



Nicholas J. Muscolino

Partner

Oakland

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Pronouns: he, him, his

Nick Muscolino is a partner in the firm's **Oakland** office. Nick specializes in the legal and procedural defenses available to public entities under California law. He has successfully represented public entities in trial and appellate courts throughout California in disputes concerning **inverse condemnation**, preemption, **eminent domain**, the California Environmental Quality Act (CEQA), water rights, flood and storm water diversions, public nuisance, negligence, quiet title, breach of contract, the Religious Land Use and Institutionalized Persons Act (RLUIPA), the Fair Housing Act, the Fair Employment and Housing Act, the First Amendment, Section 1983, preemption, redevelopment dissolution, local land use and zoning, and general plan consistency.

Nick also provides advisory services to cities and other **public** entities. He has served as a deputy or assistant city attorney to several cities. In that capacity, he advises on the Brown Act, the Public Records Act, CEQA, **litigation**, mobilehome issues, civil rights issues, affordable housing, and other areas of general municipal law. Nick drafts the staff reports, resolutions, ordinances, and agreements (e.g., purchase and sale, joint powers, loan, disposition and development), that public agencies need to serve the public. He also provides opinion letters on the legality of various housing preferences under state and federal law, and other land use and zoning-related issues.

Nick graduated Order of the Coif from the University of California, Davis in 2009, where he served as an Executive Editor of the Journal of Environmental Law and Policy. After law school, Nick served as a law clerk to the Honorable Justice Morgan Christen of the Alaska Supreme Court (now of the Ninth Circuit Court of Appeals) in Anchorage before entering private practice at a large law firm in San Francisco.

Nick works closely with clients to understand their goals and to determine how to achieve their desired outcomes in the most cost-effective and timely manner.

PRACTICES

Eminent Domain

Insurance Coverage and
Litigation

Inverse Condemnation

Litigation

Public Law

EDUCATION

J.D., Order of the Coif,
University of California, Davis
School of Law, 2009

>B.A., magna cum laude,
Political Science and Business
Economics, University of
California, Santa Barbara, 2006

ADMISSION

State Bar of California

United States Court of Appeals
for the Ninth Circuit

United States District Court for
the Central District of California

United States District Court for
the Northern District of
California

AFFILIATIONS

Contra Costa County Bar
Association

Bay Area City Attorneys
Association
League of California Cities

REPRESENTATIVE MATTERS

- Nick represented a northern California transit district in litigation involving (1) affirmative claims against a property owner for nuisance, negligence, and injunctive relief arising out of the property owner's construction of improvements that damage the district's infrastructure during storm events; and (2) defending against claims for inverse condemnation, negligence, and breach of contract. Nick successfully defeated a multi-million dollar inverse condemnation claim via motion for summary adjudication.
- Nick defended a city in a federal lawsuit alleging that a resolution and ordinance affecting rail-related development violated the Dormant Commerce Clause and is preempted by the Interstate Commerce Commission Termination Act, the Hazardous Materials Transportation Act, and the Shipping Act.
- Nick defended a northern California sanitary district in litigation alleging that the district had overcharged customers for sanitary sewer fees. After three rounds of demurrers, the court sustained the district's demurrer with prejudice.
- Nick defended a northern California city against a petition for writ of mandate alleging that the city's approval of a project violated CEQA and the Planning and Zoning Law. Nick defeated the petition on the merits and persuaded the trial court to award the City nearly \$70,000 in costs to prepare the administrative record.
- Nick defended a northern California city in a lawsuit alleging more than \$10 million in damages for the city's alleged taking of private water rights without just compensation. Nick defeated the breach of contract claims at the pleadings stage by successfully asserting the Government claims Act. He then defeated the remaining inverse condemnation claims via motion for summary judgment.