



→ S. Keith Garner

Partner

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Keith Garner is a partner and Practice Group Leader of the Real Estate, Land Use, Natural Resources and Environmental Practice Group in the firm's San Francisco office.

Areas of Practice

Keith's practice focuses on state and federal environmental laws, land use planning and entitlement procedures, and natural resources permitting 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, environmental review under the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA), National Historic Preservation Act compliance, and public trust issues.

Prior to joining Sheppard Mullin, Keith 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.

Honors

Best Lawyers in America, *Best Lawyers*, 2022

Real Estate and Construction, *Legal 500*, 2015-2021

Real Estate - Land Use/Zoning, *Legal 500*, 2021

Experience

Representative Matters

Project Planning and Permitting:

- Representing owner/developer in land use entitlement, environmental review, and public trust matters related to redevelopment of a former naval shipyard in the San Francisco Bay Area.
- Represented developer of 10-building, 305-unit apartment complex in Vista, California in local entitlement and CEQA processes, and natural resources permitting from U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, California Department of Fish and Wildlife, and California Regional Water Quality Control

Board.

- Represented developer on wetlands, water quality, and endangered species permitting for 250 MW solar generation project in Imperial County.
- Represented owners/developers in exchange and boundary line agreements with the State Lands Commission.
- Represented national e-tailer in land use entitlements for over 150 stores in California.

Due Diligence:

- Conducted wetlands, endangered species, and cultural resources diligence for over three dozen solar and wind projects in Illinois, Nebraska, Texas, Oklahoma, New Mexico, Montana, Idaho, and California.

Litigation and Administrative Enforcement:

- Represented restaurant owner in enforcement proceedings and permitting before the Bay Conservation and Development Commission.
- Represented land owner in administrative enforcement actions concerning allegedly unauthorized grading activities brought by County, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, California Department of Fish and Wildlife, and California Regional Water Quality Control Board.
- Successfully defended developer in federal court against citizen suit challenge to a Stanislaus County development project involving Endangered Species Act, Clean Water Act, and NEPA claims. *Protect Our Water v. Flowers*, 377 F.Supp.2d 844 (E.D. Cal. 2004).

Administrative Advocacy:

- Represented industry association in rulemaking proceedings before the State Water Resources Control Board concerning the adoption of state wetland definition and permitting procedures in 2016, 2017, and 2019.
- Represented industry associations in rulemaking proceedings before the California Fish and Game Commission and the U.S. Fish and Wildlife Service and the state and federal Endangered Species Act.

Articles

- California's Evolving Regulation of Wetlands: Will New Rules Bring Clarity? *Trends, ABA Section of Environment, Energy, and Resources*, January/February 2021
- "FWS Proposes, Again, To Issue 30-Year Eagle Act Permits," *Law 360*, June 21, 2016
- "Swimming Upstream: 9th Circuit CWA Cases Heading To SCOTUS," *Law360*, August 17, 2012
- "'Novel' Constitutional Claims: Rent Control, Means-Ends Tests, and the Takings Clause," 88 Calif. L. Rev. 1547 (2000).

Real Estate, Land Use & Environmental Law Blog Posts

- "Uncertainty Over 'Waters of the U.S.' Definition Continues, as Federal Court in Arizona Vacates 2020 Rule," September 7, 2021
- "Army Corps of Engineers Proposes Revising Broad Range of Clean Water Act Nationwide Permits," September 15, 2020

- "Clean Water Act Permit Required for "Functional Equivalent" of Direct Discharge, Supreme Court Says," April 24, 2020
- "District Court Provides Guidance On Climate Change Analysis Under NEPA," April 15, 2019
- "Critical Habitat Must Be Habitat for Listed Species, Supreme Court Says," November 29, 2018
- "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
- "California Proposes Adopting New Permitting Program for Wetlands and Waters of the State," June 20, 2016
- "USFWS Proposes (Again) To Issue 30-Year Eagle Act Permits," June 20, 2016
- "Corps Proposes Renewal of Nationwide Permits," June 2, 2016
- "Jurisdictional Determinations Are Reviewable By The Courts," June 1, 2016
- "Bill to Nullify Clean Water Rule Vetoed," January 21, 2016
- "BREAKING: EPA Water Rule Blocked Nationwide By Sixth Circ.," October 9, 2015
- "State Lands Commission Land Exchanges Not Exempt from CEQA Review Absent a Title or Boundary Dispute; Actual Notice Doesn't Satisfy CEQA Notice Requirements Under Public Resources Code Section 21177(e)," September 22, 2015
- "District Court Enjoins Federal Regulations Revising Scope of Clean Water Act Jurisdiction," August 28, 2015
- "EPA and Corps Issue Rule Defining 'Waters of the U.S.," June 30, 2015
- "Utility Pole Not A Point Source Under The Clean Water Act," April 16, 2013
- "Supreme Court to Hear Two Significant Clean Water Cases," July 20, 2012
- "River Segment Must Be Navigable In Fact For Commercial Purposes At Statehood For State To Obtain Title To Riverbed Under The Equal Footing Doctrine," March 5, 2012
- "New And Revised Nationwide Permits For Dredge And Fill Activities," February 22, 2012
- "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

Media Mentions

Global Holdings Acquires Instrata Nomad for \$380M
Commercial Observer, 02.20.2020

Feeling The Pain From A Divided Supreme Court Ruling
Law360, 10.08.2019

Speaking Engagements

"Legal Considerations for CGP Compliance: A Review and Projections," Building Industry Association – Southern California, Construction General Permit Renewal Webinar, January 26, 2021

"The Challenge of Completing 401 Water Quality Certifications," Building Industry Association – Southern California, Water Quality Certifications Webinar, November 10, 2020

"Potential Listing of Quino Checkerspot Butterfly under CESA," Endangered Species Update Webinar, California Building Industry Association, July 21, 2020

"Changes in Construction Storm Water Management," California Business Properties Annual Meeting, December 2019

"California Wetlands Definition and Permitting Procedures," Webinar, Association of State Wetland Management, October 2019

"Trends in retail mixed use projects," Retail Roundtable Webinar, September 17, 2019

"Waters of the State Update" Legal Panel, Bay Planning Coalition, Spring Summit, May 10, 2019

"Waters and the State and Waters of the U.S.," Expert Panel Briefing, Bay Planning Coalition, May 7, 2019

"Federal Permitting for Development Projects," Select Conference on Industry Litigation, Carmel, CA, July 21, 2018

"SWRCB Waters of the State Rulemaking," Select Conference on Industry Litigation, Carmel, CA, November 11, 2017

"Evolving Role of State Law in Protection of Streams and Surrounding Resources," California State Bar Northcoast "Your Voice, Your Future" Conference, Eureka, CA, November 3, 2017

"Evolving Federal and State Law Topics," CLE International Land Use Law Conference, San Francisco, CA, September 18, 2017

"Wetlands Overview: Regulatory and Case Law Update", CLE International California Wetlands Conference, Los Angeles, CA, June 15-16, 2017 (Program Co-Chair)

"Wetlands Overview: Regulatory and Case Law Update", CLE International California Wetlands Conference, San Francisco, CA, March 3-4, 2017 (Program Co-Chair)

"Wetlands Overview: A Primer", CLE International California Wetlands Conference, San Francisco, CA, April 16-17, 2015 (Program Co-Chair)

"Impact of the Endangered Species Act on Development," Lorman Education Services, May 15, 2014

"Avoidance and Minimization for Individual Permits," CLE International California Wetlands Conference, San Francisco, California, May 5-6, 2014

"Proximate Causation and Geographic Limits," CLE International 9th Annual NEPA Conference, San Francisco California, April 22-23, 2013

"The Essentials: The Endangered Species Act, Clean Water Act, and National Environmental Policy Act," CLE International Endangered Species Act Conference, San Francisco, California, March 7-8, 2013

"Environmental Set-Asides and The Whole Parcel Rule," American Planning Association's 2012 National Conference, April 14-17, 2012

"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

The Art of the Deal
ACC-SFBA & Sheppard Mullin Real Estate Series
06.26.2013

What Does The End of Redevelopment Mean For You?
Sheppard Mullin's Redevelopment Roundtable
01.12.2012

SF Redevelopment Roundtable Series
How to Navigate the Shark-Infested Waters of Redevelopment in California
Sheppard Mullin San Francisco Office, 07.19.2011

Memberships

Member, American Planning Association (Planning and Law Division)
Member, Bay Planning Coalition
Member, California Building Industry Association (Legal Affairs Committee)

Practices

Real Estate and Land Use
Land Use Litigation
Wetlands and Endangered Species
Environmental
CEQA Documentation and Defense
ESG and Sustainability

Industries

Energy, Infrastructure and Project Finance
ESG and Sustainability
Multifamily Housing

Education

J.D., University of California, Berkeley, 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