HIGHLIGHTS

Revised Chapters
- Ch. 23, CEQA Litigation, has been revised and updated.
- Chs. 90, 91, and 92, addressing solid waste, have been updated.

Case and Regulatory Updating
- Recent case law and regulatory developments have been added.

Climate Change Updates
- The CEQA chapters have been updated to reflect recent revisions and additions to the CEQA guidelines affecting climate change.
- Ch. 85, Climate Change, has been updated with recent California Air Resources Board regulations and developments addressing federal emission standards.

Environmental Litigation

California Environmental Quality Act (CEQA)


Supreme Court affirmed the principle that “existing conditions” should normally be the baseline for CEQA documents. See § 21.09[2][a][iv].

Environmental Impact Report—Evaluating Greenhouse Gas Emissions. In March 2010, revisions to the CEQA Guidelines [Register 2010, No. 8; see 14 Cal. Code Reg. §§ 15064.4, 15183.5] became effective that cover some of the factors that Lead Agencies should consider in determining the significance of greenhouse gas (GHG) emissions, including how Lead Agencies should consider GHG impacts in CEQA documents. For discussion, see §§ 21.09[2][f], 22.04[6][k].

Lead Agency Preparation of EIR. In Lake Almanor Associates L.P. v. Huffman-Broadway Group, Inc. (2009) 178 Cal. App. 4th 1194, the court held that when a developer submits a development application to a county, and the county hires a consultant to prepare an EIR, the consultant is not liable to the developer for damages due to the consultant’s failure to prepare the EIR in a timely fashion. See § 22.03[3][c].

Mitigation Measures for Significant Effects of Greenhouse Gas Emissions. Recent revisions to the CEQA Guidelines [Register 2010, No. 8; see 14 Cal. Code Reg. § 15126.4(c)] address mitigation measures for the significant impacts of GHG emissions. See § 22.04[7][g].

Revised CEQA Litigation Chapter. Ch. 23, CEQA Litigation, has been fully revised and updated. The chapter provides an overview of CEQA litigation and sets forth coverage of:

- An introduction to CEQA litigation. See § 23.01.
- The barriers to judicial review under CEQA, including coverage of standing, exhaustion of administrative remedies, and applicable statutes of limitation. See § 23.02.
- The unique pretrial proceedings applicable in CEQA cases, including coverage of proof of service of notice, real parties in interest and responsible agencies, request for and preparation of the administrative record, and optional mediation procedures and the mandatory pretrial settlement meeting. See § 23.03.
- Judicial procedures and standards of review under CEQA. See § 23.04.
- CEQA remedies, including injunctive relief. See § 23.05.
- The effect of ongoing litigation on responsible agency actions. See § 23.06.
- Appeals. See § 23.07.
- Attorneys’ fees and litigation costs. See § 23.08.
- Non CEQA litigation against CEQA process participants, including discussion of misuse of the legal process and damages against lead agencies and consultants. See § 23.09.

Water Quality


TMDL Litigation. In San Joaquin River Exchange Contractors Water Authority v.
State Water Resources Control Bd. (2010) 183 Cal. App. 4th 1110, plaintiffs challenged amendments approved by the Central Valley Regional Water Quality Control Board and the State Water Resources Control Board for the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins. The court found that the Boards did not violate the Clean Water Act or the Porter Cologne Water Quality Act in adopting the amendments. See § 33.93[5].

Air Quality

Exhaust Emission Standards—Greenhouse Gas Emissions. Recent regulations by the California Air Resources Board addressing GHG emissions from heavy duty tractors and certain semi-trailers [Register 2009, No. 50; see 17 Cal. Code Reg. § 95300 et seq.]. In addition, in 2010, the ARB adopted a low-carbon fuel standard to reduce GHG emissions by reducing the full fuel cycle, carbon intensity of the transportation fuel pool used in California [Register 2010, No. 3; see 17 Cal. Code Reg. § 94580 et seq.]. For discussion, see § 42.42[9].

Climate Change

Federal Emission Standards. Ch. 85, Climate Change, has been updated with developments at the U.S. Environmental Protection Agency, including EPA’s publication of a final joint rule to establish a national program of new standards for model year 2012 through 2016 light duty vehicles to reduce GHG emissions and improve fuel economy [75 Fed. Reg. 25323–25728 (May 7, 2010)]. Coverage also includes recent revision to the California Air Resources Board program for model years 2012–2016 so that compliance with the federal GHG standards will be deemed to be compliance with the California GHG standards. For discussion, see § 85.23.

Solid Waste

Department of Resources Recycling and Recovery—Transfer of Duties from California Integrated Waste Management Board. In 2009 the Legislature abolished the California Integrated Waste Management Board, which was the state’s principal agency for the management of solid waste, and transferred the Board’s duties and responsibilities to the newly-created Department of Resources Recycling and Recovery (“CalRecycle”) within the Natural Resources Agency [2009 Stats., ch. 21 (SB 63)]. Chapters 90, 91, and 92 have been updated to reflect this change. See generally § 90.20[1].

LexisNexis’s Environmental Law and Climate Change Community

Check out LexisNexis’s Environmental Law & Climate Change Community, which offers the most timely, relevant content on environmental and climate change issues. The website features commentary from leading experts on a wide variety of topics and issues and gives visitors to the site the ability to interact with the content and one another. You’ll also find real-time news; blogs on a selection of topics; news about attorneys, firms and companies; plus several delivery options, including RSS feeds, Podcasts, and email alerts. See http://www.lexisnexis.com/community/real estatelaw/.

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available by clicking on lexis.com’s “Transactional Advisor” tab is the Environmental Law & Climate Change Center. This unique site sets out the key tasks in an environmental law transaction. From assessing the initial transaction to creating and drafting documents, the site is logically organized to follow an environmental law attorney’s transactional workflow and provides easy access to the wealth of LexisNexis’s products and services that address virtually all the issues that are bound to arise. The “Transactional Advisor” site also organizes in one place research links to all of LexisNexis’s news, expert commentaries, and analytical content related to climate change and green buildings.

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