

# David J. Miller

Partner | Orange County

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David Miller assists clients on a variety of complex land use and environment related matters, including matters dealing with the National Environmental Policy Act, Section 4(f) of the Department of Transportation Act, and the National Historic Preservation Act. He also counsels clients on the California Environmental Quality Act, the California Planning and Zoning Law, the California Subdivision Map Act, the California Coastal Act, and the Federal and State Constitutions.

David represents landowners, resource developers, and public agencies on matters involving federal and state permitting issues, local zoning issues, and environmental planning and litigation. He also assists with advising state and regional infrastructure authorities on environmental issues regarding large infrastructure projects. Additionally, he has experience assisting property owners and businesses with lease disputes and breach of contract claims.

David previously served as a judicial extern for the Honorable Suzanne H. Segal in the United States District Court for the Central District of California.

David regularly comments on news, events, and policies affecting endangered species issues in California and throughout the United States on the Firm's Endangered Species Law & Policy blog.

## EXPERIENCE

**City and County of Honolulu, Hawaii – Honolulu High Capacity Transit Corridor Project.** Part of litigation team that represented the City of Honolulu in the successful defense of the \$5 billion, 20-mile, rail transit project in Honolulu. The case included numerous claims under the National Environmental Policy Act, National Historic Preservation Act and section 4(f) of the Department of Transportation Act. *HonoluluTraffic.com v. Federal Transit Administration*, 2012 U.S. Dist. LEXIS 157937 (D. Haw. Nov. 1, 2012), *aff'd* 742 F.3d 1222 (9th Cir. 2014).

**Arizona Department of Transportation.** Part of team providing counsel to Arizona Department of Transportation regarding environmental issues related to the 20-mile South Mountain Freeway Project, and which successfully defended ADOT against NEPA and Section 4(f) challenges to the Project in *Protecting Arizona's Resources & Children v. FHWA*, U.S. Dist. Ariz Case Nos. CV-15-00893; 012121 (D. Ariz. Aug. 19, 2016, Granting ADOT's Motion for Summary Judgment). The project is currently under construction, and on December 8, 2017, the Ninth Circuit Court of Appeals unanimously rejected two challenges to the 2016 decision, No.16-16586, No. 16-16605, --- Fed. Appx. ---, 2017 WL 6146939 (9th Cir. Dec. 8, 2017) (memorandum op'n).

**Orange County Transportation Corridor Agencies.** Provided environmental compliance and strategy recommendations for the Tesoro Extension Project (SR 241). Counseled on key issues, including CEQA, NEPA, transportation planning, wetlands, and water quality issues. Part of the team that handled environmental litigation

related to the project.

**Los Angeles Light Rail Transit Project.** Part of team in successful defense of \$1.5 billion rail transit project in west Los Angeles in litigation through the California Supreme Court. *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority*, 57 Cal.4th 439 (2013).

***Coalition for a Sustainable Delta v. Federal Emergency Management Agency***, E.D. Cal. Case No. 09-2024. Part of team that successfully represented plaintiffs Coalition for a Sustainable Delta and Kern County Water Agency in action challenging the Federal Emergency Management Agency for failure to consult under the Endangered Species Act regarding the effects of the National Flood Insurance Program on listed species in the Sacramento-San Joaquin Delta. Obtained settlement requiring FEMA to consult and pay attorney's fees.

***Cook v. Transportation Corridor Agency***, Case No. 30-2012-00551394. Secured dismissal with prejudice of client in an inverse condemnation case involving a claim for more than \$6 million in damages by a group of homeowners and businesses who alleged extreme flooding of their properties was caused by defective design/construction of drainage facilities for SR-73 Toll Road.

**Los Angeles County Metropolitan Transportation Authority.** Advising client with respect to implementation of a countywide development impact fee program.

**San Bernardino Associated Governments (SANBAG).** Part of team that represented SANBAG with acquiring portions of 150+ properties for the sbX E-Street Corridor Bus Rapid Transit Project, a 15.7-mile bus rapid transit project in the Inland Empire.

## INSIGHTS

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### SPEAKING ENGAGEMENTS

Speaker, "Navigating Environmental Compliance for Public-Private Partnerships," Transportation Research Board Webinar, 04.21.2021

Speaker, "A Path to Transit and Transportation Project Success in the Wake of the Pandemic: A Panel Discussion Among Legal Professionals," Nossaman Webinar, 06.03.2020

Speaker, "Bridging Plans and Projects: How Planning and Environmental Linkages Eliminates Duplication in Environmental Reviews," 2020 Transportation Research Board Annual Meeting, Washington, DC, 01.12.2020

Panelist, "Bridging Plans and Projects: How PEL Eliminates Duplication," Transportation Research Board's 58th Annual Workshop on Transportation Law, Cleveland, OH, 07.24.2019

Panelist, "NEPA Streamlining: Practitioner Perspectives on Opportunities and Risks," 2019 National Association of Environmental Professionals Conference, Baltimore, MD, 05.20.2019

Speaker, "Transportation for a Smart, Sustainable, and Equitable Future," Transportation Research Board's 98th Annual Meeting, Washington, DC, 01.13.2019

Panelist, "What Time Is It? You Mean Now - Attributed to Yogi Berra," Self-Help Counties Coalition's 2018 Focus on the Future Conference, Indian Wells, CA, 10.30.2018

Panelist, "The Scope of the Administrative Record in Environmental Litigation," Transportation Research Board's 57th Annual Workshop on Transportation Law, Cambridge, MA, 07.17.2018

Speaker, "Alternative Project Delivery: Minimization of Environmental Risks," Transportation Research Board's 97th Annual Meeting, Washington, DC, 01.08.2018

Speaker, "CEQA Guidance, Application of FAST Act, and Practice Tips," CLE International's 11th Annual NEPA Conference, San Francisco, CA, 05.08.2017

## PUBLICATIONS

Co-Author, "NEPA Rules Rewrite: Flexibility for Federal Agencies," *Nossaman eAlert*, 10.19.2021

Author, "NEPA Rules Rewrite: Categorical Exclusions and Environmental Assessments," *Nossaman eAlert*, 08.11.2020

Co-Author, "Navigating Environmental Compliance for Public-Private Partnership Projects," *Natural Resources & Environment*, 03.01.2020

Co-Author, "Guidance for Managing NEPA-Related Risks and Other Risks in Project Delivery," *National Cooperative Highway Research Program*, 05.2014

Author, "Practitioner Guidance: Managing Legal Risks in the NEPA Process for Transportation Projects," *Prepared for American Association of State Highway and Transportation Officials as part of NCHRP Project 20-24, Task 71, National Cooperative Highway Research Program*, 02.2014

## HONORS & RECOGNITIONS

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Listed, *The Legal 500 United States*, Industry Focus - Environment - Litigation, 2022

Selected to the Southern California Rising Stars list, 2015-2020

## COMMUNITY & PROFESSIONAL

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American Bar Association

Orange County Bar Association

Urban Land Institute

Public Law Center Advocates

Transportation Research Board, Standing Committee on Environmental Issues in Transportation Law (AL050)

## PRACTICES

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Environment & Land Use

CEQA & NEPA

Coastal Development

Litigation

## INDUSTRIES

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Energy & Utilities

Transportation

## EDUCATION

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Georgetown University Law Center, J.D., 2010, *cum laude*

Claremont McKenna College, B.A., 2005

## ADMISSIONS

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California

U.S. Court of Appeals, Ninth Circuit

U.S. District Court, Central District of California