California Environmental Law and Land Use Practice

Publication 102 Release 61 September 2014

HIGHLIGHTS

- Recent Case Updating
- Revised Chapter 90—Solid Waste

Administrative Law

Public Records Act. In City of San Jose v. Superior Court (2014) 225 Cal. App. 4th 75, the court found that written communications (including e-mail and text messages) sent or received by public officials and employees on their private electronic devices using their private accounts do not constitute “public records” when the agency does not have access to the communications. See Ch. 10, Administrative Law Issues, § 10.13[3].

California Environmental Quality Act (CEQA)

Projects Subject to CEQA—Potential for Environmental Impact. In Parker Shattuck Neighbors v. Berkeley City Council (2013) 222 Cal. App. 4th 768, the court found that the disturbance of preexisting contamination may constitute a “physical change” in the environment for purposes of CEQA, but the existence of toxic soil contamination at a project site, without any accompanying disturbance or other physical change, is not in itself a significant impact requiring CEQA review and mitigation. See Ch. 21, Preliminary Review, Exemptions, and Negative Declaration, § 21.05[1][b].

Project Alternatives. South County Citizens for Smart Growth v. County of Nevada (2013) 221 Cal. App. 4th 316 found that when an EIR includes a reasonable range of alternatives, there is no rule that any additional alternative, even if proffered after the final EIR is released, be added to the EIR. See Ch. 22, Environmental Impact Reports, § 22.04[8][b][i].

Water Quality

Well Stimulation Treatments; Fracking. Recent legislation [2013 Cal. Stats., ch. 313 (SB 4); see Pub. Res. Code § 3150 et seq.] authorizes the use of well stimulation treatments, including fracking, in California. The legislation defines “well stimulation treatment” and covers:
• The regulatory authorities tasked with adopting rules and regulations.
• The requirement to disclose the composition and disposition of well stimulation fluids.
• Permit requirements for performing well stimulation treatments.
• Notice requirements to surface property tenants and owners.
• Water quality testing.
• Groundwater monitoring.
• Advance notice requirements before commencing operations.
• Public disclosure requirements.
• Issues surrounding trade secrets.
• Penalties for violation.

For coverage, see Ch. 33, Control of Specific Water Quality Problems, § 33.04[8].

Hazardous Waste and Toxic Substances

Enforcement of Safe Drinking Water and Toxic Enforcement Act (Proposition 65). In Physicians Committee for Responsible Medicine v. KFC Corp. (2014) 224 Cal. App. 4th 166, the court of appeal found that the trial court properly sustained the demurrer to a complaint alleging violation of Proposition 65 where the plaintiffs’ attorney admitted during a hearing on the demurrer that the plaintiff did not have information as to whether and how the defendants had posted the required notice of warning at the time the complaint was filed. See Ch. 58, Control of Hazardous Materials and Toxic Substances, § 58.13[6][b].

Land Use

“Spot Zoning.” In Foothill Communities Coalition v. County of Orange (2014) 222 Cal. App. 4th 1302, the court found that a county engaged in spot zoning when it created a new zoning definition for senior residential housing, and applied it to a specific project site; however, in this case the spot zoning was permissible. See Ch. 60, Zoning, § 60.52[1][b].

Physical Takings—Diversions from Natural Waterways. In Biron v. City of Redding, (2014) 225 Cal. App. 4th 1264, the appellate court found that the trial court properly applied the rule of reasonableness to hold that owners of residential property damaged by flooding when the city’s stormwater system was unable to handle a 100-year flood event could not state a cause of action for inverse condemnation or for dangerous condition of public property against the city. See Ch. 65, Takings and Other Constitutional Controls, § 65.11[2].

Physical Takings—Airspace. In Powell v. County of Humboldt (2014) 222 Cal. App. 4th 1424, the court found that, under a county general plan, owners of property near an airport were required to accept an overflight easement as a condition of obtaining a building permit. See Ch. 65, Takings and Other Constitutional Controls, § 65.13.

Tahoe Regional Planning Agency—Permit Exemptions. This illustrative form has been updated. The form addresses how to apply for a Tahoe Regional Planning Agency permit exemption. See Ch. 69, Tahoe Regional Planning Agency, Appendix A.

Solid Waste

Revised Solid Waste Chapter. Chapter 90, Solid Waste Management and Planning, has been fully revised and updated. The chapter is now titled Overview of Solid Waste Law and Planning, and covers the following topics:
• An introduction to solid waste law and planning in California (Part
A). See § 90.01.

- The statutory framework, with sections on (Part B):
  - California’s Integrated Waste Management Policy. See § 90.10.
  - The Integrated Waste Management Act. See § 90.11.
  - Regulated parties and regulators. See §§ 90.12, 90.13.
  - CalRecycle’s programs. See § 90.14.
  - Funding CalRecycle and Integrated Waste Management Act programs. See § 90.15.
  - CalRecycle information and support services. See § 90.16.

- Solid waste management planning in local jurisdictions (Part C), with sections on:
  - The Source Reduction and Recycling Element of a CIWMP. See § 90.21.
  - The Household Hazardous Waste Element of a CIWMP. See § 90.22.
  - The Nondisposal Facility Element of a CIWMP. See § 90.23.
  - The Countywide Siting Element of a CIWMP. See § 90.24.
  - Reviews and revisions of CIWMPs. See § 90.25.
  - Planning assistance available from CalRecycle. See § 90.26.
  - CalRecycle enforcement for failure to implement a CIWMP. See § 90.27.
  - The rules surrounding 50 percent mandated diversion and the 75 percent diversion goal. See § 90.28.

- Comprehensive State Plans (Part D). See § 90.40.

- Various solid waste management programs (Part E), including:
  - Recycling programs such as the “bottle bill,” the at-store plastic bag recycling program, and available environmental education. See §§ 90.50–90.54.
  - Product stewardship programs such as the Architectural Paint Recovery Program, the Carpet Stewardship Program, and the Mercury Thermostat Collection Act of 2008. See §§ 90.60–90.63.
  - Recyclables market development programs, such as programs for recycled-content newsprint, recycled concrete, used oil, and used/waste tires. See §§ 90.70–90.74.
  - Other specific recycling programs, including the Used Oil Recycling Enhancement Act, the Tire Recycling Act, the Dry Cell Battery Management Act (household batteries), and the Electronic Waste Recycling Act. See §§ 90.80–90.84.
Matthew Bender provides continuing customer support for all its products:
• Editorial assistance—please consult the “Questions About This Publication” directory printed on the copyright page;
• Customer Service—missing pages, shipments, billing or other customer service matters (1-800-833-9844);
• Outside the United States and Canada, (518) 487-3000, or fax (518) 487-3584;
• Toll-free ordering (1-800-223-1940).
1. Check the Title page in the front of your present Volume 1. It should indicate that your set is filed through Release Number 60. If the set is current, proceed with the filing of this release. If your set is not filed through Release Number 60, DO NOT file this release. Please call Customer Services at 1-800-833-9844 for assistance in bringing your set up to date.

2. Separate this Release Number 61 package into the following groups of material:
   • White Publication Table of Contents
   • White Revision pages

3. Arrange these groups of material next to each other so that you can take material from each group as required and proceed with the filing of this release.

4. Circulate the “Publication Update” among those individuals interested in the contents of this release.
For faster and easier filing, all references are to right-hand pages only.

VOLUME 1

Publication Table of Contents
□ Publication Table of Contents pages 1 thru 3.

Revision
☐ Title page
☐ 10-83
☐ 21-22.1 thru 21-31
☐ 21-53 thru 21-56.5
☐ 22-69
☐ 22-81 thru 22-82.1
☐ 22-99 thru 22-111
☐ 22-149

VOLUME 2

Revision
☐ Title page
☐ 33-3
☐ 33-51 thru 33-52.1
☐ 40-55

VOLUME 3

Revision
☐ Title page
☐ 58-67

VOLUME 4

Revision
☐ Title page
☐ 60-65
☐ 61-39
☐ 63-27 thru 63-36.1
☐ 64-6.1 thru 64-22.1
☐ 65-22.1 thru 65-25
☐ 65-102.1 thru 65-111
☐ 65-141

FL-2
<table>
<thead>
<tr>
<th>VOLUME 5</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Revision</strong></td>
</tr>
<tr>
<td>☐ Title page .......................... Title page</td>
</tr>
<tr>
<td>☐ 69-3 .......................... 69-3 thru 69-4.1</td>
</tr>
<tr>
<td>☐ 69-51 .......................... 69-51</td>
</tr>
<tr>
<td>☐ 69-84.1 thru 69-107 .......................... 69-85 thru 69-93</td>
</tr>
<tr>
<td>☐ 70-88.1 thru 70-88.3 .......................... 70-88.1 thru 70-88.3</td>
</tr>
<tr>
<td>☐ 72-1 thru 72-5 .......................... 72-1 thru 72-5</td>
</tr>
<tr>
<td>☐ 72-77 thru 72-84.1 .......................... 72-77 thru 72-84.2(1)</td>
</tr>
<tr>
<td>☐ 73-61 thru 73-67 .......................... 73-61 thru 73-65</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>VOLUME 6</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Revision</strong></td>
</tr>
<tr>
<td>☐ Title page thru xi .......................... Title page thru xiii</td>
</tr>
<tr>
<td>☐ 81-65 thru 81-66.1 .......................... 81-65 thru 81-66.1</td>
</tr>
<tr>
<td>☐ 81-83 .......................... 81-83</td>
</tr>
<tr>
<td>☐ 90-1 thru 90-61 .......................... 90-1 thru 90-135</td>
</tr>
<tr>
<td>☐ 92-76.3 thru 92-79 .......................... 92-77 thru 92-80.1</td>
</tr>
<tr>
<td>☐ TS-1 thru TS-231 .......................... TS-1 thru TS-231</td>
</tr>
<tr>
<td>☐ 1-1 thru 1-249 .......................... 1-1 thru 1-243</td>
</tr>
</tbody>
</table>

FI-3
FILE IN THE FRONT OF THE FIRST VOLUME
OF YOUR SET

To order missing pages log on to our self service center, www.lexisnexis.com/printedsc or call Customer Services at 1 (800) 833-9844 and have the following information ready:

(1) the publication title;
(2) specific volume, chapter and page numbers; and
(3) your name, phone number, and Matthew Bender account number.

Please recycle removed pages.

MISSING FILING INSTRUCTIONS?
FIND THEM AT www.lexisnexis.com/printedsc

Use the search tool provided to find and download missing filing instructions,
or sign on to the Print & CD Service Center to order missing pages or replacement materials. Visit us soon to see what else the Print & CD Service Center can do for you!

---

Copyright © 2014 Matthew Bender & Company, Inc., a member of the LexisNexis Group.
Publication 102, Release 61, September 2014

LexisNexis, the knowledge burst logo, and Michie are trademarks of Reed Elsevier Properties Inc., used under license. Matthew Bender is a registered trademark of Matthew Bender Properties Inc.

FI-4