



## Donald E. Sobelman Partner

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Don Sobelman is exclusively focused on helping his clients successfully navigate the complexities of environmental law. His practice is multifaceted, embracing enforcement defense and litigation, compliance with environmental and land use regulations, contaminated site cleanup and brownfields redevelopment.

Don collaborates extensively with technical experts – such as hydrogeologists, toxicologists, and engineers – to ensure that his clients obtain the best advice possible when deciding how to address environmental issues. Whether managing a project to remediate soil vapor or groundwater contamination, litigating responsibility for cleanup costs in trial court or on appeal, or assisting a client in complying with complex environmental regulations, Don has the breadth of experience and depth of knowledge to achieve his client's goals.

Don's professional expertise includes:

- Environmental litigation involving state and federal statutes (such as CERCLA, RCRA, CWA, HSWA), complex toxic tort claims, common law claims (nuisance, trespass), and contractual claims;
- Investigation, remediation, and risk mitigation at contaminated sites involving vapor intrusion and soil/groundwater contamination (including by petroleum,
- PFAS/PFOA, perchlorate, PCBs, metals, and PCE and other volatile organic compounds (VOCs));
- Compliance with local, state, and federal environmental regulations pertaining to hazardous materials, hazardous waste, water quality, wetlands, and brownfields sites;.

### Industries

Aerospace  
Real Estate  
Public Agencies/Municipalities  
Water Rights & Resources  
Higher Education

### Practices

CEQA / NEPA  
Environmental/Toxics Litigation  
Environmental Enforcement Defense  
Environmental Remediation & Due Diligence  
Land Use  
Water Quality Law  
Appellate & Writ Practice  
Real Property & Land Use Litigation

### Education

J.D., *cum laude*, Harvard Law School, 1996  
B.A., *summa cum laude*, English, University of California at Los Angeles, 1991

- All aspects of the CEQA project review process, including preparation, review, and analysis of exemptions, negative declarations, environmental impact reports, comment letters, and responses to comments;
- Defense of Clean Water Act citizen lawsuits in federal court, alleging violations of the California General Permit for industrial storm water discharges;
- Defense of administrative enforcement and penalty actions by US EPA, the Regional Water Quality Control Boards (RWQCBs), the Department of Toxic Substances Control (DTSC), and Certified Unified Program Agencies (CUPAs);
- Responding to requests for information/technical reports from USEPA, DTSC, RWQCBs, and CUPAs.
- Implementing internal investigations and audits, to assess potential/alleged violations of environmental laws and regulations and to inform development of corrective actions, strategy for disclosures and responses to regulators, and options for minimizing potential liability;
- Advising clients on brownfields redevelopment and related liability, remediation, and permitting issues.
- Conducting due diligence regarding environmental liabilities associated with real estate transactions and development agreements, and negotiating and drafting contract provisions to resolve such issues;
- Development and approval of land use plans and entitlements, including specific plans, zoning amendments, general plan amendments, and conditional use permits;
- Litigation under CEQA and the California Planning and Zoning Law;
- Development and implementation of document retention policies, both prior to and during litigation; and
- Appellate proceedings in state and federal court, including writ review, interlocutory appeals, and appeals from final judgments.

## Experience

- Represent major defense contractor with respect to ongoing investigation and remediation of perchlorate and energetics in soil and groundwater at armaments testing facility, under supervision of Central Coast Regional Water Quality Control Board.
- Represent Bay Area municipality in negotiations with responsible party concerning remediation of 86-acre former industrial site, under DTSC oversight, to accommodate shoreline residential development, open space, and R&D uses specified in new specific plan. Drafted environmental provisions of specific plan.
- Represent client with respect to development of corrective action plan to address benzene vapor intrusion issues associated with historical release of petroleum to groundwater, under oversight of Alameda County Department of Environmental Health.
- Advise Bay Area client regarding investigation and remediation of environmental conditions at former firearms range, focused on lead, other metals, and polycyclic aromatic hydrocarbons (PAHs).
- Represent numerous clients with respect to investigation, remediation, and risk mitigation at contaminated sites posing vapor intrusion issues from chlorinated solvents, such as PCE and TCE, under oversight of Regional Water Quality Control Boards.
- Advise Bay Area client with respect to implementation of TSCA-compliant PCB remediation to levels allowing for unrestricted use, to facilitate sale and redevelopment of property for residential and other uses.
- Represented commercial property developer throughout project approval and CEQA process for 18-acre shopping center, and successfully defended project in both trial and appellate courts against suit challenging project's environmental impact report and its consistency with the City of Modesto general plan. *Naraghi Lakes Neighborhood Preservation Association v. City of Modesto*, 1 Cal. App. 5th 9 (2016).

- Conducted internal investigation for California client related to USEPA enforcement action for unpermitted filling of several acres of wetlands. Responded to USEPA request for information under Clean Water Act section 308(a) and negotiated administrative order on consent providing for mitigation and minimal penalty.
- Defended Fortune 50 aerospace company in state-law (HSAA/nuisance) cost recovery action brought by a large southern California water district concerning aquifer contamination by TCE and other VOCs.
- Defended major California recreational facility/resort against CUPA enforcement action alleging violations of hazardous materials business plan regulations, underground and aboveground storage tank regulations, and hazardous waste generator regulations. Negotiated settlement resulting in reduction of proposed penalty by over 70 percent, without any admission of liability.
- Defended a potentially responsible party, sued on a successor liability theory, in a CERCLA/RCRA cost recovery action brought by a southern California municipality over perchlorate contamination in groundwater used as drinking water; negotiated consent decree resolving claims.
- Represented former owners of East Bay property contaminated by PCE and other VOCs in Regional Water Quality Control Board enforcement proceedings, and succeeded in having clients removed from site cleanup order.
- Acted as lead counsel for CEQA lead agency City of Sunnyvale in (1) development and approval of EIR for a multi-million dollar transportation infrastructure project, and (2) defense of City in litigation resulting in key decision on selection of a baseline for environmental impacts analysis. *Sunnyvale West Neighborhood Ass'n. v. City of Sunnyvale City Council*, 190 Cal.App.4th 1351 (2010).
- Conducted time-sensitive internal investigation for large industrial client in Southern California, following internal discovery of filling in area potentially constituting regulated wetlands under state/federal law. Avoided any penalty or enforcement action by voluntarily reporting incident, promptly implementing removal action, and conducting enhanced training of facility staff.
- Defended major California oil and gas production company in citizen suit regarding storm water management at a 4,000+ acre oil and gas field utilizing hydraulic fracturing technologies.
- Represented Silicon Valley municipality in negotiating and implementing the environmental remediation requirements, and related cost-sharing and indemnification provisions, in a development agreement for a major mixed-use project.
- Represented several companies that owned and operated a former wood treating facility in the Central Valley, in a lawsuit brought by more than 2,000 plaintiffs alleging personal injuries and property damage resulting from exposure to hexavalent chromium in air and drinking water. *Abarca v. Franklin County Water District*, 761 F.Supp.2d 1007 and 813 F.Supp. 2d 1199 (E.D. Cal. 2011).
- Represented defendants in district court and Ninth Circuit proceedings in cost recovery litigation (including nuisance and trespass claims) arising from petroleum and metals contamination. *Redevelopment Agency of the City of Stockton v. BNSF Railway Co.*, 643 F.3d 668 (9th Cir. 2011).
- Conducted environmental due diligence for acquisition of petroleum product distribution company with portfolio of properties, including contaminated properties subject to ongoing regulatory oversight. Drafted and negotiated environmental indemnities and related provisions in purchase documentation.
- Negotiated consent decrees in a number of Clean Water Act citizen suits alleging violations of the California storm water industrial general permit. Clients included a metal recycling facility, a landfill, two waste transfer stations, an electronics recycler, two auto dismantlers, and a large food manufacturing facility.
- Successfully defended major aerospace company against toxic tort claims in trial court and appellate litigation, resulting in decision limiting application of component parts doctrine. *Maxton v. Western States Metals*, 203 Cal.App.4th 81 (2nd Dist. 2012).

## Professional & Community Service

- California Bar Association, Section on Environmental Law, 1997-1999 and 2004-present
- Bar Association of San Francisco, Environmental Law Section, 2004-present
- Association of Environmental Professionals, 2015-present
- Pro bono representation of South Valley Islamic Center in ongoing CEQA and permit process for the Cordoba Center, a 16-acre project in San Martin including a mosque, community center, and cemetery, 2012-present

## Honors & Rankings

- *Super Lawyers*, Northern California Super Lawyer, Environmental Litigation, 2014-2019
- Best Lawyers in America®, Litigation-Environmental, 2018-2019
- Phi Beta Kappa

## Legal Alerts

- *U.S. District Court Holds USEPA Must Regulate Previously Exempted Stormwater Runoff from Specified Commercial, Industrial, and Institutional Sources in Los Angeles*, August 31, 2018
- *DOJ Issues Policy Memo Limiting the Use of Supplemental Environmental Projects in Federal Settlements*, June 12, 2017
- *Water Board Adopts Revisions to Enforcement Policy That Are Expected to Generally Increase Penalties*, April 4, 2017
- *The California Supreme Court's CEQA Docket Comes To A Dramatic Close For The Year, Resolving That EIRs Need Not Address The Environment's Impacts On A Project*, January 8, 2016
- *California Supreme Court Strictly Interprets State Fully Protected Species Statute and Finds Greenhouse Gas Emissions Analysis Inadequate in Newhall Ranch EIR*, December 2, 2015
- *Update: Berkeley Hillside Case Ends With Victory for Lead Agency in Court of Appeal*, October 30, 2015

## Publications

- *The 2018 Environmental Legislative Recap: The End of an Era*, Contributor, California Environmental Law Reporter, Vol. 2019, Issue 2, February 2019
- *The 2016 Legislative Recap: An Unconventional Election Year Defending A Legacy*, Contributor, California Environmental Law Reporter, Vol. 2017, Issue 3, March 2017
- *GMO Labeling: Coming Soon To California and the Rest of the Country*, California Grocer, Issue 4, August 2016
- *The 2015 Legislative Recap: Settling In and Taking a Breath*, Contributor, California Environmental Law Reporter, Vol. 2016, Issue 4, April 2016
- *Calif. High Court Humbles Itself Over CEQA Case*, Law360, September 8, 2015
- *Storm Water Requirements For Industry In CA Getting More Stringent*, Facility Executive, May 20, 2015
- *Ruling Complicated Use of CEQA's Categorical Exemptions*, San Francisco Daily Journal, March 16, 2015
- *Federal Preemption May Be The Key For Calif. Railroads*, Law360, November 17, 2014

- *Analysis of New Framework for Transportation Impact Under CEQA*, ENR California , September 16, 2014
- *SB 743: Tinkering with CEQA for the Future*, San Francisco Daily Journal, January 21, 2014
- *In CA, New Water Quality Regulations For Industrial Facilities*, Facility Executive, October 24, 2013
- *Bill To Create Environmental Court Lacks Specificity*, San Francisco Daily Journal, March 6, 2013
- *The Future is Now (Or Is It?): Choosing the "Baseline" and Minimizing Related Litigation Risk Under CEQA*, San Francisco Daily Journal, May 16, 2012
- *Statewide Stormwater Permit Revisions Could Limit Citizen Suits Against Industry*, San Francisco Daily Journal, April 22, 2011

## Speaking Engagements / Events

- *Communicating Environmental Risk to Judges and Juries*, Co-Chair and Presenter, Association for Environmental Health and Sciences (AEHS) 29th Annual International Conference on Soil, Water, Energy, and Air, March 18-21, 2019
- *Stormwater Litigation Avoidance, Response, and Defense Strategies*, Co-Presenter, Mapistry's 2018 Pollution Prevention Summit, September 13, 2018
- *Preventing, Negotiating and Understanding Lawsuits* , Co-presenter, Mapistry's Industrial Stormwater Summit, September 14, 2017
- *Sea Level Rise and Shoreline Adaptation: Lessons From the Bay Area*, Moderator, Association of Environmental Professionals (AEP) 2017 State Conference, May 20, 2017
- *CEQA Litigation: Administrative Records & Remedies*, Presenter, County Counsels' Association of California Fall 2016 Land Use Conference, December 1, 2016
- *What To Know For The Next Wet Season And Beyond*, Presenter, Storm Water Awareness Week Webcasts, September 28-29, 2016

## Blogs

- *Fourth District Upholds Use of Existing Facilities Exemption for San Diego Amusement Park Lease, Finding no Causal Connection Between "Unusual Circumstance" and Potential Impacts*, January 29, 2019
- *Update: SCOTUS Declines Review of Friends of the Eel River CEQA Preemption Decision*, May 1, 2018
- *Second Appellate District Rejects Challenge to EIR Alternatives Analysis for West Hollywood Redevelopment Project*, January 5, 2018
- *First Appellate District Rejects Urban Decay Claim, Upholds EIR for New El Dorado County Courthouse*, October 25, 2017
- *Fourth Appellate District Upholds City of San Diego's Rejection of Subdivision Project and Related MND*, August 29, 2017
- *"Self-Governance," Not "Regulation": California Supreme Court Rules No Federal Preemption of CEQA under ICCTA for State-Owned Rail Projects*, August 1, 2017
- *Sixth District Upholds County Zoning Updates Against Piecemealing Claim, Rejects Challenge to Negative Declaration Based on "Wholly Speculative" Impacts*, July 6, 2017
- *The California Supreme Court Has a Banner Week, Hearing Argument in Three CEQA and Land Use Cases*, May 31, 2017



- *Third District Finds that EIR for Residential Development Inadequately Assessed Traffic Impacts*, May 7, 2017
- *Second District Denies Mandatory Relief from Adverse Judgment to Plaintiff Whose Counsel Failed to Timely Lodge Administrative Record*, April 30, 2017
- *Downey Brand Partners to Speak at AEP 2017 State Conference in San Francisco*, March 14, 2017
- *California Supreme Court Grants Review in Medical Marijuana CEQA Case*, January 18, 2017
- *Local Ordinance Regulating Medical Marijuana Dispensaries is Not a "Project" Subject to CEQA Review*, Fourth Appellate District Rules (Again), October 24, 2016
- *Surface Transportation Board Discusses Boundaries of Federal Preemption of CEQA and Local Land Use Requirements, Denies Petition by Refinery Over Crude-By-Rail Facility*, September 27, 2016
- *First Appellate District Upholds Use of Subsequent Mitigated Negative Declaration for Revisions to Use Permit for Religious Facility, Rejects Claim of General Plan Inconsistency*, September 15, 2016
- *Sixth Appellate District Adopts Substantial Evidence Standard for Review of Lead Agency Determinations Regarding Historical Resources*, August 25, 2016
- *Appellate Court Rejects Urban Decay Claim Based on Lay Witness Opinion, Upholds Mitigated Negative Declaration*, July 29, 2016
- *Appellate Court Upholds Bay Area's SB 375 Sustainable Communities Strategy*, July 27, 2016
- *Fifth Appellate District Publishes Opinion Confirming Broad Discretion of Local Agencies to Determine General Plan Consistency*, July 20, 2016
- *Addendum Does Not Save Inadequate Energy Impacts Analysis in EIR, First Appellate District Rules*, July 4, 2016
- *Appeals Court Finds Wal-Mart EIR Deficient and Overturns Development Approval Due to Inadequate Map Act Findings*, June 24, 2016
- *CEQA Portal, New Web Resource for CEQA Practitioners, Now Available*, June 16, 2016
- *Fifth Appellate District Rejects CEQA and General Plan Consistency Challenges to Modesto Commercial Development*, June 9, 2016
- *Social and Psychological Impacts Related to "Community Character" Not Covered by CEQA*, April 19, 2016
- *Appellate Court Upholds Local Restrictions on Medical Marijuana Dispensaries Against CEQA Challenge*, April 6, 2016
- *The End (of LOS) is Nigh: OPR's Revised Proposal on Analysis of Transportation Impacts*, April 5, 2016
- *Another Busy Year for CEQA in the California Supreme Court: Arguments Set for May 4 in San Mateo Gardens Case; Four Other Cases Pending*, April 4, 2016