

CAPISTRANO BAY DISTRICT
AGENDA REPORT
December 7, 2021

New Business

ITEM 10

Proposed New Coastal Law Counsel/Release of Nossaman LLP

The law firm of Nossaman LLP and Steve Kaufmann are still bound to an engagement agreement with the District that was originated back in December 2020. This was primarily to deal with threatened enforcement actions by the Coastal Commission for unpermitted 'sand grading' out on the beach by the District.

In the intervening year, through numerous correspondence and meetings with CCC staff, the matter has somewhat resolved itself since the District has made it clear to the CCC that the District has conducted no such activity and has no jurisdiction. That is not to say that it could come up all over again, given the unpredictable behavior of CCC staff, but for now, it's essentially a low priority issue.

However, for the time being, Nossaman has been in a kind of limbo with the District while we work with LAFCO, and starting back in about mid-September, Steve Kaufmann has been hinting around to possibly end the engagement, being fully aware of what is underway with the LAFCO matter. Mr. Kaufmann has cited the issue of conflict of interest that continues to come up for him as homeowners have, on numerous occasions, contacted his firm for legal assistance and direction regarding shoreline protection matters.

Given the promising movement currently with the homeowners *Advisory Committee*, coupled with the unavoidable delay with the District in dealing with LAFCO, Kaufmann has offered a suggestion that would result in a solution to the conflict of interest issue, and free up Nossaman LLP to engage with either individual homeowners or the *Advisory Committee* or both.

In a communication this past week, Mr. Kaufmann has suggested to the District that the Board give consideration to engaging with another coastal law firm that Nossaman has had a long relationship with and highly recommends.

The advantage here would be to make Steve Kaufmann and his associate, John Erskine, available to the homeowners and the *Advisory Committee*, possibly as soon as January. The downside could be a possible disadvantage for the District in losing probably one of the most capable coastal law attorneys, namely John Erskine at Nossaman LLP.

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However, if the District fails in expanding its powers through the LAFCO process, then its needs for coastal law representation are going to become somewhat secondary right now, to the needs of the homeowners and the *Advisory Committee*.

The following pages include a biography and summary of Ms. Ginetta Giovinco of the law firm of Richards, Watson & Gershon, whom Nossaman LLP has recommended to the District. I spoke by phone on Friday to Ms. Giovinco who was familiar with our District due to her phone call earlier in the week with Steve Kaufmann.

It is for the Board of Directors to consider and decide on this suggested course of action and while it would be premature to approve anything at the Tuesday Board meeting, I would like the Directors to review the bio and summary material on the following pages and possibly set a time for a zoom meeting with this new firm for further discussion in the five to ten days following the Board meeting.

It would be a real show of support by the District to allow the *Advisory Committee* to have this legal representation hurdle out of the way to start off the new year.

You're welcome to google the *RICHARDS, WATSON & GERSON Law Firm* and review Ginetta Giovinco's bio and summary which I have also provided on the following pages.

PRACTICE AREAS

Coastal
Litigation

FOCUS AREAS

CEQA (California
Environmental Quality Act)
(Litigation)

Coastal Litigation

Coastal Regulation &
Development

Land Use Planning &
Zoning (Environmental)

Land Use Planning &
Zoning (Litigation)

Land Use Planning &
Zoning (Municipal)

Local Coastal Programs

Mobilehome Parks & Rent
Control

Validation Actions
(Litigation)

Writs & Appeals

EDUCATION

J.D., University of California, Los
Angeles, School of Law

Ginetta specializes in land use matters, including the California Environmental Quality Act (CEQA) and the California Coastal Act. Ginetta's practice encompasses both advisory work and litigation, allowing her to handle matters seamlessly from the administrative level through trial and the appellate courts. Ginetta is frequently asked to assist on controversial projects that appear headed towards litigation, including providing advice on CEQA compliance, local coastal programs, and land use entitlements. Ginetta's combination of substantive knowledge, strategic thinking, and advocacy skills make her one of the state's leading writ litigators, resulting in five published Court of Appeal decisions in eight years. These cases include important decisions addressing exemptions from CEQA for projects in transit priority areas (*Covina Residents for Responsible Development v. City of Covina, et al.* (2018) 21 Cal.App.5th 712), clarifying the level of administrative appeal review required for subsequent CEQA review (*San Diegans for Open Government, et al. v. City of San Diego, et al.* (2016) 6 Cal.App.5th 995), and establishing limitations on when attorneys' fees may be awarded in CEQA litigation (*Coalition for a Sustainable Future in Yucaipa v. City of Yucaipa, et al.* (2015) 238 Cal.App.4th 513).

Complementing her land use practice, Ginetta has developed an expertise in legal issues affecting special districts. Ginetta currently serves as General Counsel to the Clovis Veterans Memorial District. Ginetta also has represented water agencies and community services districts in litigation, and often handles matters involving

B.A., *summa cum laude*, Phi Beta Kappa, The American University

matters before local agency formation commissions (LAFCOs).

WORK FOR CLIENTS

Ginetta currently serves as General Counsel to the Clovis Veterans Memorial District.

Ginetta frequently represents clients in litigation involving writs of mandate, land use (including CEQA and the California Coastal Act), and validation actions involving complex finance matters. Most recently, Ginetta has successfully defended challenges to land use decisions of the cities of Beverly Hills, Covina, Manhattan Beach, Pasadena, and Yucaipa.

PROFESSIONAL EXPERIENCE

Ginetta currently serves as Chair of the Firm's Coastal Department and previously served as Assistant Chair of the Firm's Litigation Department.

Ginetta is also a member of the Firm's Management Committee.

HONORS & AWARDS

Ginetta has been selected to the Southern California Super Lawyers List in 2014-2018, and previously was

selected to the Southern California Rising Stars List in 2010-2013.

Ginetta is AV Preeminent Rated by Martindale-Hubbell.

PROFESSIONAL AND COMMUNITY AFFILIATIONS

Member, Association of Environmental Professionals

Member, International Municipal Lawyers Association

Member, Los Angeles County Bar Association

Member, Los Angeles County Bar Association Judicial Appointments Committee

Member, Environmental Section, State Bar of California

PUBLISHED OPINIONS

Covina Residents for Responsible Development v. City of Covina, et al. (2018) 21 Cal.App.5th 712 (holding that CEQA exemption which took effect three months before city approved project applied and exempted consideration of project's parking impacts; represented city).

San Diegans for Open Government, et al. v. City of San Diego, et al. (2016) 6 Cal.App.5th 995 (clarifying level of administrative appeal review required for subsequent CEQA review; represented real party in interest).

Coalition for a Sustainable Future in Yucaipa v. City of Yucaipa, et al. (2015) 238 Cal.App.4th 513 (establishing limitations on when attorneys' fees may be awarded in CEQA litigation under Private Attorneys General Act "catalyst" theory; represented city).

Eiskamp v. Pajaro Valley Water Management Agency (2012) 203 Cal.App.4th 97 (upholding dismissal of a challenge to an ordinance that increased groundwater augmentation charges for well operators; represented water agency).

South Orange County Wastewater Authority v. City of Dana Point (2011) 196 Cal.App.4th 1604 (holding that a mitigated negative declaration prepared for a rezoning project was not required to study the impacts of an existing sewage treatment plant on the project; represented real party in interest).

Habitat Trust for Wildlife, Inc. v. City of Rancho Cucamonga (2009) 175 Cal.App.4th 1306 (upholding city's right to select a qualified conservation entity to receive mitigation lands dedicated by a developer; represented city).

RECENT LITIGATION VICTORIES

San Marino Heritage, et al. v. City of San Marino.
Successful defense of city's use of categorical exemption and determination that no historic resource was present; no appeal filed.

The Inland Oversight Committee v. City of Covina.

Successful defense of city's use of mitigated negative declaration under CEQA; no appeal filed.

Coalition for Preservation of the Arroyo v. City of

Pasadena. Successful defense in trial court and on appeal of CEQA challenge to environmental impact report (EIR) for the use of the Rose Bowl as a temporary NFL location.

Dunex, Inc. v. City of Oceanside. Second chaired bench trial leading to judgment in city's favor on \$30 million dollar inverse condemnation claim stemming from city's denial of mobile home park conversion.

Successful prosecution of multiple validation actions, including for multi-tiered bond transaction, Property Assessed Clean Energy (PACE) program, and refunding of pension obligation bonds.

ALERT // General Public Testimony About Impacts
Insufficient to Meet "Fair Argument" CEQA Test
08.09.2021

NEWS // Ginetta Giovinco Appointed to the LACBA
Judicial Appointments Committee
07.17.2018

Ginetta is a frequent speaker on issues relating to land use litigation and CEQA. Her recent presentations include:

"My General Counsel Says What? Tips from Two Attorneys" California Special Districts Association, Board Secretary/Clerk Conference, 10.24.2018

"Into the Vortex: The Ever-Expanding Reach of the CEQA Administrative Record (Including Your Files?)" Planning Directors Association of Orange County, 07.27.2017

"Ask the Legal Experts" California Special Districts Association, General Manager Leadership Summit, 06.25.2017

"Administrative Records: The Foundation of Land Use and CEQA Challenges (And Successful Defenses)" California League of Cities, City Attorneys' Conference, 05.03.2017

"Prosecuting and Defending Writs Under the Public Records Act." California State Bar, 2016 California Public Records & Open Meetings Conference, 06.02.2016

A recognized expert on administrative writs and other litigation relevant to land use, Ginetta is a contributing author to several leading treatises.

Co-Author, California Administrative Mandamus (3d ed.) – Ch. 13, Other Pleadings and Procedures Before Trial and Ch. 17, Procedures Unique to Special Writ Proceedings (Continuing Education of the Bar, 2016)

Co-Author, California Civil Writ Practice (4th ed.) – Ch. 3, Administrative Mandamus (Continuing Education of

the Bar, 2016)

Co-Author, California Civil Discovery Practice (4th ed.)
– Ch. 3, Evaluating Privileges, Work Product, and Other
Protections (Continuing Education of the Bar, 2016)

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