

Navigating COVID-19 for the Right of Way Industry

April 1, 2020



California CLE Credit

- During the webinar:
 - CLE credit will be given to participants that attend the full presentation (time-in and time-out is captured)
 - Participants will be asked periodic polling questions
- Following the webinar:
 - You will receive a CLE completion certificate via email within a week

Today's Presenters



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Agenda

- Construction Delays
- Court Closures
- Filing and Service Delays
- Board Meetings
- Title & Recording Issues
- Temporary Construction Easement Expirations
- Other Litigation Challenges
- Relocation Issues
- Valuation Problems
- Appraisal and Site Inspection Issues



Construction / Real Estate Deemed Essential Services

- Construction of infrastructure projects deemed "essential service" – can continue operations.
- Includes: Communications, Energy, Transportation, Water, Government facilities
- Real estate sales also deemed "essential service"
- This may vary by jurisdiction so please check with your local government agency (Santa Clara, Bay Area, Ventura Restrictions)

Construction Progress Delays

- Construction may be delayed because:
 - Local "Shelter-in-Place" order precludes construction
 - Contractors do not have sufficient crews to work
 - Contractors cannot get necessary supplies and equipment
 - Agencies cannot get necessary permits
 - Construction techniques change to effect better social distancing

Construction Progress Accelerated

- Construction may be accelerated because:
 - Construction viewed as an essential service (particularly for infrastructure projects)
 - Construction is one of the only economic drivers still proceeding
 - Impediments to construction lessened with many sheltering in place
 - Agencies work to streamline permits / ease requirements
 - Potential federal stimulus opportunities

Some Examples – State DOTs

- Some statewide project shutdowns announced:
 - Pennsylvania (3/21): "No forms of construction . . . are considered 'lifesustaining' businesses. Therefore all transportation projects remain closed."
 - Washington (3/26): "WSDOT is temporarily suspending all construction projects."
- California (3/24):
 - Caltrans: "[C]onstruction and maintenance projects vital to a fully functioning transportation system are currently moving forward."
 - But, United Contractors: "[I]f you are working within a county that has a
 more strict [stay-in-place] order than the statewide order, we encourage you
 to contact the owner and/or local government to determine how to proceed."

Some Examples – State DOTs

- Arizona, Oregon, Utah, Texas, Virginia and many others: projects moving forward with proper precautions
- In some states, projects are being accelerated
 - Hawaii (3/25): "We will utilize the lower than normal traffic volume on our system to expedite the improvements we are currently building."
 - Indiana (3/25): "INDOT is willing to discuss options to accelerate projects."
 - And one anecdotal local example: OCTA recently completed a major utility relocation project ahead of schedule because businesses were closed and there was little traffic in the area

Beverly Hills and Metro Look to Speed Subway Construction During COVID-19 Traffic Lull

By Joe Linton Mar 30, 2020 COMMENT HERE



Rendering of future Wi|shire/Rodeo Purple Line station in Beverly Hills - via Metro

omorrow, the Beverly Hills City Council will vote on a proposal to approve temporary street closures to facilitate faster construction of Metro's Purple Line Subway extension. In tough times, this is modest good news – a win-win for Metro, for Beverly Hills, and for the region. With a lull in tourists, drivers, hotel occupants, etc. Beverly Hills can get construction activity completed with little additional disruption. Metro can save time and money by speeding up the subway project.



Most State and Federal Courts Are Impacted

- In California, all jury trials suspended for at least 60 days
- Most courts are largely closed, particularly for civil matters
- May hear only emergency matters, and even then, may not allow in person appearance
- Length of delays uncertain, but even when courts reopen, backlog will create lasting impacts
- Many judges are working remotely
- Appellate courts

Open Questions / Unknowns

- What to do with motions for possession and other necessary motions? Possible emergency exception?
- Ex parte applications for early calendaring?
- Certified copies?
- Case priority?
- Judicial vacancies
- What will jury service look like after shelter-in-place restrictions lifted? What is the new normal?

How long do you think the Shelter-in-Place order will last in CA?



Filing

- With courts either partially or completely closed, parties may experience delays with filing of documents
- e-file and fax filing systems halted for some courts

- Partial Court Closure does not mean No Filings
- Filing Deadlines For purposes of computing times under CCP 12 and 12(a), closures are treated as "Court Holidays." Check each County for Closure and whether it applies to your case.
- So what is the status of filings?

Filing – "It Depends"

- Filings <u>depend</u> on what is being filed and in which County.
 Filing ≠ Processing!
 - New Matter Filings/Subsequent Filings
 Ex. of California Courts: LA; OC (but slow); SB (Dropbox not processing); Sac; Riv; Contra Costa; Alameda; SD (e-filing not processing) (Check Court Resources Links)
 - Obtaining Motion Hearing Dates
 - Delay in issuing non-emergency orders

Filing

	County Court 🔻	eDelivery / eFiling Available 🔻	Dropbox Status 🔻	Notes / Est. End Date
▼ CLC	OSED Count 10			
1	Alameda	Criminal & Juvenile Dependency	Unavailable	Recorder Closed Expires: 4/3/20
2	Amador	No eFiling	Unavailable	Recorder Closed. Order Expires: 4/6/20
3	Contra Costa	Complex	Unavailable	Recorder Closed. Expires: 4/1/20
4	Del Norte	No eFiling	Unavailable	Expires: 4/17/20
5	Mariposa	No eFiling	Unavailable	Recorder Closed. Accepting filings via US-Mail and email. Payments must be mailed. Expires: 4/19/20
6	Sacramento	Unlawful Detainer	Limited	Recorder Closed. Court dropbox for Emergency Ex Parte and TRO only. Expires 4/16/20
7	San Bernardino	No eFiling	Available	Recorder Closed. Court not processing items in dropbox. Expires: 4/2/20
8	Trinity	No eFiling	Unavailable	Recorder Closed. Expires 4/17/20
9	Ventura	eDelivery Civil, Family & Probate	Unavailable	Recorder Closed. Court eDelivery suspended. Order Expires: 4/17/20
10	Yolo	No eFiling	Unavailable	Recorder Closed. Expires 4/1/20

California Courts Newsroom Coronavirus Updates: https://noss.law/39tlflr

First Legal COVID-19 Court Status Summary: https://noss.law/3bAl49s

One Legal California Court Updates: https://noss.law/39A2KMc

Service

- With "stay-at-home" orders in place and social distancing requirements, it may be difficult (or impossible) to serve parties
 - Locating Agents for Service of Process presents a challenge
 - CT Corp. open but operating on limited hours
- Alternate service can be a partial solution, but it typically requires at least some effort to personally serve first; not clear whether courts will waive these requirements
- Subsequent Services Counsel must agree to e-service
- Counsel encouraged to cooperate, extend professional courtesies and stipulate to continuances

What is your role at your current organization?



Board Meetings

Many agencies are either not meeting, or not meeting in person

Governor has issued Executive Order N-29-20, which relaxes
Brown Act requirements and allows meetings via
teleconference, but full impact of those measures not yet clear

Executive Order - Paragraph 11:

- A local legislative body or state body is authorized to hold public meetings via teleconferencing and to make public meetings accessible telephonically or otherwise electronically to all members of the public seeking to observe and to address the local legislative body or state body
- All requirements in both the Bagley-Keene Act and the Brown Act expressly or impliedly requiring the physical presence of members, the clerk or other personnel of the body, or of the public as a condition of participation in or quorum for a public meeting are hereby waived

Board Meetings – Impact on ROW Activities

- How to adopt a resolution of necessity?
 - Must give proper notice
 - Must give property owner opportunity to appear and be heard
- How to continue to engage in real property negotiations, or secure Board approval of settlements, purchase agreements, etc.?
- How to secure approvals for final offers?



Recording Documents

- County Recorder's physical offices may be closed BUT many services can be handled online, via mail or phone
 - Only two counties fully closed: Alameda and Santa Clara
- Yes, you can still record documents method varies by county
 - NO in-person and over-the-counter service currently allowed
 - Many accept documents via U.S. Mail
 - Electronic recording still available for some counties

Recording Documents

- How to electronically record documents:
 - Title and escrow Authorized Secure Electronic Recording Submitters still allowed to submit documents electronically
 - They are using services like Synrgo to handle recording
- What about recordings where no escrow company?
 - Use RecordMyDocs.com
 - To avoid recording late check local jurisdictions and anticipate processing time, e.g., sending by mail
 - Contact parties in transaction to agree upon extensions now

Acquiring Title

- Processing title reports or litigation guarantees
 - Title companies are open for business
 - Turnaround times may be 1-2 days longer than normal
- Even if Recorder is open, can people get documents notarized?
 - Yes UPS Stores have been designated as essential, many are open and have notaries
 - Escrow companies still have mobile notaries visiting signers
- What about maps, drawings? (tract maps, improvement plans)
 - Certain jurisdictions allow digital submissions already, others are accepting by mail – check websites for requirements



Extending Temporary Construction Easements

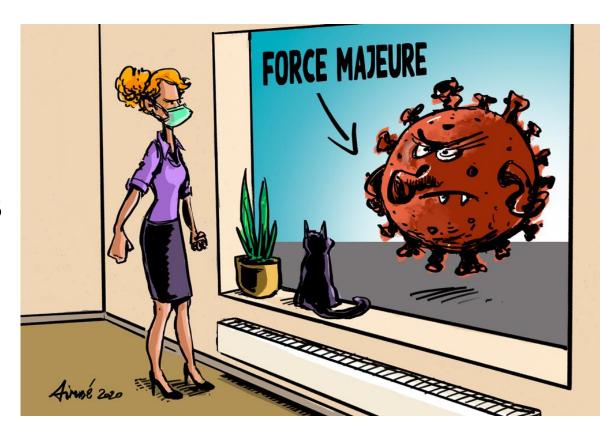
• If TCE was condemned, likely no existing provisions to extend it

Query: Could "force majeure" be used to

extend condemned TCEs?

 Negotiated TCEs often contain a right of extension, as long as notice and payment obligations satisfied

Need for strict compliance



Extending Temporary Construction Easements

- If no right to extend, consider early negotiations to extend, regardless of whether initial TCE was negotiated or condemned (or even still in condemnation)
- If no negotiated solution, anticipate delays in gaining possession of a new TCE and plan accordingly



Query: Should agency simply continue to work past TCE expiration?

What is your biggest ROW concern relating to the COVID-19 crisis?



Litigation Concerns

- Conducting depositions with "stay-at-home" orders in place can be a challenge for lawyers and witnesses
- Web-based or telephonic depositions possible, but often not ideal and may be impractical for some witnesses
- New guidance forthcoming from Judicial Council
- Even written discovery can be a challenge, as agencies working remotely may not have access to all of their records

Litigation Concerns

- Subpoenas to third parties
- Simultaneous exchange of information (appraisals, final offers / demands)
- Mediations, Arbitrations, ADR scheduling
- Check processing
- Interstate travel restrictions

RELOCATION ISSUES



Relocation Issues

- No current restrictions to carrying out relocation and/or acquisition activities by FHWA, FTA, Caltrans or other oversight agencies
- Relocation impacts considered among the most sensitive community-related effects of public projects

Challenges:

- With stay-at-home orders, how do right of way agents and displacees tour or engage in relocation activities?
- Relo activities No exception in Governor's March 22 order clarifying "Essential Critical Infrastructure Workers." But CISA provides RE Services
- Logistics of moving and typical "reestablishment" activities
 - While relocating residential will present more challenges, it may be a better time to relocate certain types of businesses (in particular self-move)

Relocation Issues

Legal Challenges of Enforcing Possession Orders:

- With laws restricting or even prohibiting "evictions," can agencies proceed with displacements?
- Displacement For Project ≠ UD Evictions for Failure to Pay Rent
 - UD restrictions likely do not strictly apply, because they tend to address evictions for "failure to pay rent" and require the tenant to certify that the failure to pay is related to COVID-19
 - But from a practical (and perhaps perception) basis, do agencies really want to be seen as evicting someone right now?
 - Assuming you have OPP, obtaining writs and executing writs may be challenging



Valuation Issues

- Separating damage caused by the project as opposed to damage caused by COVID-19
- Regarding property owners:
 - Landlords likely facing claims for rent relief / rent abatement
 - May be impossible to lease vacant space
- Regarding business owners:
 - May not be able to operate due to "stay home" orders
 - Even if operating, likely seeing major drops in revenues (e.g., restaurants, only serving take-out / delivery)

Valuation Issues – Declining Markets

- Preparing to deal with "underwater mortgages"
 - This was a major problem during the last recession
 - Agencies find themselves condemning property where the outstanding mortgages exceed fair market value
 - Be aware (in California) of the difference between purchase money loans and refinanced loans
 - Last time, proposals to condemn mortgages to solve the problem
 - Look for creative solutions
 - Last Resort Housing exceptions
 - Payments above fair market value using local funds

Valuation Issues – Declining Markets

- Dealing with date of value
 - In California, date of value typically the date of deposit
 - If the agency does not need possession right away, should it make a deposit when it files?

Query: Is it ethical for agencies to "play the market"?





Appraisal and Site Inspections

- Stay-at-home orders present new challenges
 - Conduct site inspections for pending litigation
 - Personally visit comparables
- Options available:
 - Make arrangements with owners/counsel
 - "Desktop Appraisals"
 - Stay in your car site inspection "drive-bys"
 - Work best for visiting comps, vacant properties
 - Wait pending litigation will likely be impacted by court closures, meaning deadlines may be pushed

Appraisal and Site Inspections

- Even when inspections possible, business appraisers especially impacted
 - Appraisers may not be able to view businesses in operation
 - May visit when business is operating very differently than they would normally
- The Appraisal Institute, the National Association of Realtors, the American Society of Appraisers and others have asked state and local government leaders to include appraisers among "essential services" exempted from stay-at-home or shelter-in-place orders

How has COVID-19 impacted the progress of your projects?

Registrant Questions

- Impact on RAP Evictions?
- Force Majeure Clauses?
- Ellis Act implications?
- Indemnification from potential future legal action for service providers?
- Grant Obligations?
- How to handle rent/late fees for short or long-term contracts with third parties for secondary land use?

Questions?



Additional Nossaman Resources

Nossaman's Eminent Domain Blog: www.californiaeminentdomainreport.com

Nossaman's COVID-19 Response Team: www.nossaman.com/covid-19-response-team

Additional Resources:

- U.S. DOT Coronavirus resource page: https://noss.law/DOT-COVID-19
- American Road and Transportation Builders Association Coronavirus Resources page: https://noss.law/ARTBA-COVID-19
- FTA Emergency Relief Docket: https://noss.law/3aA5LgS
- ALM's Roundup of California Courts' Services: https://noss.law/39wMqvN
- Law360's Roundup of U.S. Courts' Services: https://noss.law/2UT1sXr
- DocVerify's Roundup of States that Allow e-Notary: https://noss.law/2UxQ0S5
- General Government Page: https://noss.law/3bAkPv4
- COVID-19 Screening Tool: https://noss.law/3aBV9yi

LOS ANGELES SUPERIOR COURT COVID 19 UPDATE

FREQUENTLY ASKED QUESTIONS

CIVIL CASES

- 1. Trial Dates: All trials that were set to start within the period of March 23 to May 23, 2020 have been continued pursuant to an Order of the Chief Justice, dated March 23, 2020. In addition, in the Los Angeles Superior Court, pursuant to the Presiding Judge's General Order, dated March 23, 2020, all trials set through June 22, 2020 are suspended.
 - a. If my trial date is set to start after June 22, 2020 is it continued 60 days? No. If you have a trial set to start AFTER June 22, 2020 it will remain set as scheduled. Example, if your trial is set to start on July 10, 2010, the trial will remain set for July 10, 2020, unless the judge assigned to the case finds good cause to continue the trial date.
 - b. What happens if my trial date is set to start after June 22, 2020 in Los Angeles Superior Court but there is a Final Status Conference or hearing set before June 22? Currently there is an Order that designates the period to April 16, 2020 as an Emergency Period and every non-trial hearing date during that period has been vacated. It is anticipated that a further 30 day Emergency Period will be implemented shortly that extends that period to mid-May 2020. If there is a hearing date that falls within an Emergency Period, and it is not one of the essential matters that are listed in March 17 General Order, the hearing will not go forward. The Court will be reevaluating the situation as time progresses and further Orders may be issued depending on the status of the pandemic. Further, if your trial date is continued, the Final Status Conference will likely be continued along with the trial date.
 - c. If my trial is set to start after June 22, 2020 but I cannot get discovery done before the discovery cut-off because of the stay at home orders, what should I do? Please contact your opposing counsel and try and work this situation out. This is not an issue that falls into the emergency category warranting an ex parte. If you are not able to work this out, you should anticipate addressing this after the emergency is over.
- 2. Pre-Trial Dates: All pretrial dates, including Final Status Conferences, deadlines for filing motions in limine, discovery deadlines, deadlines for submission of trial documents (exhibit lists, witness lists, etc.) for trials that are continued pursuant to the Orders identified above are also continued.

- 3. When will my trial date be reset? When will I find out what the new trial date is? Your trial date will be reset by the Court where the case is pending. Currently there are limited staff working to issue the Minute Orders continuing the matters that are pending in the many civil courtrooms in the County. You will receive a Minute Order in due course by U.S. Mail so please be patient. The one exception is for cases pending in Complex, where the Minute Orders will likely be uploaded to the Bulletin Board (e.g. Case AnyWhere) rather than being sent out by U.S. Mail. In cases pending in the PI Hub, it is likely that you will receive a Minute Order that vacates your trial date and sets a Trial Setting Conference. In cases pending in an IC Court, you may receive a Minute Order that resets the trial date but more likely it will be an Order vacating the trial date and setting a Trial Setting Conference. Please understand that as to the PI Hub, once the Court is cleared to resume normal operations, there will be approximately 20 standalone trial courts available to handle the trials and all effort will be made to get the cases set and out to trial as soon as possible.
- **4.** Can attorneys prepare and file a stipulation for a new trial date? If you are able to stipulate to a new trial date, please feel free to do so. Please understand that there may be some delay in processing the stipulation but that should not dissuade you from working with your opposing counsel to reach agreement on new dates. For those trials set during the period to June 22, 2020, your trial date will be vacated and as noted you will likely be set for a Trial Setting Conference.
- 5. Preference Cases: What happens if I have a Preference Case that has been set for trial during the March 23 to June 22, 2020 period? Will they get priority when the court starts holding trials again? The preference statute provides the Court with authority to continue preference cases for 15 days (incrementally) for good cause and the pandemic meets the definition of good cause. A Minute Order has been drafted for asbestos cases that sets up a series of continuing 15 day continuances that parallel the Emergency. Once the emergency is over, the Court will have these cases proceed to trial as a preference since there will not be good cause to continue for further time.
- 6. Mis-tried Cases: What happens to cases that were in trial when the court closure was announced which were mis-tried? Will these cases be re-set for trial once the courts start holding trials again, and will they get priority? It is likely that these cases will get priority with the caveat that the age of the case is always considered a factor when it comes to setting for trial.
- 7. Motions: Are motions that are set for hearing during the period March 23 to June 22, 2020 continued? Trials set to start during the period March 23 to June 22, 2020 are continued. Non-trial hearings set before April 16, 2020 (the first Emergency Period) are continued and a further Emergency Order is anticipated that will continued hearings set through to mid-May, 2020.

- a. When can we expect to be provided with a new hearing date for motions set? You can access the CRS system and reset your hearing. The CRS system will not allow you to set a hearing prior to April 16, 2020 and once a new Emergency Order is issued that vacates hearings to mid-May the CRS system will shut that period down also. You can however set a hearing for a date after that period. If you can reach an agreement with your opposing counsel, please do so and reset the motions outside the above periods.
- b. If a Motion was filed and set for hearing in the emergency period, should Opposition and Reply papers be filed based on the hearing date that was set? If you don't have an Order vacating the hearing date you should file opposition and reply briefs as if the hearing date was still applicable. BUT, if you can, please work this out with your opposing counsel and reset the hearing which will reset the opposition and reply dates.
- c. If I have a Petition for Approval of a Minor's Compromise (with an annuity deadline) set for hearing during the emergency period, is there any way to have that Petition go forward? Yes. Minors' compromise hearings with an annuity funding deadline are considered legitimate ex parte matters. HOWEVER, please keep in mind that if you have a compromise petition that involves a Special Needs Trust, you have to give the Court more time than a normal ex parte BECAUSE the SNT petitions must first be reviewed by Probate. Further, please note that a minors comp petition that does not have an annuity funding deadline is not an emergency and must not be brought as an ex parte.
- d. Can't the Courts handle motions through court call through emergency period? Unfortunately not because motions are not permissible proceedings under the Emergency Orders. Please understand that the Court is having to direct its resources to criminal, dependency, and delinquency matters and staff from civil courts have and will be redirected to handle those issues, which have statutory deadlines that must move forward.
- e. Ex Partes: What types of ex parte matters are being heard during the period of emergency period? ONLY REAL emergencies are being handled by ex parte. That means a discovery motion or some other motion that can be filed as a regular motion does not qualify as an emergency!
 - i. What Department is handling ex parte matters? As of Wednesday April 1, 2020, there will be three courtrooms covering ex partes for Spring Street and Mosk Courthouse. These are Dept. 1, 20 and 72. Dept. 74 will no longer be handling ex partes. Be advised that ex partes cannot be handled by CourtCall so you must go to the Mosk Courthouse for the hearing. An updated list of the Courts handling ex partes for Mosk and Spring Street is attached.

- ii. How do I file ex parte papers? Ex partes should be filed electronically in cases with electronic filing. If you are filing an opposition, please file the opposition electronically as early as you can. And, for Complex cases please notice the ex parte in Dept. 1 and file the papers manually in Mosk.
- iii. If a case is assigned to a Complex Court and an ex parte needs to be heard how are the papers supposed to be filed since Complex is not yet allowing electronic filing and the Clerk's office is closed? There is a drop box at every Clerk's office so even though the courtroom may be dark there is a manner in which you can file. Please note that the Mosk Courthouse is open but with limited access so you will have to demonstrate that you have an emergency matter to gain access. The same is true for the branch courts.
- **8.** Can we file a motion, if it is set for hearing after mid-May? Yes e-filing is alive and well. In addition, you can file electronically right now without a hearing date.
- **9.** What if I have a Statute of Limitations that will run? There is currently nothing that tolls the Statute of Limitations for cases so you should file your complaint electronically if you have a SOL pending. And if you have a matter that cannot be filed electronically you should have it dropped into the Drop Box for the Clerk's office.
- **10. Settlement Conferences:** Nothing is happening regarding settlement conferences or MSC's that are set during the Emergency Period.
- 11. Five Year Rule: What happens if my case has a five year time period that will run during the Emergency Period? The Five-Year period was tolled pursuant to the March 17 Order by the Presiding Judge and the Chief Justice's March 23, 2020 Order. In addition the Judicial Council on March 28, 2020 approved an emergency motion that extended the 5 year period by 30 days.
 - a. What do we do if the five-year period will be running during the period July to September 2020? The court will act promptly to get cases that have a 5 year period upcoming to trial, when trials commence again.
- 12. Do the answers to the questions above differ for the Superior Courts in other Counties? YES
 - a. Where can I find answers to questions about scheduling issues in other Superior Courts? You can either check each respective court's website or you can access information on the Emergency Court closures for the various courts through the Judicial Council website at courts.ca.gov/43589.htm.

Coverage of Civil Ex Parte Matters As of April 1, 2020

3rd Floor Courtrooms

Dept. 20 covers all 3rd floor Civil courtrooms – 14, 15, 16, 17, 19, 20, 24, 25, 26, 28

4th Floor Courtrooms

Dept. 20 covers 30, 31, 33, 37, 39, 44

Dept. 72 covers 32, 34, 36, 38, 40

5th Floor Courtrooms

Dept. 1 covers the following 5th floor courtrooms – 1, 1A, 45, 48, 50, 51, 52, 53, 54, 57, 58, 89, 90, 96

Dept. 20 covers the following 5th floor courtrooms – 47, 49, 55, 56

6th Floor Courtrooms

Dept. 72 covers 12, 62, 66, 68, 69, 91, 92, 93, 97

7th Floor Courtrooms

Dept. 72 covers 7th floor courtrooms – 61, 71, 72, 73, 76, 78

Dept 1 covers 74

8th Floor Courtrooms

Dept. 1 covers Writs and Receivers – 82, 85, 86

Spring Street Courtrooms

Dept. 1 in Mosk covers all Spring Street courtrooms (with the exception of Complex)

[Spring Street Courtrooms include Depts 2, 3, 4, 5, 8, 16, 25, 26, 27, 28, 29, 31, 32]