

recovering the popularity he believes he lost by being too anti-Democrat in last year's special elections.

Business should become a shaper of trends rather than merely reacting to them. And good businessmen know how to sell. The trend to look for is one toward making the case seriously for opening up the vast stores of Alaskan and offshore oil and natural gas, the

case for nuclear power, for cleaner coal technology (the nation has 200 years worth of coal) and for other creative ideas and proposals whose common factor would be to increase rather than decrease our freedom and independence and ability to make an honest living — without gaining Phil Angelides as overseer of our lives.

CPR



The Law

Coastal Commission fascists suffer welcome reversal

Panel's latest fig leaf excuse for dictatorial regulation of private property is overturned by appeals court.

HAROLD JOHNSON and J. DAVID BREEMER

THE CALIFORNIA COASTAL COMMISSION, tasked with oversight of property use along the ocean's edge and several miles inland, is infamous for charting a course beyond legal limits. Too often its power cruises succeed and property rights are diminished. A welcome exception came last month, when the state Second District Court of Appeals scoffed at the Commission's latest inventive excuse for saying "no" to reasonable land-use requests from property owners. (*see*, in reference to the build-up to this case, "Power tends to corrupt," M. David Stirling, *CPR*, Jan./Feb. 2006.)

Boaters must have pristine views of the coast. This was the new Commission policy that was before the court. A few years ago, after hearing from a sailor whose sensibilities had been offended by some structure or other on the shoreline, the Commission's executive director, Peter Douglas, issued a memorandum expressing his determination to help the boaters by restricting any development that might break up offshore views of the coast.

Douglas put on his poet's hat to justify his latest regulatory squeeze. "People who come ... to be on the

water are a community of users whose enjoyment of the coast for recreation, to find solace and inspiration, or to be with wild nature is also deserving of careful stewardship," he lyricized. To protect the quality of the spiritual "sojourn" at sea, Douglas vowed to preserve seascapes "by minimizing the intrusion of human works, particularly along rugged reaches of rural coast."

Translation: If your proposed home can be seen from the sea, there's a good chance the commissioners won't let it be built.

As loopy as it might sound, this new rationale for nixing building permits won't surprise anyone familiar with the Coastal Commission's historic mix of mysticism and authoritarianism. The Commission already bars coastal landowners from building a home near a stream or on a slope, or between a stream and a slope. There can be no building if your home looks different than your neighbors' or different than the surrounding natural setting. No permit if your land contains common plants, like coastal chaparral, which areas the Commission calls "environmentally sensitive area[s]." And no permit if your home might be seen from a public trail or, if shielded from the trail, it could be seen from cars traveling on Highway One.

Nothing in the Coastal Act authorizes such rules. Could the Commission also ban homes that could be

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seen by a skydiver? Alternatively, why not restrict the kinds of vessels that can put to sea, so coastal homeowners can have a pristine ocean view?

Created, ostensibly, to ensure an environmentally sound use of land, the Commission is supposed to respect property rights in the process. But Douglas's Commission continues to demonstrate a bias against landowners. Homes for people are suspect; protecting the "quality of a sojourn" for a "community of users" (which somehow does not include landowners) is mandatory.

AS A CONSEQUENCE, the commissioners increasingly restrict building; the supply of new homes and hotel rooms keeps dwindling, and the price of living or vacationing near the beach keeps rising. In the end, the Commission will put the California dream out of reach for all but the most wealthy.

Against this discouraging background, June's court decision in the "boater's right to a view" case is especially heartening. Dennis Schneider had sought to build a single home on the San Luis Obispo County coast. The Coastal Commission, enforcing its new policy restricting construction that might impede views from the ocean, denied permission for his pro-

posed project. Instead, the panel demanded that he build in an area far from the bluff that happened to be geologically unsound for construction. A Superior Court upheld the Commission's decision, including its determination that view-from-the-ocean factors can prohibit construction.

The Second District Court of Appeals unanimously reversed. The decision was based on the small but consequential fact that nothing in the Coastal Commission's enabling legislation authorizes the scuttling of projects simply because they might be seen, from the ocean, by "the occasional boater, kayaker, or surfer."

The Court of Appeals was especially critical of Executive Director Douglas and his attempt to justify the view-from-ocean policy based on the desires of the United States Sailing Association and practices in Maine. Douglas is making noises about recommending an appeal to the state Supreme Court. But for now, the case stands as a win for property rights and rule of law. The Commission's power grab would have put projects up and down the coast in jeopardy based on nothing more than the arbitrary aesthetic whims of Commission staffers and members. The Court of Appeals was right to hold that a boater's "right to a view" does not trump a property owner's right to a home.

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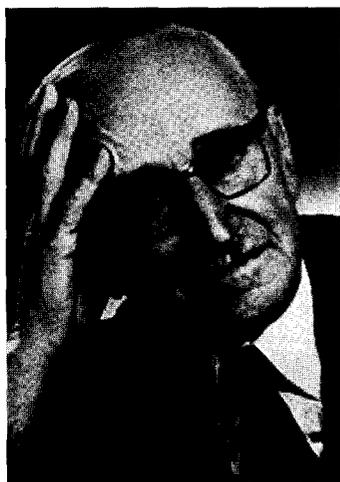
The Road to Serfdom*

Lessons for state budgeteers: government is dangerous

Friedrich A. Hayek introduced by John Kurzweil

Why Hayek?

As Ray Haynes argues persuasively in this issue's cover article (page 17), beyond the often-voiced concerns about how long California can sustain its huge, and hugely growing, state budgets (with their built-in deficits even in times of revenue abundance) lies a moral question of even greater importance: What effect on our leaders' and the people's moral sensibilities can we expect from a political culture in which no one registers any trepidation about entrusting government to spend such vast amounts of our money, and to do it no longer to meet any discernible, much less rationally-defensible, needs but only in response to a manic imperative to spend as much as we can as fast as we can. Every extra dime spent is seen as progress *just because it is more*, every slowing in increased spending is portrayed as a step backward, and anyone betraying a hint of doubt about the wisdom of it all is reflexively denounced as morally reprobate if not actually imbecilic.



Friedrich A. Hayek

Friedrich A. Hayek witnessed the growth of the Nazi, Italian Fascist, and Soviet tyrannies. In his book, here excerpted, he explained in devastating detail how a corrupt idea — that tyrannical control of men was both more pragmatically productive and morally compassionate than freedom — produced the totalitarian horrors of World War II and Stalin's slave-state. His book, a smashing success on both sides of the Atlantic, was a crucial contribution to the post-war debate over Europe's future while helping launch the post-war conservative intellectual renaissance for freedom that eventually flowered in the elections of Ronald Reagan and Margaret Thatcher with mandates to lead their respective countries away from the socialist brink and, in time, to the final downfall of the Soviet Empire. This excerpt is taken

from a new Foreword Hayek wrote for a 1955 re-printing (for publication in the United States) of *The Road to Serfdom*. It analyzes the applicability of the book's lessons originally gleaned by consideration of what he called "hot socialism" — the by-then already dying

*The Road to Serfdom was originally published in 1944. We here excerpt from the Foreword to the 1955 U.S. edition.

Vienna-born Friedrich A. Hayek (1899-1992) was a Nobel Prize-winning, internationally influential economic theorist. Author of several books, he was a professor at the Universities of London and Chicago.