

WILDLIFE & NATURAL RESOURCES

Comprehensive Support for Endangered Species Act matters

Our attorneys actively support clients in addressing federal and state Endangered Species Act matters. This includes conducting habitat assessments, evaluating potential “take” incidents, engaging in Section 7 consultations, and defending against civil and criminal enforcement actions, while also playing a crucial role in the development and negotiation of habitat conservation plans covering diverse issues such as water use, transportation, timberland harvest and management, permitting, and real estate development.

Our expertise includes:

- Agriculture Properties
- Animal Confinement Facilities Plans
- Biological Opinions and Assessments
- California Coastal Act
- California Surface Mining and Reclamation Act
- Citizen Suit Defense
- Civil and Criminal Enforcement Defense
- Conservation Easements
- Conservation Management Agreements
- Habitat Conservation Plans (HCPs)
- Implementation Agreements
- Lacey Act
- Marine Mammal Protection Act
- Migratory Bird Treaty Act
- Mitigation Agreements
- Mitigation Banking/Offsets
- MS4 Permits
- No Surprises Agreements
- Section 7 Consultations
- Surface Mining Control and Protection Act
- Timber Harvesting Plans
- Wilderness Act

PRACTICE CHAIRS



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EXPERIENCE

County of San Bernardino – Western Joshua Tree CESA Listing

Advocacy

Meyers Nave advises the County of San Bernardino in advocacy before the California Fish and Game Commission against listing the western Joshua tree as threatened under the California Endangered Species Act. The work has included negotiating with other stakeholders and the California Department of Fish and Wildlife, appearing before the Commission, and counseling the County on implementation of the Western Joshua Tree Conservation Act and the negotiations shaping how that compromise works on the ground.

Acjachemen Tongva Land Conservancy – Bolsa Chica Mesa land return

Meyers Nave represented the Acjachemen Tongva Land Conservancy in the first Indigenous land return in Orange County history, a six-acre parcel on Bolsa Chica Mesa that was home to a Tongva and Acjachemen village roughly nine thousand years ago, now held by the Conservancy for native species reintroduction, cultural ceremonies, and public education.

Tongva Taraxat Paxaavxa Conservancy – Altadena ancestral land reclaiming

Meyers Nave represented the Tongva Taraxat Paxaavxa Conservancy in one of the first private land returns to Native Americans in the Los Angeles area, the first time in the nearly 200 years since the California mission system ended that land has been returned to the Tongva people.

BNSF – Barstow International Gateway (BIG)

Meyers Nave is lead counsel to BNSF Railway Company (BNSF) on the Barstow International Gateway (BIG) project, one of the most significant private freight infrastructure investments in California history.

County of Los Angeles – Hagopian v. Coastal Commission (2014) 214 Cal.App.4th 349

Successfully defended Los Angeles County on a complex coastal issue in the Santa Monica Mountains. The landowners built numerous structures without coastal

development permits (cdp). Challenge to the proper permit-enforcement agency, and the need to complete and certify a Local Coastal Program, or LCP. Published decision: *Hagopian v. County of Los Angeles*, (2014) 214 Cal.App.4th 349 [coastal land use].

Los Angeles Department of Water and Power – Endangered Species Act Portfolio.

More than a decade of counsel on ESA consultation and compliance across LADWP's infrastructure, coordinating with the U.S. Army Corps of Engineers on Section 404 permitting, the water boards on Section 401 certification, and the U.S. Fish and Wildlife Service and National Marine Fisheries Service on consultation.

Los Angeles Department of Water and Power – Owens Lake Dust Control

Counsel on the multi-billion-dollar dust control program spanning thousands of acres of BLM-administered land, including federal resource agency coordination and preparation and defense of CEQA and NEPA documents.

San Bernardino County Flood Control District – Permitting Advice

We are advising the district on Endangered Species Act and water quality issues related to several projects for the operation and maintenance of dams and other flood control facilities, including negotiating California Department of Fish and Wildlife on various habitat mitigation and Section 1600 matters.

County of Los Angeles – Seismic Retrofit Project and Habitat Mitigation

We provided legal advice to the County regarding a seismic retrofit project on a bridge over the San Gabriel River. Even though the U.S. Army Corps of Engineers declined to assert jurisdiction under Clean Water Act section 404, the California Regional Water Quality Control Board, Los Angeles Region, persisted in asserting jurisdiction under Clean Water Act section 401 and demanded 1.2 acres of habitat mitigation. We assisted the client in developing a successful strategy that convinced the Regional Board to agree no mitigation was required.

CEQA/CESA Consistency Determination Lawsuit

In *Center for Biological Diversity v. California Department of Fish and Game*, a Meyers Nave was on the legal team that defeated a CEQA challenge to DFG's consistency determination under CESA section 2080.1 for the marbled murrelet, a bird listed under the state and federal law. The Court determined that the agency's decision was not a "discretionary" project triggering the environmental review requirements of CEQA.

San Bernardino and Riverside County Flood Control Districts – Seven Oaks Dam Endangered Species Act Litigation

Meyers Nave represented the San Bernardino County Flood Control District and the Riverside County Flood Control and Water Conservation District in Endangered Species Act litigation over operations at Seven Oaks Dam, one of the largest embankment dams in the United States, in the foothills near Redlands. In 2016 environmental groups sued

the dam's builder, the U.S. Army Corps of Engineers, alleging that operations neglected habitat for the Santa Ana sucker and the San Bernardino kangaroo rat. The case was resolved by settlement.

Los Angeles County Flood Control District – Permitting Advice

We are advising the district on Endangered Species Act, water quality and Surface Mining and Reclamation Act issues related to several projects for the operation and maintenance of dams, groundwater recharge basins and other facilities, including negotiating with the Army Corps of Engineers and U.S. Fish and Wildlife Service.

Southwest Resources Management Association – Conservation Easements and Long-Term Management Planning

We represent Riverside-Corona Resource Conservation District and the Southwest Resource Management Association in negotiating conservation easements and counseling on management issues and related real property matters with public and private entities seeking to satisfy mitigation obligations for development projects.

Santa Clara Valley Water District – Anderson Dam Seismic Retrofit

CEQA advice and review for the draft EIR restoring the county's largest reservoir to its 89,000 acre-foot design capacity, including conservation measures and flow releases to Coyote Creek benefiting South-Central Coast steelhead, a federally endangered species.

SANDAG – Buena Vista Lagoon Enhancement

Counsel on the EIR for the enhancement of one of Southern California's last remaining coastal freshwater lagoons.

Headwaters Agreement Environmental Challenge (CEQA/CESA/Fish and Game Code streambed alteration, Sustained Yield Plan, Habitat Conservation Plan)

Defended a timber company in challenge to historic Headwaters Agreement, based on claims under CEQA, California Endangered Species Act and the Fish and Game Code's streambed alteration provisions, as well as challenges to Sustained Yield Plan, Habitat Conservation Plan and other approvals for timber harvesting. Related published decisions include Prot. Info. Ctr. v. Cal. Dep't of Forestry & Fire Prot. (2008) 44 Cal.4th 459; People ex rel. Gallegos v. Pac. Lumber Co. (2008) 158 Cal.App.4th 950; Env'tl. Prot. Info. Ctr. v. Pac. Lumber Co. (N.D. Cal. 2007) 469 F. Supp. 2d 803.

City of Suisun City v. Suisun Shores Development – Highway 12 Improvement and Wetlands Mitigation Project (Jury Trial May 1997)

City of Suisun City v. Suisun Shores Development, jury trial May 1997. Meyers Nave was lead counsel for the City in an eminent domain case to acquire approximately 11 acres of unimproved property for the Highway 12 Improvement and Wetlands Mitigation Project. The City's appraiser estimated total compensation at approximately \$1,290,000. The owner's appraiser estimated total compensation at over \$3,320,000. The jury verdict was \$1,300,000.

Center for Natural Lands Management – Pacific Pocket Mouse

Litigation and Coastal Development Permit

Center for Natural Lands Management. Meyers Nave represents CNLM in its efforts to ensure protection of the critically endangered pacific pocket mouse through an extremely contentious litigation with the City of Dana Point involving issues under the Endangered Species, Coastal Act, conservation easements and public access and rights. The firm also represents CNLM in its application for Coastal Development Permit for the continued management of the Preserve, which includes coordination with the California Coastal Commission, U.S. Fish and Wildlife and California Department of Fish and Wildlife.

California non-profit public benefit corporation (unnamed) –

Conservation Easement and 140-Acre Habitat Conservation

Acquisition

Advise a California non-profit public benefit corporation on conservation easements, management issues and related real property matters. Recently advised on the purchase/donation of 140 acres to be used for habitat conservation/permanent open space.

City of Half Moon Bay – Yamagiwa v. City of Half Moon Bay –

Wetlands and Stormwater System Takings Trial (N.D. Cal.,

November 2007)

Yamagiwa v. City of Half Moon Bay – Bench Trial November 2007. Meyers Nave was lead trial counsel for defendant City of Half Moon Bay in Federal Court (United States District Court, Northern District of California (San Francisco)). The City had previously denied a commercial development application on grounds that ‘wetlands’ were present on the property. The developer therefore sued the City, arguing that the City’s faulty stormwater system caused the wetlands condition. The Court agreed with the developer.

California Department of Fish and Wildlife – Munari v. City of El

Paso De Robles – CEQA and Endangered Species Mitigation

Defense

Munari v. City of El Paso De Robles, et al. Defended the Department of Fish and Wildlife as lead counsel on CEQA issues in a developer’s action challenging the City of El Paso De Robles’ denial of a development application and mitigation requirements imposed by the department relating to endangered species. Successfully resolved by summary judgment, which the court of appeal affirmed.

San Diego Association of Governments (SANDAG) – San Dieguito

W-19 Wetlands Restoration Project (MOU)

Meyers Nave assisted SANDAG in developing an MOU for the San Dieguito Restoration Project to create 150 acres of coastal wetlands. The MOU was developed to address the scope of the impacts of the W-19 project on Southern California Edison mitigation efforts, and to ensure joint maintenance of the wetlands.

County of Los Angeles – Santa Monica Mountains Plan (ridgeline ordinance) amendment

Federal court action involving a myriad of civil rights and takings challenges from a suspension of a plot plan in the Santa Monica Mountains. Case also includes 12 individually named defendants and assertions of improper delay resulting in a temporary taking.

County of Los Angeles – Land Use Preservation Defense Fund v. County of Los Angeles and Park Lands Ranch v. County of Los Angeles (ridgeline ordinance)

Defense of writ challenge to County's ridgeline ordinance and asserted general plan deficiencies. Writ denied in full in both matters preserving the County's newly enacted environmental preservation ordinance. Court of Appeal affirmed in full in both cases.

City of Rancho Santa Margarita v. County of Orange (Chiquita Ridge, 400+ acres)

Represent the newly incorporated City in a dispute as to the County's failure to transfer over 400 acres of the Chiquita Ridge as required under the LAFCO terms of incorporation.

City of Glendale – Hensler v. City of Glendale (hillside ordinance / tentative tract map, open space set-aside)

Successfully defended Glendale in challenge to hillside ordinance and tentative tract map approval which set aside a portion of the parcel as open space.

Timber company (unnamed) – Clean Water Act Lawsuit Alleging Sediment Discharge During Timber Harvesting

Successfully defended a timber company in Clean Water Act lawsuit based on allegations of sediment discharge during timber harvesting.