burke
BURKE, WILLIAMS & SORENSEN, LLP



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Pronouns: he, him, his

Steve Velyvis is a well-respected land use and environmental law attorney with over 24 years of expertise advising and representing public agency and private clients in administrative proceedings and before state and federal trial and appellate courts.

Steve has extensive advisory and litigation experience with and works daily on projects addressing complex legal issues spanning the California Environmental Quality Act (CEQA), the National Environmental Policy Act (NEPA), the Federal Power Act, and the California Coastal Act, as well as the state and federal legal and regulatory frameworks governing clean water, clean air, endangered species and electricity generation and transmission. He also routinely represents clients in land use and planning-related matters and advises on CEQA compliance issues in eminent domain matters.

While Steve has extensive advisory and litigation experience with a multitude of environmental laws, he is most experienced with CEQA, having represented parties on all three “sides” of the CEQA equation. In other words, in addition to successfully representing Burke’s many municipal and public agency clients, Steve has also successfully represented numerous private clients (e.g., project applicants and project opponents.) In this regard, Steve distinguishes himself as a leading CEQA practitioner. Steve’s deep and varied experience gives him invaluable insight into what all three sides on a given CEQA project are thinking at every step along the way. This unique perspective also enables him to develop cutting-edge legal strategies aimed at resolving conflicts and prevailing in litigation, as opposed to simply posturing or falling back on routine “cookie cutter” advice and litigation tools. In sum, Steve draws on his collective experience to help Burke’s clients think outside the box and routinely provides successful, cost-effective results.

PRACTICES

Education Law

Eminent Domain and Inverse Condemnation

Environmental Land Use and Natural Resources

Litigation

Public Law

Real Estate and Business Law

EDUCATION

J.D., Vermont Law School, 1998

B.A., Ohio University, 1993

ADMISSION

State Bar of California

State Bar of Colorado

AFFILIATIONS

California Bar Association, Environmental Law Section Legislation Committee (member) and Environmental Law Update publication (regular contributor)

American Planning Association, Northern California Chapter (Board of Directors, Legislative Director)

INSIGHTS

Public Law Update – Governor Signs New Endangered Species

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California Solar Energy Industries Association

USGBC Northern California Chapter (founding member, former steering committee member and emerging professionals chair of the Chapter's Diablo East Bay Branch)

California Special Districts Association: CEQA Expert Feedback Team

Bay Area City Attorneys' Association

Protections Into Law

Public Law Update – SB 158 Amends Major CEQA Reform Bills AB 130 and SB 131

Public Law Update: Court of Appeal Rules That A Mixed-Use Development May Not Rely On State's Cap-And-Trade Program To Offset Project's Greenhouse Gases Impacts

Appellate Decision Finds Tribal Developer is Indispensable Party to CEQA Litigation and Dismisses Lawsuit that Failed to Timely Name the Tribe

Appellate Decision Provides Guidance on Permit Streamlining Act Submittal Checklists

Public Law Update – Appellate Decision Provides Guidance on CEQA/AB 52 Tribal Consultation Process

PUBLICATIONS

How could a new CEQA law impact your city's infill housing projects?

The Evolution and Application of a CEQA Exemption

Identifying Baseline Conditions under CEQA — Back to the Future?

Big Changes on Horizon for Traffic Impact Analysis Under CEQA

Practical Advice for Minimizing CEQA Liability in Your City

REPRESENTATIVE MATTERS

In just the past few years alone, Steve has worked with numerous cities, school districts, and private clients providing advice on projects involving myriad land use and environmental issues, actively guiding the preparation of a host of CEQA documents (statutory and categorical exemptions, mitigated negative declarations and environmental impact reports and addenda) and successfully defending various legal challenges thereto.

Steve also has experience with solar and other renewable energy projects and climate change issues, including representation of parties in proceedings before the Federal Energy Regulatory Commission, the U.S. Forest Service, the State Water Resources Control Board, and the California Public Utilities Commission concerning pumped-storage hydroelectricity, transmission line and desalination projects involving complex CEQA/NEPA, Clean Water Act, CA Coastal Act and Endangered Species Act issues, among others.

Some recent and ongoing representative matters in which Steve has provided land use/CEQA advice and/or litigated the adequacy of CEQA documents include:

Advisory Matters

- Advise water authority serving as CEQA lead agency and myriad

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environmental consultants and engineers regarding the preparation of a joint EIS/EIR for Friant Kern Canal Middle Reach Capacity Correction Project to restore canal water conveyance capacity diminished due to land subsidence.

- Advise City and County serving as joint lead agencies for solid waste transfer station project on CEQA compliance issues and assist in preparation of EIR and related staff reports, resolutions and CEQA findings.
- Advise City Attorney and City Council on land use and CEQA aspects of controversial emergency demolition permit application seeking approval to demolish two significant historic buildings.
- Advise City Attorney and lead multi-faceted team advancing City's appeal of adjacent City's Planned Development Permit for vertical landfill expansion.
- Advise and direct City staff and consultants on CEQA compliance issues and assist in preparation of Revised EIR for General Plan Update project.
- Advise School District General Counsel on CEQA compliance issues concerning sports field improvement project.
- Advise City Attorney on land use planning and zoning issues concerning major updates to the General Plan and Zoning/Development Code.
- Advise City Attorney on CEQA compliance issues concerning changes to a planned hotel and related specific plan to determine whether subsequent environmental review is required and assist on preparation of focused supplemental EIR.
- Directed city staff, outside consultants and applicant teams and provided extensive land use and CEQA compliance advice and guidance to newly incorporated city and city attorney regarding various proposed commercial, residential and transportation infrastructure projects.
- Lead interdisciplinary team of attorneys, engineers, consultants, and school district personnel working on the environmental impact review process related to the yearly provision of charter school facilities (involving an addendum to a prior EIR one year, a new MND the next and a focused EIR the following year).
- Lead interdisciplinary team of attorneys, consultants and school district personnel to develop facts supporting CEQA exemption for project involving reopening of closed elementary school and changes in attendance boundaries to repopulate the reopened school.
- Provided extensive CEQA compliance advice and guidance to a city and a special district regarding joint exercise of powers agreements for wastewater, fire and emergency medical services to be provided to an Indian tribe.

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- Develop legal strategy and develop record documents and findings supporting statutory CEQA exemption for traffic mitigation projects related to new Indian casino.
- Advised a Fortune 100 company and led interdisciplinary team of attorneys, engineers, consultants, public relations, and agency personnel working on CEQA review and entitlement processes associated with a number of large and controversial retail development projects.

Litigation Matters

- ***Gallaher v. City of Santa Rosa*,** Sonoma County Superior Court Case No. SCV-265711—successfully defended challenge to ordinance requiring electric-only power and heating systems for new low-rise residential construction (AKA all-electric reach code), under CEQA and California reach code regulations
- ***Clayton for Responsible Development v. City of Clayton*** (Contra Costa County Superior Court Case No. N20-05343). Representing project applicant as Real Party in Interest, successfully defended City's project approvals (including CEQA infill exemption determination) against challenge alleging both CEQA and State Density Bonus Law claims.
- ***McCorkle Eastside Neighborhood Group et al. v. City of St. Helena*** (Napa County Superior Court Case No. 000205 and 1st District Court of Appeal Case No. A153238). Prevailed in trial and appellate courts in challenge to City's reliance on CEQA infill exemption and issuance of design review approval for 8-unit multi-family residential project, resulting in significant published decision by the First District Court of Appeal in *McCorkle Eastside Neighborhood Group v. City of St. Helena* (2019) 31 Cal.App.5th 80.
- ***Citizens for Responsible Winery Growth v. City of St. Helena*** (Napa County Superior Court Case No. 000953). Successfully defended City's reliance on existing facilities CEQA exemption and issuance of design review approval for wine fermentation tank farm replacement project at existing winery.
- ***APS West Coast, Inc. dba Amports v. City of Benicia*** (Solano County Superior Court Case No. FCS050113). Successfully defended/resolved challenge to City's decision granting appeal and denying emergency demolition permit sought to demolish and remove historic buildings.
- ***Tiernan et al. v. Diablo Community Services District*** (Contra Costa County Superior Court Case No. MSC17-02529). Successfully defended District in quiet title action seeking to negate claimed public right to use of Diablo roads and declare District has obligation to prohibit such public use.
- ***Albert Park Neighborhood Alliance v. City of San Rafael*** (Marin County Superior Court Case No. 1105491 and Court of

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Appeal Case No. A135028). Prevailed in trial court and Court of Appeal in challenge to City's reliance on CEQA exemption and issuance of use permit for lease of City-owned baseball park to independent professional baseball team.

- ***Pasetta Park Neighbors v. City of Santa Clara*** (Santa Clara County Superior Court Case No. 114CV266514). Worked collaboratively with counsel for Real Parties to obtain favorable settlement and early dismissal of entire action raising zoning challenge requiring nothing from the City.
- ***Concerned Citizens of Sonoma County v. City of Rohnert Park* and *M&M Services, Inc. v. City of Rohnert Park*** (Sonoma County Superior Court Case Nos. SCV250536 and SCV250020). Prevailed in these two separate but related actions challenging City's award of exclusive temporary debris box franchise on Proposition 218 and CEQA grounds.
- ***Citizens for Upholding Zoning Regulations v. City of Palo Alto*** (Santa Clara County Superior Court Case No. 107CV078386 and Court of Appeal Case Nos. H032872, H033204 and H036691). Prevailed in trial court action challenging approval of mixed-use project on State Density Bonus Law and CEQA grounds and subsequently received, successfully defended (in two separate appeals) and recovered significant attorneys' fee awards pursuant to CCP section 1021.5.
- ***Bullis Charter School v. Los Altos School District*** (Santa Clara County Superior Court Case Nos. 113CV245684 and 113CV255506). Achieved favorable and significant settlement and dismissal of consolidated actions challenging charter school facilities offers on various CEQA grounds, ending bitter multi-year litigation between the parties.
- ***Stop the Casino 101 Coalition v. City of Rohnert Park*** (Sonoma County Superior Court Case No. SCV252617). Prevailed in trial court on motions for judgment/to dismiss in challenge to City's use of statutory exemption for transportation project related to new Indian casino.
- ***Livermore Citizens for Responsible Growth v. City of Livermore*** (Alameda County Superior Court Case No. RG 14725317). Worked collaboratively with counsel for Real Parties to obtain favorable settlement and dismissal of entire action challenging CEQA exemption determination requiring nothing from the City.
- ***Residents of Santa Clara v. City of Santa Clara*** (Santa Clara County Superior Court Case No. 113CV254623). Successfully opposed Petitioner's motion to augment Administrative Record with voluminous extra-record documents and prevailed on motion to dismiss lawsuit, challenging City's use of CEQA categorical exemption for project to rehabilitate a historic residence, as moot.

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- ***Concerned Citizens of Fort Bragg v. City of Fort Bragg*** (Mendocino County Superior Court Case No. SCTMCVG 15-65240). Successfully defended City's approval of loan agreement to provide grant money for homeless services from a variety of claims including CEQA and NEPA causes of action. Petitioner voluntarily dismissed lawsuit after failing to secure temporary restraining order or preliminary injunction and while the City's motion for judgment was pending.
- ***Center For Biological Diversity v. Department of Fish and Wildlife*** (California Supreme Court Case No. S217763). Co-authored amicus brief for the League of California Cities, the California State Association of Counties, the California Special Districts Association and the Southern California Association of Governments addressing important issues regarding exhaustion of administrative remedies, impact analysis and mitigation and greenhouse gas emission impact methodology.

Prior to joining Burke, Steve successfully litigated numerous other land use and CEQA actions including: a successful defense of challenges to lot line adjustment ordinance in two consolidated actions in Napa County Superior Court (facial and as applied challenges) asserting Subdivision Map Act preemption and CEQA claims; successful traditional mandamus action in Contra Costa County Superior Court resulting in rare judgment ordering agency to complete long-delayed EIR and water supply assessment forthwith; successful defense of subdivision approval in action in Alameda County Superior Court asserting Subdivision Map Act and CEQA claims; successful mandate action in Napa County Superior Court challenging flood control project on CEQA grounds; successful mandate actions in both Napa County Superior Court and Santa Cruz County Superior Court challenging issuance of timber harvest permits and timberland conversion permits on CEQA grounds and related attorneys' fee awards.

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