

## **BPC Expert Briefing: CEQA and Environmental Regulatory Update 2022**

November 7<sup>th</sup>, 2022 | 8:30 am – 11:45 am

**In-Person:** Oakland City Center Paramount Room  
500 12<sup>th</sup> Street, Suite 105, Oakland, CA 94612

**Virtual:** Zoom Webinar

Link: <https://us02web.zoom.us/j/82513536819>

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|-------------|-------------------|---|
| <b>I.</b>   | <b>8:30 a.m.</b>  | <b>Welcome and Introductions</b>  |
| <br>        |                   |   |
| <b>II.</b>  | <b>8:35 a.m.</b>  | <b>CEQA Case Developments – Year in Review</b> <ul style="list-style-type: none"><li>• Arielle Harris, <i>Miller Starr Regalia</i></li><li>• Hina Gupta, <i>Downey Brand LLP</i></li><li>• Todd Williams, <i>Fennemore Wendel</i></li></ul>   |
| <br>        |                   |   |
| <b>III.</b> | <b>9:35 a.m.</b>  | <b>State Legislative Updates &amp; Responses</b> <ul style="list-style-type: none"><li>• Arielle Harris, <i>Miller Starr Regalia</i></li><li>• Amara Morrison, <i>Fennemore Wendel</i></li></ul>  |
| <br>        |                   |   |
| <b>IV.</b>  | <b>10:10 a.m.</b> | <b>Environmental Considerations in Disadvantaged Communities</b> <ul style="list-style-type: none"><li>• Divya Agarwal, <i>Trinity Consultants</i></li><li>• Phoenix Armenta, <i>Bay Conservation &amp; Development Commission (BCDC)</i></li><li>• <b>Moderator:</b> Christian Marsh, <i>Downey Brand LLP</i></li></ul>                          |
| <br>        |                   |   |
| <b>V.</b>   | <b>10:50 a.m.</b> | <b>Discussion on ESA/Clean Water Act/Porter-Cologne Act</b> <ul style="list-style-type: none"><li>• Tom Mumley, <i>San Francisco Regional Water Quality Control Board (SFRWQCB)</i></li><li>• Tony Francois, <i>Briscoe, Ivester &amp; Bazel LLP</i></li><li>• <b>Moderator:</b> David Ivester, <i>Briscoe, Ivester &amp; Bazel LLP</i></li></ul> |
| <br>        |                   |   |
| <b>VI.</b>  | <b>11:40 a.m.</b> | <b>Closing Remarks</b> <ul style="list-style-type: none"><li>• John Coleman, <i>Bay Planning Coalition</i></li></ul>  |

## Participant Biographies



**Divya Agarwal**

*Principal Consultant, Trinity Consultants*

Ms. Agarwal serves as a Principal Consultant and the Manager of Consulting Services for Trinity's Oakland office. Her experience includes a wide range of environmental projects across numerous states including federal Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) permitting, federal Maximum Achievable Control Technology (MACT) and New Source Performance Standard (NSPS) compliance, state construction permitting, due diligence, CEQA strategy, CEQA Air Quality Impact Assessments, Title V compliance and permitting, Class II and health risk modeling analyses, environmental auditing, air emissions reporting and toxic release inventories. She has provided services to numerous industries including surface coating, cement manufacturing, chemical manufacturing, bulk storage terminals, pipeline facilities, steel foundries, refineries, pharmaceutical manufacturing facilities, utility, and oil and gas facilities.

Ms. Agarwal is the instructor of Trinity's Air Quality Permitting Courses in California (Bay Area) and Nevada, and several other national webinars. Ms. Agarwal earned a M.S. degree in Biomedical Engineering from Washington University in St. Louis and a B.E. degree in Chemical Engineering from Birla Institute of Technology & Science, Pilani, India. Ms. Agarwal is a certified Professional Engineer (P.E.) in the state of California.



**Phoenix Armenta**

*Senior Manager for Climate Equity and Community Engagement, Bay Conservation & Development Commission (BCDC)*

Phoenix Love Armenta is the Sr. Manager of Climate Equity and Community Engagement at the SF Bay Conservation and Development Commission. Their work has spanned academia, government, and the non-profit sector and they have worked on environmental, racial, and social justice campaigns around the world, including anti-nuclear organizing in Japan and India, homeless advocacy in San Francisco, and multiple civic engagement and political campaigns throughout the Bay Area. They have also worked as a teacher with the Mycelium Youth Network and as the Regional Resilience Manager for the West Oakland Environmental Indicators Project. They are the co-founder of the New Leaders Council Oakland, a professional leadership development organization, and the Project Manager of the Oakland Shoreline Leadership Academy, a pilot project that teaches members of Environmental Justice communities to be resident planners. They hold a B.A. in Anthropology from Howard University and M.A. in Energy and Resources from UC Berkeley, with a specialty in Environmental Justice and Social Movement Theory.



### John Coleman

Chief Executive Officer, *Bay Planning Coalition*

John Coleman is the Chief Executive Officer of the Bay Planning Coalition, a non-profit, public benefit, membership corporation, to advocate for the balanced regulation and use of Bay-Delta resources to ensure that commerce, recreation and the environment thrive in the region. The Coalition's members represent a broad spectrum of public and private Bay-Delta entities, including ports, maritime and shoreline industry, labor unions, local government, residential and commercial builders, recreational users and engineering, planning, environmental science, construction and legal professionals.

Coleman was elected in 1990 and since re-elected to the Board of Directors of the East Bay Municipal Utility District (EBMUD). Coleman was elected to serve as the President of the Association of California Water Agencies (ACWA) in December 2013. Coleman currently serves in the following capacities: Board Member of the Marine Exchange of the San Francisco Bay Region; member of the Freeport Regional Water Authority (FRWA); Chair of the Upper Mokelumne River Watershed Authority (UMRWA); Board Member of the East Bay Leadership Council; member of the San Francisco Bay Restoration Authority Advisory Committee; member of the East Bay Economic Development Alliance Legislative Committee, and Board Member of DERWA, the joint powers authority for recycled water service provided by EBMUD and the Dublin-San Ramon Services District.



### Tony Francois

Attorney, *Briscoe, Ivester & Bazel LLP*

Tony Francois is experienced in Water and Real Property Law, Land Use and Zoning, Environmental Regulation, Natural Resources Development, Agricultural Law, and Constitutional Law. He has represented homeowners, builders, farmers and ranchers, trade associations, and water districts in administrative, civil, and criminal proceedings before state and federal administrative agencies and state and federal trial and appellate courts. He is a member of the California State Bar and the Northern, Eastern, and Central Districts of California and the Districts of New Mexico and North Dakota, and has litigated cases in federal courts in California, Oregon, Washington, Idaho, Montana, Nevada, Arizona, New Mexico, Colorado, North and South Dakota, Minnesota, Massachusetts, Maryland, South Carolina, and the District of Columbia, as well as the Sixth, Eighth, Ninth, and Tenth Circuit Courts of Appeals. He has appeared before the Supreme Courts of California, Idaho, Nevada, and the United States. Prior to attending law school, he served as an infantry officer in the United States Army and was stationed in the former West Germany during the fall of the Berlin Wall.



### Hina Gupta

*San Francisco Estuary Institute (SFEI)*

Public and private sector clients turn to Hina for advice and counsel on a wide variety of land use and environmental matters, including compliance with local planning and zoning laws, California Environmental Quality Act (CEQA), National Environmental Policy Act (NEPA), the California Coastal Act, local municipal and election laws, and brownfield redevelopment. Her experience includes assisting clients with land use entitlements and CEQA compliance for large and small-scale residential projects, office buildings/business parks, self-storage facilities, industrial warehouses, medical and higher education facilities, and redevelopment projects. She assists clients with renewable energy siting and permitting issues as well. Clients also rely on Hina for her litigation experience handling writs of mandamus matters for CEQA and land use issues. Before her career as an attorney, Hina worked as an environmental planning consultant preparing CEQA and NEPA compliance documents on a variety of projects, including large infrastructure and transit projects



### Arielle Harris

*Shareholder, Miller Starr Regalia*

Arielle is a shareholder in Miller Starr Regalia's Walnut Creek office and a member of the firm's Land Use Department and Appellate Practice Group. She represents developers, landowners, and public agencies in connection with obtaining and defending land use entitlements, environmental review, as well as state and federal permitting for a wide range of projects including housing and mixed-use developments, subdivisions, commercial and industrial development, and public infrastructure projects.

Arielle assists clients in all aspects of land use, including initial due diligence, environmental review pursuant to the California Environmental Quality Act (CEQA), obtaining approvals of general plan amendments, specific plans, subdivision maps, and conditional use permits, as well as negotiating and drafting development agreements and subdivision improvement agreements. Arielle has substantial expertise in California planning and zoning laws, CEQA, the Permit Streamlining Act, the Housing Crisis Act (SB 330), Housing Accountability Act, and density bonus laws, as well as the public trust doctrine.

Arielle represents clients in both administrative hearings and in litigation. She has represented clients both at the trial and appellate levels in litigation involving land use entitlements, CEQA review, claims under the common law public trust doctrine, inverse condemnation, and easement disputes.



### David Ivester

Partner, *Briscoe, Ivester & Bazel LLP*

David Ivester focuses on land use, environmental, and natural resource law. He has represented landowners, developers, public entities, energy companies, and other businesses on a wide variety of environmental, land use, land title, and water quality issues before federal, state, and local regulatory agencies and state and federal trial and appellate courts. Mr. Ivester has frequently lectured and written about environmental and land use regulation.

Mr. Ivester regularly represents clients in federal, state, and local regulatory agencies on land use, environmental review, wetlands, endangered species, water quality, and natural resource issues. He has broad experience with the U.S. Army Corps of Engineers, Environmental Protection Agency, U.S. Fish and Wildlife Service, National Marine Fisheries Service, Federal Energy Regulatory Commission, California Department of Fish and Game, State Water Resources Control Board and the Regional Water Quality Control Boards, California Coastal Commission, California Energy Commission, San Francisco Bay Conservation and Development Commission, and cities and counties.

Mr. Ivester's litigation experience includes federal and state suits involving the Clean Water Act, Endangered Species Act, National Environmental Policy Act (NEPA), Federal Flood Insurance Act, Rivers and Harbors Act, California Environmental Quality Act (CEQA), California Endangered Species Act, Fish and Game Code, Porter-Cologne Act, Permit Streamlining Act, and regulatory takings under the U.S. Constitution.



### Christian Marsh

Partner, *Downey Brand LLP*; Co-Chair, *BPC Government Affairs Committee*

Christian Marsh is a partner in the San Francisco office of Downey Brand LLP. He advises public and private clients on natural resource, energy, and land use matters involving endangered species, wetlands, California planning and zoning law, water rights, the public trust doctrine, and NEPA and CEQA review. Among a variety of projects, he has entitled and permitted large-scale residential, commercial, and mixed-use real estate developments, ground and surface water supply projects, renewable energy facilities, oil production and transmission infrastructure, port and waterfront developments, and public infrastructure and mining projects.

Christian also conducts trial and appellate-level litigation in the areas of his expertise, including CEQA and NEPA. Among other significant appeals, Christian represented the prevailing parties in consecutive CEQA cases before the California Supreme Court, *Save the Plastic Bag Coalition v. City of Manhattan Beach*, 52 Cal.4th 155 (2011), and *Stockton Citizens for Sensible Planning v. City of Stockton*, 48 Cal.4th 481 (2010). Before practicing law, Christian served as special assistant in the U.S. Department of the Interior, where he advised the Deputy Secretary and the Assistant Secretary for Water & Science on endangered species and water policies.





### **Amara Morrison**

Director, *Fennemore Wendel*; Co-Chair, *BPC Government Affairs Committee*

Amara understands municipal law, land use, and real estate from just about every angle. With more than 25 years of experience as an assistant city attorney, she's worked closely with mixed use, residential, commercial, industrial and hotel developers, public agencies, and individuals and community groups on everything from land use approvals and subdivisions to capital improvement projects. She has extensive experience in all aspects of land use law, including compliance with the California Environmental Quality Act (CEQA), the Permit Streamlining Act, planning and zoning law, the Subdivision Map Act and affordable housing laws, including density bonus and SB 35.

Amara is currently general counsel to various transportation agencies and Geologic Hazard Abatement Districts (GHADs). Prior to private practice, Amara served as assistant city attorney for two Bay Area cities, where she advised officials and staff on matters including the California Public Records Act, the Ralph M. Brown Act, public finance and contracts, solid waste, risk management and conflicts of interest, First Amendment, and redevelopment. She drafted the state's first comprehensive no-smoking ordinance, which banned smoking in the workplace (including bars and restaurants), cigarette vending machines, and smoking in multi-family housing units, an action followed by jurisdictions around the country.

Valued by clients for her responsive, determined, pragmatic style, she was named "Woman of Influence" by Globe Street Real Estate in 2019. Amara was also honored as one of San Francisco Business Times' "Most Influential Women in Bay Area Business" in 2020.

Amara is proud of her lengthy service to non-profit organizations, previously as Secretary and Board Member of Save Mount Diablo and currently as a Board Member of the Bay Planning Coalition. She is also co-chair of the Programs Committee for the East Bay Chapter of Commercial Real Estate Women (CREW).

Amara is an avid dressage rider and hiker and proud parent of her daughter, Islay, a rising freshman at Brandeis University.



### **Tom Mumley**

Assistant Executive Officer, *San Francisco Regional Water Quality Control Board*

Thomas Mumley has worked at the San Francisco Bay Water Board for over 39 years, including 15 years as Assistant Executive Officer. Tom has experience in all program areas of the Water Board including basin planning, water quality standards, TMDLs, NPDES wastewater and stormwater permits, dredging, water quality certification, contaminated site cleanup, and enforcement. Tom grew up in Vermont,

received his BS degree in Chemical Engineering from the University of Massachusetts, Amherst in 1976 and his Ph.D. in Chemical Engineering from the University of California, Berkeley in 1983.



### **Todd Williams**

*Director, Fennemore Wendel*

Todd represents clients in the broad spectrum of land use, real estate and environmental issues in both litigation and administrative proceedings.

He works with private clients and public entities, including landowners and developers of residential, infill, commercial and industrial property, as well as local agencies, providing property entitlement processing and local government land use approvals; CEQA compliance and litigation; planning and zoning law advice; and real property litigation. He also has experience with infill project streamlining, density bonus and housing laws, affordable housing and historic preservation regulations, as well as advising clients on public-private partnerships, the Subdivision Map Act, the Williamson Act, and cannabis land use regulations, along with easement and boundary dispute matters.

A contributing editor on the 2010 – 2011 edition of *State and Local Government Land Use Liability*, and a reviewer of the 2012 and 2013 editions of the *Municipal Law Handbook*, Todd also has spoken throughout the state on land use law, with particular emphasis on CEQA.



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