

Contents

Preface xix
 Conventions in This Book . . . xxii

1 Local Land Use Authority / 1

Police Power 1
Legislative Preemption 5
State Statutory Framework for Land Use Decisions 6
City Council 6
Planning Commission 7
Planning Staff 8
Public Meetings 8

2 General Plan / 9

The General Plan Before 1971—Advisory Status 9
The General Plan Today—Constitution for Development 9
 Introduction
 General Plan—The Constitution
 General Plan—Purposes and Contents; General Plan Guidelines
 Legal Adequacy of the General Plan
 Description of the mandatory elements •
 Optional (permissive) elements • Organization
 Legal Implications of Failure to Have a Legally Adequate General Plan
 California Environmental Quality Act • Charter cities
 Internal (Horizontal) Consistency
 Consistency Between General Plan and Other Land Use and Development Actions (Vertical Consistency)
 Consistency with Airport Land Use Plan
 Procedure for Adoption and Amendment
 Implementation and Annual Report
 Checklist for General Plan Adequacy
 Is it complete? • Is it informational, readable, and available to the public? • Is it internally consistent? • Is it consistent with state policy? • Does it cover all territory within and outside its boundaries that relate to its planning? • Is it long-term in perspective? • Does it address all locally relevant issues? • Is it current? • Does it contain the statutory criteria required by state law as interpreted by the courts? • Are the diagrams or maps adequate? • Does it serve as a yardstick? • Does it contain an action plan or implementation plan? • Is it horizontally consistent? • Was it adopted correctly?

Adoption of General Plans by New Cities, Revisions of Existing General Plans, and Related Approvals
 The General Plan as a Source of Dedications and Development Fees
 The General Plan as a Tool in Growth Management and Other Innovative Land Use Controls
 Judicial Review of the Adequacy of the General Plan
Conclusion 38

3 Specific Plan / 39

Introduction 39
Contents of a Specific Plan 39
Adoption 40
Interplay with CEQA 40
Judicial Review 41

4 Zoning / 43

Zoning Defined 43
Application to Charter Cities 43
Judicial Review 43
 Presumption of Validity
 Limited Role of Court Review—Policy Issue
Enactment of Zoning Regulations 45
 In General
 The Ordinance Must Be Reasonably Related to the Public Welfare
 Zoning Must Be Consistent with the General Plan
 Zoning Must Be Consistent with Airport Land Use Plan
 Due Process Requirements
 Sufficiency of Standards—Vagueness and Uncertainty
 Adoption of a Zoning Ordinance
 Motives
 Zoning by Initiative and/or Referendum
 No Formal Rules of Evidence; Effect of Procedural Errors
Zoning and the First Amendment 54
 Regulation of Adult Businesses
 Protection of Religious Exercise

Contents

Administrative Zoning Relief— Variances—Conditional Use Permits	60
In General	
Variances	
Conditional Use Permit	
Nonconforming Uses	
Voluntary and Required Repairs of Nonconforming Uses	
Structural Alterations of Nonconforming Uses	
Destruction of a Nonconforming Use by Fire or Other Catastrophic Events	
Amortization	66
Other Types of Zoning	67
Form-Based Zoning	
Prezoning	
Interim Ordinance	
Conditional Zoning	
Specific Plan as Zoning	
Planned-Unit Development	
Inclusionary Zoning/Housing Programs	71
Relationship of General Plan and Zoning to Redevelopment Law	72
Conformity of the Redevelopment Plan to the General Plan	
Status of Zoning Classifications After Redevelopment Plan Adoption	
Applicability of Zoning to the Federal and State Governments	73
Federal Government	
State Government	
Applicability of Zoning to Joint Powers Agencies, School Districts, and County and Other Local Districts	75
Applicability of Zoning to Indian Lands	77
5 Subdivisions / 81	
Introduction	81
Subdivision Map Act	
Need for a local ordinance; applicable to charter cities • Preemption	
Subdivisions Covered by the Map Act	83
What Is a Subdivision?	
What Type of Map Is Required?	87
General Rule: Tentative and Final Map or Parcel Map?	
Counting Parcels	
Successive subdivisions • Remainder parcels • Conveyances to public entities and public utilities	
Important Exemptions to Mapping Requirements	89
Lot Line Adjustments	
“Second” Units	
Conveyances to or from Public Entities and Public Utilities	
Financing and Leasing of Certain Units	
Condominium, Stock Cooperatives, and Community Apartment Projects	
Conversions • Three-dimensional divisions	
Agricultural Leases and Agricultural Labor Housing	
Other Exemptions	
Map Waivers	
Condominium projects • Mobile home park conversions • Other parcel map waivers	
Tentative Map Processing	95
Tentative Maps	
Necessity for tentative maps • Local ordinances • Other regulations • Applicable time periods to act upon the tentative map	
Time Limits Imposed by the Permit Streamlining Act	
Notice and hearing; processing • Life of tentative maps • Development agreements • Discretionary extensions • Statutory extensions • Moratoria • Litigation stays • Summary • Conditions imposed on extensions • Expiration of other permits issued in conjunction with a tentative map	
Effect of Approval of Map on the Right to Develop—Vested Rights	
Vesting Tentative Map	
Background • Procedures	
Effect of Annexation to City Upon Maps	
Effect of Incorporation into a Newly Incorporated City	
Conditions to Map Approval	111
In General	
Conditions Imposed Through the Subdivision Process	
Specific Conditions Allowed by the Map Act and Local Ordinance	
Parkland dedication • Adequate water supply • School site dedication • Reservations • Street and bicycle path dedications • Dedication for local transit facilities • Fees for drainage and sewer facilities • Fees for bridges and major thoroughfares • Groundwater recharge • Supplemental improvements—reimbursement agreements • Soils investigations and reports • Setting of monuments • Grading and erosion control requirements • Public access to public resources and dedication of public easements along banks of rivers and streams • Energy conservation • Dedication for solar access easements • Indemnification • Off-site improvements • Standards and criteria for public improvements: residential subdivisions	

Contents

Conditions Imposed Under City’s Authority to Regulate “Design” and “Improvement” and Ensure General and Specific Plan Consistency	
Map Act Requirements vs. General Plan Standards	
Conditions That May Be Imposed Through the CEQA Process	
Condominium, Stock Cooperative, and Community Apartment Project Conversions	
Timing of Conditions and Subsequent Conditions	
Refunds	
Reconveyances	
Grounds for Map Approval or Denial	124
Grounds for Approval	
Grounds for Denial	
Findings for Approval or Denial	
Appeals and Judicial Review	127
Appeals	
Judicial Review	
Exhaustion of administrative remedies • Statute of limitations	
Final Maps and Parcel Maps	130
Final Maps	
Form and filing of final maps • Procedures for approval	
Final Map Is Deemed Valid When Recorded	
Filing of certificates and security for tax liens • Subdivider to provide evidence of consent of record title holders • Recorder has ten days to accept or reject map for filing • Condominium, stock cooperatives, and community apartment project conversions • Dedications of streets, utilities, and other property • Improvement agreements	
Improvement Security	
Types of security • How much security is required? • Rights and requirements • Releasing security • Remedies	
Parcel Maps	
Local ordinance requirements • Parcel map requirements • Special case: four or fewer parcels and no dedications or improvements	
Correction and Amendment of Maps	140
Grounds	
Errors and omissions • Changed circumstances	
Amendment Procedure	
Changes Affecting Property Rights	
Enforcement	141
Prohibition	
Remedies of Private Persons	
Remedies of a City	
Certificates of Compliance	

Exclusions and Reversions	144
Antiquated Subdivisions	145
Antiquated Subdivisions—Legally Created Parcels?	
Maps Before 1929	
Maps After 1893 Generally	
U.S. Survey Maps and Federal Patents	
Merger and Unmerger	
Merging parcels under one ownership • Unmerger or deemed not have merged	
Presumption of Legal Parcels	

6 California Environmental Quality Act (CEQA) / 151	
Introduction	151
Definition of a Project Under CEQA	152
Approval	
Environmental Change	
Process	155
Determining If the Activity Is Exempt from CEQA	
Preparation of an Initial Study	
Adoption of a Negative Declaration	
Preparation of an Environmental Impact Report	
EIR Procedure	
Scoping • Draft EIR • Final EIR	
Contents of an Environmental Impact Report	
Project description • Evaluation of environmental impacts • Water supply • Cumulative impacts • Mitigation • Project alternatives • Range of alternatives • Extent of discussion • Growth inducement	
Responses to Comments	
Recirculation of an EIR	
Project Approval and Findings	
Mitigation Monitoring and Reporting Programs	
Supplemental and Subsequent EIRs	
Use of an Addendum	
EIR Deadlines and Required Notices	
Judicial Challenges to Agency Action	179
Time Limits for Judicial Challenges	
Judicial Review	
7 Federal and State Wetland Regulation / 181	
Introduction	181
A Brief History of the Federal Program	182
How “Wetlands” and Other “Waters of the United States” Are Defined Under the CWA	184
Legal Definition of Wetlands and Other “Waters of the United States”	184

Contents

The Scientific/Technical	
Definition of Wetlands	192
Wetland Vegetation	
Wetland Soils	
Wetland Hydrology	
Procedural Issues in Delineating Wetlands	
Activities Regulated by the Corps	195
Statutory Exemptions	196
Corps' Permitting Process	197
Nationwide Permits	
The Corps' Individual Permitting Process	202
Regulatory Guidance Letters	204
Scope of Environmental	
Analysis Under NEPA	205
Alternatives Analysis Under	
EPA's 404(b)(1) Guidelines	206
Project Purpose and Wetlands	
Avoidance (Sequencing)	207
Practicability	
Availability	
Mitigation	
EPA's Role in the Permit	
Evaluation Process	212
Other Federal Statutes	213
Section 401 of the Clean Water Act • National	
Environmental Policy Act • Endangered Species	
Act • Fish and Wildlife Coordination Act •	
Section 302 of the Marine Protection, Research	
and Sanctuaries Act of 1972 • National Historic	
Preservation Act of 1966 • Land Sales Full	
Disclosure Act • Coastal Zone Management	
Act of 1972 • Food Security Act of 1985	
State Statutory Authority	215
Porter-Cologne Water Quality Control Act •	
Streambed Alteration Agreement • Navigation	
Dredging Permit • Coastal Zone Management	
Enforcement	218
Citizen Suits	
Standing to Sue	
Investigations and Compliance Orders	
Criminal, Civil, and Administrative Penalties	
Class I administrative penalties •	
Class II administrative penalties	
Practical Considerations	222
8 Endangered Species Protections / 223	
Introduction	223
Listing Process	224
Listing of a Species as	
Threatened or Endangered	
Listing of a "Distinct Population Segment"	
Listing Procedures and Requirements	
Five-Year Review and Delisting	
Emergency Listings	
Designation of "Critical Habitat"	
Consultation Process	233
Component of the Consultation Process	
Agency action • "May affect" trigger •	
Informal vs. formal consultation • Duty to	
use best available science • Climate change	
impacts • Biological opinion • Incidental take	
statement • Reinitiation of consultation	
Exemptions from the Endangered	
Species Act Requirements	241
Prohibitions Against Takings	242
Fish and Wildlife	
Plants	
Definition of Take	
No Exceptions for Religious Practices	
or the Protection of Private Property	
Habitat Conservation Plans	
and Incidental Take Permits	246
Safe Harbor and Candidate	
Conservation Agreements	247
Judicial Review and Enforcement	248
Citizen Suits	
Suits under the Administrative	
Procedure Act	
Judicial Remedies and Penalties	
California Endangered Species Act	250
The CESA Listing Process	
"Take" Under CESA	
Incidental Take Permits Under CESA	
9 Design Review, Historic Preservation,	
Williamson Act, TDR, Water Supply,	
Coastal Development, and Other	
Development Regulations / 255	
Introduction	255
Design Review	255
Historic Preservation	259
Federal Level	
State Level	
Local Level	
Preservation of Agricultural Lands	
by Williamson Act Contract	261
Coastal Development	265
California Coastal Act of 1976	
California Coastal Commission	
Composition • Constitutionality	
Coastal Zone	
Development and Permitting	

Contents

Local Coastal Programs	
Appeals	
Judicial Review of Commission Decisions	
Other Coastal Commission Responsibilities	
San Francisco Bay Conservation and Development Commission	
Composition • Jurisdiction • Permitting Authority	
Water Supply Planning	272
Senate Bill 610—Water Supply Assessment	
Senate Bill 221—Water Supply Verification	
Storm Water Quality Requirements for California Cities	283
Regulatory Background	
The Federal Clean Water Act • California’s Porter-Cologne Water Quality Act • General construction permit • Risk-based approach and effluent limits • Minimum BMPs • Post-construction requirements • Reporting requirements	
Phase I Municipal Separate Storm Sewer System Permits	
Phase II Municipal Separate Storm Sewer System Permits	
Congestion Management and Land Use	290
Introduction	
Adoption of a CMP	
Failure to Comply with the CMP	
Relationship Between CMPs and Regional Transportation Plans	
Prevailing Wage Concerns on Private Development Projects	292
Public Bidding Concerns on Private Development Projects	294
10 Vested Rights—Development Agreements and Vesting Tentative Maps / 297	
Vested Rights	297
The <i>Avco</i> Rule	
Refinements of the <i>Avco</i> Rule	
Development Agreements	301
Vesting Tentative Maps	307
Vesting Tentative Maps vs. Development Agreements	308
11 Necessity for Findings / 311	
Background	311
<i>Topanga</i>: The Cornerstone for Adjudicatory Findings Under Code of Civil Procedure Section 1094.5	311
Purpose of Findings	312
When Are Findings Required?	312
Legislative Acts	
Nonlegislative Acts	
Dedications or Ad Hoc Impact Fees	
Findings Must Be Clear and Discernable, Though Need Not Be Formally Presented	313
Evidence in the Record to Support Findings	314
12 Takings / 317	
Takings	317
Introduction	
The Four Types of Takings: <i>Loretto</i> , <i>Lucas</i> , <i>Penn Central</i> , and <i>Nollan-Dolan</i>	
<i>Loretto</i> • <i>Lucas</i> • <i>Penn Central</i> • <i>Nollan/Dolan</i>	
Denial of Economically Viable Use	
Application of the <i>Penn Central</i> Test	
Temporary Takings—Interim Ordinances, Moratoria, and Other Growth Management Measures	
Federal decisions • California decisions	
“Partial” Takings; Segmentation—the Relevant Parcel Issue	
Ripeness and Other Grounds for Denial of a Takings Claim	335
Ripeness—When Is a “Takings” Claim Ripe for Judicial Determination	
Final determination of the agency • Seeking compensation through state procedures	
Exhaustion of Administrative Remedies	
Illegal Condition Must First Be Challenged in Court as Invalid Before Damages Are Sought for Inverse Condemnation	
Other Grounds for Denial of Takings Claim: Requirement of Unique Injury	
Reasonableness Standard in Flood Control Context	
Remedies for Excessive Land Use Regulations—Damages	
Measurement of Damages	
Permanent takings • Temporary takings	
The Importance of Properly Calculating Damages	
Duration of temporary taking • Measuring compensation	
Summary	
Civil Rights Action	355
Actions Under Section 1983—Due Process and Equal Protection	357

Contents

Legislative Acts Given More Deference Than Adjudicatory Acts	359
Interplay Between Takings Claims and Substantive Due Process Claims	361
Substantive Due Process and Rent Control	362
13 Exactions: Dedications and Development Fees / 365	
Introduction	365
Proper Exercise of Police Power	366
Development: Privilege or Right?	366
Test of Reasonableness/ Nexus Requirement	368
In General	
U.S. Supreme Court Case Law—The <i>Nollan</i> and <i>Dolan</i> Decisions	
<i>Nollan v. California Coastal Commission</i> • <i>Dolan v. City of Tigard</i> • What does <i>Dolan</i> mean in California?	
Applicability of the <i>Nollan/Dolan</i> Test to Impact Fees: <i>Ehrlich v. Culver City</i>	
Factual situation • Judicial proceedings • The <i>Ehrlich</i> decision: new distinction—legislatively formulated vs. ad hoc development fees • The \$280,000 recreational mitigation fee • Art in public places fee • Mitigation Fee Act	
Summary of Impacts of <i>Ehrlich</i>	
<i>San Remo Hotel</i> Reaffirms <i>Ehrlich</i>	382
Recent Applications of <i>San Remo</i> to Affordable Housing In Lieu Fee	384
California’s “Nexus Legislation”—The Mitigation Fee Act	385
Documenting the Nexus	
Double Taxation	388
Equal Protection	388
Opportunities for Dedications or Fees	389
In General	
The General Plan	
Subdivision Process	
Building Permits	
Processing Fees—Land Use and Building Permit Fees	
School District Facilities Fee	392
Background	
Leroy F. Greene School Facilities Act of 1998 (SB 50) • Nonprofit private university is not exempt from school fees • Redevelopment construction is not exempt from school fees • Level of scrutiny for school fees	
Habitat Conservation Plans and Natural Communities Conservation Plans	
CEQA	
Special Requirements Relating to Imposition of Fees	398
Waiting Period Before Fees Become Effective; Public Hearing Required	
When Fees Are Required to Be Paid	
Reasonableness of Development Fee Amount	
Fees Cannot Be Levied for Maintenance and Operation	
Dedication of Land—Reconveyance to Subdivider	400
Judicial Review	400
Development Fee or a Tax?	401
Historical Background	
Effect of Jarvis Initiatives—Prop. 13 (1978), Prop. 62 (1986), and Prop. 218 (1996)	
Proposition 218 • Impacts on local general taxes • Impacts on local special taxes • Impacts on special assessments • Impacts on fees and charges • Possible impacts on new development fees • Impacts on standby charges • Use of initiatives	
Conditions Attached to Land Use Approvals for Financing and Maintaining Public Facilities	
GHADs in particular • Burden of proof and interpretation	
Conclusion	412
14 Initiative and Referendum / 413	
Introduction	413
The Initiative	414
The Referendum	415
Procedural Requirements for Placing an Initiative or Referendum Measure on the Ballot	
Form of Petition	
Notice of Intention to Circulate; Ballot Title and Summary	
Publication and Posting	
Circulation; Signature	
Filing; Examination of Signatures	
Pre-Election Invalidation of Initiatives and Referenda for Failure to Comply with Procedural Requirements	
Actions by Local Legislative Bodies on Initiatives and Referenda	422
Initiatives	
Referenda	
Limitations on the Use of Initiative and Referendum	424
Constitutional Limitations	
Single subject rule • Cannot conflict with state law	

Contents

Judicial Limitations
 Cannot invade a duty imposed on an “agent of the state” • Cannot be an improper exercise of the police power • Cannot be inconsistent with the General Plan • Cannot affect non-legislative matters • Cannot impair an essential governmental function

Initiatives and Referenda Are Not Subject to the Same Procedural Requirements as City Council Measures 433

Pre-election Challenges to Initiatives and Referenda 437

Initiatives Limiting Housing: Burden of Proof 440

Conflicting Initiatives on the Same Ballot 440

Restrictions on a City’s Role in Campaigns 442

Conclusion 444

15 What Is Growth Management? / 449

Types of Growth Management Measures 450

California Growth Management Measures—Ballot Box Planning 452

Problems with Certain Slow-Growth Measures 454

Legality of Growth Management 454

Proper Exercise of the City’s Police Power

Planned Growth Ordinances

Introduction to “Smart Growth” 456

Barriers to Smart Growth 457

APA’s Growing Smart Legislative Guidebook

ABAG’s Smart Growth/Regional Livability Footprint Project

Smart Growth Is Not Going Away

Surviving Growth Management Regulations, Including Initiatives: Tools Developers Can Use 462

16 Local Agency Formation Commissions: Local Agency Boundary Changes / 465

Introduction 465

History of LAFCO Law 465

Composition and Function of LAFCOs 467

Spheres of Influence 468

Municipal Service Review Requirement

LAFCO’s Jurisdiction Over Changes of Organization and Reorganizations 470

Authority to Make Determinations Regarding Changes of Organization or Reorganizations

Limitations on LAFCO’s Jurisdiction Over Changes of Organization and Reorganizations

Procedures for Changes of Organization or Reorganizations

Factors LAFCOs Must Consider When Reviewing Boundary Change Proposal 479

General Factors

Additional Factors that LAFCO Must Consider in Certain Proceedings

Additional Factors That LAFCO May Consider

LAFCO Consideration of Boundary Change Proposals

Reconsideration Hearing

Protest Proceedings

Final Actions, Filings, and Notifications

Processing Multi-County Changes of Organization or Reorganization

Environmental Review

17 Rights of the Regulated and of the Citizens / 489

In General 489

Notice and Hearing 489

The One Who Decides Must Review Evidence 491

Maintaining Separation Between Prosecutorial and Adjudicatory Function 493

Ralph M. Brown Act 494

Ex Parte Contacts 497

Permit Streamlining Act 498

Other Procedural Matters 503

Developer Misrepresentations 503

Standing to Sue 503

18 Legal Liability of Local Agency and Its Personnel / 505

In General 505

California Tort Claims Act 505

Liability of Public Employees and Entities

Employees • Entities

Immunity of Public Employees and Entities

Contents

Federal Civil Rights Act	507	Anti-Nimby Laws—Restrictions on the Disapproval of Certain Housing Projects	529
Color of Law		Disapproval Restrictions on Affordable Housing Projects (as Defined by Anti-NIMBY Laws)	
Treatment of Persons and Public Entities Under Section 1983: Municipal Liability and Legislative Immunity		Disapproval of Housing Development Projects Generally (as Defined by Anti-NIMBY Laws)	
19 Enforcement of Land Use Laws / 511		Prioritization of Services to Certain Affordable Housing Projects	
Introduction	511	Special Treatment for Affordable Multi-Family Housing Projects	
Administrative and Criminal Sanctions	511	Other State Laws Designed to Facilitate Housing Production	534
Misdemeanor		Least Cost Zoning Law	
Infraction		Density Bonuses	
Administrative Penalties	512	Second Units	
Warrant	512	Community Redevelopment Law	
Enforcement Under the Revenue and Taxation Code	513	Growth Management and Affordable Housing	540
Enforcement Under the Subdivision Map Act	513	Tension Between Environmental Protection and Affordable Housing	
Enforcement Under CEQA	513	Special Legislative and Judicial Requirements for Growth Management Measures	
Enforcement Under the Business and Professions Code	514	Inclusionary Housing	542
Possible Defenses to a City's Enforcement Action	514	Introduction	
Denial of Due Process or Equal Protection		Judicial Treatment of Inclusionary Housing	
Estoppel		History of Inclusionary Housing—The Pre- <i>Nollan</i> and <i>Dolan</i> Era	
20 Affordable Housing / 519		Inclusionary Housing in California in the Post- <i>Nollan</i> and <i>Dolan</i> Era	
Introduction: The Affordable Housing Crisis in California	519	Legal Issues to Consider When Adopting and Implementing an Inclusionary Housing Program	
State Housing Element Law	520	Method of Enactment	
Purpose of the Mandated Housing Element		Factual Record to Support Enactment and Application	
Required Contents of the Housing Element		Inclusion of “Safety Valve” Provisions	
Regional Housing Needs Allocation Process		Provision of Incentives and Concessions to Developers	
Preparing the Land Inventory and Identifying Adequate Sites		Relationship to the Costa-Hawkins (Anti-Rent Control) Act	
Analysis of Governmental and Non-Governmental Constraints		Policy Issues to Consider When Crafting an Inclusionary Housing Program	
Consistency with General Plan, Preparation of Annual Report, and Notification Requirements		Nature of the Program—Mandatory or Voluntary?	
Special Provisions Regarding Housing Needs within the Coastal Zone		Determining the Classes and Size of Development That Will Be Subject to the Inclusionary Housing Program	
Review, Certification, and Legal Adequacy of Housing Elements			

Contents

- Required Amount and Affordability
- Levels of Inclusionary Units
- Timing Issues and Design
- Standards for Inclusionary Units
- Preserving Affordability of Inclusionary Units
- Sale Price Limitations
- Qualification of Applicants
- Length of Time That Inclusionary Units Must Remain Affordable
- Enforcement and Monitoring Mechanisms

21 Land Use Litigation / 563

- Introduction** 563
- Overview and Terminology** 563
- Types of Mandate Proceedings** 564
 - Traditional Mandate Proceedings Under Section 1085 Challenge
 - Legislative and Ministerial Acts
 - Legislative acts • Ministerial acts
 - Administrative Mandate Proceedings Under Section 1094.5 Challenge
 - Administrative and Quasi-Judicial Decisions
- Administrative Mandate Is the Exclusive Procedure for Challenging Administrative Decisions** 568
- Standards Courts Apply in Reviewing Land Use Decisions** 569
 - Standard of Judicial Review of Legislative Decisions
 - The “arbitrary-and-capricious” standard of review • Individual legislator’s motives are irrelevant • The intent and purpose of the legislative body is relevant • Due process and fair hearing requirements
 - Standard of Judicial Review of Administrative Decisions
 - “Excess of jurisdiction” • “Fair hearing” • “Proceeding in the manner required by law” • “Supported by the findings and evidence”
 - Standard of Judicial Review of Agency Decisions with Both Legislative and Administrative Aspects
 - Standard of Judicial Review of an Aspect of an Agency Decision That Interprets or Applies Law
- Deadlines for Bringing Actions** 577
 - How to Find the Applicable Statute of Limitations

- Process of a Mandate Proceeding** 582
 - Prerequisite to Litigation: Exhaustion of Administrative Remedies
 - The common law exhaustion doctrine • The exhaustion requirement has two components • Issue exhaustion • Appeal exhaustion • Rehearing/ Reconsideration • Exceptions to the exhaustion requirement • Codification of the exhaustion requirement
 - Ripeness and Finality
 - Identifying the Proper Parties
 - Petitioner • Beneficial interest • Associational standing • Citizen’s action • Taxpayer suits • Respondent • Real party in interest
 - Joining Other Causes of Action with a Writ Claim
 - Preparation of the Record
 - Discovery and Evidence Outside the Record
 - Evidence outside the record generally is inadmissible and undiscoverable to determine whether a local agency’s decision is valid • Evidence outside the record regarding issues other than the validity of a local agency’s decision generally is admissible and discoverable • Evidence outside the record may be admissible in traditional mandate proceedings that challenge ministerial acts • Decisionmaker’s thought processes • Attorney client privilege and work product doctrine • Judicial notice
 - Setting a Briefing and Hearing Schedule
 - Alternative writ • Noticed motion • Informal means of obtaining hearing date
 - Summary Judgment
 - Preparing the Briefs
 - A Stay or Preliminary Injunction May Issue Pending a Final Decision on the Writ Petition
 - Stays • TROs and preliminary injunctions
 - Issuance of the Writ
 - Appeal in a Writ of Mandate Case
 - Time to appeal • Effect of appeal on judgment • Administrative mandate • Traditional mandate • Injunction
- Litigation Under CEQA** 608
 - Special Procedures for CEQA Actions
 - Contents of a CEQA Record
 - Presenting comments to the local agency
 - Standard of Judicial Review of CEQA Decisions
 - Remedies in a CEQA Case
- Litigation Under the Mitigation Fee Act** 612
 - Challenge to Imposition of Fees on a Development Project
 - Challenge to Enactment or Increase of Certain Fees
 - Remedy

Contents

Anti-SLAPP Statute	617	Land Use and Environmental Regulation of the Delta	646
Application of the Anti-SLAPP Statute to the Land Use Context		2007 Flood Protection Legislation for Sacramento-San Joaquin Valley	
CEQA issues have also been addressed in SLAPP decisions		Changes in governance • Development of a regional flood plan • Requirement that local agencies conform their general plans to the Central Valley Flood Protection Plan • Requirement that local agencies conform zoning ordinances to the Central Valley Flood Protection Plan • Prohibition on entering into new development agreements for any property located within a flood hazard zone • Prohibition on approving subdivision maps for projects located within a flood hazard zone	
Attorneys' Fees in Land Use Cases	618	Delta Vision Process	
		Overview • Delta Vision • Strategic plan process • Summary of new legislation • Delta Protection Commission • Sacramento-San Joaquin Delta Conservancy • Delta Stewardship Council	
22 Climate Change and Sustainable Development / 621			
Introduction	621	Short Articles	
Legislative Consensus On Climate Change and Regulatory Landscape	621	Calculating the Life of a Tentative Map	103
State Legislation and Enforcement	623	Map Act Definitions of Design and Improvement	118
AB 32: The California Global Warming Solutions Act of 2006		Nationwide Permits	198
SB 375: "Anti-Sprawl" Legislation			
CEQA exemption and streamlining provisions—overview • Affordable housing		List of Figures	
Accounting for Climate Change Impacts in CEQA Documents: SB 97, New CEQA Guidelines, and Guidance from Regional Air Quality Management Districts	628	Figure A	
SB 97, New CEQA Guidelines, and Growing Consensus		Certificate of Compliance Flow Chart	143
New CEQA Guidelines		Figure B	
Significance Criteria Proposed/Adopted by Regional Air Quality Management Districts		CEQA Flow Chart for Local Agencies	160
CARB • SCAQMD • SJVAPCD • BAAQMD • Other resources		Figure C	
Attorney General Enforcement	636	Lead Agency Decision to Prepare an EIR	161
Potential Federal Climate Change Legislation	638	Figure D	
Green Building	639	Time Periods for Review of Environmental Documents	169
Potential Issues Arising from Incorporation by Reference of Rating Systems	640	Figure E	
State Preemption and Required Findings	641	Scope of Corps Regulatory Jurisdiction	185
Federal Preemption	642	Figure F	
Development of Renewable Energy	643	U.S. Army Corps of Engineers Permitting Process	203
Required Renewable Procurement		Figure G	
Lowering Barriers to Development and Permitting of Renewable Energy		LAFCO Proceedings	474
Subdivision Map Act exemptions for solar projects • New permitting process for wind systems outside urbanized areas • Williamson Act express inclusion of biofuels and probable inclusion of wind • Minimizing private entity restrictions on solar energy systems • Minimizing public entity restrictions on solar energy systems • Solar easements			

Contents

List of Tables

Table 1 Comparison of SB 610 and SB 221	273
Table 2 A Comparison of California's Vested Rights Statutes	309
Table 3 LAFCO Protest Proceedings— Effect of Protests.	477
Table 4 Statutes Applicable to Common Land Use Decisions.	580

Glossary / 657

List of Acronyms / 666

Suggested Reading / 667

Table of Authorities / 671

Other Sources / 707

Index / 711