

# Tide Turns at Coastal Commission With Douglas' Retirement

BY JOSH STEPHENS

**THE RETIREMENT OF PETER DOUGLAS**, the 26-year executive director of the California Coastal Commission, has unleashed a tsunami of superlatives from admirers: “legend,” “tremendous,” “staunch advocate.” For decades, Douglas has been a lightning rod of both praise and criticism for the Coastal Commission. Some say that, under his direction, the commission has protected coastal resources that otherwise would have been lost. Others say that during his tenure the commission has been too strict, too capricious, and too dismissive of property rights.

Many credit him with singlehandedly enforcing, and strengthening, the 1972 ballot initiative that gave rise to the Coastal Act of 1976, which he helped draft and has helped enforced as a commission staff member for the better part of a generation.

“There’s nothing you can really say that isn’t a cliché,”



CALIFORNIA COASTAL COMMISSION

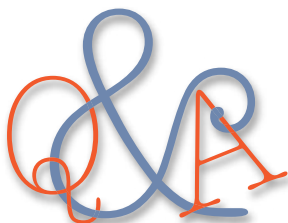
**Peter Douglas**, longtime executive director of the California Coastal Commission

said Mary Nichols, chair of the Air Resources Board and longtime environmental advocate.

“Peter is the single most defining force of the implementation of the Coastal Act.” said Susan McCabe, a lobbyist and former commission member. “He has shaped the coast of California.”

While nearly everyone involved with environmental protection or coastal development agrees on Douglas’ influence – he has never shied away from inflammatory rhetoric in defense of a pristine, accessible coastline – agreement on his virtuousness is far from unanimous. He is known for inviting debate and for agreeing to disagree amid the passionate debates that surround land use and environmental protection. But some contend that his pursuit of conservation ran roughshod over principles of justice.

– CONTINUED ON PAGE 8



**WITH GAIL  
GOLDBERG**

# Gail Goldberg Pursues ‘Real Planning’ as Head of Urban Land Institute-L.A.

BY JOSH STEPHENS

**GAIL GOLDBERG** arrived in the City of Los Angeles during robust times. Appointed by Mayor Antonio Villaraigosa to be director of the Department of City Planning – after holding the same position in the City of San Diego – Goldberg was poised to help Los Angeles embrace density and reinvent itself during the post-millennial real estate boom. Plans to streamline the department and create “elegant density” were hampered, however,

by the recession and, by Goldberg’s own admission, difficulties in reaching consensus and doing citywide planning in a place as large and diverse as Los Angeles. Goldberg stepped down from City Planning in 2010 and recently became executive director of the Urban Land Institute’s Los Angeles chapter. *CP&DR* spoke with Goldberg about how she hopes to approach planning in Southern California from outside the public sector.

– CONTINUED ON PAGE 6

**IN BRIEF**

*Jim Kennedy becomes interim head of Calif. Redevelopment Assoc. .... Page 2*

**IN BRIEF**

*Fish & Game releases draft of ecosystem restoration strategy ..... Page 3*

**LEGAL DIGEST**

*Case clarifies ways of measuring GHGs under CEQA ..... Page 4*

**NEWS**

*Judge throws out ballot initiative protesting parking rates ..... Page 5*

**FROM THE BLOG**

*A New Jersey perspective on the Coastal Act ..... Page 10*

**FROM THE BLOG**

*Lessons in density from the densest city of them all ..... Page 11*

**FORMER CONTRA COSTA COUNTY** redevelopment director Jim Kennedy has been tapped to succeed John Shirey as executive director of the California Redevelopment Association. Shirey is the City of Sacramento's new city manager. Kennedy joins the organization amid unprecedented tumult in the redevelopment world. He inherits the pending lawsuit that CRA and the League of California Cities have filed to overturn this year's budget bills, which require jurisdictions either to submit remittance payments to the state or shut down their redevelopment agencies, thus relinquishing their tax increments to the state. Kennedy will serve in an interim capacity while the lawsuit concludes. In Contra Costa County, Kennedy garnered accolades for his hand in planning development around the Pleasant Hill BART station.

**LED BY LEGAL SERVICES** of Northern California and the Public Interest Law Project, a coalition of affordable housing advocates have made good on a threat to sue the City of Folsom. Several months ago, the city rescinded an inclusionary zoning ordinance that city officials said was ineffectual and was hindering the production of both affordable and market rate housing and that it violated the city's own housing element (see *CP&DR* Vol. 26, No. 4, Feb. 2011 [↖]). The suit urges the Sacramento County Superior Court to put a ban on residential building permits and housing-related zoning changes in the city until it reinstates the inclusionary policy, which mandated that large housing developments include a certain number of affordable units. The suit comes against the backdrop of the city's efforts to annex 3,500 acres. City officials contend that plenty of affordable units are in the pipeline and that loosening the policy will actually lead to the creation of more housing. Folsom was sued on similar grounds ten years ago; the rescinded ordinance was implemented in response to that lawsuit.

**FOLLOWING A FINAL COURT DECISION** in June, Governor Brown took down the "for sale" sign on at the Orange County Fairgrounds, thereby officially shutting down the possibility to sell the land to a private company. Facilities Management West, based in Newport Beach, tried to acquire the 150-acre property in Costa Mesa two years ago in a bidding arranged by the Schwarzenegger administration. Since then, the com-

pany has had to fend off a coalition of activists and fairgrounds vendors, who challenged the sale based on the argument that the bidding system was flawed. Wylie Aitken, a Voice of OC board member, supported the governor's decision, and encouraged the community to rally around the fair. He said, "It is now incumbent on the community to support the fair and eat lots of cotton candy and ride the Ferris wheel."

**A 200-WATT WIND FARM**, which would have placed windmills along the ridges of mountain city Tehachapi, has been pulled by Alta Windpower Development LLC. Many in the Kern County community, including Planning and Community Development Director Lorelei Ovlatt and Supervisor Zack Scrivner, loudly opposed the 7,106-acre project to construct 400-foot wind turbines. Alta was in the midst of conducting an environmental impact study of Pahnamid when it pulled its proposal. The company has indicated that it will continue to build the 1,100 megawatts of wind turbines in Kern County that were approved by the Board of Supervisors before Pahnamid.

**IN MAY**, Southern California Association of Governments partnered with the California Environmental Protection Agency and Air Resources Board to host the 5th Annual Compass Blueprint Awards, which recognize plans with significant achievement in four aspects of development. The City of Los Angeles and Los Angeles County Metropolitan Transportation Authority won the President's Award for Excellence, the top honor, for its America Fast Forward, 30/10 Plan for Sustainable Transit Communities, which SCAG deemed "transformative." Five other awards were also granted, to the city of Fullerton for sustained leadership, and to the cities of Santa Ana, West Hollywood, San Bernardino, and Brawley for visionary planning in mobility, sustainability, prosperity, and livability, respectively.

**A NEW SPORTS ARENA** for the NBA Sacramento Kings would bring in \$157 million a year, says a study commissioned by Mayor Kevin Johnson's arena task force. That figure, which includes inflation estimates, restaurant sales and hotel bookings, indicates an economic benefit of \$7 billion over 30 years. Much of the revenue would come from local residents, but after

that total is subtracted, the study—written by Capitol Public Finance Group—anticipates a benefit of \$24.6 million a year coming from the 3.1 million new visitors the arena would attract. A report on financing the \$387-million project will come out September 8, though it is anticipated that the city of Sacramento will have to bear much of the burden. The task force has put together a list of potential funding sources, including selling city-owned properties and relying on parking and ticket fees from out-of-towners.

**THE COMMUNITY REDEVELOPMENT AGENCY** in Los Angeles is requesting proposals from companies to develop a 20-acre site that was meant to be a "clean tech corridor" for industrial, manufacturing, and research centers. The CRA had hoped that this corridor would also connect to the revitalization project at the Cornfield near the Los Angeles River. Three separate proposals fell through for that plan, including Italian rail car manufacturer AnsaldoBreda's proposal to construct an assembly plant for Metro rail cars. The site has a long and troubled history, having once been contaminated by toxic chemicals and under consideration for the construction of a prison. Proposals to develop the site next should emphasize Los Angeles environmental programs and Measure R's incentive for transportation projects. The plans will also have to comply with environmental standards and pay a living wage to their workers.

**PASADENA HAS HALTED** the removal of 25,000 cubic yards of sediment from behind Devil's Gate Dam due to concerns that moving the dirt to Johnson Field would destroy the habitat of toads. The temporary storage spot is a groundwater restoration basin that has gone unused, and was chosen to prevent trucking the dirt out to Irwindale to a fill area. The city is still considering using the field, but will wait until it dries out in late summer, when the toads will leave in search of other, wetter land. It is critical the sediment is removed from the basin behind Devil's Gate so the dam's valves do not clog in the winter. This process is just the first step of several to remove 1.5 million cubic yards of mud and debris from the basin behind the dam, much of which is a consequence of the August 2009 Station Fire.

— CONTINUED ON PAGE 3



is published semi-monthly by

Solimar Research Group  
Post Office Box 24618  
Ventura, California 93002

Telephone: 805/701-CPDR (2737)  
Facsimile: 805/643-7782

Subscription Price: \$238 per year

ISSN No. 0891-382X

Visit our website:  
WWW.CP-DR.COM

You may e-mail us at:  
INFO@CP-DR.COM

William Fulton  
Editor and Publisher Emeritus

Josh Stephens  
Editor

Paul Shigley  
Senior Editor

David Blum  
Graphic Design

Morris Newman, Kenneth Jost  
Contributing Editors

Abbott & Kinderman, LLP  
Legal Digest

Robin Andersen  
Circulation Manager

Connie Phu  
Editorial Intern

— CONTINUED FROM PAGE 2

**THE CALIFORNIA DEPARTMENT** of Fish and Game has released its “Draft Ecosystem Restoration Program Conservation Strategy,” which outlines how the agency will undertake efforts to coordinate state and federal conservation efforts. The United States Fish & Wildlife Service and NOAA’s National Marine Fisheries Service also coordinated in the drafting of the plan. The plan’s objectives are to “achieve recovery for at-risk species; rehabilitate natural processes; maintain or enhance populations of selected species for sustainable commercial or recreational harvest; protect or restore functional habitat types; prevent or reduce harmful impacts from nonnative species; and improve or maintain water quality and sediment quality conditions that support healthy ecosystems.” A variety of different funding sources – including State proposition monies and Clean Water Act funds – combine to provide over \$600 million for the restoration effort. A copy of the document is available at [dfg.ca.gov/ERP/](http://dfg.ca.gov/ERP/).

**BACK IN MARCH**, San Clemente voters rejected a 50,000-square-foot commercial development in the community of North Beach. The project’s spurned developers, Shaheen and Linda Sadeghi, subsequently filed suit to challenge the special election that blocked their project, dubbed Playa del Norte. The plaintiffs contended that the special election was illegal because voters had the incorrect impression that they were voting on the development itself, instead of what the bill actually proposed – amending city planning documents. An Orange County judge, however, has ruled preliminarily that the “purported errors do not appear to be critical in any way.” The plaintiffs still have another legal challenge in play. They argue that the ballot measure should be invalidated because the permitting process it challenged cannot be subject to referendum according to state law.

**PLACER COUNTY HAS SETTLED** a lawsuit with a former Planning Commissioner and her two development partners for \$400,000. The county had sued the

group in 2007 for deliberately working around laws that prevent the creation of subdivisions without proper permits. The suit alleged that former commissioner Michelle Burris coordinated the sale and splitting of properties numerous times to create multiple smaller lots out of formerly large parcels of land. A local ordinance would have required strict review of any proposal to subdivide a property into more than four parcels. The terms of the settlement do not require Burris to admit fault; she had maintained she did no wrong throughout the suit’s proceedings. Burris said she decided to settle because the cost of the suit was overwhelming her personal finances.

**CONCERNED ABOUT** the proliferation of wind farms in Yolo County, county officials are considering an ordinance that would protect real farms. The ordinance, believed to be the first of its kind in the state, would compel developers who want to build wind power generation plants on prime agricultural land to prove that there was no available non-prime agricultural land for their projects. The City of Davis and developers Angelo K.Tsakopoulos and Phil Angelides have opposed the ordinance, saying that it is too strict. Several projects are in the works that would place wind farms near the city; the largest would produce up to 200 megawatts.

**FOLLOWING A FIERCE BATTLE** over the preservation of the modernist Century Plaza Hotel in Los Angeles, developer Next Century Associates has released the EIR for a new, \$2 billion plan for the property. The plan would preserve the hotel but halve the number of hotel rooms while adding two, 46-story condominium towers west of the hotel.

**TRAFFIC ACROSS THE SACRAMENTO RIVER** is too congested and will get worse, according to a recently concluded nine-month study of commuting patterns between the cities of Sacramento and West Sacramento. The report’s key recommendation is that two

new bridges be added between the two cities. It recommends five potential sites near downtown Sacramento, in addition to three existing bridges. They could cost between \$40 million and \$270 million each. No funds have been set aside. Planners say it could be ten years before a bridge is built.

**THE CITY OF LIVERMORE** won one of two 2011 Driehaus Form-Based Codes Awards from the Form-Based Codes Institute. According to the jury, Livermore’s code provides a valuable model of how to code a medium-sized town with existing walkable and sprawl neighborhood; is focused on providing a complete form-based regulation for higher-density residential areas that are, or have the potential to be, walkable and will provide a successful model for other areas within the city; the document is organized to incorporate a form-based code into a larger development code overhaul, such that the sprawl areas of the city remain under Euclidean zoning while the form-based code is designed for walkable areas of the city and designed to expand to all walkable areas. ■

**OLIS**  
Oregon Leadership  
in Sustainability  
University of Oregon Graduate Program  
**APPLY NOW FOR FALL 2011**

LAND USE ENERGY  
WATER EQUITY

<http://olis.uoregon.edu>  
olis@uoregon.edu  
541.346.8227

**MISSION: GET POSSIBLE SMART**  
APA California 2011 Annual Conference Santa Barbara

## AB32 Offers Benchmark for Greenhouse Gas Analysis

*Ruling suggests that EIRs can base targets on AB 32's goals*

BY LESLIE Z. WALKER

JURISDICTIONS ACROSS CALIFORNIA have slowly come to accept that their environmental reviews under the California Environmental Quality Act now must address greenhouse gas emissions. Yet, relatively few rulings exist to help jurisdictions establish thresholds by which to analyze a project's GHG impact. A recent case suggests that Assembly Bill 32, California's 2006 climate change law, may provide a reasonable guide.

In *Citizens for Responsible Equitable Environmental Development v. City of Chula Vista*, the Court of Appeal for the Fourth Appellate District found substantial evidence of a fair argument that the development of a Target store would have a significant environmental impact. The court held that the project would likely disturb contaminated soil, but it rejected challenges to the project based on air pollution and greenhouse gas impacts.

The City of Chula Vista adopted a mitigated negative declaration (MND) for the construction of a Target store on a site formerly occupied by a smog check facility, a market, and existing, smaller Target store. The MND concluded the project could have significant environmental impacts in the areas of air quality, geology and soils, hazards and hazardous ma-

terial, hydrology and water quality, and traffic/transportation, but that all impacts could be mitigated.

Citizens for Responsible Equitable Environmental Development (CREED) filed a petition for writ of mandate challenging the approval of the project and MND. The trial court

Agencies have been struggling to prepare greenhouse gas emissions analyses in the absence of adopted numeric thresholds.

denied the petition and CREED appealed, claiming there was substantial evidence of a fair argument that the project may have a significant impact on hazards or hazardous materials, air quality for sensitive receptors, particulate matter and ozone, and greenhouse gas emissions and global climate change. The

Court of Appeal for the Fourth District reversed the decision on hazards and hazardous materials, but affirmed the trial court judgment in all other respects.

On each count, the court ruled as follows:

**Hazardous Materials:** The court found that the administrative record contained evidence that a former gas station on the site contaminated the soil beneath the site, but contained no evidence of mitigation measures directed at the contaminated soils. Therefore, there was substantial evidence of a fair argument that the project would have a significant environmental impact by disturbing contaminated soils.

**Air Pollution Impact on Sensitive Receptors:** An Air Quality Assessment ("AQA") was prepared for the Project using the CEQA Air Quality Handbook created by the South Coast Air Quality Management District ("District"). The District requires Heath Risk Assessment of diesel particulate matter for projects that generate substantial truck traffic or substantially increase traffic over existing levels. The AQA concluded the project would not significantly impact traffic and determined that emissions associated with construction and operation did not exceed air quality thresholds. Thus, there was no substantial evidence of a fair argument that the project would have a significant impact by exposing sensitive receptors to increased air pollution.

— CONTINUED ON PAGE 7

"It's said that great minds think alike.

Sometimes great firms do, too."

NEW GROWTH  
from deep roots



The merger of two major planning firms, The Planning Center of Costa Mesa, CA, and DC&E of Berkeley, CA.

The Planning Center is a full-service consulting firm specializing in community planning, environmental services, and land planning and design. DC&E provides a comprehensive range of planning and design services, with an emphasis on urban design and smart growth.

www.planningcenter.com | www.dceplanning.com

# Judge Rejects Initiative to Banish Ventura Parking Meters

BY CP&DR STAFF

A BALLOT INITIATIVE to remove parking meters from downtown Ventura has been knocked off the November ballot by a Ventura County Superior Court judge.

Opponents of the parking meters – including several members of the local Tea Party – had gathered 8,000 valid signatures to qualify the measure for the ballot. However, Judge Mark Burrell ruled that use of an initiative to remove parking meters is pre-empted by Vehicle Code Section 22508 as interpreted by an appellate court case decided in 1967. He rejected the proponents' argument that the Vehicle Code did not apply because the main purpose of the meters was to raise money, not to control traffic.

In addition to ordering removal of the parking meters, Measure J also would have required 2/3 voter approval on all future plans to charge for parking on city streets and city-owned property. City officials claimed that this requirement would hamstring future attempts to build parking garages downtown and near the city's main hospital, and would even impede attempts to create new residential permit parking districts because parking permits cost \$10 per year.

It is very unusual for a judge to remove an initiative from the ballot prior to an election. However, past court rulings have concluded that if an initiative is patently illegal, there is no point in holding an election.

The state Vehicle Code generally pre-empts local actions on traffic regulation. Vehicle Code Section 22508 has a long history with regard to ballot measures. In *Mervyn v. Acker*, 189 Cal.App.2d 558 (1961), the Fourth District Court of Appeal ruled that this section pre-empted a San Diego initiative that attempted to remove parking meters.

Later that year, the Legislature amended Section 22508 to permit referenda on parking meters but did not include the right to referen-

dum. In a subsequent court case, *Bragg v. City of Auburn*, 253 Cal.App.2d 50 (1967), the Third District Court of Appeal ruled that the amended Vehicle Code section did, indeed, prohibit initiatives to remove parking meters. Since that time, the Vehicle Code has been reorganized but Section 22508 has not been amended.

tiative is to govern a matter which is not within the electorate's power to govern through the initiative process," Judge Burrell wrote in his decision. "No purpose would be served by placing it on the ballot."

Ventura introduced paid parking in approximately 300 spaces downtown last September as part of its Downtown Parking Management plan. Merchant unrest about the meters was high last fall but petered out after retailers had a strong holiday season. City officials point out there, even with the paid parking system, Downtown Ventura still has more than 2,000 free parking spaces.

The initiative was put forth by three local residents – the owner of a knife-and-flag store downtown, a local Tea Party activist, and a former downtown property owner and business owner. The signatures were gathered in a period of six weeks with the active involvement of Tea Party members. Few downtown merchants were involved in the campaign. The measure received considerable publicity because it captured the attention of conservative radio personalities John and Ken, who broadcast on KFI, a 50,000-watt radio station in Los Angeles.

In July, the Ventura City Council placed the measure on the ballot but also voted 4-3 to file the pre-emption lawsuit. After losing the lawsuit, the proponents decided not to appeal but focus instead on defeating the two incumbents in this fall's election who supported the meters. One of the two is longtime Ventura County planner Carl Morehouse, who is running for his fourth term on the City Council.

Morehouse voted in favor of installing the parking meters but against the lawsuit.

Mayor Bill Fulton, a planning consultant and also publisher emeritus of *CP&DR*, supported both the meters and the lawsuit but is not running for re-election to the City Council. ■

► The Case:

*City Of San Buenaventura V. Preston, Ventura County Superior Court No. 56-2011-00400736-Cu-Wm-Vta*



A volunteer gathers signatures in downtown Ventura for a ballot initiative that would have removed parking meters installed last September in approximately 300 spaces.

In court, the initiative's proponents argued that the Vehicle Code did not apply because the main purpose of the parking meter system was to establish "a municipal fee monopoly" for parking. Judge Burrell rejected the argument out of hand in oral argument and relied on the previous court cases in removing the measure from the ballot.

"The court finds that the object of the Ini-

# >>>> Goldberg Welcomes Public Sector to ULI

— CONTINUED FROM PAGE 1

**CP&DR:** What drew you to ULI and what are your goals for the L.A. chapter?

**GAIL GOLDBERG:** What drew me right now was the potential to engage in planning in a different way.

Given the problems public agencies are having, and given all the financial problems that cities are having, ULI is one of the ways that we can still make some progress in terms of planning. ULI is still prepared to be at the table to be that resource to cities and to continue doing research and educational programs. I think it was an opportunity to continue to contribute in a different forum.

Lots of public agencies already belong to ULI, and I would like to get them a lot more engaged in the dialog with the development community, the design community, and the financial community. I see the benefit of public agency involvement, because of my own history, in ways that many of the public agency folks have not seen I'm also interested in our engagement with the universities and young people and how we can build leadership in this city.

**CP&DR:** Are there things you think you can accomplish through this role that you couldn't accomplish leading the L.A. Department of City Planning?

**GG:** In this setting I will have an opportunity to talk about the larger issues. In most public agencies, folks are sort of hunkered down right now. There is very little real planning going on in Los Angeles, or in most other large cities. In a bad economic time, a typical response is to stop doing long-range planning and just concentrate on development processing. That's just a function of the scarcity of general fund money.

ULI is still prepared to be at the table. We are still prepared to do Technical advisory panels. We've been Doing them for Santa Monica and Los Angeles; and we're looking to do a national panel with Metro for Union Station.

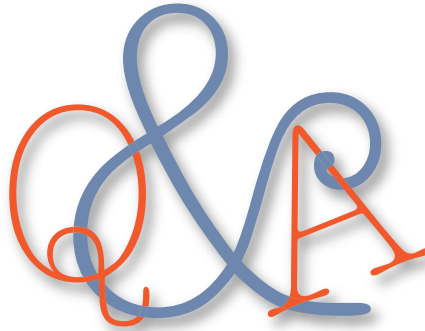
**CP&DR:** What's it like for you to focus on the greater LA area and not just on the city of LA?

**GG:** It's wonderful. We are talking about infrastructure and looking at infrastructure across the region. What are the ways we can think of planning for infrastructure? What are new ways to finance infrastructure? To be able to be at the table with folks not only from the city, the county, and from other jurisdictions; it's a great opportunity to have the broader discussion.

In recent years we've had the trend towards more compact development, and we've had SB 375. How do you think the membership at large feels about these trends?

I think that the ULI membership, both locally and nationally, understands that in order to accommodate growth we have to do so in a way that promotes livability and is sustainable. We are going to have to look to connecting land use and transportation in ways that we haven't considered in the past. There continues at ULI to be a large focus around transit and developing along transportation corridors. This is a discussion that's not only going on in California because of SB 375, but it's going on nationally too.

**CP&DR:** Are there specific things that you hope to see come out of the SCS process? Did you develop ideas that you hope SCAG comes up with?



## WITH GAIL GOLDBERG

**Gail Goldberg,** former director of the L.A. and San Diego departments of city planning. She now heads the Los Angeles office of the Urban Land Institute.



**GG:** All of us are interested in how we determine what the goals are and how we are going to measure them. I think all the jurisdictions are interested in knowing what the benchmarks and thresholds are and how can we measure progress. It's not clear to me yet whether there is that kind of standard measure.

**CP&DR:** You were in the public sector for many years, has your perspective on planning changed at all?

**GG:** In the five years that I spent in Los Angeles, the difficulty of doing real planning in a city the size of Los Angeles became clearer to me. Building consensus in a city the size of L.A. is an overwhelming challenge. How does one come up with citywide policies that solve problems in some communities without creating problems in others?

I think planners in general have not spent enough time strategizing about the techniques for public engagement and building consensus. I came from a city (San Diego) that had a long history of public engagement and long-range planning. I had not fully understood the difficulty of coming into a developed, very large city and trying to establish the infrastructure needed to have meaningful long-range planning.

**CP&DR:** And yet you've stayed in L.A..

**GG:** I love Los Angeles. It is a wonderful, dynamic city and I think it has much to offer. That's why we're all still here, despite all of the problems. It also has huge challenges. I think the more people stay engaged and are committed to long-term solutions, the better off we are.

**CP&DR:** What does it mean for CRA/L.A. to either be hamstrung by payments or to go out of business?

**GG:** All of us are concerned about the loss of the tools that have leveraged development in some of our disadvantaged communities. Over the last few years in L.A., redevelopment has been a predominant supplier of affordable housing and I am concerned about the loss of affordable housing.

It feels to me, like in most cities, the redevelopment agencies are the single agency in the city that really understands how to develop in a city. The loss of that kind of resource in cities is going to be huge. It's going to impact planning, because this is a resource that has been available to planning agencies — I certainly took advantage of the redevelopment agencies in San Diego and Los Angeles — because they did have folks who were more skilled and knowledgeable about how developments come together and whether they're marketable.

**CP&DR:** Developers have been hurting in the downturn. What's your assessment of the attitude among your membership?

**GG:** The membership in ULI is very diverse, so it's not just builders and land developers. There's the design community, the finance community, the education community, and the public sector. As they are looking forward, they are beginning to understand that the recovery is going to be slower.

There appears to be recognition that as we do recover, the entire market and our business is going to look very different. There is a fascinating interest by all of our members in what it is going to look like in the future: What can we be thinking about now that will facilitate that kind of future development? What will the

— CONTINUED ON PAGE 7

## >>>> ULI-L.A. to Host National Fall Meeting

– CONTINUED FROM PAGE 6

new market for homes be like? How will young people view homeownership in the future? I find that a fascinating discussion. They are looking for solutions that don't exist – yet.

**CP&DR:** How will that discussion play out at the ULI Fall Meeting in Los Angeles?

**GG:** That's clearly going to be a huge part of the

discussion at the Fall Meeting. It is the 75th anniversary. It's been six years since many of these folks have been in Los Angeles. There's going to be a lot of discussion around what the capital markets are going to look like in the future, what kind of housing products are going to be more future-oriented: Rental vs. homeownership, and how we achieve af-

fordability. There's also interest in bringing the public agencies to the table so while private industry is thinking about the future and public-private partnerships, I think it's important for public agencies to be part of that dialog. ■

*This interview has been edited and condensed.*

## >>>> Case Offers Insight into Greenhouse Gas Baselines

– CONTINUED FROM PAGE 4

**Cumulative Impact on Particulate Matter and Ozone:** CREED asserted that the project may have significant cumulative air quality impacts due to its contribution of particulate matter and NO<sub>x</sub>, since the project is located in a non-attainment area, where pollution is already above SCAQMD standards. The city evaluated the project emissions against the significance thresholds established by the district and found that the net increases over existing amounts were below the significance thresholds for all pollutants. Therefore, the court found no substantial evidence of a fair argument existed that the project would cause a significant and unavoidable cumulative contribution to an air quality impact.

**Greenhouse Gas and Climate Change:** The city used as a threshold for its greenhouse gas analysis whether the project would “conflict with or obstruct the goals or strategies of the California Global Warming Solutions Act of 2006 or its governing regulation.” CREED claimed that since the Project allegedly exceeded three other well-recognized potential thresholds of significance, a fair argument existed that the Project would have a significant

impact on greenhouse gas and climate change. The court found that the city properly exercised its discretion to use AB 32 compliance as the threshold.

CREED further challenged the city's use of a reduction target of 20 percent below business as usual. The AQA analyzed the AB 32 goal of reducing GHG to 2000 levels by 2010 and 1990 levels by 2020, and determined that 11 percent and 25 percent reductions in business as usual would be necessary to achieve these targets. The city then set the reduction target at 20 percent – a mid-point between the 2010 and 2020 goals. CREED claimed the 20 percent reduction target was not supported by substantial evidence. The AQA concluded that the implementation of the emission reduction program would reduce the Project's emissions by 29 percent. The court found this was adequate and found the issue of whether the target should have been 20 percent or 25 percent irrelevant.

Finally CREED argued the City should have used the 33 percent reduction set by San Diego County in its “On-Road Transportation Report,” as the target. The court reiterated the City's discretion to not adopt this threshold.

The court remanded to the trial court to determine whether the mitigation imposed addresses soil contamination. The appellate court directed the trial court to order the preparation of an EIR if the trial court finds mitigation for soil contamination was not imposed.

Agencies have been struggling to prepare greenhouse gas emissions analyses in the absence of adopted numeric thresholds. This case suggests, without so holding, that the common strategy of basing a greenhouse gas reduction target on the AB 32 reduction goals may be a defensible approach. ■

► The Case:

*Citizens for Responsible Equitable Environmental Development v. City of Chula Vista* Filed June 10, 2011, published July 8, 2011, D057779, \_\_\_ Cal.App.4th \_\_\_,

The Attorneys:

For CREED: Briggs Law Corporation, Cory J. Briggs and Mekaela M. Gladden

For the City of Chula Vista: Bart C. Miesfeld, City Attorney, and Michael J. Shirey, Deputy City Attorney; Gatzke Dillon & Ballance LLP, Mark J. Dillon and Rachel C. Cook

**ABBOTT &  
KINDERMANN, LLP**  
ATTORNEYS AT LAW

Abbott & Kindermann, LLP  
Land Use, Environmental and Real Estate Law  
Counseling, Advocacy and Litigation

2100 21st Street, Sacramento, California 95818  
916-456-9595



## >>>> Coastal Commission Loses ‘Institutional Knowledge’

— CONTINUED FROM PAGE 1

“As the leader of one of the most abusive agencies in the state, I can’t think of anything that I admire in his leadership,” said Paul Beard, Principal Attorney at the Pacific Legal Foundation, a public service law firm that supports private property rights. “He has sought to extort land or money from property owners.”

While Beard expressed sympathy for Douglas’ medical plight — he is stepping down because he has been diagnosed with lung cancer — he represents a common view among many coastal landowners and would-be developers that the Coastal Commission’s review process under Douglas has overstepped the bounds of not only the Coastal Act itself but in fact of the U.S. Constitution. The Pacific Legal Foundation and other critics have long fought the commission, claiming that some denials have constituted illegal takings.

Now that they won’t have Peter Douglas to curse, speculation is rampant about whether anyone else will have the temerity to uphold his legacy. Otherwise, a more mellow Coastal Commission office could lead to fewer controversial permit denials and, as a consequence, some cozier quarters along the state’s 1,100-mile coastline.

Predicting future of the Coastal Commission’s decisions depends in part on how much influence Douglas wielded in the first place.

Though Douglas was known for speaking out in favor of a pristine coast, formal decision-making power lies in the board of commissioners, a group of 12 state appointees. (Four are appointed by the governor, four by the Senate, and four by the Assembly.)

“It isn’t as though Peter Douglas controls the process. That’s a bit of an exaggerated misinformation that the Pacific Legal Foundation never gets tired of trumpeting,” said Mark Masara, longtime coastal advocate and current general counsel and vice president of social responsibility for Santa Cruz-based O’Neill Wet-suits, which has supported coastal protection campaigns. “Peter’s just the chief of the staff. That’s all he’s ever been.”

As chief, however, Douglas oversaw the process by which staff chose potential violations of the Coastal Act to investigate and deliberate on. The force of those recommendations often, say both critics and fans, led directly to votes by the commission.

“He leads a full-time staff who investigate and research and analyze different permitting issues,” said Beard. “They come up with staff reports that the commissioners read...and



STEVE MINKLER

**Under the leadership** of executive director Peter Douglas for 26 years, the California Coastal Commission has received both praise and condemnation while navigating the controversial waters of land use versus environmental protections. Shown here, waves lap at the La Jolla shoreline next to an oceanfront development.

based mostly on what the staff said whether to issue a permit.” Beard claimed that Douglas was especially attuned to “cutting-edge,” precedent-setting decisions.

“A lot of permits are routine,” said Beard. “The law is what the law is and there’s not that much room for discretion.”

McCabe confirmed that the commission almost always abides by staff recommendations, especially if the staff recommends a denial. Commissioners are impressionable, she said, in part because they serve for relatively short durations.

“Peter is the institutional knowledge of the commission,” said McCabe. “Commissioners

come and commissioners go.”

The staff review process, critics say, gave Douglas and the staff enough leeway to pursue agendas that pushed the purview of the Coastal Act. That was, in fact, his goal, according to Nichols.

“Peter Douglas was exceptionally skilled in recognizing that and finding ways to continually push the envelope a little bit further in finding ways to preserve open space and access to the coast and to protect the environmental values of the coast,” said Nichols.

Nichols said, however, that in pushing the envelope, the commission has not always been

— CONTINUED ON PAGE 9

## >>>> Commission Faces Huge Backlog

— CONTINUED FROM PAGE 8

as aboveboard as it could have been. Its decisions essentially set policy through cases rather than by promulgating policies through more open channels.

“If I have any overarching criticism of the commission, it is that they didn’t do enough by policy or rulemaking but always made policy on a case-by-case basis,” said Nichols.

In that sense, Douglas’ friends and foes are in almost unanimous agreement about Douglas’ impact. Douglas’ zealotry has often garnered accusations of power-grabbing and egoism.

“One of the hallmarks of his integrity is that he never second-guesses the work of the staff,” said Massara. “It’s not as if he was some politically motivated ideologue. It’s quite the opposite.”

Massara said that the competency, and of the staff all but ensures that staff recommendations will not change much. The most pressing challenge facing the commission staff is, in fact, budget cuts that have led to a reported backlog of 1,500 cases.

“I view this as an opportunity for their many talented staff to be able to show that they’re capable of continuing on in a consistent manner and providing the world’s most experienced coastal planning expertise,” said Massara.

Beard, however, said that change cannot come too soon to the organization.

“We think that this retirement will bode well for property owners in the sense that we may finally see a more pragmatic leadership that respects property owners,” said Beard.

The commission itself is in charge of appointing the next executive director. The staff is currently being led by interim executive director Charles Lester, whom Massara said would be an ideal successor.

According to Bruce Reznik, executive director of the Planning and Conservation League, said that the best way to honor Douglas’ work is to forget about Douglas himself.

“If it gets caught too much up in one person, it really is a very limited legacy that he would leave,” said Reznik.

Then again, the vacancy could set off a frenzy, with political aspirants jumping at the chance to lead one of the state’s most powerful agencies.

“The worst possible result would be a sort of beauty contest with every retiring politician in Sacramento trying to get the job just because it’s a corner office in San Francisco,”

said Massara. Such a frenzy could, according to Massara, fundamentally alter what he considers to be a relatively apolitical staff.

Some political leaders who don’t agree with the commission, or very much like Douglas, include local officials whose land use decisions have been upended by Coastal Commission rulings. Many see those rulings as unwelcome intrusions from Sacramento into matters that some consider the nearly sacred provenance of local government.

“Over the last 15-20 years they’ve tried to micromanage the most local activities imaginable,” said Beard. “Ideally these sorts of decisions would be left to local governments and planning agencies.”

Whoever leads the commission staff henceforth will not have just the choice of following the “Douglas way” or not. New challenges await the next incarnation of the Coastal Commission. In fact, questions of property rights may become moot for owners whose property will, because of climate change, cease to exist.

“We’ve spent the better part of three decades acquiring, carefully deliberating on land use, and restoring wetlands, resources, and beach access, providing for protection of public resources that in all likelihood in the next century are going to be drowned,” said Massara. “Nobody is willing to move back one inch. All of the challenges that Peter and the Coastal Commission and the Coastal Act have faced are only going to become more challenging in the future.”

Others are more sanguine, regardless of climate change and even ideological battles.

“This is California,” said Nichols. “Its coastline is unique and iconic and I don’t think that will change regardless of who the next executive director is.” ■

### ➤ Contacts:

Paul Beard, Lead Council, Pacific Legal Foundation, 916.419.7111

Mark Massara, Senior Counsel and VP of Social Responsibility, O’Neill Wetsuits, 800.538.0764

Susan McCabe, Principal, McCabe & Company, 310.821.1004

Mary Nichols, Chair, California Air Resources Board, 800.242.4450

Bruce Reznik, Executive Director, Planning & Conservation League, 916.822.5631

Join us  
online ...



Is now on  
**TWITTER**  
and  
**FACEBOOK!**



Follow our tweets  
@Cal\_Plan  
and search for us  
to become a fan  
on Facebook.



## Gym, Tanning and Coastal Access



One of the Jersey Shore's more infamous denizens.

**NORMANDY BEACH, NJ** – We have a situation at the Jersey Shore. I don't mean *Jersey Shore* and I don't mean *The Situation*.

I'm referring to the actual Jersey Shore. Here, along the state's 110-mile coastline a sense of imprisonment overpowers hedonism and even nature worship. It's the same in many other East Coast states.

It's in this incongruous setting that I've been writing an upcoming *CP&DR* article on the future of the Coastal Commission and the retirement of its controversial executive director Peter Douglas. Douglas is known for his aggressive, expansive interpretation of the Coastal Act. Anecdotes abound about commission decisions that force land owners to abandon development plans or create easements in exchange for the right to make the most measly improvements.

Whether he's actually pulling the strings or not, Douglas makes some people's blood boil. But, here it's the absence a Peter Douglas that makes me sick to my stomach.

I went this morning to take a swim in the Atlantic. Before I went, my host stopped me and handed me a little badge, about the size of a sand dollar, with a number and a safety pin. I needed it to get on the beach. Without it, a high school girl with a yellow t-shirt reading "Badge Check" would have stopped me at the edge of the dunes. Like D-Day, but backwards.

I told my host here in Normandy Beach that we don't stand for that sort of thing in California. Needing permission to put my toes in the sand or get barreled by a breaking wave has never occurred to me in all my life. Beach access is a cultural value that we all share, whether we're conscious of it or not. But try going to a place where it is not an inalienable right, and – unless you're David Geffen or Barbara Stresand – you'll discover your state fealty in a heartbeat. NorCal, Southern California, Central Coast: it doesn't matter. This coast is our coast.

I could be petty and say that Jersey's strictures don't even matter since it's not like they're keeping Big Sur off-limits. But a coastline is a coastline. Subliminally, access to the coast is what prevents a state from being a prison. If all else fails in this world – and so much has failed already – we can always put a paddle in the water and set out for the high seas. Landlocked folks can cross their state borders and come to our shores. Ultimate freedom does not reside in Oklahoma or Kansas or Short Hills or in what you can do on your own piece of real estate. Freedom lies in the view from the end of the Santa Monica Pier, or the Marin Headlands, or the Cliff House.

The Jersey Shore offers no such views. Wealthy folks with summer homes buy their beach passes. The weekenders and partiers cluster in towns where booze flows freely and hoi polloi are allowed to touch the sand. Thank goodness *The Situation* has someplace to show off those peccs.

Say whatever else you want about the Coastal Commission and its ailing leader: at least we can show off our peccs anyplace we please.

– JOSH STEPHENS | SEPTEMBER 4, 2011 ■

“I told my host here in Normandy Beach that we don't stand for that sort of thing in California. Needing permission to put my toes in the sand or get barreled by a breaking wave has never occurred to me in all my life.”

Planning & Visioning Websites Internet Marketing

 **URBAN INSIGHT**

Phone 877-872-6150 Fax 877-944-6792  
[www.urbaninsight.com](http://www.urbaninsight.com)

## For Lessons in Density, California Can Look to Hong Kong

WHEN SOME PEOPLE learned that I grew up in Hong Kong, they expressed that my decision to become an urban planner was not surprising. After all, Hong Kong, a former British colony, is a modern city well known for its skyscrapers, high density, creative use of limited land resources, and efficient public transportation system. I began my career as a student professional worker with the Los Angeles Housing Department (LAHD) where I got my first true taste of planning.

After a year at LAHD, I joined a consulting firm primarily as a preparer of housing elements of general plans. As the years went by, I became increasingly frustrated by my role as a consultant or an “outsider” to the many communities for which I wrote and presented housing assessments and plans.

In particular, several client cities simply had no interest in meeting the housing needs of lower-income households and only wanted to have state-certified housing elements to avoid lawsuits that might be brought forth by affordable housing advocates. (To be fair, there were also some cities that were serious and proactive about meeting its share of regional housing needs.) It also bothered me that for the most part, local governments in California lacked the authority to meet the housing goals established for them and that the Regional Housing Needs Assessment seemed more like an academic exercise for regional planning agencies without any real power.

This is in sharp contrast to the approach in Hong Kong, where the government is actually in the business of producing quality public housing (unlike Pruitt-Igoe and other failed housing projects in the U.S.) and is able to control the supply of land available for developers to build market-rate housing. This, of course, is not to say that Hong Kong functions like a socialist state; to the contrary, people can decide for themselves the location and type of their residence.

I later joined the Los Angeles County Department of Regional Planning, where I was assigned to the coastal studies section. This position turned out to be very educational and challenging in that I had to wrestle with issues that I was completely unfamiliar with, such as the California Coastal Act, environmentally sensitive habitat areas, ridgeline protection, fuel modification, and rural development. Having lived in cities all of my life, I quickly realized how little I knew or understood about planning in less developed areas and how strongly property owners responded to government regulations.

Sometimes I wonder how the Hong Kong government would have planned for a unique area like the Santa Monica Mountains. My guess is that it probably would have designated the entire area as a country park or it might have allowed the development of high-rise residential towers with premium ocean views that are quite common in Hong Kong. (While the Santa Monica Mountains is a national recreation area and contains public parks and open space, private development is permitted.)

In my third and current major planning job, with L.A. County’s Department of Parks and Recreation, I find much satisfaction in my role as a park planner because it gives me opportunities to help promote a healthy lifestyle and strengthen communities through the improvement of existing and development of new parks and recreational facilities. This work takes place in a sprawling metropolitan area that, somehow, is famous for having one of the lowest rates of per capita green space in the country.



Lippo Center Towers rise behind the 80,000-square-meter Hong Kong Park.

By contrast, in a city with some of the most densely packed neighborhoods in the world, the Hong Kong government has also shown foresight in its park and open space planning. While most are familiar with Hong Kong’s high rises, few seem to know how green the metropolis actually is. Residents are never more than 20 minutes away from nature in Hong Kong and nearly two-thirds of the city is green space, with parks and hiking trails lining the surrounding hills and mountains.

Hong Kong is certainly not perfect, but does a great job of meeting the housing and park/recreation needs of its residents. Anyone who thinks that California can’t possibly make room for affordable housing or that preserving open space will devastate land values might want to visit Hong Kong.

*Clement Lau is a freelance writer and a planner with the Los Angeles County Department of Parks and Recreation.*

— CLEMENT LAU | SEPTEMBER 2, 2011 ■

