

## Preface

**F**or twenty-seven years, Dan Curtin authored this book as a handy desk reference for those interested in California land use and planning law. Beginning in 2000, Dan and I worked together drawing on our own and our partners' decades of experience representing both public agencies and private developers. Dan passed away in November 2006. Like the 2007, 2008, and 2009 editions, this book is again dedicated to Dan.

This edition contains new, expanded discussions of several topics, including:

- An entirely new chapter providing an overview of key developments in California's climate change and sustainable development laws, including Assembly Bill 32, Senate Bill 375, new CEQA Guidelines and significance threshold guidance, green building standards, and renewable energy statutes (chapter 22)
- A comprehensive update of the recent regulatory and case law developments in the law governing wetlands, including the continued fallout from the Supreme Court's 2006 decision in *United States v. Rapanos* (chapter 7)
- A comprehensive update of the recent regulatory and case law developments governing endangered species protections, including the growing role played by climate change under the Endangered Species Act, and the new requirements for standing that environmental organizations must satisfy before bringing a lawsuit in federal court (chapter 8)
- A new and updated discussion of storm water quality requirements and permitting (chapter 9)
- A new discussion of nonconforming uses (chapter 4)
- A reorganized discussion of takings jurisprudence (chapter 12)
- A reorganized discussion of statutes and laws relating to exactions (chapter 13)
- Analysis of affordable housing case law and legislation, including a review of recent legislation governing the regional housing needs allocation process and a discussion of recent case law with implications for local inclusionary housing programs (chapter 20)
- A comprehensive review of existing and new laws relating to land use and governance in the Sacramento-San Joaquin Delta region (chapter 22)
- All significant 2009 California legislation

As in previous years, the 2010 edition has benefited from the contributions made by many of my partners and associates in Bingham McCutchen's Land Use and Development Group.

Matthew Gray, a partner with our Land Use and Development Group in San Francisco, has taken on the responsibilities of Managing Editor this year, and also authored chapter 5 (Subdivision Map Act). Mr. Gray has extensive experience in land use entitlement processing and litigation. He represents a range of local agencies, real estate developers, and landowners in every stage of development agreements, general plan amendments, specific plans, zoning, subdivision approvals, and annexation of property into cities and special districts. Matt regularly appears before planning commissions and city councils, advises clients on compliance with CEQA and other federal and state regulatory programs during the development process, and litigates land use matters in state and federal courts. Prior to joining the firm, Matt clerked for the Honorable Jerome Farris, United States Court of Appeals for the Ninth Circuit.

Barbara Schussman, a partner with our Land Use and Development Group in San Francisco, authored chapter 6 (CEQA). Ms. Schussman has extensive experience litigating land use and environmental cases on behalf of public agencies and private entities, as well as providing comprehensive CEQA compliance advice. Her recent practice includes advising the Ports of Oakland and Stockton for their maritime projects, and defending the Ports in CEQA litigation regarding expansion of their projects; advising Stanford University in securing land use entitlements for the coming decade of campus growth while implementing a sustainability plan, and representing Stanford University and Stanford University Medical Center in securing land use approvals for major campus and hospital expansion projects in Santa Clara County and Redwood City; and representing Contra Costa Water District in expansion of Los Vaqueros Reservoir. Ms. Schussman received her law degree in 1989 from Boalt Hall School of Law at the University of California, Berkeley, where she was elected to the Order of the Coif. She received her bachelor's degree in Communication Studies, magna cum laude, from the University of California, Los Angeles, where she was elected to Phi Beta Kappa.

This year's edition has again benefited from updated discussions on Federal and State Wetlands Regulation and the Endangered Species Protections (chapters 7 and 8) authored by Marc Bruner. Marc represents governmental entities and private companies in a wide variety of environmental and land use matters, focusing on litigation and counseling under the California Environmental Quality Act, the National Environmental Policy Act, the federal Clean Water Act, the Federal Endangered Species Act, and California laws and regulations regarding water quality and endangered species. Marc litigates in the state and federal courts, at both the trial and appellate level. He also advises clients in preparing environmental studies and processing environmental and land use permits and approvals for a broad range of public and private projects, including residential subdivisions, large commercial and mixed-use developments, airport and maritime expansion projects, industrial facilities, and major university campus projects. He speaks regularly on a variety of environmental and land use topics. Prior to joining the firm, Marc practiced environmental and land use law at Wilmer, Cutler and Pickering (now Wilmer Cutler Pickering

Hale and Dorr) and Cutler and Stanfield (now Akin Gump) in Washington, D.C. He clerked for the Honorable Jose A. Cabranes, chief judge of the U.S. District Court for the District of Connecticut, from 1993 to 1994.

Additionally, this edition continues to benefit greatly from the discussion of Land Use Litigation (chapter 21), co-authored by two of Bingham McCutchen's top land use litigators, Geoffrey Robinson and Marie Cooper. Mr. Robinson and Ms. Cooper have brought their collective 40-plus years of land use litigation experience to bear in this practical and informative approach to land use litigation. Mr. Robinson is partner in Bingham McCutchen's San Francisco office. He graduated with distinction from the University of California, Berkeley in 1978 and attended law school at the University of Virginia and Hastings College of the Law, from which he received his law degree with honors in 1983. After serving as an extern and a law clerk in two federal courts, Mr. Robinson has represented clients in civil litigation and administrative proceedings involving real estate, planning and zoning laws, CEQA, development fees and exactions, and Mello-Roos community facilities financing. Ms. Cooper, counsel in Bingham McCutchen's San Francisco office, graduated Order of the Coif from Boalt Hall School of Law in 1984. After serving as an extern for the California Supreme Court, Ms. Cooper has focused her practice on land use litigation and transactional work, at both the trial and appellate court levels. She frequently addresses issues arising under the planning and zoning laws, CEQA, and water rights law. She has substantial experience challenging and defending land use entitlements, general plan and zoning enactments, fees and dedications, proceedings under the Cortese-Knox-Hertzberg Act, initiatives and referenda, and in inverse condemnation actions. Ms. Cooper also assisted in updating chapter 9 (Design Review and Other Development Regulations) and chapter 16 (LAFCOs).

I also wish to thank the following individuals in the San Francisco office of Bingham McCutchen for their contributions to this 2010 edition: Sean Marciniak, associate attorney, for his extensive efforts as Associate Editor, responsible for reviewing, writing, and editing much of the text of this edition; my new partner, Ella Foley Gannon, for her assistance in updating our discussions on storm water regulations in chapter 9 (Design Review and Other Development Regulations); Nadia Costa, counsel, for her assistance in updating chapters 16 (LAFCOs) and 20 (Affordable Housing); Verne Ball, Jessica Tucker-Mohl, and Sarah Barker-Ball, associates, for their support and assistance whenever needed; Doug Larson, our paralegal, for compiling new land use legislation and cite checking; Peggy Pavao, administrative assistant, for preparing all of the revised text; and Jessica Burns and Kelsey Barclay, our interns, for preliminary research and editing.

This book is not a substitute for the guidance and advice of an attorney, especially in complex matters in which refinements and interpretations of the law are essential before final conclusions are drawn about planning and development processes, property rights, due process, and procedural matters.

In addition, although legal reference points are essential, in matters pertaining to local public planning and the development process, there is no substitute for an understanding of how the planning process works at the city and county levels. Much of the process is delineated by California law and indeed

most of the process is mandated. The law does not say a great deal, however, about what local planning policies should be or how a city or county should organize its land uses. That is a local task. But the law does require cities and counties to prepare, adopt, and update general plans before making land use and land use-related decisions, and it requires that certain procedures be followed to carry out public policies, protect private rights, and ensure due process prior to making decisions. I hope you find this book a helpful guide to better understanding how those mandates and procedures may be applied at the local level.

Cecily Talbert Barclay  
January 2010

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### **Conventions in This Book**

For brevity and readability, this text uses the following conventions:

- When the word “city” is used, it also means “county”; “city council” also means “county board of supervisors.” The text will note instances where there is a substantive distinction between how land use and planning law affects cities and counties.
- All references to the Legislature are to the California State Legislature, unless otherwise indicated.

Code references are to the California Code, unless otherwise indicated.

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