 CA5th 504

To allow development of a valley, a natural watercourse was improved with above-ground concrete-lined channels. In 1959, on the property at issue, the developer moved water underground when he buried a corrugated metal pipe on top of the existing concrete-lined channel. At that time, County had expressly rejected an offered dedication of the pipe.

Property Owners suffered flooding damage to their home on that lot in 2014 and 2016 when their privately owned, underground, corrugated metal drain pipe failed due to rust that had accumulated over the course of 50 years. At no point did County design, construct, inspect, install, repair, or maintain that pipe. Property Owners sued County for inverse condemnation, trespass, and nuisance.

The trial court found that County had implicitly accepted a drainage easement and thus was required to maintain the privately owned pipe. The court dismissed the trespass and nuisance causes of action and, under the inverse condemnation cause of action, awarded Property Owners \$328,033, which was essentially the amount required to replace the rusted metal pipe with reinforced concrete pipe, which was the standard used in the neighborhood. County appealed.

The court of appeal reversed the judgment. The privately owned storm drain pipe located on private property, even though part of a public drainage system, could not be considered a public improvement simply because public water ran through it. The use of the pipe for public drainage did not convert the privately owned pipe into a public improvement or constitute implied acceptance of a drainage easement, particularly given that County had expressly rejected an offer of dedication. Further, both parties stipulated that

County had not formally accepted an offered dedication of an easement to the privately owned pipe.

Some evidence of either “control” or “maintenance” is legally required to transform a privately owned pipe into a public work. 47 CA5th at 515. Neither County control nor maintenance was present here, given that County had not planned, inspected, constructed, repaired, or maintained the privately owned metal pipe. Under eminent domain law (Cal Const art I, §19(a)), a governmental entity may be held liable for “[p]rivate property ... taken or damaged for a public use.” Nevertheless, Cal Const art I, §19(e)(5) does not cover a “public use,” but instead defines a “[p]ublic work or improvement,” which definitively did not exist here. Thus, Cal Const art I, §19 “does not compel a finding that a privately owned storm drain pipe connected to a public storm drain system is a public use for purposes of imposing inverse condemnation liability.” 47 CA5th at 525.

Property Owners argued that County acted unreasonably by using their pipe for over 50 years without maintaining it. But the court of appeal held that the proper inquiry was whether County’s ownership, operation, or control of its own property created an unreasonable risk of harm to Property Owners’ private property. Fatally, Property owners’ expert testified that water from neighboring private properties would have caused the pipe to fail. County was not responsible for a majority of the drainage. Even were County responsible, it would only be liable for the proportionate amount of damage caused by its actions; no evidence was offered to show that County was even partially responsible. The court equitably balanced governmental entities’ need to develop public works against an individual property owner’s likely bearing “the burden of a storm drain system [that] serves the general public” and found no liability for County in this context. 47 CA5th at 529.

CROSS-REFERENCES: For discussion of inverse condemnation in the context of water disputes, see Condemnation Practice in California §§13.3B, 13.6, 13.7A, 14.2, 14.5–14.6 (3d ed Cal CEB); Neighbor Disputes: Law and Litigation §3.44 (Cal CEB); and California Construction Contracts, Defects, and Litigation §10.8 (Cal CEB). On the reasonable use doctrine in the context of water disputes, see Condemnation Prac §14.6B; Neighbor Law §3.18; and California Real Property Remedies and Damages §12.78 (2d ed Cal CEB). For discussion of governmental entities’ liability after acceptance of an offer of dedication, see Condemnation Prac §§13.3B, 13.7B.