California Environmental Law and Land Use Practice

Publication 102   Release 46   April 2007

HIGHLIGHTS

New Chapter on Climate Change

• This release includes a new Ch. 85, Climate Change.

Legislative, Case, and Regulatory Updating

• This releases includes coverage of 2006 environmental and land use legislation. Recent cases and regulatory developments are also included.

Climate Change

New Chapter 85, Climate Change. This release includes a new Chapter 85 on climate change and global warming. Written by expert practicing attorneys, Michael Barr with Pillsbury Winthrop Shaw Pittman LLP and Ralph Cavanagh with the Natural Resources Defense Council, the chapter covers:

• The regulation of greenhouse gases, including discussion of the California Global Warming Solutions Act of 2006 and other 2006 legislation. See §§ 85.01–85.05.

• The California Climate Action Registry, including discussion of the nature, purpose, and functions of the registry, certification requirements, and climate change inventory and information. See §§ 85.10–85.16.

• Mobile source emissions standards, including coverage of vehicular emissions and Air Resources Board regulations, as well as current litigation under ARB regulations. See §§ 85.20–85.22.

• Energy source controls, including discussion of controls by the California Public Utilities Commission and California Energy Commission. See §§ 85.30, 85.31.

California Environmental Quality Act (CEQA)

CEQA Updating. Chapters 20 through 23 have been updated with CEQA devel-
opments, including recent legislation, regulations, and cases. Updates include coverage of:

- 2006 Stats., ch. 667, regarding fees paid to the Department of Fish and Game for environmental reviews. *See Ch. 20, Background and Implementation of CEQA, § 20.06[5A].*

- 2006 Stats., chs. 36, 827, regarding changes and additions to statutory exemptions found in CEQA. *See Ch. 21, Preliminary Review, Exemptions, and Negative Declarations, § 21.06[5][c].*

- Register 2006, No. 28, regarding changes to the list of certified regulatory programs. *See Ch. 21, Preliminary Review, Exemptions, and Negative Declarations, § 21.07[3].*

- 2006 Stats., ch. 715, providing for an infill development exemption from the findings requirement on traffic needed for project approval. *See Ch. 22, Environmental Impact Reports, § 22.05[3][g].*

**Water Quality Control**

Water Quality Monitoring. *Ch. 31, Water Quality Control Planning, Regulation, and Enforcement,* has been updated with 2006 Stats., ch. 750. This legislation [Water Code § 13181] provides for the establishment of the California Water Quality Monitoring Council, including provisions addressing reporting, consultation, and audit requirements. *See § 31.33.*

Nonpoint Source Water Pollution Problems—Agricultural Practices. *Ch. 33, Control of Specific Water Quality Problems,* has been updated with 2006 Stats., ch. 309. This legislation revised the operating requirements applicable to sustainable farming and irrigation practices [see Health & Safety Code §§ 25209.13–25209.15] and added provisions for petitions to the State Water Board [see Health & Safety Code § 25209.19]. For discussion, *see § 33.13[2][e][iii], [v].*

Conservation in Landscaping–Model Water Efficient Landscape Ordinance. Ch. 33 has been updated with revisions to the Water Conservation in Landscaping Act [2006 Stats., ch. 559]. *See § 33.33[1][b].*

Ballast Water Discharges. Ch. 33 has been updated with 2006 Stats., ch. 292, which provides for experimental and interim ballast water treatment systems [see Pub. Res. Code §§ 71204.7, 71205.3]. *See § 33.69[2].*

**Air Quality Control**

Alternative Fuels. *Ch. 42, Federal and State Regulation of Motor Vehicles,* has been updated to include discussion of 2006 Stats., ch. 877, which added Health & Safety Code §§ 43868 and 43869 regarding hydrogen as an alternative fuel. *See § 42.58[3].*

Hazardous Waste and Toxic Substances

Hazardous Materials Transportation Act–Preemption. *Ch. 52, Regulation of Transporters of Hazardous Waste and Materials,* has been updated with People v. Union Pacific R.R. Company (2006) 141 Cal. App. 4th 1228, an action arising from spills of hazardous material from railroad cars. The court held that the state requirement of immediate verbal notice of a discharge of hazardous materials was not preempted by the HMTA. *See § 52.02[2][b][i].*

Uniform Hazardous Waste Manifest Form. *Ch. 53, Regulation of Hazardous Waste Treatment, Storage, and Disposal Facilities,* has been updated with the federal Uniform Hazardous Waste Manifest form. *See Ch. 53, Appendix D.*
“Arranger” Liability Under CERCLA. Ch. 56, Cleanup Liability and Cost Recovery, has been updated with Pakotas v. Teck Cominco Metals Ltd. (9th Cir. 2006) 452 F.3d 1066, in which the Ninth Circuit held that a Canadian corporation could be liable as an “arranger” under CERCLA for the release of hazardous substances from slag accumulated in and along the Columbia River in northeastern Washington state, when the original source of the hazardous substances was a smelter owned by the corporation and located in Canada. See § 56.10[2][f][iii].

Hazardous Waste Fees. Ch. 57, Hazardous Waste and Cleanup Fees, has been updated with 2006 Stats., chs. 77, 344, which revised statutory provisions addressing hazardous waste manifest and environmental fees. See §§ 57.32, 57.33.

Land Use

Consolidated Coastal Development Permits. Ch. 66, Coastal Zone Regulation, has been updated to reflect 2006 Stats., ch. 294. This legislation provides that the California Coastal Commission may process and act on a consolidated coastal development permit application if certain criteria are satisfied. See § 66.41.

Regulation of Isolated Wetlands. Ch. 68, Wetlands Regulation, has been updated with Northern California River Watch v. City of Healdsburg (9th Cir. 2006) 457 F.3d 1023. Here, the Ninth Circuit held that an excavated gravel pit filled with water from an underlying aquifer and separated from the Russian River by a levee qualified as a “water of the United States” under the Clean Water Act. Thus, the city was required to obtain a permit to discharge treated wastewater into the pit. See § 68.04[3][d].

Immunity From Liability Under California Land Reuse and Revitalization Act. Ch. 72, Hazardous Waste Cleanup and Land Use, has been updated to reflect 2006 Stats., ch 510, which requires a bona fide ground tenant who seeks to qualify for immunity under the Act to make all appropriate inquiries and enter into an agreement to take responsibility for implementing the site assessment and response plan. See § 72.04[8][b].

Forestry Developments

Forest Practice Act; Scope of CEQA Exemption. In Joy Road Area Forest & Watershed Assn. v. California Dept. of Forestry & Fire Protection (2006) 142 Cal. App. 4th 656, the court held that CDF was required to comply with CEQA’s notice and recirculation requirements before approving a Timber Harvest Plan to which significant new information had been added. See Ch. 80, Forestry Development, § 80.13[9][f].

Effect of Local Planning Laws on Forest Land. In Big Creek Lumber Co. v. City of Santa Cruz (2006) 38 Cal. 4th 1139, the California Supreme Court held that the Forest Practice Act and Timberland Productivity Act did not preempt Santa Cruz County ordinances restricting timber harvesting operations to specific areas and regulating the areas where helicopter operations associated with harvesting could occur. See § 80.31[2].

Wildlife Protection

California Sea Otter Fund. Ch. 81, Endangered, Threatened, and Sensitive Species Regulation, has been revised to reflect 2006 Stats., ch. 296. This legislation establishes the California Sea Otter Fund, which seeks to research the issue of reducing sea otter mortality from nonpoint source pollution and developing water treatment technologies for causes affecting sea otter mortality. See § 81.92.
Solid Waste

Plastic Food and Beverage Containers. Ch. 92, Resource Recovery and Recycling, has been updated to reflect 2006 Stats., ch. 349, which found that it is the public policy of California that environmental marketing claims should be substantiated by competent and reliable evidence to prevent deceiving or misleading consumers about the environmental impact of compostable plastic food or beverage containers [Pub. Res. Code § 42359]. See § 92.49

Plastic Carryout Bags. 2006 Stats., ch. 845, requires stores and supermarkets to establish an at-store recycling program that provides an opportunity for customers to return to the store clean plastic carryout bags [Pub. Res. Code § 42551]. See § 92.50

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LAND USE PRACTICE

Publication 102  Release 46  April 2007

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   • Tab Cards
   • White Revision pages
   • Tan Publication Table of Contents

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