

Red-legged Frog Critical Habitat Designation Vacated

11.20.2002

Sheppard, Mullin, Richter & Hampton LLP successfully represented the Home Builders Association of Northern California (HBA), the California Building Industry Association, the California Building Industry Defense Fund, the California Chamber of Commerce, the California Alliance for Jobs, and El Dorado County, California, in litigation against the Department of the Interior and the U.S. Fish and Wildlife Service. In the **widely-followed** case in Washington D.C., federal district court Judge Richard J. Leon approved and entered a Consent Decree **vacating approximately 4 million acres of land which had been erroneously designated** as critical habitat for the California red-legged frog.

HBA filed suit to challenge the rule-making on the basis that it designated large swaths of land that are not "critical habitat" under the federal Endangered Species Act. "Critical habitat" refers to specific geographic areas that are "essential for the conservation" of a threatened or endangered species and may require special management considerations.

HBA also alleged that the U.S. Fish and Wildlife Service had failed to prepare a proper economic analysis to evaluate whether certain lands should be excluded because they are of marginal value to the frog, but are important economically, e.g., they include areas that have a critical need for housing. This economic inquiry is mandatory under the Endangered Species Act.

The Court concluded that taking additional time to conduct a proper economic analysis will not harm the Frog. Judge Leon noted that federal law already has numerous other provisions, including civil and criminal protections, that protect the Frog and where it currently lives.

Commented Robert Uram, partner in the Real Estate, Land Use, Natural Resources & Environment Practice Group in San Francisco, and plaintiffs' counsel, "We are pleased that the Court approved the Consent Decree. Judge Leon's decision supports our view that the designation of critical habitat was flawed and should be redone. While the red-legged frog will continue to be protected under other provisions of the ESA, **landowners, homebuilders and property developers** will not have to suffer financially from the flawed designation."

Tom Roth, special counsel the Real Estate, Land Use, Natural Resources & Environment Practice Group in San Francisco, and also plaintiffs' counsel, added, "Judge Leon's decision helps bring back some **rationality to the critical habitat debate**. With this decision, the Fish & Wildlife decision can now take the time necessary to evaluate **how much of the 4 million acres is really needed** to protect the Frog."

Judge Leon's decision and the consent decree can be viewed here.

Sheppard Mullin's Real Estate, Land Use, Natural Resources & Environmental Practice Group is one of the most prominent in California, having an unparalleled depth of specialized expertise in all areas of land use regulation, including land use approvals and permitting; subdivision map approvals and planned unit developments; wetlands; endangered species and critical habitat designation; Coastal Commission approvals; state lands, public trust and other waterfront jurisdictional use limitations and permitting; CEQA and NEPA; redevelopment law; historic preservation; toxic and hazardous materials compliance and clean-up; and administrative appeals, takings, eminent domain and other land use litigation.

Sheppard Mullin has more than **330 attorneys** among its **seven offices** in San Francisco, Santa Barbara, West Los Angeles, Los Angeles, Orange County, Del Mar Heights, and San Diego. The **full-service firm** provides counsel in Antitrust & Trade Regulation; White Collar and Civil Fraud Defense; Business Litigation; Construction, Environmental, Real Estate, Land Use Litigation & Natural Resources; Corporate; Finance & Bankruptcy; Financial Institutions; Government Contracts & Regulated Industries; Healthcare; Intellectual Property; Labor & Employment; and Tax, Employee Benefits, Trusts & Estates. **The firm is celebrating its 75th anniversary in 2002.**

###