



## California Environmental Law

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Burke Environmental Law attorneys advise and represent both public agency clients in federal and State regulatory compliance, administrative actions, and litigation. We are uniquely positioned to address public agency development and redevelopment projects of any scale in California and throughout the project development cycle. Burke's Environmental Law team manages compliance and dispute resolution under the California Environmental Quality Act (CEQA) and the National Environmental Protection Act (NEPA). Our Environmental Law team frequently teams with the Burke Land Use Law team in advising on agency-managed project development legal matters. As needed, such matters may also have the involvement of Burke's Natural Resources Law team.

Burke Environmental Law attorneys have applied expertise in interacting with federal and State environmental regulations and regulatory agencies, including: the California Department of Transportation, the California Housing and Community Development Department, the California Department of Fish and Game, the U.S. Fish and Wildlife Service, the California Regional Water Quality Control Boards, the U.S. Department of Interior, the Department of Water Resources, and county flood control districts. We also negotiate and manage permitting with federal, State, and local regulatory agencies, working with regional water quality control boards on water conveyance systems and wastewater facilities, and advise on litigation and disputes related to the Endangered Species Act and the Clean Water Act.

## **CEQA**

CEQA generally requires State and local government agencies to inform decision makers and the public about the potential environmental impacts of proposed projects, and to reduce those environmental impacts to the extent feasible.

## **NEPA**

NEPA is a U.S. environmental law that promotes the enhancement of the environment and established the President's Council on Environmental Quality. The law was enacted on January 1, 1970. NEPA requires federal agencies to assess the environmental effects of their proposed actions prior to making decisions.

## **CEQA and NEPA Permitting and Compliance**

Burke Environmental Law attorneys regularly assist public agencies with the preparation and defense of environmental documents prepared pursuant to CEQA and NEPA. We serve as trusted advisors to all parties in the CEQA and NEPA permitting process because of our collaborative and straight-forward approach to compliance issues and expertise in ensuring adequacy of documentation.

For public agency clients, Burke Environmental Law attorneys routinely advise on these issues:

- Whether a particular project is subject to (or excluded from) CEQA or NEPA.
- If a project is subject to CEQA or NEPA, what level of review is appropriate.
- Whether a previously prepared CEQA or NEPA document is legally viable.
- How to employ CEQA stream-lining options.
- Risks involved in pursuing a particular types of CEQA document (e.g. Mitigated Negative Declaration versus a full Environmental Impact Report);
- Risks involved in pursuing a particular type of NEPA document (e.g. pursuing an Environmental Assessment versus an Environmental Impact Statement)
- Commenting or responding to comments on CEQA and NEPA documents.

Burke Environmental Law attorneys recognize that there is no cookie-

cutter approach to CEQA and NEPA compliance. We first clarify the client agency's (or company's) specific project development goals and objectives so that we can effectively advise and assist in balancing competing factors of time constraints, political sensitivities, budget concerns, need for future flexibility, administrative challenges, and other interests. Often, the time involved in the CEQA and NEPA process is the linchpin of the project implementation schedule. However, the CEQA and NEPA documentation process can be a lightning rod for litigation. Burke Environmental law attorneys collaborate with the client agency (or company) to optimize execution of the compliance solution. We also skillfully work with developer's counsel, community groups, environmental groups, regulatory agencies, and professional consultants, as appropriate to a given project.

### **CEQA and NEPA Litigation Defense**

Throughout the compliance process, Burke CEQA and NEPA compliance and permitting attorneys keep in mind the possibility of litigation. We routinely build an in-depth administrative record, ensuring that all necessary documents and findings create the most supportive record of the public agency's position on a project to secure the required regulatory approval. Because Burke's Environmental Law team often advises on the administrative approval and compliance advice level, we are well positioned to cost-effectively manage seamless and successful litigation outcomes.

### **Permitting**

Land use and environmental permitting in California frequently involves ministerial and discretionary decision-making by local governments to authorize a particular project development or redevelopment activity. These local and state government permitting processes are often complex and time consuming. Burke Land Use and Environmental attorneys counsel clients on overcoming potential regulatory roadblocks, as well as advise on practical solutions to achieve client objectives. We often assist clients with developing strategies for navigating public hearings and meetings related to the land use, environmental, and zoning permitting processes.

### **Environmental Review and Compliance**

The California Environmental Quality Act (CEQA) is the primary law in California governing environmental review of development projects

that potentially entail environmental harm. CEQA requires that public agencies be fully informed regarding environmental impacts of a particular development project. Only after consideration of CEQA compliance may a public entity determine whether a proposed development project may be formally approved and built.

Environmental review and compliance also involve an interwoven web of sometimes competing federal, state, and local regulations; including those governing air and water quality; habitat preservation, noise, and vehicle traffic. Burke Environmental and Land Use attorneys are experienced with all aspects of CEQA and National Environmental Policy Act (NEPA) compliance and mitigation.

Our team is very familiar with federal and state environmental regulations and regulatory agencies, including the California Department of Transportation, California Department of Fish and Game, the U.S. Fish and Wildlife Service, Regional Water Quality Control Boards, the U.S. Department of Interior, the Department of Water Resources, the California Air Resources Board, and regional air districts.

### **California Land Use Law**

Land Use law is the set of legal principles and regulations governing the use of land and buildings within the police powers of certain public entities. These laws govern how land may be developed, zoned, and used. They significantly impact property owners, developers, and local communities. Planning and Zoning laws, the Subdivision Map Act, the California Environmental Quality Act (CEQA), the National Environmental Protection Act (NEPA), the California Mitigation Fee Act all exemplify the types of regulations affecting land use. Although a local agency has broad authority to enact laws relating to land use, there are State and federal laws which may preempt a particular area of the land use such as residential care facilities. Burke Land Use attorneys advise public agency clients on compliance and enforcement of such local laws and issues of preemption.

Burke Land Use attorneys provide guidance and representation in all aspects of land use planning, housing, and development matters. We assist clients with navigating complex local, state, and federal laws and regulations related to land use and development including zoning, environmental review, and land use entitlements. From project inception and site selection to entitlements, permitting, and construction, we provide legal advice on housing policy, including affordable housing programs and other initiatives to address housing needs in California communities.

Burke Land Use attorneys also litigate disputes growing out of

complex development projects that address zoning, environmental, transportation, economic, cultural, and community issues.. Representing both municipalities and private landowners, we deal with the interacting components of real estate development and redevelopment, real estate finance and construction, subdivisions, water supply and water rights, remediation, and other land use issues.

Having served as advisors and litigators to California public agencies for decades, Burke's Land Use team approaches each matter with the view that land use design and land use litigation strategies must be customized to fit the client's specific project goals and objectives. As trusted legal advisors to a myriad public entities in the full range of municipal law, Burke also regularly advises and represents public agencies in key procedural aspects of the land use process, including the Brown Act, the Public Records Act, and on due process and equal protection claims.

### **Planning and Zoning Law**

Planning and zoning law regulates the use and development of land. General plans, specific plans, and zoning regulations are implemented to ensure that land is used in a manner consistent with community goals and objectives, such as protecting natural resources, promoting economic development, and preserving residential neighborhoods.

Planning and zoning laws may vary widely from each jurisdiction within California. These regulations are routinely guided by local politics, geography, community values, and economic conditions. However, compliance with statutory requirements also play a role. One factor highly scrutinized by the State is a city's housing composition, which is part of a city's general plan. A city's housing element must use its land use and zoning designations to, among other things, meet State housing goals regarding affordable housing. Burke Land Use attorneys specialize in preparation and enforcement of zoning regulations; negotiating development agreements; and representing public agencies shaping land use policies.

Burke Land Use attorneys advise public agency clients on the development of general plans, specific plans, local coastal plans, and zoning codes, including consistency with requirements for localities to plan to supply their fair share of housing units. We strive to ensure that these plans are consistent with all planning and zoning laws and that their adoption complies with CEQA and NEPA requirements. Burke Land Use attorneys regularly advise planning commissions and municipal boards when they review applications for annexation, rezoning, planned developments, and subdivision approvals. We advise public agencies on due diligence, transactional documents,

government entitlements, CEQA strategy and implementation, preparing findings to support approvals, and defending any ensuing CEQA related litigation. Our full-range capabilities position Burke to anticipate and plan for inevitable challenges.

Burke's Land Use team routinely teams with the Environmental Law team and Natural Resources law team in developing and implementing legal solutions for public agency (and private sector) client development and redevelopment projects.

We have deep expertise in the Permit Streamlining Act, Mitigation Fee Act (and nexus requirements and takings jurisprudence generally), the Subdivision Map Act, and laws and recent cases concerning affordable housing inclusionary requirements and/or fees.

### **Development Agreements**

Development agreements are contracts between developers and local government agencies that provide a framework for developing land. Such agreements are ordinarily utilized to regulate and manage development of large or complex projects such as residential subdivisions, commercial developments, or industrial parks. These agreements may address a range of issues including zoning requirements, building standards, and public infrastructure needs.

Ordinarily, a developer agrees to provide public benefits to the local community in exchange for a limited right to develop land. Such public benefits may be dedication of park land; development of affordable housing; mitigating traffic congestion; or funding certain community interests or projects. The local government may, in return, provide the developer with streamlined permitting; protection from changes in local land use laws; or certain credits from fees. These are complex agreements that require the type of experience BWS attorneys provide.