



## S. Keith Garner

Partner

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### PRACTICE AREAS

- Real Estate
- Land Use and Natural Resources
- Environmental

### INDUSTRIES

- Climate Change and Clean Technology

### OVERVIEW

Keith Garner, AICP, is a partner in the Real Estate, Land Use, Natural Resources and Environmental practice group in the firm's San Francisco office.

### Areas of Practice

Mr. Garner's practice focuses on state and federal environmental laws, land use planning and entitlement procedures, and natural resources permitting issues for large residential, commercial and mixed use communities and energy generation and transmission projects, including wind and solar facilities. He provides legal and strategic planning advice to clients at every stage of the complex development process, including due diligence for land acquisition, project planning and permitting, regulatory compliance, and land use litigation. He handles a wide range of state and federal regulatory matters, including endangered species, wetlands, water quality and land use issues, initiatives and referendums, environmental review under the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA), Williamson Act contracts, and State Lands issues. He frequently manages the interdisciplinary teams needed to address the regulatory requirements and permit conditions.

Prior to joining Sheppard Mullin, Mr. Garner worked as an urban planner in Boston, Massachusetts, and as a research fellow at the Harvard University Center for Urban Development Studies, where he participated in international development and research projects in Eastern Europe, the Middle East, Sub-Saharan Africa and Latin America.

### EDUCATION

- J.D., University of California, Berkeley, School of Law (Boalt Hall), 2001, Managing Editor, California Law Review, Executive Editor, Ecology Law Quarterly
- Master in Urban Planning, Harvard University, 1997, with distinction
- B.A., Stanford University, 1993, with honors

### ADMISSIONS

- California (Environmental Law Section)
- U.S. District Courts for the Northern and Eastern Districts of California
- U.S. Court of Appeals for the Ninth Circuit

### EXPERIENCE

#### Representative Matters

- *Project Planning and Permitting.* Advised Whispering Hills LLC in the development of a project that included over 150 single-family homes and a high school on approximately 356 acres in San Juan Capistrano. Represented client in the local entitlement and CEQA process and in natural resources permitting, including obtaining water quality certification from the California Regional Water Quality Control Board, negotiating a streambed alteration agreement with the California Department of Fish and Game, completing a Section 7 consultation with the U.S. Fish and Wildlife Service, securing a Section 404 permit from the U.S. Army Corps. of Engineers, drafting conservation easements and resolving Section 106 cultural resource issues with the State Historic Preservation Officer and the U.S. Army Corps. of Engineers.
- *Due Diligence.* Advised renewable energy company on public lands and endangered species issues related to a potential wind generation site within a right-of-way grant from the Bureau of Land Management (BLM) near Barstow.
- *Litigation.* Successfully defended Diablo Grande Limited Partnership in federal court against a citizen suit challenge to the Diablo Grande project in Stanislaus County involving claims under the Endangered Species Act, the Clean Water Act, and the National Environmental Policy Act. *Protect Our Water v. Flowers*, 377 F.Supp.2d 844 (E.D. Cal. 2004).
- *Administrative Advocacy.* Represented industry associations opposed to the proposed listing of the California tiger salamander under the California Endangered Species Act. Prepared extensive written comments and testimony before the Fish and Game Commission, which denied listing petitions in 2001 and 2004.

## MEMBERSHIPS

- Member, American Planning Association (Planning and Law Division)
- Member, American Institute of Certified Planners
- Member, San Francisco Planning and Urban Research Association (SPUR)
- Member, Urban Land Institute (ULI)

## ARTICLES

- "Identifying the LEDPA under the Section 404(b)(1) Guidelines," CLE International 2nd Annual California Wetlands SuperConference, Sacramento, California, January 14 and 15, 2008.
- "Overview of Wetlands Regulation: Federal, State, and Local Regulatory Issues," CLE International 13th Annual Conference on California Wetlands, Jan. 4-5, 2007 (co-authored with Robert J. Uram).
- California Tiger Salamander Not Threatened With Extinction, November 17, 2003.
- "'Novel' Constitutional Claims: Rent Control, Means-Ends Tests, and the Takings Clause," 88 Calif. L. Rev. 1547 (2000).

## Real Estate, Land Use and Environmental Law Blog Articles

- "Court of Appeal Rules that Denial of a Landowner's Application to Develop Property Can Be a Compensable Regulatory Taking", January 6, 2012
- "Superior Court Strikes Down Numeric Effluent Limits in California's Construction General Permit," January 5, 2012
- "Fish and Wildlife Service Settles Lawsuits on Listing Deadlines," August 5, 2011
- "U.S. Supreme Court to Review Two Cases With Potentially Significant Consequences for Wetlands and Waterways," June 29, 2011
- "Corps Proposes New, Reissued, And Modified Nationwide Permits," February 28, 2011

- "Fish and Game Commission Seeks Comments Related to Proposed California Tiger Salamander Rulemaking," April 16, 2010
- "State Listing of California Tiger Salamander Warranted," March 8, 2010
- "New Construction General Permit Imposes Significant New Requirements for Storm Water Discharges," September 10, 2009
- "Obama Budget Includes Details on Emission Targets and Cap-And-Trade Program," March 2, 2009
- "Fish and Game Commission Accepts Petition to List CTS and Adopts Interim Take Rules," March 2, 2009
- "California Fish and Game Commission to Consider Candidacy Status of California Tiger Salamander under CESA at February 5 Meeting," January 23, 2009
- "Fish and Game Commission Must Accept Petition to List the CTS under California Endangered Species Act," September 17, 2008
- "Five Year Statute of Limitations Applies to Unrecorded Rules of Homeowners Association," March 26, 2008
- "Corps Eliminates Elevations for Jurisdictional Delineations Affected by Rapanos Decision in Revised Coordination Procedures," January 31, 2008
- "Ninth Circuit Holds Recovery Standard Applies to Jeopardy Analysis," April 10, 2007
- "Corps Announces Implementation of Arid West Interim Supplement to the 1987 Wetlands Delineation Manual," December 29, 2006
- "Court Orders the CTS be Considered for Listing under the California Endangered Species Act," December 21, 2006
- "Corps Proposes New, Reissued, and Modified Nationwide Permits," September 26, 2006
- "Nationwide Permits Schedule to Expire on March 19, 2007," September 26, 2006
- "Statewide Listing of California Tiger Salamander as a Federal Endangered Species Took Effect on September 3, 2004, Critical Habitat Proposed," September 1, 2004

## **SPEECHES**

- "Land Use Issues Associate with Sitting Renewable Energy Projects," Imperial Valley Renewable Energy Summit, March 17, 2010
- "EPA's Rules on Compensatory Mitigation for Impact on Wetlands, Streams, and Other Waters," Lorman Education Services Teleconference, January 19, 2010
- "Identifying the LEDPA under the Section 404(b)(1) Guidelines," CLE International 2nd Annual California Wetlands SuperConference, Sacramento, California, January 14 and 15, 2008
- "What is an Endangered or Threatened Species? The California Tiger Salamander Debate," CLE International 6th Annual Conference on the Endangered Species Act • Regulatory and Judicial Developments, Costa Mesa, California, May 16-17, 2005
- "Emerging Trends in Municipal Governance, Participatory Processes in the Planning and Management of Local Development: Growth Management in Portland, Oregon," Harvard Graduate School of Design, Center for Urban Development Studies, Executive Training Program on Infrastructure and Partnerships for Local Economic Development, Durban, South Africa, August 2002
- Guest speaker or lecturer on planning and land use issues at Harvard University Graduate School of Design, Stanford University Urban Studies Program, and Golden Gate University School of Law

**EVENTS**

- What Does The End of Redevelopment Mean For You?
- SF Redevelopment Roundtable Series