

## LAND USE AND NATURAL RESOURCES

Real estate developers, property owners, mining companies, timber companies, agricultural producers and others are constantly confronted with new land use and environmental regulations, the need for agency approvals at all levels of government and ensuing litigation challenging those approvals. With a clear understanding of applicable legal requirements, strong negotiating skills, thorough preparation of materials and persuasive presentation skills, Sheppard Mullin's Land Use attorneys regularly guide clients through the land use and environmental regulatory maze and related court actions.

Our Land Use practice is composed of lawyers from the Real Estate, Litigation and Environmental groups. We are knowledgeable about specialized issues such as state and federal laws regarding wetlands and rivers, water rights, endangered species, mining, coastal protection, hazardous wastes, toxic air contaminants, solid wastes, air and water quality and historic preservation. We have worked with developers of large and small projects, which routinely require compliance with one or more of these laws. In order to serve our clients ably, we keep abreast of relevant legal developments and maintain solid relations with the staff and officials of applicable regulatory bodies.

### Relevant Experience and Expertise

Several of our lawyers are well known and highly regarded for their representation of owners, investors and developers in the area of land use and natural resources, mining and other kinds of development. This includes all aspects of environmental clearances, development entitlements, permit processing and land use and environmental litigation. Sheppard Mullin has been at the forefront in guiding clients through California's difficult and increasingly complex requirements regulating land development. This includes requirements for environmental impact analysis, imposition of mitigation measures and linkage fees, as well as the negotiation of elaborate conditions and land use agreements. We are also experts in helping clients address federal regulatory issues for wetlands, endangered species, mining, timber, water supply and other land uses. Our Environmental attorneys specialize in hazardous wastes, air and water quality and underground fuel tanks.

Our Land Use attorneys combine the specialized knowledge necessary for an entitlement practice with the breadth derived from a full transactional workload. As a result, our clients benefit from a practical approach informed by an appreciation of the marketing and financial implications of governmental approvals and conditions, as well as the time required to perfect entitlement.

Sheppard Mullin attorneys have been responsible for legal services in connection with developments of virtually every kind, including:

- Planned residential and recreational communities
- R&D, office and industrial parks
- Retail and shopping centers
- Hotel developments in urban, suburban and rural resort locations
- Major downtown office buildings and suburban office developments
- Urban residential and mixed-use developments
- Waterfront and coastal attractions
- Research laboratories
- Wineries and winery expansions
- Live work space and office conversions
- Ski resort and recreational condominiums
- Military base reuse
- Mobile home parks
- Redevelopment projects
- Affordable housing developments
- Recycling and industrial facilities
- Rehabilitation of historic structures
- Sanitary landfills

- Parkways and roads
- Oil and gas development
- Self storage facilities
- Mining operations
- Timber harvesting
- Waste disposal sites
- Golf courses
- Dams
- Water supplies

The firm's experience in coastal and waterfront development, urban redevelopment, mixed use projects, timber and mining has been especially notable. Recent work has focused on the clean-up and reuse of contaminated land, habitat conservation and the adaptive reuse of historic buildings.

For these projects, our Land Use attorneys counsel clients and prepare and process applications before various agencies with special jurisdiction, including the California Coastal Commission, various redevelopment agencies, local agency formation commissions and water agencies, the U.S. Army Corps of Engineers, the California Regional Water Quality Control Boards, the California Department of Fish and Game, the U.S. Fish and Wildlife Service, Bureau of Land Management, U.S. Forest Service, Bureau of Reclamation, Bureau of Indian Affairs, Mineral Management Service, Office of Surface Mining, Caltrans, the Federal Highway Administration, the Advisory Council on Historic Preservation, State Mining and Geology Board, Air Quality Management Districts, Air Pollution Control Districts and the San Francisco Bay Conservation and Development Commission.

In addition, our Land Use attorneys regularly litigate issues relating to the California Environmental Quality Act ("CEQA") and the National Environmental Policy Act ("NEPA"). We have handled several important cases through the California Courts of Appeal and the federal appellate courts. Our familiarity with CEQA and NEPA enables us to provide efficient, focused counseling in the preparation of environmental impact reports and in the creation of a defensible record in anticipation of CEQA or NEPA litigation.

We advise our lender clients on a variety of land use issues, including the impact of state and federal legislation, local ordinances, ballot initiatives and pending litigation on real property collateral and "real estate owned" assets. We also investigate the status of entitlements and other land use issues with respect to the real estate which secures existing and proposed construction and permanent loans. In particular, our attorneys are called on by lenders to assess a borrower's potential liability with respect to unsatisfied conditions to project approvals, claims by adjacent landowners and regulatory agencies, as well as to evaluate the impact of those liabilities on the value of the real estate collateral or asset.

For condominium and other common interest subdivision projects, we prepare and process covenants, conditions and restrictions ("CC&Rs"), as well as documents for the formation of owners' associations and unit sales. We have Master Management Documents approved by the Department of Real Estate. We also counsel developers, lenders and owners' associations in the modification of these documents over time to reflect changed conditions and to resolve disputes. We have prepared reciprocal easement agreements for shopping centers, and CC&R's for conventional suburban subdivisions, urban high rise mixed use projects and industrial parks.

Sheppard Mullin attorneys have negotiated and prepared numerous disposition, owner participation and cooperation agreements with redevelopment agencies, as well as subdivision improvement and development agreements for both single phase and large scale multi-phase projects. We counsel clients on how to structure public financing of infrastructure improvements, including conventional assessment and facilities improvements districts, as well as Mello-Roos special tax districts. We also advise on potential impacts of general plan revisions.

We provide services to both public entities and private developers for public/private transactions, including leasing, build-to-suit and turnkey acquisition projects. We have expertise in the Public Contracts Act, affirmative action, prevailing wage and other special legal requirements that arise in such transactions. We also draw upon the resources

of our Government Contracts and Regulated Industries group in structuring transactions and preparing documents to avoid the ambiguities and claims that often accompany public/private arrangements.

We have experience representing land owners and public entities in both resource conservation and extraction. We regularly assist landowners in the negotiation and execution of water rights and water supply agreements, in the assessment and mitigation of impacts on endangered species in both the wetland and upland contexts, as well as on energy and industrial facility licensing and siting. We have unique expertise advising agribusiness on regulatory, pesticide reduction and labeling matters, and in organic agriculture certification. Sheppard Mullin attorneys are noted for their ability to reconcile land conservation and development controversies.

Our attorneys have frequently served as the leaders of permitting and land acquisition efforts for major development projects including resorts, golf courses, housing developments, waste disposal sites, oil and gas development and mines for coal, gold, silver and other hard rock minerals, limestone, clay and other industrial minerals, as well as sand and gravel. This work includes obtaining wetland permits, drafting leases and joint venture agreements, securing water rights and providing title opinions for mining claims.

We have also represented clients in mining related litigation. Examples include a dispute between joint venturers over the operation of a gold mine, a dispute charging an oil and gas lessee with failure to prevent drainage from an oil and gas lease, litigation over water rights, a dispute over title to sand and gravel and a claim for trespass by the surface owner against the operator of a sand and gravel mine. We also have extensive experience with the United States Congress, as well as in developing and reviewing proposed federal laws and regulations.

#### **Attorney Qualifications and Staffing**

With one of the largest real estate, land use and environmental practices in California, Sheppard Mullin offers significant depth for representing clients. Staffing of each client matter is based on specific needs. Many matters require the attention of only one experienced lawyer. Where very complex issues and multiple tasks are involved, we follow a team approach. In each case, those assigned will have the expertise the client requires and be available at all times to meet client needs in a timely and cost effective manner. The number of partners and senior associates who spend all of their time on such work permits us to assign client responsibility to 1-2 attorneys and field teams for very large projects.

The Land Use practice is unique and offers partners who possess experience in architecture, urban planning, civil engineering, oceanic and coastal management and regulation, economic and financial consulting and other disciplines related to real estate development. As a result, we are able to offer uniquely tailored services that go beyond the capacities and expertise of most land use and real estate lawyers. Our knowledge of construction, contracting, real estate and construction litigation complements this expertise.