

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

Montebello Hills Specific Plan Project. Provided environmental compliance counseling, including on CEQA document development and defended CEQA and specific plan project approvals for project proposing up to 1,200 single family homes, internal circulation network, backbone water system and supporting infrastructure, parkland and hiking trails and a 260-acre nature reserve for the threatened California gnatcatcher. Judgment for client in both the California Superior Court and the California Court of Appeal.

Diversified Pacific Development Company. Provided environmental compliance advice, including on CEQA document development and defended CEQA and Subdivision Map Act approvals for 71-unit project in the City of Highland.

Back Bay Landing. Part of team that provided compliance advice, including on CEQA document development and Coastal Act compliance and defended CEQA and other environmental approvals for residential and mixed-use project for a primarily undeveloped/underutilized 31-acre bay front site in Newport Beach, California.

Orange County Transportation Corridor Agencies. Provides environmental compliance, including on CEQA document development and litigation support for large-scale infrastructure projects, including advice related to CEQA, NEPA, California Coastal Act and the Endangered Species Act. Also acts as general counsel to the Agencies, providing compliance counseling related to the California Ralph M. Brown Act and Public Records 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.

City of Bakersfield. Key part of team defending City's CEQA approvals for a multimillion dollar freeway project connecting State Route 99 with I-5 and including major improvements to State Routes 99, 58 and 178. Judgment for client in both the California Superior Court and the California Court of Appeal.

Kern County Water Agency. Key part of team representing client in litigation regarding CEQA and Endangered Species Act approvals for the State Water Projects.

LA Department of Water and Power. Provide Coastal Act compliance counseling related to utility replacement project.

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

Almond Alliance of California, et al. v. California Fish & Game Commission, et al., Sacramento County Superior Court Case No. 34-2019-80002469. Represent petitioners challenging the California Fish & Game Commission's candidacy determination for four bumblebee species under the California Endangered Species Act. In 2020, the Superior Court granted judgment in clients' favor and invalidated the candidacy determinations. The decision is currently on appeal.

Capistrano Unified School Dist. v. County of Orange et al., Court of Appeal Case No. G056177 (May 7, 2019). Defended the Foothill/Eastern Transportation Corridor Agency's environmental approval for bridge safety project. Judgment for client in both the California Superior Court and the California Court of Appeal.

Humane Society of the United States, et al. v. Paul M. Kienzle, et al., U.S. Dist. Court for the District of New Mexico Case No. 16-cv-0724. Defended the New Mexico Department of Game and Fish in proceedings challenging the State of New Mexico's cougar trapping regulations. Plaintiffs alleged that the regulations violated the "take" prohibition in section 9 of the Federal Endangered Species Act. In 2018, the U.S. District Court granted judgment in favor of the New Mexico Department of Game and Fish.

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.

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

SPEAKING ENGAGEMENTS

Panelist, "Data Privacy Review: What Do We Know (and Who Else Can Know It?)," Transportation Research Board's 60th Annual Workshop on Transportation Law, 09.13.2021 – 09.15.2021

Speaker, "Privacy and Government Data," Mileage-Based User Fee Alliance Webinar, 06.16.2021

Speaker, "Living on the Edge: Managing Sea Level Rise in California," Nossaman's 2021 Water Webinar Series, 05.27.2021

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, "Everything Local Public Agencies Need to Know About California's New Rules on Virtual Meetings During the Pandemic," *Nossaman eAlert*, 09.17.2021

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

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

Listed, *The Legal 500 United States*, Industry Focus - Environment - Litigation, 2022
Selected to the Southern California Rising Stars list, 2013-2019

COMMUNITY & PROFESSIONAL

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

PRACTICES

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

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

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