FisherBroyles

Name: Paul Beard II

Email: paul.beard@fisherbroyles.com

Direct: +1.818.216.3988

Office: Los Angeles

Practice Areas: Commercial Litigation; Compliance Counseling; Condemnation/Eminent Domain; Energy/Oil & Gas Law; Environ, Health & Safety; Government; Litigation — Appellate; Litigation — Civil Pretrial and Trial Services; Political Law & Litigation; Real Estate

Bar Admissions: California; Texas

Education: Cornell Law School, JD, 2000; University of California (Los Angeles)1996, BA (Economics & English), 1997

Experience: Alston & Bird LLP; Pacific Legal Foundation

Paul is a land-use and environmental attorney, representing clients before cities, counties, and state agencies in California, as well as in litigation implicating the right to use, develop, or lease property. He represents a wide range of clients, including those in the oil-refining and railroad industries, residential and commercial developers, mobile home parks, landlords, and nonprofit associations whose mission is to promote and protect the private property rights of their members. His substantive areas of expertise include federal constitutional law (Takings, Due Process, etc.), a variety of federal and state environmental statutes (NEPA, CEQA, ESA, CWA, etc.), the California Coastal Act, and California's Proposition 65.

As a California-certified appellate lawyer, he regularly appears before the California and federal courts of appeal, as well as the United States Supreme Court. He successfully briefed and argued the seminal property rights case of *Koontz v. St. Johns River Water Management District* (2013) in the U.S. Supreme Court. In *Koontz*, the Court recognized that monetary exactions imposed by permit agencies on land-use permits are subject to heightened constitutional scrutiny.

At present, Paul teaches a course in Land Use Regulation at the Vermont Law School, an institution renowned for its teaching and scholarship in the area of land-use and environmental law.

Before joining FisherBroyles, Paul was a Partner with the international law firm of Alston & Bird, LLP (2015-2019). From 2003 to 2014, he was an attorney with the Pacific Legal Foundation (PLF), the nation's premier public-interest organization committed to litigating precedent-setting cases that limit the reach and burdens of land-use and environmental regulations. For years, he led PLF's Coastal Land Rights Project, overseeing and conducting litigation against the California Coastal Commission. For his

years of experience representing developers against the California Coastal Commission, he was interviewed for, and quoted in, a book about the agency and its leadership. (Thomas J. Osborne, *Coastal Sage: Peter Douglas and the Fight to Save California's Shore* (2018)).

Paul has been named to The Best Lawyers in America© in the areas of Land Use and Zoning Law and Environmental Law.

Honors and Recognitions

- State Bar of California Certified Specialist in Appellate Law
- *Best Lawyers in America*, Land Use and Zoning Law

Representative Cases

Paul's litigation experience spans state and federal courts. He has litigated a number of matters concerning a variety of environmental statutes and involving takings, including a seminal U.S. Supreme Court case involving the power of agencies to impose monetary exactions in the land-use permit context (*Koontz v. St. Johns River Water Management District*). Representative cases include:

- Representing national and state industry groups as amici curiae in a case before the Fifth Circuit Court of Appeals that considers the federal constitutionality of applying the Endangered Species Act to wholly intrastate species. *American Stewards of Liberty v. U.S. Department of Interior*.
- Representing homebuilder groups as amici curiae in a case before the U.S. Supreme Court involving whether legislative exactions are subject to heightened constitutional scrutiny under the Fifth Amendment. *Cherk v. County of Marin*.
- Representing a commercial developer in a challenge to a coastal city's denial of a gas station / convenience store project.
- Representing a residential developer in a challenge to the California Coastal Commission's unlawful permit conditions.
- Representing a major supplier of industrial, medical, and specialty gases in a federal citizen-suit challenge under the Clean Water Act, resulting in a voluntary dismissal by the plaintiff and no liability for the company.
- Representing Michigan organizations as amici curiae in a case before the U.S. Supreme Court involving whether the EPA veto of a state-approved Clean Water Act Section 404 permit is judicially reviewable under the Administrative Procedure Act. *Marquette County Road Commission v. Environmental Protection Agency.*
- Representing the National Federation of Independent Business as amicus curiae in a case before the U.S. Supreme Court involving whether the Clean Water Act's jurisdictional definition ("waters of the United States") is—on its face or in light of controlling Court precedent—void for vagueness. Robertson v. United States.
- Representing a coalition of industry and trade organizations as amici curiae, at both the petition and merits stages, in a case before the U.S. Supreme Court involving whether the Endangered

Species Act prohibits designation of private land as unoccupied critical habitat that is neither habitat nor essential to species conservation. *Weyerhaeuser Co. v. U.S. Fish & Wildlife Service*.

- Representing a major oil refinery on an NGO's appeal from a trial court decision rejecting CEQA challenges to the refinery's project, which resulted in a favorable published decision for the company. *Rodeo Citizens Association v. County of Contra Costa*, 22 Cal. App. 5th 214 (2018).
- Representing the Citizens' Alliance for Property Rights as amicus curiae in support of a petition for writ of certiorari in the U.S. Supreme Court, seeking review of a California court of appeal decision holding that legislative exactions imposed in the land-use permit context are not subject to heightened scrutiny under the Takings Clause. *616 Croft Ave. LLC v. City of West Hollywood*.
- Representing the Western Mining Alliance as amicus curiae in support of a petition for writ of certiorari in the U.S. Supreme Court seeking review of a California Supreme Court decision upholding, against a federal preemption claim, a ban on mining on federal lands. *Rinehart v. People of California*.
- Representing counties and state farm bureaus as amici curiae in support of a petition for a writ of certiorari in the U.S. Supreme Court seeking review of a Third Circuit decision upholding the EPA's establishment of a Total Maximum Daily Load (TMDL) for the Chesapeake Bay watershed under the guise of the Clean Water Act. *American Farm Bureau Federation v. U.S. Environmental Protection Agency*.
- Representing agricultural petitioners on a petition for writ of certiorari in the U.S. Supreme Court in cases involving Endangered Species Act (ESA) issues and judicial deference to agency interpretations. *Stewart & Jasper Orchards, et al. v. Jewell*.
- Representing a timber company in an Administrative Procedure Act challenge to the EPA's designation of a creek as an impaired water under Section 303(d) of the Clean Water Act. *Barnum Timber Co. v. EPA*, 835 F. Supp. 2d 773 (2011) (ultimately settled).
- Representing a major recycling facility in the defense of state prosecution for, among other things, alleged violation of a National Pollutant Discharge Elimination System (NPDES) permit.
- Representing a large commercial and residential developer in the defense of an environmental challenge to a real-estate transaction under CEQA and state and federal Endangered Species Acts.
- Representing an oil refinery in the defense of a CEQA challenge to a project.
- Representing an oil refinery in a writ and due process challenge to an agency's designation of property as non-developable "environmentally sensitive habitat area."
- Defending a major structural steel fabricator in a citizen-suit challenge under the Clean Water Act.
- Representing a landowner in a challenge to an enforcement action based on the unconstitutional exaction of private property. *Spangler v. City of Pismo Beach*.
- Representing a vineyard in a challenge to county ordinances that affect development and water rights. *Gentle Hills Vineyards LLC v. County of San Luis Obispo.*
- Representing the California Building Industry Association as amicus curiae in a California Supreme Court case concerning the power of local agencies to impose duplicative permit exactions on project applicants. *City of San Marcos v. Loma San Marcos LLC*.
- Representing landowners in a petition for review of a landmark property rights case in the California Supreme Court and representing the California Association of Realtors as amicus curiae on the merits of the case. *Lynch v. California Coastal Commission*.

- Representing a landowner in a court of appeal case holding, among other things, that a project applicant is not bound by conditions in a permit whose benefits the applicant does not take. *Bowman (SDS Family Trust) v. California Coastal Commission*, 230 Cal. App. 4th 1146 (2014).
- Representing a building industry association in a facial challenge to a city ordinance requiring project applicants to waive their right to vote for a special tax as the condition of obtaining a land-use permit. *Building Industry Association – Bay Area v. City of Santa Rosa*.
- Representing a school in a challenge to a state agency's jurisdiction over a project based on the alleged existence of a stream on the property. *Saint Catherine of Siena Catholic School v. California Coastal Commission*.

Representative Permit Counseling

- Counseling a storage company in negotiations to develop digital displays on site.
- Serving as counsel to a multinational energy company in its efforts to obtain coastal permit approval related to its California refinery.
- Providing counsel to an Oakland television station in an after-the-fact permit proceeding before the Bay Conservation and Development Commission.
- Serving as counsel to a San Luis Obispo applicant in efforts to secure a coastal development permit for a structural rehabilitation project.
- Counseling a permit applicant in an effort to negotiate a dismissal of an appeal of land-use approval.
- Counseling an applicant defending against an alleged permit violation on statutory and constitutional grounds.

Recent Presentations

- Speaker, "California's Emergency Housing Rules and Regulations in the Era of COVID-19," Orange County Bar Association (Real Estate Section) (May 26, 2020)
- Speaker, "Wetlands, Animals, and Sensitive Habitats: Challenges and Opportunities for Project Proponents," 2019 Education Conference sponsored by the California Construction and Industrial Materials Association (CalCIMA) (November 2019)
- Speaker, "Property Rights Update: Key Legal Issues Affecting the Residential Real Estate Market," California Association of Realtors' 2019 Spring Business Meeting
- Speaker, "CEQA and Regulatory Update: Risks and Opportunities for the Real Estate Industry," 2018 Real Estate Law and Business Forum at USC Gould School of Law (April 12, 2018)
- Speaker, "Development in the Coastal Zone in the Era of Rising Sea Level," Environmental Sections of the L.A. County Bar Association and the Bar Association of San Francisco' (August 15, 2017)
- Speaker, "The Challenges of Entitling Rail Projects: Federal Preemption," 31st Annual Environmental Law Section, Spring Super Symposium, L.A. County Bar Association (April 7, 2017)

- Speaker, "The Clean Water Act and the Federal Take-Over of Private Property: Current Issues and Future Trends," 2016 Annual Agricultural Law Symposium (October 6-8, 2016)

Publications

- "Hight Court's Knick Ruling Is a Big Win for Property Rights," Law360, June 28, 2019
- "Supreme Court Ruling Could Dramatically Change the Playing Field for Takings Claims, JD Supra, June 27, 2019 (with co-author)
- "California Issues Expansive 'Wetland' Regulations as Federal Agencies Work to Narrow Clean Water Act Jurisdiction," April 24, 2019 (with co-author)
- "Property owners have the right to a fair hearing first," Daily Journal, April 10, 2019 (with co-author Damien Schiff) (discussing their constitutional challenge to a California law giving the California Coastal Commission unilateral power to impose penalties on landowners)
- "Preemption at Midfield: Why the Current Generation of State-Law-Based Climate Change Litigation Violates the Supremacy Clause," 49 Envtl. L. 853(2019) (with co-author, Damien M. Schiff)
- "EPA, Army Corps Continue Drive To Increase Leverage and Power over Landowners," Growing Georgia, March 17, 2016 (with co-author)
- "Utility Air Regulatory Group v. EPA: A Foreshadowing of Things to Come?," Engage, Vol. 16, Issue 3 (2015) (with co-author)
- "Real Reform Means Amending the Clean Water Act Itself," Daily Journal, December 23, 2015
- "Reading Rehnquist and Roberts Courts on Property Rights," Law360, August 28, 2015
- "BNA Insights: Interpreting 'Water of the United States,' An Analysis of the New Clean Water Act Regulations," Bloomberg BNA: Water Law & Policy Monitor, August 14, 2015 (with co-author)
- "Raisins Reveal High Court's Pro-Property Rights Position," Law360, July 6, 2015
- "Calif. Case Could Shape Enviro Permit Challenge Rights," Law360, February 18, 2015
- "District Court Holds Utah Prairie Dog Protection Unconstitutional," American Bar Association, February 18, 2015 (with co-author)
- *Koontz v. St. Johns River Water Management District*: Monetary Exactions in the Land-Use Permit Process, American Bar Association, Trends, Vol. 45, No. 6

In the News

- Quoted in "EPA Water Rule Won't Speed Up New Oil, Gas Pipeline Projects," Amena H. Saiyid, Bloomberg Law, June 8, 2020
- Quoted in "SCOTUS Clean Water Act Test 'Devastating' for Industry," Ellen M. Gilmer & Amena H. Saiyid, Bloomberg Law, April 23, 2020
- Quoted in "Justices Told Clean Water Act Permits Put Small Mines at Risk," Michael Phillis, Law360, February 4, 2020
- Quoted in "WOTUS lawsuits start long, muddy legal battle," Pamela King, E&E News, October 24, 2019
- Quoted in "Gov. Newsom Named in Federal Lawsuit Targeting New Statewide Rent Control Law," Katy Grimes, California Globe, October 18, 2019

- Quoted in “Feeling the Pain from a Divided Supreme Court Ruling,” Erin Coe, Law360, October 8, 2019
- Quoted in “Justices overturn precedent in win for landowners,” Ellen M. Gilmer, E&E News, June 21, 2019
- Quoted in Coastal Sage: Peter Douglas and the Fight to Save California’s Shore, Thomas J. Osborne (2018) (a history of the California Coastal Commission)
- Quoted in “The Supreme Court’s latest ruling isn’t just about a frog,” Ellen M. Gilmer, E&E News, December 3, 2018

Professional Associations

- American Bar Association
    - Member, Air Quality Committee (Environment, Energy & Resources Section)

Languages

- Spanish (native)
- French (fluent)
- Italian (fluent)