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For 27 years, Dan Curtin authored this book as a desk reference for those interested in California land use and planning law. Cecily joined Dan as a co-author in 2000 and worked with him to continually update the book based on their own and their partners’ decades of experience representing both public agencies and private developers. Following Dan’s passing in November 2006, Matt joined Cecily—first as Managing Editor and later as co-author—in preserving and expanding upon the legacy Dan started with this book. Like all editions published since his passing, this book is again dedicated to Dan.

This 36th edition summarizes two years of published decisions, statutory revisions and other agency policies and guidance, including:

• Analysis of the multiple legislative changes designed to promote housing development and further constrain local agency authority to disapprove housing projects that are consistent with the General Plan and zoning (chapter 15)

• Discussion of changes to the Elections Code removing the ability of initiative proponents to compel consideration of a measure at a special election (chapter 13)

• Discussion of numerous cases decided under CEQA addressing when the requirement to comply with CEQA is triggered, the types of impacts required to be evaluated under CEQA, application of exemptions and exceptions thereto, evaluation of climate change and energy impacts, and the scope of alternatives to be identified (chapter 6)

• Analysis of the continued uncertainty over the definition of the “waters of the United States” for determining federal jurisdiction under the Clean Water Act and the ongoing regulatory efforts to formulate a new definition (chapter 7)

• Analysis of new case law on the listing and delisting of species under the federal and California Endangered Species Acts, and new federal policies and regulations on the protection of critical habitat (chapter 8)

• Analysis of toughened statewide goals for reductions in greenhouse gas emissions and indications from the California Supreme Court that more stringent regulations and evolving science will affect the analysis of climate change impacts under CEQA (chapter 16)

• Discussion of case law upholding use of Mello-Roos tax imposed as a condition of approval of new residential development to finance a range of governmental services and facilities (chapter 12)

• Analysis of case law confirming there is no “discovery rule” that delays CEQA statutory deadlines until the plaintiff knows of the existence of a claim (chapter 19)

• Discussion of the Pfeiffer-McDougal rule and the circumstances when proceeding with development authorized with a permit results in waiver of objections to permit conditions (chapter 19)
This 2018 edition has benefited from the contributions made by attorneys in Perkins Coie’s California Land Use and Development Practice.

**Barbara Schussman** authored chapter 6 (CEQA). Barbara litigates land use and environmental cases on behalf of public agencies and private entities, and provides comprehensive CEQA compliance advice. Her engagements include representing Stanford University, Stanford Hospital, and Lucile Packard Children’s Hospital in securing land use approvals for major campus and hospital expansion projects in Santa Clara County and Redwood City; representing the Port of Stockton as special counsel in litigation challenging the EIR prepared for reuse of a 1,500-acre former Navy facility as expanded port maritime and industrial facilities; representing American President Lines in securing approvals for expansion of its shipping terminal at the Port of Los Angeles; and representing Contra Costa Water District in expansion of the Los Vaqueros Reservoir. Barbara received her law degree from the University of California, Berkeley School of Law (Boalt Hall), where she was elected to the Order of the Coif. She graduated *magna cum laude* from the University of California, Los Angeles, where she was elected to Phi Beta Kappa.

**Marc Bruner**, author of chapters 7 (Federal and State Wetland Regulation) and 8 (Endangered Species Protections) represents governmental entities and private companies in a wide variety of environmental and land use matters. Marc’s work involves federal laws and regulations, including the National Environmental Policy Act (NEPA); the Clean Air Act; the Clean Water Act; and the Endangered Species Act. He also focuses his practice on numerous California laws and regulations such as: CEQA; the Porter-Cologne Water Quality Control Act; the California Endangered Species Act; the Integrated Waste Management Act; the Subdivision Map Act; the Planning and Zoning Law; the Building Code; and California laws and regulations governing water supply, green buildings, recycled water, coastal development, state lands and the public trust, conversion of agricultural lands, historic resources, hazardous materials and wastes, and flood protection and safety. After Marc graduated from Yale Law School, where he was Managing Editor of the Yale Journal of Law and the Humanities, he clerked for the Honorable José A. Cabranes, Chief Judge of the U.S. District Court for the District of Connecticut. Marc received his bachelor’s degree, *magna cum laude*, from Harvard College.

**Julie Jones**, author of chapter 16 (Sustainable Development), is an experienced litigator in trial and appellate advocacy in both state and federal courts. Julie’s counseling experience includes providing CEQA, NEPA, and other environmental and land use advice in the permitting of major solar energy, reservoir, and port expansion projects. She works extensively with universities to obtain approvals for their large projects by addressing CEQA, historic resources, wetlands, and local permitting issues. Julie has assisted developers of thermal and wind energy projects, regional distribution centers, and residential projects in securing land use entitlements. Julie regularly defends projects against CEQA and other claims and has helped clients overcome challenges to a university/county agreement for trails, a city annexation process, a transportation sales tax ballot measure, a city/county agreement for provision of urban services, a light rail project, and a university development and roadway project. Julie also successfully defended major expansion and dredging projects against NEPA and Endangered Species Act claims. Julie received her law degree from the University of California, Berkeley School of Law (Boalt Hall), where she was Executive Editor of the Ecology Law Quarterly. She graduated from Stanford University with distinction and was elected to Phi Beta Kappa.
Geoff Robinson, co-author of chapter 19 (Land Use Litigation), focuses his practice on land use, development, and real estate litigation. He represents clients in civil and administrative proceedings involving planning and zoning laws, CEQA, development fees and exactions, and public facilities financing. He is an authority on writs of mandate in the trial court and is co-author of the treatise *California Administrative Mandamus* (CEB, 3rd ed. 2012) and other publications on civil writ practice. He also has substantial experience in the area of development mitigation and has litigated numerous cases involving challenges to development exactions, mitigation requirements, and public financing districts. Geoff has also handled a broad range of water law matters, including a ground water basin rights adjudication, and appellate litigation involving the validity of a water supply assessment and an Urban Water Management Plan.

Geoff has been an active participant in pro bono efforts, representing individuals, nonprofits and public agencies before state and federal courts, including several matters in the California Supreme Court. He is the recipient of the California State Bar President’s Pro Bono Award. Geoff served as law clerk to the Honorable Thomas J. MacBride of the United States District Court for the Eastern District of California and as extern to the Honorable Joseph T. Sneed of the United States Court of Appeals for the Ninth Circuit. Geoff attended law school at the University of Virginia and Hastings College of the Law, from which he received his law degree with honors. He graduated with distinction from the University of California, Berkeley.

Marie Cooper, co-author of chapter 19, focuses her practice on land use and development, entitlement processing, and land use litigation at the trial and appellate court levels. Marie is experienced in addressing issues arising under the Planning and Zoning laws, CEQA, NEPA, the Religious Land Use and Institutionalized Persons Act (RLUIPA), water supply bills, water rights law, election laws pertaining to initiatives and referenda, and annexation-related laws. Marie is also skilled in handling Williamson Act matters, having represented the developer in the first easement exchange project processed through the Department of Conservation. Marie has substantial litigation experience in challenging and defending land use entitlements, general planning and zoning enactments, development fees and dedications, annexation proceedings, and initiatives and referenda. Her land use litigation practice focuses on writ of mandate proceedings, validation actions, and inverse condemnation. She is adept at navigating the peculiar procedures applicable to land use cases and focusing on rational solutions that fit the client’s particular circumstances. Marie served as an extern to the Honorable Otto Kaus of the California Supreme Court. She graduated from the University of California, Berkeley School of Law (Boalt Hall), where she was elected to the Order of the Coif. Marie graduated with high honors from the University of California, Santa Barbara.

We also wish to thank the following individuals in the San Francisco office of Perkins Coie for their contributions to this 2018 edition: Alan Murphy, partner, and Lindsey Quock and Brian Daluiso, associate attorneys, for their review and editing of portions of this edition; and Shari Harewood and Michelle Rodriguez, administrative assistants, for reviewing and preparing numerous draft revisions of each chapter.

This book is not a substitute for the guidance and advice of an attorney, especially in complex matters in which refinements and interpretations of the law are essential before final conclusions are drawn about planning and development processes, property rights, due process, and procedural matters.

In addition, although legal reference points are essential, in matters pertaining to local public planning and the development process, there is no substitute for an
understanding of how the planning process works at the city and county levels. Much of the process is delineated by California law and indeed most of the process is mandated. The law does not say a great deal, however, about what local planning policies should be or how a city or county should organize its land uses. That is a local task. But the law does require cities and counties to prepare, adopt, and update general plans before making land use and land use-related decisions, and it requires that certain procedures be followed to carry out public policies, protect private rights, and ensure due process prior to making decisions. We hope you find this book a helpful guide to better understanding how those mandates and procedures may be applied at the local level. For regular insights into legal issues relating to development and use of land and federal, state, and local permitting and approval processes, subscribe to Perkins Coie’s California Land Use and Development Law Report at www.californialandusedevelopmentlaw.com.

Cecily Talbert Barclay
Matthew S. Gray
January 2018

CONVENTIONS IN THIS BOOK

For brevity and readability, this text uses the following conventions:

- When the word “city” is used, it also means “county”; “city council” also means “county board of supervisors.” The text will note instances where there is a substantive distinction between how land use and planning law affects cities and counties.

- All references to the Legislature are to the California State Legislature, unless otherwise indicated.

Code references are to the California Code, unless otherwise indicated.