HIGHLIGHTS

• Legislative Updates—Recent legislation has been added.
• Case Updating—Recent cases have been added.
• Revised Chapters:
  • Ch. 1, Nuisance, Trespass, and Strick Liability for Ultrahazardous Activities.
  • Ch. 55, Cleanup of Hazardous Substances.
  • Proposition 65—The section on the California Safe Drinking Water and Toxic Enforcement Act (Proposition 65) has been updated.

Common Law and Environmental Protection

Chapter 1, Nuisance, Trespass, and Strick Liability for Ultrahazardous Activities, has been revised and updated to reflect recent developments. The revised chapter covers:

• The doctrine of nuisance. This Part covers (see Part A, §§ 1.01–1.07):
  ○ The applicability of the doctrine to environmental problems and issues.
  ○ Understanding the concept of actionable nuisance.
  ○ Classifying nuisances by type, that is, distinguishing public from private nuisances; distinguishing permanent from continuing nuisances; and nuisance per se.
  ○ Establishing the existence of a nuisance.
  ○ Evaluating the types of conduct that may subject a defendant to nuisance liability.
  ○ Bringing a public nuisance action and a private nuisance action
  ○ Civil remedies available in nuisance actions.
  ○ Defending a nuisance action.
• The doctrine of trespass. This Part covers (see Part B, §§ 1.20–1.23
The applicability of trespass law to environmental problems and issues.

The nature and definition of trespass, including examples.

Distinguishing trespass from nuisance.

The essential elements of an action for trespass.

Remedies for a trespass.

Defending a trespass action.

- Strict Liability for ultrahazardous or abnormally dangerous activities. This Part covers (see Part C, §§ 1.30, 1.31):
  - The nature of strict liability doctrine.
  - The relationship of the doctrines of nuisance and trespass to the strict liability doctrine.
  - The applicability of the strict liability doctrine as a question of law.
  - Both specific activities to which strict liability has been held to apply and activities to which strict liability has been held not to apply.
  - Defending an ultrahazardous/abnormally dangerous activity action.

**California Environmental Quality Act (CEQA)**

Integration Between CEQA and Other Laws. The California Supreme Court, in *Friends of the Eel River v. North Coast Railroad Authority* (2017) 3 Cal. 5th 677, held that CEQA is not necessarily preempted by federal law when the project to be approved involves railroad operations. The Court found that the Interstate Commerce Commission Termination Act of 1995 (49 U.S.C. § 10101 et seq.) is not so broadly preemptive, and did not preempt application of CEQA to a railroad project undertaken by a state public entity. For discussion, see § 20.02[9].

**Statutory Exemptions Found in CEQA—Ministerial Projects.** In *Sierra Club v. County of Sonoma* (2017) 11 Cal. App. 5th 11, the court found that a county commissioner’s issuance of a vineyard development permit under the provisions of the county’s Grading, Drainage, and Vineyard and Orchard Site Development Ordinance was a ministerial act exempt from the CEQA. See § 21.06[5][d][i].

Judicial Review of Exemption Decisions—Significant Impact Exception to Categorical Exemption. In *Respect Life South San Francisco v. City of South San Francisco* (2017) 15 Cal. App. 5th 449, the court found that a court may not affirm an entity’s implied determination that the unusual circumstances exception is inapplicable by simply concluding that the record contains substantial evidence that the project involves no unusual circumstances. Instead, to affirm such an implied determination, the court must assume that the entity found that the project involved unusual circumstances and then conclude that the record contains no substantial evidence to support either (1) a finding that any unusual circumstances exist or (2) a fair argument of a reasonable possibility that any purported unusual circumstances identified by the petitioner will have a significant effect on the environment. See § 21.06[10][b].

**EIR Threshold Decisions and Negative Declarations—Determining Whether Effects Are Significant—Greenhouse Gas Emissions.** Recent cases have addressed the impacts from greenhouse gas emissions, including:

- *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal. 5th 497,
where the California Supreme Court held that the EIR for a regional transportation plan adequately addressed greenhouse gas emissions and was not required to consider an executive order signed by Governor Schwarzenegger in 2005.

- **City of Long Beach v. City of Los Angeles** (2018) 19 Cal. App. 5th 465, which found that the EIR for the construction of a new railyard (SCIG facility) approximately four miles from the Port of Los Angeles adequately addressed impacts from greenhouse gas emissions.

- **Rodeo Citizens Assn. v. County of Contra Costa** (2018) 22 Cal. App. 5th 214, which found that the EIR for a project to modify existing facilities and add new facilities to allow a refinery to recover up to 14,500 barrels per day of propane and butane for commercial sale adequately addressed greenhouse gas emissions. See § 21.09[2][f].

**Remedies Provided by CEQA.** In **Center for Biological Diversity v. Department of Fish & Wildlife** (2017) 17 Cal. App. 5th 1245, the court found that a trial court has authority to order partial decertification of an EIR so long as the severability criteria are satisfied. For discussion, see § 23.05[1].

**Water Quality Control**

Waste Discharge Regulation—Fees. In **California Building Industry Assn. v. State Water Resources Control Bd.** (2018) 4 Cal. 5th 1032, the California Supreme Court held that waste discharge permit fees are valid regulatory fees and not illegal taxes under Cal. Const. art. XIII A, because revenues do not exceed administrative costs and fees are reasonably allocated among different classes of permits. See § 31.23[2A].

**Monitoring and Investigation by Regional Water Boards.** 2017 Cal. Stats., ch. 758 (AB 1328), added Water Code § 13267.5, requiring information relating to all chemicals in discharged wastewater as well as requiring the public availability of such information. See § 31.31.

**Federal Nonpoint Source Laws—Clean Water Act.** The Ninth Circuit, in **Hawai‘i Wildlife Fund v. Cty. of Maui** (9th Cir. 2018) 886 F.3d 737, held that a county was liable under the federal Clean Water Act for discharge from wells used by a county wastewater treatment facility to dispose of effluent to groundwater that then flowed to the ocean. See § 33.11[3][a].

**NPDES Permits for Stormwater Discharges—Phased Approach to Stormwater Discharges.** In **Ecological Rights Found. v. Pac. Gas & Elec. Co.** (9th Cir. 2017) 874 F.3d 1083, the Ninth Circuit found that an environmental organization could bring an action under the Resource Conservation and Recovery Act against a utility that dispersed wood treatment chemicals from various of its facilities into San Francisco and Humboldt Bays via indirect and direct stormwater discharges. See § 33.80[2][b].

**Air Quality Control**

Emission Limitations—District Regulations Limiting Emissions—Schedule of Required Increments of Progress. 2017 Cal. Stats., ch. 136 (AB 617) requires, by January 1, 2019, each district that is a nonattainment area for one or more air pollutants to adopt an expedited schedule for the implementation of Best Available Retrofit Control Technology by the earliest feasible date, but in any event not later than December 31, 2023. This schedule applies to each industrial source that, as of January
1, 2017, was subject to a market-based compliance mechanism adopted by the Air Resources Board and must give highest priority to permitted units that have not modified emissions-related permit conditions for the greatest period of time. See § 41.20[2][d].

The legislation also requires the State Board to establish and maintain a statewide clearinghouse that identifies the best available control technology and best available retrofit control technology for criteria air pollutants, and related technologies for the control of toxic air contaminants. See § 41.20[2][g].

**Interim Order for Abatement.** 2017 Cal. Stats., ch. 171 (AB 1132), enacted rules surrounding an interim order for abatement. The legislation provides, in part, that an air pollution control officer may issue an interim order for abatement, pending a hearing, if the air pollution control officer finds that any person is causing an imminent and substantial endangerment to the public health or welfare, or the environment, by constructing or operating any article, machine, equipment, or other contrivance without a required permit, or by violating emission discharge prohibitions or any order, rule, or regulation prohibiting or limiting the discharge of air contaminants into the air. See § 41.37.

**Annual Stationary Source Emissions Report; and Disadvantaged Communities and Sensitive Receptors.** 2017 Cal. Stats., ch. 136 (AB 617) added Health & Safety Code § 39607.1. This legislation establishes a uniform statewide system of annual reporting of emissions by stationary sources. For discussion, see § 43.14.

This legislation also added Health & Safety Code § 42705.5, which establishes a “community air monitoring system.” The legislation requires the State Air Resources Board to prepare a monitoring plan regarding the availability and effectiveness of toxic air contaminant and criteria air pollutant advanced sensing monitoring technologies and existing community air monitoring systems. For discussion, see § 43.15.

**Hazardous Waste and Toxic Substances**

Chapter 55, *Cleanup of Hazardous Substances*, has been revised and updated to reflect recent developments. The revised chapter covers:

- The history and purpose of California hazardous site clean-up legislation, the state agencies involved in cleanups, and State/EPA coordination. See Part A, §§ 55.01–55.05.

- The identification of clean-up sites, including sections on the Site Evaluation Program, the National Priorities List, and the State Listing and Priority Ranking. See Part B, §§ 55.10–55.12.

- Site cleanup procedures and standards. This Part includes sections on:
  - The requirement to furnish information.
  - Inspections.
  - Penalties for failing to comply with inspection requirements or failing to provide information.
  - Determining who performs cleanups.
  - The site assessment and cleanup process.
  - The Expedited Remedial Action Reform Act.

**The California Safe Drinking Water and Toxic Enforcement Act (Proposition 65).** The section on Proposition 65 (§ 58.13), which requires warnings to indi-
viduals exposed to carcinogens and reproductive toxicants, and prohibits the discharge of these chemicals into sources of drinking water, has been revised and updated to reflect recent developments. The section covers:

- The purpose and scope of Proposition 65.
- Circumstances requiring a warning and exemptions from the warning requirements.
- Responsibility for providing a warning.
- Warning methods and messages, including discussion of the “Safe Harbor” concept.
- The contents of required warnings.
- Enforcement.

**Land Use**

**Workforce Housing Opportunity Zones.** The Legislature enacted SB 540 [2017 Cal. Stats., ch. 369] authorizing local governments to establish “Workforce Housing Opportunity Zones.” For coverage, see § 60.104.

**Conditional Use Permits.** A new section covering challenges to the issuance or denial of a conditional use permit has been added. See § 60.112A.

**Exactions—School Impact Fees.** In *1901 First Street Owner, LLC v. Tustin Unified School Dist.* (2018) 21 Cal. App. 5th 1186, the court held that the “assessable space” of an apartment building includes the interior common area for purposes of calculating school impact fees. See § 64.02[4][c].

**Denial of All Economically Viable Use of Property—Denominator Issue.** In *Murr v. Wisconsin* (2017) 137 S. Ct. 1933, 198 L. Ed. 2d 497, the U.S. Supreme Court considered the proper unit of property against which the effect of the challenged governmental action should be assessed for purposes of a regulatory takings claim. For discussion, see § 65.20[4][e][i].

**Rent Control as Regulatory Taking.** In *Colony Cove Props., LLC v. City of Carson* (9th Cir. 2018) 888 F.3d 445, 455, the plaintiff, a mobilehome park owner, contended that the city rent board’s denials of the full amount of plaintiff’s requested rent increases in 2007 and 2008 were the functional equivalent of a direct appropriation of plaintiff’s mobilehome park property. The Ninth Circuit rejected the park owner’s as-applied regulatory takings claim. See § 65.23[3][b][ii].

**Judicial Review of Permit Actions in the Coastal Zone—Exhaustion of Administrative Remedies.** The court in *Greenfield v. Mandalay Shores Community Assn.* (2018) 21 Cal. App. 5th 896 found that the trial court improperly refused to issue a motion for a preliminary injunction to stay the enforcement of a homeowners association resolution banning short-term rentals in Oxnard Shores, a development on the beach. See § 66.56[1][b].

**Wetlands—Definitions of “Waters of the United States.”** In *Nat’l Ass’n of Mfrs. v. DOD* (2018) 138 S. Ct. 617, the U.S. Supreme Court held that the Courts of Appeals do not have original jurisdiction over challenges to the rule defining “waters of the United States,” and thus any challenge must be brought in federal district court. See § 68.04[2].

**Wildlife Protection**

**Section 2080.5 Take Authorization through Federal Enhancement of Survival Permits.** A new section has been added regarding 2017 Cal. Stats., ch. 276 (AB 1133). The legislation added Fish & Code § 2080.5, which addresses the enhancement of a survival permit authorizing
the take of endangered, threatened, or candidate species in order to establish or main-
tain an experimental population. For coverage, see § 81.58.

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, +1.937.247.0293, or fax (+1.800.828.8341) or email (international@bender.com);
• Toll-free ordering (+1.800.223.1940) or visit www.lexisnexis.com/BrowseUs.
1. Check the Title page in the front of your present Volume 1. It should indicate that your set is filed through Release Number 68. If the set is current, proceed with the filing of this release. If your set is not filed through Release Number 68, 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 69 package into the following groups of material:
   - New Volume 7 Binder
   - Sticker Envelope
   - White Revision pages
   - White Tab cards

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.
SHIFT OF MATERIAL INVOLVING VOLUME 6 AND CREATION OF A NEW VOLUME 7

☐ 1. Remove, but do not discard, from Volume 6 all of the material from and including the white “Ch. 90 Overview of Solid Waste Law & Planning” Tab card thru page I-261 (including all intervening Tab cards).

☐ 2. Insert into your new Volume 7 binder all of the material from and including the white “Ch. 90 Overview of Solid Waste Law & Planning” Tab card thru page I-261 (including all intervening Tab cards).

STICKER ENVELOPE

☐ Remove the backing and apply the sticker to the spine of volume 6.
**VOLUME 1**

**Revision**

<table>
<thead>
<tr>
<th>Check</th>
<th>Remove Old</th>
<th>Insert New</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>As Pages Numbered</td>
<td>Pages Numbered</td>
</tr>
<tr>
<td></td>
<td>Done</td>
<td></td>
</tr>
</tbody>
</table>

- 1 thru xvii
- 1-1 thru 1-55
- 3-39 thru 3-40.1
- 12-35 thru 12-37
- 13-27 thru 13-32.1
- 20-16 thru 20-17
- 21-9 thru 21-11
- 21-23 thru 21-30.1
- 21-40 thru 21-64.1
- 21-85 thru 21-88.3
- 21-99 thru 21-100.2(1) | 21-41 thru 21-64.13 |
- 21-109 thru 21-131
- 22-57 thru 22-62.1
- 22-81
- 22-112 thru 22-114.1
- 22-149 thru 22-150.1
- 23-9
- 23-37 thru 23-43
- Title page thru xiii
- 31-33 thru 31-34.1
- 31-43 thru 31-57
- 31-65 thru 31-67
- 32-21 thru 32-29
- 32-83
- 33-57 thru 33-60.1
- 33-155
- 33-162.5 thru 33-164.1
- 33-191 thru 33-195
- 41-1
- 41-25 thru 41-32.1
- 41-81 thru 41-91
- 42-27 thru 42-32.1
- 43-3 thru 43-4.1
- 43-59
- 50-50.1 thru 50-57
- 52-5 thru 52-7
- 52-31 thru 52-33
- 52-31 thru 52-33

**VOLUME 2**

**Revision**

<table>
<thead>
<tr>
<th>Check</th>
<th>Remove Old</th>
<th>Insert New</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>As Pages Numbered</td>
<td>Pages Numbered</td>
</tr>
<tr>
<td></td>
<td>Done</td>
<td></td>
</tr>
</tbody>
</table>

- 31-33 thru 31-34.1
- 31-43 thru 31-57
- 31-65 thru 31-67
- 32-21 thru 32-29
- 32-83
- 33-57 thru 33-60.1
- 33-155
- 33-163 thru 33-164.7
- 33-191 thru 33-195
- 41-1
- 41-25 thru 41-32.1
- 41-81 thru 41-91
- 42-27 thru 42-32.1
- 43-3 thru 43-4.1
- 43-59
- 50-51 thru 50-57
- 52-5 thru 52-7
- 52-31 thru 52-33

**FI-3**
<table>
<thead>
<tr>
<th>Check As Done</th>
<th>Remove Old Pages Numbered</th>
<th>Insert New Pages Numbered</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>52-49 thru 52-61</td>
<td>52-49 thru 52-61</td>
</tr>
<tr>
<td></td>
<td>52-85 thru 52-89</td>
<td>52-85 thru 52-89</td>
</tr>
</tbody>
</table>

**VOLUME 3**

**Revision**

- Title page thru xi
- 55-1 thru 55-167
- 56-5 thru 56-15
- 56-59 thru 56-67
- 56-85
- 56-101
- 58-1 thru 58-3
- 58-51 thru 58-70.1
- 58-135 thru 58-139

**VOLUME 4**

**Revision**

- Title page thru ix
- 60-1 thru 60-9
- 60-35 thru 60-37
- 60-75
- 60-144.1 thru 60-151
- 62-32.7 thru 62-33
- 64-9
- 65-26.3 thru 65-26.5
- 65-55 thru 65-59
- 65-78.2(1) thru 65-78.5
- 66-79
- 66-101

**VOLUME 5**

**Revision**

- Title page
- 68-15
- 68-75
- 74-1
- 75-19

**VOLUME 6**

FI-4
## VOLUME 7

### Revision
- Title page thru xvii
- 81-7 thru 81-8.1
- 81-95
- 81-159 thru 81-160.3
- 82-17 thru 82-23
- 85-3 thru 85-6.1
- 85-39 thru 85-41
- 85-52.1 thru 85-54.9
- 85-55 thru 85-57
- 86-3 thru 86-4.1
- 86-74.17 thru 86-74.19
- 86-83
- 86-74.17 thru 86-74.19
- 86-83 thru 86-84.1

### Tab Card
- Overview of Solid Waste Law & Planning Tab Card
- Regulated Parties Under Solid Waste Law Tab Card
- Solid Waste Handling Facilities Tab Card
- Table of Cases Tab Card
- Table of Statutes Tab Card
<table>
<thead>
<tr>
<th>Check</th>
<th>Remove Old</th>
<th>Insert New</th>
</tr>
</thead>
<tbody>
<tr>
<td>As</td>
<td>Pages Numbered</td>
<td>Pages Numbered</td>
</tr>
<tr>
<td>Done</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

- Index Tab Card (preceding page I-1)  
- Index Tab Card

**Revision**

- I-1 thru I-261
- I-1 thru I-257
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/printcdsc 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/printcdsc

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!