



## → James Rusk

### Partner

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Jim Rusk is a partner with the Land Use and Natural Resources practice group in the firm's San Francisco office. He specializes in project permitting, compliance and litigation involving endangered species, wetlands and water quality, and related environmental review requirements.

### Areas of Practice

Jim guides landowners and developers through the complex permitting and compliance processes under federal and state natural resources laws, including the Endangered Species Act, the Clean Water Act, the California Fish and Wildlife Code and Porter-Cologne Act, the National Environmental Policy Act and the California Environmental Quality Act. He also represents clients in litigation defending federal and state permits against challenge by project opponents, and in suits challenging arbitrary agency action.

Jim has established strong working relationships with staff at the Army Corps of Engineers, U.S. Fish and Wildlife Service, California Department of Fish and Wildlife, Regional Water Quality Control Boards and U.S. Department of Justice.

Jim's areas of expertise also include California water rights, federal Indian law, and the USDA's National Organic Program, and he is a member of Sheppard Mullin's Food and Beverage Industry Team.

### Representative cases and projects

- Advised the developer of a 2,700-acre solar generation project in California on natural resources permitting and water rights.
- Obtained a Clean Water Act section 404 permit and section 401 state water quality certification for a mixed-use, master planned community of more than 10,000 homes in Southern California.
- Successfully defended the section 404 permit against attacks by project opponents in federal district court involving claims under the Clean Water Act, Endangered Species Act, National Environmental Policy Act and National Historic Preservation Act.
- Represented a landowner in litigation in federal district court in Hawaii challenging the U.S. Fish and Wildlife Service's designation of its property as critical habitat under the Endangered Species Act.
- Helped obtain a "no jeopardy" biological opinion and incidental take statement from the U.S. Fish and Wildlife Service for a mixed-use developmental several thousand homes in the Sacramento region. Prepared a 404(b)(1) alternatives analysis for the project to support its application for a Clean Water Act section 404 permit to fill wetlands on site.

- Conducted a water rights assessment for a proposed master-planned development in the Central Valley.
- On behalf of the members and Tribal Council of a federally recognized Indian tribe, successfully challenged in federal district court a Bureau of Indian Affairs decision recognizing a rogue faction as the tribe's government. Defeated a suit by the rogue faction in California court seeking access to more than \$10 million dollars held in trust for the tribe by the state.
- Counseled an accredited organic certification agent on compliance with National Organic Program regulations.
- Assisted an organic foods industry association in commenting on proposed rulemaking and guidance by the USDA under the National Organic Program.

## Honors

California Lawyer Attorneys of the Year, *Daily Journal/California Lawyer*, 2018

Real Estate and Construction, *Legal 500*, 2016

## Articles

- As legal challenges loom, impact of new Endangered Species Act rules remains uncertain  
*American Bar Association*, 10.25.2019
- Cascade of ESA Listings Unlikely, For Now  
*Daily Journal*, 11.17.2016

### Real Estate, Land Use & Environmental Law Blog Posts

- "Clean Water Act Permit Required for "Functional Equivalent" of Direct Discharge, Supreme Court Says," April 24, 2020

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"D.C. Circuit Says NEPA Requires FERC To Inquire Into Up and Downstream Effects of Pipeline Project," June 21, 2019

- "Critical Habitat Must Be Habitat for Listed Species, Supreme Court Says," November 29, 2018
- *Hawai'i Wildlife Fund v. County of Maui*, EPA Considers 'Clarifying' Clean Water Act Coverage for Discharges Via Groundwater" rel="noopener noreferrer" href="https://www.realestatelanduseandenvironmentallaw.com/hawaii-wildlife-fund.html">"After 9th Circuit Ruling in *Hawai'i Wildlife Fund v. County of Maui*, EPA Considers 'Clarifying' Clean Water Act Coverage for Discharges Via Groundwater," March 14, 2018
- "Corps and EPA Push Out Effective Date of Disputed Clean Water Rule," February 6, 2018
- "District Courts Have Jurisdiction Over Challenges to Clean Water Rule, Supreme Court Says," January 23, 2018
- "Corps and EPA Solicit Public Comment on Restoring Pre-Clean Water Rule Regulations," July 27, 2017
- "California Proposes New Permitting Procedures for Impacts to Wetlands and Waters of the State," July 24, 2017
- "EPA, Corps Propose Rescinding Clean Water Rule," June 29, 2017

## Speaking Engagements

Cost-Benefit Analysis In Clean Water Act Section 404 Permitting, presented at CLE International California Wetlands Conference, March 3-4, 2016.

Clean Water Act § 404 Enforcement – Jurisdiction, Exemptions and Defenses, presented at CLE International California Wetlands Conference, June 15-16, 2017.

Federal Permitting for Development Projects – Lessons from the 9th Circuit’s Newhall Ranch Decision, presented at the Select Conference on Industry Litigation, July 21-22, 2018.

Permitting Fill of Wetlands under Clean Water Act Section 404—Key Issues for California Practitioners, presented at CLE International California Wetlands Conference, April 16-17, 2015.

Practicable Alternatives: Criteria and Identification Under the Section 404(b)(1) Guidelines, presented at CLE International California Wetlands Conference, May 5-6, 2014.

Integrating NEPA with Other Federal Requirements, presented at CLE International NEPA Conference, January 23-24, 2012.

Endangered Species Regulatory and Case Law Update 2009, prepared for CLE International Endangered Species Act Conference, November 5-6, 2009.

The National Environmental Policy Act: Wetlands Issues Within the NEPA Process, prepared for CLE International California Wetlands Conference, February 26-27, 2009.

Consideration of Cumulative Impacts Under the National Environmental Policy Act, prepared for CLE International NEPA Conference, February 23-24, 2009.

Endangered Species Regulatory and Case Law Update 2007, prepared for CLE International Conference On the Endangered Species Act and Habitat Conservation Planning, November 1-2, 2007.

## Memberships

American Bar Association, Environment, Energy and Resources Section; Endangered Species Committee; Water Quality and Wetlands Committee

Urban Land Institute, San Francisco District Sustainable Development Committee

State Bar of California, Environmental Law section

Bar Association of San Francisco

Organic Trade Association

## Practices

Real Estate and Land Use

Historic Preservation

Tribal and Indian Law

Wetlands and Endangered Species

## Industries

Food and Beverage

## Education

J.D., University of California, Hastings, 2007, *magna cum laude*, *Order of the Coif*, Senior Articles Editor, *Hastings Law Journal*

B.A., University of Houston, 1997, *magna cum laude*

## Admissions

California

Federal: United States District Court of California, Northern District, Central District, and Ninth Circuit Court of Appeals