

# Benjamin Z. Rubin

Partner | Orange County

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Ben Rubin assists developers, public agencies, landowners, and corporate clients on a variety of complex land use and environmental matters. He counsels clients on matters dealing with the Federal and State Endangered Species Act, the Federal Telecommunications Act of 1996, the National Environmental Policy Act, the National Historic Preservation Act, the Federal Toxic Substances Control Act, the California Hazardous Waste Control Act, the California Environmental Quality Act, the California Coastal Act, the California Permit Streamlining Act, and the Federal and State Constitutions. These matters generally involve federal and state permitting issues, local zoning issues and variances, environmental planning and compliance, right-to-take challenges, and valuation of property interests. Ben also has experience assisting property owners and businesses with lease disputes and breach of contract claims.

Prior to joining Nossaman in 2007, Ben was a law clerk to the Honorable Andrew J. Guilford, United States District Judge. He also served as an intern for the Honorable Patrick J. Walsh, United States Magistrate Judge.

Ben regularly comments on news, events, and policies affecting endangered species issues in California and throughout the U.S. on the Firm's Endangered Species Law & Policy blog. He also frequently comments on court decisions, news, and events impacting eminent domain on the Firm's California Eminent Domain Report blog.

## EXPERIENCE

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**Transportation Corridor Agencies.** Provide environmental compliance and litigation support for large-scale infrastructure projects, including advice related to CEQA, NEPA, and the Endangered Species Act.

**San Diego Association of Governments (SANDAG).** Defended light rail transit project from various challenges under CEQA, NEPA, and Section 4(f) of the Department of Transportation Act. Also provided environmental compliance and strategy recommendations on other matters regarding the federal and state Endangered Species Act, CEQA, and NEPA. Also provided compliance advice related to state privacy law.

**Imperial Irrigation District.** Counseled client regarding federal Toxic Substances Control Act and California Hazardous Waste Control Act compliance. Represented client in discussions with EPA.

**Wind Energy Partnership.** Assisted client with permitting and litigation regarding a wind energy project in Riverside County, California.

***New Mexico Department of Game and Fish v. Department of the Interior*, 854 F.3d 1236 (10th Cir. 2017).**

Represented the New Mexico Department of Game and Fish in proceedings challenging release of captive Mexican wolves into an experimental population in New Mexico in violation of federal and state law. As a result of the litigation, the U.S. Fish and Wildlife Service entered into a memorandum of agreement with the Department regarding future releases, allowing the Department to dismiss the litigation.

***Wild Equity Institute v. City and County of San Francisco*, 2015 U.S. App. LEXIS 4854 (9th Cir. 2015).** Part of team that defended City and County of San Francisco in an action alleging the City and County's operation of public property resulted in harm to a protected species in violation of Section 9 of the federal Endangered Species Act. The U.S. District Court dismissed the action and judgment was affirmed on appeal.

***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).** Part of team that successfully represented the City of Honolulu in the defense of a \$5 billion, 20-mile, rail transit project. The case included claims under the National Environmental Policy Act, National Historic Preservation Act, and section 4(f) of the Department of Transportation Act.

***Sprint Spectrum L.P., et al. v. County of San Mateo et al.*, Case Nos. C 08-0342, C 11-0056, 2013 U.S. Dist. LEXIS 171810 (Dec. 4, 2013).** Successfully represented plaintiff Sprint Spectrum L.P. in challenge to County's denial of use permit renewal for wireless telecommunications facility. The litigation resulted in a U.S. District Court judgment in favor of the client.

***Coalition for a Sustainable Delta v. Federal Emergency Management Agency*, 812 F. Supp. 2d 1089 (E.D. Cal. 2011).** Successfully represented plaintiffs Coalition for a Sustainable Delta and Kern County Water Agency in challenge to the Federal Emergency Management Agency's administration of the National Flood Insurance Program in the Sacramento-San Joaquin Delta. Plaintiffs alleged that the Agency failed to comply with the consultation requirements under the Federal Endangered Species Act. The litigation resulted in a settlement obligating the Agency to consult and pay attorney's fees.

***Coalition for a Sustainable Delta v. Koch*, Case No. 08-397, 2011 U.S. Dist. LEXIS 37306 (E.D. Cal. 2011).** Successfully represented plaintiffs in challenge over the State of California's enforcement of sport-fishing regulations. Plaintiffs alleged that enforcement of the regulations violated section 9 of the Federal Endangered Species Act, which generally prohibits "take" of federal protected species. The litigation resulted in a settlement with the State requiring the California Department of Fish and Game to develop a regulatory proposal, with input from the Federal Fish and Wildlife Service and National Marine Fisheries Service, to amend the sport-fishing regulations. The settlement included the establishment of a \$1 million fund for research on the effects of predation on listed species in the Sacramento-San Joaquin Delta.

***Building Industry Association of the San Joaquin Valley v. City of Fresno*, Case No. F052538, 2008 Cal. App. Unpub. LEXIS 6806 (Cal. Ct. App. 2008).** Successfully represented plaintiff Building Industry Association in an action challenging the City of Fresno's adoption of a fire sprinkler ordinance. Judgment in favor of client, and affirmed on appeal.

## INSIGHTS

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### SPEAKING ENGAGEMENTS

Speaker, "Rising Sea Levels - Financial Liability Issues to Cities & Legal Issues," International Right of Way Association Chapter 1 Annual Valuation Seminar, Montebello, CA, 02.25.2020

Speaker, "CEQA: Important Developments You Need to Know," Nossaman's 2019 California Land Use Seminar, Costa Mesa, CA, 05.21.2019

Panelist, "Waves of Change: Greenhouse Gas Analysis After the CEQA Guidelines Update," 2019 California Association of Environmental Professionals State Conference, Monterey, CA, 03.26.2019

Speaker, "Case Law Update," Nossaman's 2017 California Coastal Law Conference, La Jolla, CA, 10.10.2017

Speaker, "California's Water Supply Challenges – They Still Exist," California Real Estate Professionals of Orange County, 03.14.2017

Panelist, "2015 Environmental & Land Use Seminar," Nossaman's 2015 Environmental & Land Use Seminar, Newport Beach, CA, 09.22.2015

Speaker, "CEQA in the Age of Climate Change," BILD Foundation, 03.19.2015

## **PUBLICATIONS**

Co-Author, "Fish and Game Commission Violated Law by Seeking to Protect Bees Under CESA," *Nossaman eAlert*, 11.20.2020

"COVID-19 Takings Lawsuit Filed in California," *IRWA Orange County Newsletter*, 06.01.2020

Co-Author, "9th Circ. Sees Climate Problem but Rejects Plaintiffs' Solution," *Law360*, 02.03.2020

Author, "Air Quality Analysis Derails BNSF California Project," *The Natural Lawyer*, 04.22.2018

Co-Author, "Proposed CEQA Guideline for Highway Projects Promises Flexibility in the Measurement of Traffic Impacts, But Delivers Ambiguity," *Nossaman eAlert*, 02.07.2018

Co-Author, "Cases Pending Before the California Supreme Court on Climate Change may Foreshadow Federal Law Challenges," *The Natural Lawyer*, 04.06.2015

Author, "A Closer Look at *T-Mobile v. Roswell*," *Law360*, 02.03.2015

Co-Author, "Notice Period doesn't Cause 9th Circ. to Pause on ESA," *Law360*, 12.12.2014

Author, "How Untimely Service can be Deadly to your Takings Claim," *Law360*, 08.07.2014

Author, "California Appellate Court Requires Assessment of Healthcare Effects of New Development," *The Natural Lawyer*, 07.14.2014

Author, "California Projects Must Take Health Impacts Into Account," *Law360*, 06.17.2014

Author, "The Grapes of Wrath Part 2 - A Return to Horne," *Law360*, 06.16.2014

Co-Author, "Urban Decay Still Plagues California Big-Box Retail Plans," *Law360*, 04.22.2014

Co-Author, "9th Circuit Reminds BOEM About the Importance of Evidence," *Law360*, 03.11.2014

Co-Author, "California High Court Clarifies Scope of Mitigation Fee Act," *Law360*, 10.30.2013

Co-Author, "Judge or Jury? A Critical Eminent Domain Question Answered," *Law360*, 08.16.2013

Co-Author, "The Grapes of Wrath Crack High Court Precedent," *Law360*, 06.18.2013

Co-Author, "Condemn Now, CEQA-Compliance Later? Maybe," *Law360*, 04.29.2013

Co-Author, "Options, Agreements, and Prior Appraisals: Admissibility Issues in Eminent Domain Trials," *The Real Estate Finance Journal*, 12.17.2012

Co-Author, "Ninth Circuit Ratchets Up Consultation Obligations For Federal Agencies," *American Bar Association Endangered Species Committee Newsletter*, 08.01.2008

## **HONORS & RECOGNITIONS**

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Selected to the Southern California Rising Stars list, 2013-2019

## **COMMUNITY & PROFESSIONAL**

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American Bar Association

International Right of Way Association, Chapter 67 – President (2013-2014), President Elect (2012-2013)  
Orange County Bar Association  
Orange County Jewish Bar Association  
Orange County Business Council

## PRACTICES

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Environment & Land Use  
CEQA & NEPA  
Environmental Litigation  
Coastal Development  
Eminent Domain & Valuation  
Air Quality  
Class Actions & Multi-District Litigation  
Climate Change & Resiliency  
Contamination & Natural Resource Damages  
Endangered Species & Wildlife Law  
Government & Administrative Law  
Land Use Entitlements & Litigation  
Litigation  
Telecommunications Facilities

## EDUCATION

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Chapman University School of Law, J.D., 2006, *magna cum laude*; *Chapman Law Review*; Moot Court Honor Board  
University of California, Santa Barbara, B.A., 2003

## ADMISSIONS

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California  
U.S. Court of Appeals, Ninth Circuit  
U.S. Court of Appeals, Tenth Circuit  
U.S. District Court, Central District of California  
U.S. District Court, Eastern District of California  
U.S. District Court, Northern District of California  
U.S. District Court, Southern District of California