

# Decision Time Nears For Local Initiatives

Measures On Ballot In Mendocino County, L.A. County, Santa Barbara And Elsewhere

By Paul Shigley

Formation of new cities, building-height limits in Santa Barbara and Ventura, and a developer-written specific plan for a vacant industrial site near Ukiah are among the land use proposals up for a vote in the November 3 municipal elections.

At least 22 measures with land use implications are on the ballot in 13 different California jurisdictions. That number is a considerable jump from the nine measures on the ballot in November 2007 municipal elections (see *CP&DR Elections*, December 2007) but down from the 30 measures that voters decided in November 2005 (see *CP&DR*, December 2005).

In Carmel Valley, incorporation of the valley as a new city of 39 square miles and 12,000 residents is up for approval. Located inland from Carmel-By-The-Sea, the valley has been the site of numerous, intense battles over growth. Both sides in the debate say they want to maintain the valley's semi-rural character.

Three separate advisory ballot measures ask voters in unincor-

porated Santa Clarita Valley, north of Los Angeles, if they want to create a new city, become part of the City of Santa Clarita or remain unincorporated. The measures – A, B and C – will be decided in Sunset Pointe, Stevenson Ranch, Southern Oaks, Westridge, Tesoro, Castaic and Val Verde.

In the City of Santa Barbara, Measure B would lower the maximum height of new buildings downtown from 60 feet to 45 feet, and to 40 feet in the historic district. Supporters say the initiative would maintain the city's scale and tourist appeal, while opponents worry it would drive development to the fringes.

The City of Ventura's Measure B would cap new building height at 26 feet in most of the town, including the long-struggling midtown area, for two years while a proposed 23-member committee drafts a view-protection ordinance. The city would have to adopt the ordinance or place it before voters. Ventura voters will also decide an anti-Wal-Mart Supercenter measure. — CONTINUED ON PAGE 9

# Moffett Field Redevelopment May Provide Base Reuse Model

economic  
development

BY LARRY SOKOLOFF

For the past half century, three huge aircraft hangars at the former Moffett Naval Air Station have been familiar landmarks on San Francisco Bay. The hangars tower over the tidal marshes next to Highway 101 near the cities of Mountain View and Sunnyvale in Santa Clara County and may be seen from miles away.

The Navy closed the air station in 1994, and, at first, some buildings sat empty. But now, given the right economic conditions, Moffett is poised to be a national model of base reuse with various parts serving as a business incubator, business park and research univer- — CONTINUED ON PAGE 7

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**A major residential and resort development** on the Tejon Ranch has won unanimous approval from the Kern County Board of Supervisors. The project, known as Tejon Mountain Village, is proposed to have 3,450 housing units, two golf courses, 750 hotel rooms, a resort and extensive highway commercial development on about 5,000 acres of a 26,000-acre spread east of Frazier Park. About 21,000 acres is designated for open space protection. Tejon Ranch Company and DMB Associates are the developers.

The Center for Biological Diversity has vowed to block the project. It contends the development's water supply assessment is inadequate and that the project would have unacceptable consequences for the endangered California condor and other rare species.

The reliability of water supplies was an issue throughout the project's review. Tejon Mountain Village would rely primarily on the State Water Project, which frequently delivers only a half to two-thirds of the water it promises to subscribers. But the project would also have access to a large groundwater bank, which could be resupplied during wet years. The project's numerous water-saving features – such as drought-tolerant landscaping, a recycled water system for irrigation and a water budget for each building – are intended to ensure a reliable water supply as well.

In 2008, several large environmental organizations, including the Sierra Club, the Natural Resources Defense Council and the Audubon Society, agreed not to challenge development on the 270,000-acre Tejon Ranch in exchange for the landowner placing 90% of the property under a protective conservancy. They said the preservation agreement was the surest way to protect the condor and other species on the area. The Center for Biological Diversity, however, refused to sign the pact and now intends to sue over development plans on the historic ranch.

Tejon Ranch's much larger "Centennial" development, a 23,000-housing unit proposal along Highway 138 in Los Angeles County, remains in the plan-

ning stages (see *CP&DR Local Watch*, April 2003).

**After nearly 10 years of planning**, analysis and public meetings, Santa Barbara County supervisors approved, by a 3-1 vote, a community plan that limits growth in the Santa Ynez Valley.

The plan covers about 72 square miles of unincorporated territory between Santa Barbara and Santa Maria, a largely rural and agricultural region with approximately 10,000 residents. The drawn-out planning process featured numerous battles between property owners and slow-growth advocates over how much development should be permitted and the best ways to preserve agricultural operations. Creating mixed-use overlay zones, the adopted plan directs most growth to the communities of Santa Ynez, Ballard and Los Olivas. The plan establishes 40-acre or larger minimum parcel sizes for most of the valley to protect agriculture and open space, and it provides a design overlay to safeguard views along Highways 154, 246 and 101, and Alamo Pintado Road.

Supervisor Joni Gray, who cast the dissenting vote, and Supervisor Joseph Centeno, who abstained, complained that the plan downzones rural parcels in violation of property rights. The plan is available at [http://longrange.sbcountyplanning.org/planareas/santaynez/syv\\_cp.php](http://longrange.sbcountyplanning.org/planareas/santaynez/syv_cp.php).

**The Western Riverside Council of Governments** has sued one of its members – the City of Beaumont – for failing to turn over Transportation Uniform Mitigation Fees (TUMF) to the council.

Riverside County and cities in the region began levying the TUMF fee on new development in 2003. The program has generated about \$500 million to pay for local and regional transportation projects. Before the Western Riverside Council of Governments (WRCOG) agreed to cut the fee in half through December 31, 2010, in hopes of encouraging construction, the fee was \$9,800 per house, \$6,900 per multifamily unit and \$10 per square foot of retail development.

The lawsuit claims that Beaumont has not remitted a "significant" amount of fees – ranging from \$50 million to \$60 million – owed to WRCOG,

instead spending the money on improving city streets. In response, Beaumont officials contend that development agreements force the city to spend the money within Beaumont's limits, and that most of the city's street projects are similar to those on the TUMF list anyway.

The council of governments fought back earlier this month when its members voted to remove Beaumont from the fee program. As a result, Beaumont will not receive about \$500,000 in annual sales tax revenue designated for road repairs, because the revenue is available only to jurisdictions that participate in the TUMF program. City officials vowed to fight for their share of the money.

**Four dams on the Klamath River** could be demolished as a result of an agreement among the states of California and Oregon, the utility that owns the dams, Indian tribes, federal agencies, environmental groups and water contractors.

For years, the tribes, fishermen, local governments in Humboldt County and environmentalists have sought removal of PacifiCorp's dams because they block access to salmon spawning grounds and alter the river's natural flow. In 2001, Klamath Basin farmers and federal officials tangled when the Bureau of Reclamation released more water to aid fish (see *CP&DR Environment Watch*, October 2001). The following year, the bureau increased farmers' water supply, causing poor downstream conditions and the death of thousands of migrating salmon.

Under the agreement, PacifiCorp customers in Oregon will pay \$180 million in surcharges to fund removal of the dams, while California will kick in \$250 million in bond money for the project. But even if all the promised money comes through and the environmental review process goes smoothly, it could be 10 years before any of the dams comes down.

The Board of Supervisors in Siskiyou County, where three of the dams are located (the fourth is in southern Oregon), strongly opposes knocking down the dams. County officials say dam removal would hurt farmers, lower property values and kill tourism related to the reservoirs. ■



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# Capitolupdate

## Stadium Bill Approved; Vetoes Kill Other Measures

BY PAUL SHIGLEY

State lawmakers have approved a bill that would exempt a proposed football stadium in the City of Industry from having to comply with the California Environmental Quality Act, as well as state planning and zoning law.

The legislation, AB 81 X3 by Assemblyman Isadore Hall III (D-Compton), was passed in the Assembly but did not leave the upper chamber before the Legislature recessed its two-year term on September 11 (see *CP&DR*, September 15, 2009). While meeting in a special session regarding the state's "fiscal emergency" during October, however, the Senate took up the bill and approved it, 21 to 14. Gov. Schwarzenegger is expected to sign the bill.

In the days before the Senate's approval of the measure, Schwarzenegger vetoed some of the year's most significant land use bills. Among them: two fire-safety planning bills; legislation funding regional and local planning; and a bill giving local government more authority over the conversion of mobile home parks to condominiums.

While state lawmakers have previously exempted a few projects from the California Environmental Quality Act (CEQA), no waiver has been as far-reaching as that in AB 81 X3. In addition to the CEQA exemption, the bill exempts developer Majestic Realty from a state law requiring its project – a 75,000-seat football stadium, a 25,000-space parking lot and 3 million square feet of entertainment, commercial and office space – to be compatible with the City of Industry's general plan. Finally, the bill bars any legal challenge based on CEQA, including two lawsuits already filed by the City of Walnut and a Walnut citizens group.

Under pressure from the Legislature, Walnut settled its lawsuit in late September, receiving \$9 million in traffic mitigation fees, annual payments from Majestic of \$350,000 to \$500,000 for a Walnut "community fund" and other considerations (see *CP&DR In Brief*, October 1, 2009).

But Citizens for Community Preservation reached no agreement with Industry and Majestic. According to newspaper reports, Majestic

offered to add \$2 million worth of traffic and pedestrian upgrades in Walnut, pay for a \$250,000 air-filtration system at Walnut Elementary School and pick up the group's legal fees. State Sen. President Pro Tem Darrell Steinberg (D-Sacramento) also promised to ask Caltrans to investigate the possibility of building dedicated ramps from Interstate 10 to the stadium so motorists could bypass Walnut streets.

The citizens group's attorney, Bruce Tepper, declined to discuss details of any negotiations with Industry and Majestic. But he did say that the group had participated in eight days of talks mediated by former Attorney General John Van de Kamp and has had direct and indirect contacts with state lawmakers.

"It doesn't speak well for the Legislature to have adopted this exemption," said Tepper. "It is testament to the power of Majestic Realty. It is disastrous for CEQA."

A number of environmental groups – including Sierra Club California, the Natural Resources Defense Council, Heal the Bay and Defenders of Wildlife – opposed AB 81 X3 because of the precedent it would establish by setting aside state law to allow a favored project to proceed and eliminating citizens' legal recourse.

While the Majestic-backed legislation would appear to "substantially moot" the citizens' lawsuit to block the football stadium, AB 81 X3 does not address a legal claim made under the Water Code, Tepper said. The group contends that Industry should have adopted a new water supply assessment for the stadium project rather than rely on an assessment, approved in 2004, for a different project (a 4.8 million-square-foot

industrial park and commercial development) proposed on the same site. In the meantime, the state's water situation has worsened.

In lobbying for the bill, Majestic and labor unions said that the stadium and related development would create 12,000 construction and more than 6,000 permanent jobs – numbers that clearly influenced some state lawmakers, as California's unemployment rate was 12.2% in September. State Sen. Gloria Romero (D-Los Angeles), in whose district the stadium would be built, told the *San Gabriel Valley Tribune* that the project "puts us on the map and

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– STATE SENATOR GLORIA ROMERO.

“ It is  
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– BRUCE TEPPER, ATTORNEY FOR  
CITIZENS FOR COMMUNITY PRESERVATION.

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gives us the respect we deserve.”

“This will be one of the most significant job-creation projects in the nation,” Romero said.

### Other Legislation

Although the Legislature’s regular two-year session went into recess on September 11, lawmakers continue to meet in special sessions on water, tax reform and education.

After refusing to act on more than 700 bills to pressure lawmakers to pass water legislation (they did not), Schwarzenegger took pen in hand just before the October 12 deadline. He **vetoed** the following:

- AB 666 (Jones) and SB 505 (Kehoe). Jones’s bill would have required counties to make specific fire-service findings before approving a development in a state fire responsibility area or a fire hazard zone; SB 505 would have required cities and counties in fire hazard zones to adopt general plan policies to minimize wildfire risk to new development. Schwarzenegger said AB 666 “would place an increased workload on the state without additional staff or other resources,” while SB 505 would cost the state and counties too much money.

- AB 566 (Nava). Mobile home park owners vigorously fought this measure, which would have allowed cities and counties to consider tenant support in deciding a park owner’s proposal to convert to condominiums or a common interest development. Park owners use conversions partly to avoid local rent-control regulations (see *CP&DR Legal Digest*, September 1, 2009). In his veto message, the governor said park tenants should not be able to block a park owner’s conversion request.

- SB 406 (DeSaulnier). This measure would have provided a consistent funding source for regional and local planning efforts by allowing metropolitan planning organizations and county transportation commissions to levy a \$2 annual fee on vehicle registrations. The governor said voters should decide on the fee increases.

- AB 64 (Krekorian) and SB 14 (Simitian). As promised, Schwarzenegger killed the Legislature’s renewable-energy package, saying it amounted to “new regulatory hurdles.” He instead signed an executive order directing the Air Resources Board to adopt regulations that would increase the procurement of renewable resources. The governor would allow increased reliance on out-of-state sources of renewable energy, while Democratic legislators back greater environmental scrutiny of projects.

- AB 338 (Ma). The bill aimed to encourage use of infrastructure financing districts to fund improvements around transit stations by expanding districts’ size and eliminating a voter-approval requirement. The governor said the measure would “undermine the rights of voters.”

- AB 444 (Caballero). The bill would have permitted nonprofit entities to accept and disburse public funds to manage mitigation lands and conservation easements held by land trusts or special districts. The governor said the bill lacked fiscal assurances.

- AB 1176 (Ammiano). Schwarzenegger said the bill to create an infrastructure financing district to assist redevelopment of brownfields at San Francisco’s Pier 70 was “unnecessary.”

- AB 1404 (de Leon). The bill would have imposed limits, backed by environmentalists and social justice groups, on a cap-and-trade program for greenhouse gas emissions. Schwarzenegger called the restrictions premature.

- SB 213 (Florez). The governor said “no compelling rationale”

existed for this bill, which would have extended an existing moratorium on new card clubs by five years, to 2020.

- SB 279 (Hancock). For the second time, the governor rejected expanding Mello-Roos financing authority to fund water conservation, energy efficiency and renewable energy improvements. Mello-Roos taxes should be limited to paying for core infrastructure, the governor said.

- SB 545 (Cedillo). This measure would have settled the 50-year controversy over completion of the 710 freeway by requiring that any freeway extension through South Pasadena run underground in a tunnel. The governor said there was “no need to erect statutory restrictions that would mandate certain project design options or remove others from consideration.”

The governor **signed** the following legislation:

- SB 43 (Alquist). This lower-profile stadium bill authorizes Santa Clara to use a no-bid, design-build process to construct a new home for the San Francisco 49ers.

- SB 215 (Wiggins). Local Agency Formation Commissions will now be required to consider sustainable communities and alternative planning strategies under SB 375 before deciding boundary changes.

- SB 391 (Liu). The measure requires the California Transportation Plan to address how the state will reach greenhouse gas reduction goals in AB 32. The bill also requires Caltrans to report on how required sustainable communities strategies will influence the state’s transportation system.

- SB 575 (Steinberg). This cleanup legislation to last year’s SB 375 clarifies housing element due dates in the San Diego region.

- AB 881 (Huffman). This pilot project designates the Sonoma County Transportation Authority as the clearinghouse for the greenhouse gas reduction programs throughout the county.

- AB 45 (Blakeslee). This measure reauthorizes counties to regulate small wind-energy systems.

- AB 74 (Chesbro). The bill authorizes restoration of 1,400 acres of wetlands in the Clear Lake Basin. Nearly \$50 million in state and federal funds are designated for the project.

- AB 570 (Arambula). This legislation modifies a Housing and Community Development program so that housing trust funds in small and rural communities have a better chance of receiving state money.

- AB 720 (Caballero). This measure permits a city or county that rehabilitates a unit using redevelopment funds – before adoption of a housing element – to count the unit toward the city or county’s fair-share allocation of low-, very low- or extremely low-income housing.

- AB 1084 (Adams). Originally a far-reaching proposal that sought to restrict development impact fees, the signed bill makes minor changes to the Mitigation Fee Act.

- SB 93 (Kehoe). The bill restricts the ability of redevelopment agencies to fund public works projects outside of redevelopment project areas.

- SB 99 (Senate Local Government Committee). The bill imposes additional accountability requirements on public agencies that provide conduit financing.

- SB 310 (Ducheny). Sponsored by the building industry, this measure authorizes local government to develop a watershed improvement plan to address stormwater runoff and to assess fees to implement it.

- SB 494 (Caballero). This bill allows nonprofit organizations to build farmworker housing on agricultural parcels of up to 5 acres. ■

# legal digest

## Air District Fee On New Development Upheld

### First-Of-Its-Kind Assessment Survives Building Industry Test

BY PAUL SHIGLEY

An air pollution fee levied on new development in the San Joaquin Valley has been upheld by the Fifth District Court of Appeal.

In rejecting all arguments presented by the California Building Industry Association and its allies, the court concluded that the San Joaquin Valley Air Pollution Control District fee is not bound by restrictions in the Mitigation Fee Act and is a properly adopted regulatory fee.

In early 2006, the air district became the first agency in the country to assess what amounts to a smog mitigation fee on nearly all new development. The fee applies to projects with at least 50 residential units, 2,000 square feet of commercial space or 25,000 square feet of light industrial space, as well as to certain office and public projects (see *CP&DR Environment Watch*, April 2009, January 2004). The district relies on a customized urban emissions model known as URBEMIS, which determines the amount of nitrogen oxide (NOx) and particulate matter (PM 10) a project would produce. Projects with "smart growth" features, such as higher densities and locations near transit, may reduce their fees, as may projects that incorporate energy efficiency features, are built with clean-air construction vehicles and that do not have wood-burning stoves and fireplaces.

The fees currently are \$9,350 per emitted ton of NOx and \$9,011 per emitted ton of PM 10. This translates to approximately \$100 to \$650 per dwelling unit, or an average of about \$475, according to Arnaud Marjollet, the valley district's permit services manager. The amount of the fees is based on the district's cost of implementing off-site mitigations, such as replacing diesel engines with

cleaner-burning engines and paving dirt roads to eliminate dust. The program has generated \$9.4 million in fees thus far, although the district has only spent or contracted to spend about \$700,000, according to Marjollet.

The air pollution district's program, known as "indirect source review," or ISR, applies to any building or facility that "attracts or generates mobile source activity that results in emissions of" NOx and PM10 – meaning projects that generate automobile trips. Because the San Joaquin Valley qualifies under federal standards as an area of "serious nonattainment" for PM 10 and "extreme nonattainment" for NOx, the district has prepared federally required plans to demonstrate how the region will comply with air standards in the future. The ISR is part of the compliance plan. In addition, a fee on indirect sources of emissions in the San Joaquin Valley is required under legislation approved in 2003 by state lawmakers concerned about the valley's dismal air quality.

Developers and landowners fought the ISR throughout the district's rule-making process. In the end, the Building Industry Association, the Modesto Chamber of Commerce, the Coalition for Urban Renewal Excellence and Valley Taxpayers Coalition sued to block the air pollution fee. They contended that the levy violates the Mitigation Fee Act because there is no nexus between the effects of a development and the fee. Alternatively, the plaintiffs said that if the fees were regulatory in nature, the district's methodology for determining and apportioning them was illegal. Fresno County Superior Court Judge Donald Black ruled for the district, and a unanimous three-judge panel of the Fifth District upheld the decision.

The appellate court explained that an agency may levy three types of fees or assessments without voter approval: special assessments based on the value of benefits to a

specific property; development fees exacted in return for permits or entitlements to build; and regulatory fees imposed under the police power.

Builders argued that the ISR levy is a development fee because it is imposed when a project is approved and the money is used to alleviate the project's air quality effects on the larger community. Thus, the fee should be subject to the Mitigation Fee Act and its requirements for a detailed study linking effects with fees, the builders contended.

The court ruled, however, that the ISR fee is not a development fee because approval of a project is not conditioned on payment of the fee. "The ISR fees are not exacted in return for permits or other government privileges. Thus, the ISR fees are not development fees and, therefore, are not subject to the Mitigation Fee Act," Justice Herbert Levy wrote for the court. "Rather, the fees are regulatory in nature. They are designed to mitigate growth in air pollution from new development in order to achieve and maintain federal air quality standards."

The court then considered whether the regulatory fees are valid. The builders argued that the district did not establish a reasonable relationship between the fees and the burden they impose on new development. Much of their argument centered on the district's use of URBEMIS to determine a project's emissions. The builders said a travel demand model would be more appropriate.

The court, though, found that the district "undertook extensive efforts to ensure the URBEMIS was the best tool ... [and] initiated an extensive statewide effort to update the URBEMIS model." The district documented and justified its reliance on URBEMIS to determine emissions, and the district based its fees on the estimated cost of mitigating emissions, the court said.

"The calculation — CONTINUED ON PAGE 6

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need not be exact, just reasonable,” Levy wrote. “Appellants’ criticisms are nothing more than a difference in expert opinion. Contrary to appellants’ position, the district has shown that the fees charged are reasonably related to the amount of pollution, or ‘burden,’ attributable to each new development. The more a new development increases air pollution, the more the developer pays.”

The court also ruled that not only is the district authorized to regulate and assess indirect sources of pollution, it is required to

do so under the 2003 legislation (Health and Safety Code § 40604).

The case was closely watched because the air pollution district broke new ground and because fees tied to greenhouse gas emissions, or climate change, could become the norm. William Abbott, a Sacramento attorney who co-authored *Exactions and Impact Fees in California*, said the case reflects “the increased sophistication by consultants in justifying regulatory and development impact fees.”

District officials say the point of the ISR program is to hold developers accountable

for their contributions to air pollution. “We hope the state Building Industry Association will now join the many valley developers who have taken this rule to heart and designed their projects to reduce air quality impacts,” said Seyed Sadredin, the district’s executive director. ■

■ The Case:

*California Building Industry Association v. San Joaquin Valley Air Pollution Control District*, No. F055448, 2009 DJDAR 14570. Filed October 6, 2009.

■ The Lawyers:

For CBIA: David Lanferman, Sheppard, Mullin, Richter & Hampton, (415) 774-2996.

For the district: Philip Jay, SJVAPCD, (559) 230-6033.

## takings

# Rent-Controlled Landlords Break Through In Ninth Circuit

In the first decision of its kind, a divided Ninth U.S. Circuit Court of Appeals panel has declared that the City of Goleta’s mobile home rent control ordinance constitutes a regulatory taking.

The ruling is remarkable on several fronts. First, the court weighed the merits of property owners’ claims even though a state court did not issue a decision on the claims. Second, the court accepted a “facial” challenge to the city’s ordinance, meaning there are no circumstances in which the rent control law would be permissible. Nearly all successful takings cases in the past have been “as applied” challenges that contest how a government agency applies the law to a property owner’s situation. Finally, the court sided with the property owners even though the rent control scheme predated the owners’ purchase of the mobile home park by 18 years.

“The decision breaks new ground, both in the conclusion that there is a facial *Penn Central* taking and in concluding the federal courts could reach the merits of the taking claim,” Robert Coldren, attorney for the property owners, wrote in the *Los Angeles Daily Journal*. “The decision is likely to be controversial on both counts.”

Goleta has already asked for a rehearing before a full panel of the Ninth Circuit. While such “en banc” rehearings are rare, this case appears to be a good candidate for one because the opinion departs from the circuit’s jurisprudence and because the panel split 2-1 on the ruling.

The facts are not unusual for a mobile home rent control case. Santa Barbara Coun-

ty adopted the ordinance for mobile home parks in 1979 and amended it in 1987. When Goleta incorporated in 2002, the county’s ordinances automatically went into effect in the new city. In April 2002, the Goleta City Council formally readopted the entire county code, including the rent control ordinance (RCO). That ordinance limits annual rent hikes to 75% of the increase in the local consumer price index and includes provisions for park owners to recapture increased operating costs and capital expenses.

Daniel and Susan Guggenheim and Maureen Pierce bought Ranch Mobile Estates in 1997. After Goleta incorporated, they filed lawsuits in state and federal court contending that the ordinance was a taking on its face and that they were entitled to compensation. The two sides settled the state court lawsuit. An important stipulation in the settlement was that the City of Goleta lacked a rent control ordinance between the time incorporation took effect and the time the City Council first met, which amounted to a few hours. In the Ninth Circuit’s eyes, this lapse restarted the statute of limitations for the park owners to challenge the RCO.

A district court judge ruled for the park owners in 2004. But the decision was vacated while on appeal after the U.S. Supreme Court ruled on an unrelated takings case (*Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528; see *CP&DR Legal Digest*, July 2005). The Guggenheim case returned to district court, which then ruled for the city.

On appeal, the Ninth Circuit first had to decide if the case was “ripe” for a decision.

Many federal lawsuits fail the ripeness test because of the Supreme Court’s *Williamson County* precedent, which permits a federal court to weigh a Fifth Amendment taking claim only if the plaintiff has unsuccessfully sought compensation in state court. The seeming Catch-22 from *Williamson County* is that if a property owner has litigated to completion in state court, a federal court will not consider the case because it has already been decided in the state court.

The Ninth Circuit ruled the case was ripe in large part because Goleta had never raised the issue during previous proceedings in state or appellate court. “It would certainly seem counterintuitive to us now to think that a case that had at that point already been litigated through three rounds – two in federal court and one in state court – could suddenly become ‘unripe,’” Judge Jay Bybee of the Ninth Circuit wrote.

The panel then turned to the question of whether the ordinance amounted to a taking based on the three factors in the Supreme Court’s *Penn Central* test: the economic impact of the regulation on the property owner; the extent to which the regulation interfered with investment-backed expectations; and the character of the government action.

To determine the RCO’s economic impact, the court relied on the testimony of the park owners’ expert, John Quigley, an economics professor at the University of California, Berkeley. He said that housing costs in Goleta had increased 205% from 1997 to 2003, but park rents had risen only 21.1%. Most importantly, Quig-

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ley said the below-market rents amounted to a transfer of value from the park owners to their tenants, who could sell their units at a premium. The economist said a mobile home worth \$12,000 would sell for about \$100,000 because of rent control.

The court called this a “naked transfer” of wealth. “The undisputed evidence shows that the mere enactment of the RCO has caused a significant economic loss for the park owners,” Bybee wrote. The court did not consider the significant devaluation of real estate during more recent times.

To determine whether the ordinance affected the park owners’ investment-backed expectation, the court turned to *Palazzolo v. Rhode Island*, 533 U.S. 606 (2001). In *Palazzolo*, the court ruled that a property owner could contest a land use restriction imposed years before acquiring his property (see *CP&DR Legal Digest*, August 2001).

“[T]he mere fact that the park owners bought the park in its regulated state does not mean that the city has not taken property by regulation or that the park owners cannot bring such a claim,” Bybee wrote. He also pointed to the city’s re-adoption of the RCO.

“At the very least, the parks owners have the right to bring a takings action based on the city’s 2002 adoption of the RCO.”

As to the character of the government action, the third factor in *Penn Central*, Bybee cited *Cf. Cienega Gardens v. United States*, 331 F.3d 1319 (Federal Circuit 2003): “We do not doubt that the city’s objective in passing the RCO was to increase the availability of low-cost housing. Singling out mobile home park owners, however, and forcing them to rent their property at a discount of 80% below its market value, ‘is the kind of expense-shifting to a few persons that amounts to a taking.’ Moreover, the city has numerous alternatives for supporting affordable housing – such as tax incentives, low-cost loans, rent supports, or vouchers – without directing the burden at such a limited group.”

The court concluded that the RCO “‘goes too far and’ and constitutes a regulatory taking under the Fifth and Fourteenth Amendments.” The court sent the case back to District Court to determine how much the city must pay the park owners.

In dissent, Judge Andrew Kleinfeld agreed the case was ripe for adjudication and that

a transfer of wealth had occurred. But, he added, “I cannot agree that there was a taking of anything for which the Guggenheims would be entitled to compensation, because they purchased the park after the regulatory takings that mattered.” He added, “There is nothing in the record to support the notion that the Guggenheims’ interest in the trailer park was worth more before than after the city reenacted the county ordinance.”

If the decision stands, it has implications for the approximately 100 cities and counties with mobile home rent control ordinances, according to an analysis by Nossaman inverse condemnation attorneys Rick Friess and Brad Kuhn. Those cities and counties, they wrote, need to ensure their ordinances “have not crossed the line of transferring the value of the property from the mobile home park owners to the tenants.” ■

■ The Case:

*Guggenheim v. City of Goleta*, No. 06-56306, 2009 DJDAR 14205. Filed September 28, 2009.

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city. Collectively, those projects could add as many as 4,000 residences, more than 2,000 students and upwards of 5,000 employees to the former base.

Much of the credit for Moffett’s turnaround goes to the U.S. National Aeronautics and Space Administration (NASA), which took over the 1,800-acre site in 1994. NASA had a research park located next door that combined with the military base, and NASA continues to operate part of Moffett, including two runways, for military uses.

With encouragement from local communities and colleges, NASA officials determined that Moffett’s location at the center of Silicon Valley made it a natural site for technology, science and education, according to Michael Marlaire, director of the NASA Research Park. A base reuse plan adopted under federal guidelines in 2002 allows for two large developments. One enables expansion of tech giant Google; the other is a planned university research center run by the University of California.

Last year, Google leased 42 acres of Moffett across from the company’s headquarters building complex in Mountain View that is known as the Googleplex. Google has an estimated 7,000 employees working in 1 million square feet in the city. The company declined to comment on its expansion plans, but Marlaire said the company’s expansion plans “are going very well.”

Google will be allowed to build 1.2 million square feet on its 42 acres, and must do so by 2013, Marlaire said. Because of federal approval of the Moffett Field development plans in 2002, “they could start building tomorrow,” he said.

So far, no specific plans have been released on the company’s expansion, although the lease agreement gives the company the right to build

## economic development

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up to 100,000 square feet of short-term residential units, Marlaire said.

Moffett already contains office and facilities for numerous colleges and universities that conduct classes and research there. Some of those universities now plan to build a scientific research center at Moffett on 77 acres located next to Highway 101

and an existing light rail system. The university proposal, spearheaded by the University of California, calls for a \$1 billion project that would include 3 million square feet of buildings, including housing for 2,000 students and employees in a compact, pedestrian-oriented area. A master developer for the project is currently being selected by University Associates, the nonprofit entity established to oversee the project, Marlaire said. Unlike the federally approved reuse plan, the university proposal is subject to analysis under the California Environmental Quality Act, he said.

Plans call for automated buses and people movers “to complement a pedestrian-friendly environment,” according to a website for University Associates. The nearby light rail line connects to the Caltrain system that runs between San Francisco and San Jose.

Current partners in the project include the University of California, Santa Cruz, and the Foothill-De Anza Community College District. Other participants are expected to include Santa Clara University, San Jose State University and Carnegie Mellon University, the highly ranked Pittsburgh, Pennsylvania, school, which already offers classes for 150 students at Moffett. The project is moving forward despite the state’s economic woes and cuts in funding for higher education. Bill Berry, president of University Associates, said the project takes

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# Moffett Becomes Green Innovation Showcase

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“no resources” from the University of California.

“We have other activities with NASA in Silicon Valley which allow the project to self fund,” said Berry. “We perform work here, and we reinvest that.”

The new buildings at Moffett are expected to serve as an environmental showcase in a region that is known for innovation. Solar and wind systems will supply energy for the university research center. This fall, NASA began construction of a 50,000-square-foot collaborative support facility at Moffett that has been called “the greenest building in the federal government,” according to the San Jose *Mercury News*.

In addition to the new development, business tenants have moved into the former base over the past 15 years. NASA has leased office space at the former base to scientific companies, including start-ups who have outgrown their facilities and moved into adjacent communities, Marlaire said. In addition, several military tenants moved onto Moffett in the 1990s, including the Naval Air Reserve and the Army Reserve. A unit of the California National Guard, which arrived in the 1980s, also is located there.

Mountain View environmentalist Lenny Siegel, director of the Center for Environmental Oversight, described the emerging plan for the base reuse as “what other communities want as a reuse of a base. This is ideal.”

Mountain View City Manager Kevin Duggan expressed support for Google’s expansion into Moffett. Duggan also said that local cities raised concerns about traffic and housing that were later addressed in the 2002 federal Ames Development Plan, which guides land use at the former base.

Duggan noted that Google is already a leader in alternative transportation for employees at its existing office space in Mountain View. The company has its own bus system to transport workers to residences in San Francisco, the East Bay and the Monterey Bay area, he said.

“Traffic is always an issue,” he said. “They’ve got a good track record in mitigating traffic impacts.”

Like most former military bases, Moffett has environmental contamination. There are 29 contaminated sites at Moffett, said Siegel, although most have been cleaned up.

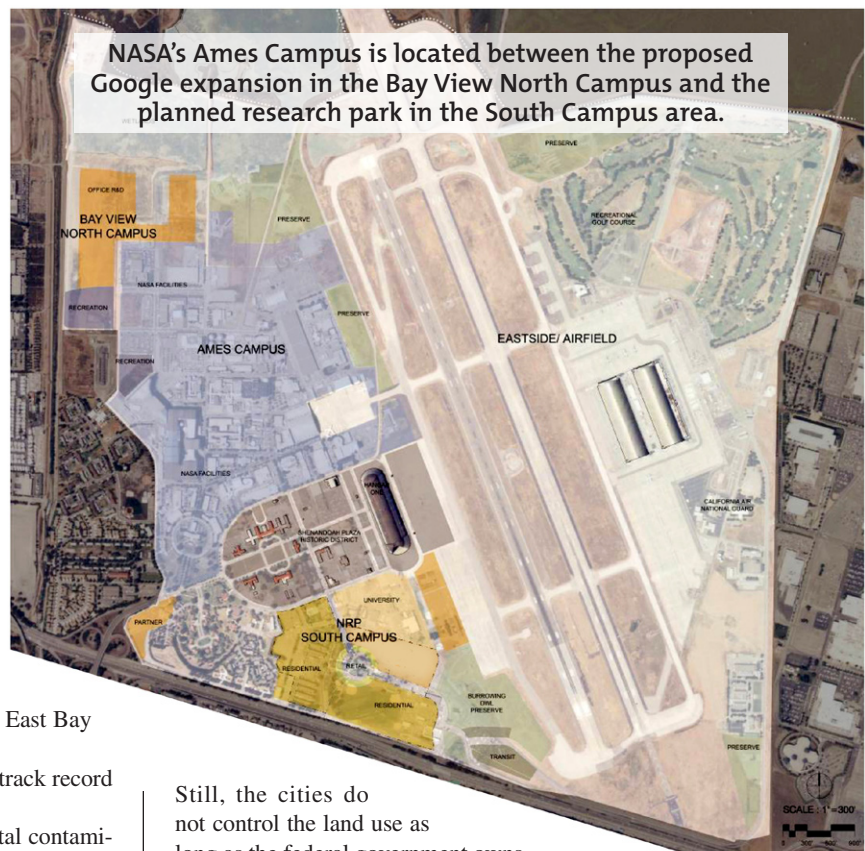
One source of pollution on the site is one of the landmark hangars, Hangar One, which is covered with material containing asbestos, lead and PCBs, Siegel said. The U.S. Navy recently announced plans to de-skin the building at a cost of \$22 million but hasn’t budgeted money to restore the building. That has led to a standoff with environmental activists and local Democratic Congresswoman Anna Eshoo, who want the building re-covered.

Besides the hangars, a visitor to Moffett today sees Mission-style buildings dating from the 1930s when Moffett first opened, along with a NASA visitors center. In addition, new military housing opened at the base in 2008, when 181 Mission-style town homes were built as Wescoat Housing. Siegel said the homes were designed to resist vapor intrusion from contaminated groundwater in the area.

The new development plans for Moffett may finally derail efforts to open Moffett’s two runways for general aviation and commercial use.

The airfield’s two runways are now used by Moffett’s military tenants, and corporate jets for Google’s chief executives have been allowed to use the airfields as well.

San Jose city officials, who would like to move small planes out of the city’s Mineta International Airport, have coveted Moffett’s landing strips. Others have suggested the airfield would be a great location for package delivery services such as FedEx and UPS. However, residents of Sunnyvale and Mountain View have long opposed such expansion, and locals have voted against expansion of the airfield several times.



Still, the cities do not control the land use as long as the federal government owns Moffett, according to a recent City of Mountain View report.

Moffett has already served as a stimulus for economic growth in the surrounding communities. To the south lies an historic Lockheed Martin facility. Although the aerospace company has reduced its size during recent years, it remains the largest employer in Sunnyvale.

But effects of the state’s and region’s economic downturn are still in evidence. Santa Clara County has an office vacancy rate of approximately 20%. Near Lockheed, and within the shadow of Moffett air field, several 8-story glass office buildings called Moffett Towers sit empty, waiting for the next boom in Silicon Valley. ■

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# Developer Takes The Initiative In Mendocino County

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Measure C would prohibit – retroactive to January 1, 2008 – stores of more than 90,000 square feet from devoting more than 3% of floor space to groceries.

Perhaps the most intense battle is in Mendocino County, where Developers Diversified Realty (DDR) gathered enough signatures to place before voters a specific plan for a 76-acre industrial site just north of the Ukiah city limits. The 300-page-long plan would permit a wide variety of uses and up to 800,000 square feet of building area, which includes a maximum of 150 residential units.

Growth in the Ukiah Valley has been controversial. Mendocino County and the City of Ukiah have worked on the Ukiah Valley area plan intermittently since the mid-1990s. The most recent draft of the plan was released by the county in 2007, but a consensus has remained elusive. A central component of the plan involves reuse of the Masonite site, where a door and wood-siding factory operated until 2001. The draft area plan designates half the site for industrial use and half for mixed commercial development. The county's general plan and a draft general plan update designate the land for industrial use. Even though Masonite site reuse is of great importance for the Ukiah area, voters throughout Mendocino County will decide Measure A because the site is unincorporated.

An Ohio-based company that develops and operates retail centers, DDR acquired the Masonite property five years ago with the intention of building a large, outdoor retail center. Company representatives say they submitted development applications to the county in 2005 and 2008, but the county refused to act until it had adopted a specific plan for the area.

Frustrated by a planning process “without end,” DDR prepared a ballot measure based on a specific plan that amends the county's general plan by creating a unique zoning district for the Masonite site. While company representatives and campaign materials talk of a mixed-use project that the public helped determine, the plan itself says that it is only conceptual and that the final project will depend on market conditions.

Opponents say the fight is not over growth per se, but over local control and appropriate locations for development. Citing the fact that the California Environmental Quality Act does not apply to citizen initiatives, opponents refuse to believe DDR promises to mitigate the effects of the project.

“A lot of people don't like the process – exempt from CEQA, no public input. They'll build whatever they want to build within a vague specific plan,” said Richard Shoemaker, a former county supervisor and Ukiah councilman who opposes Measure A. “For industrial uses, this site is a natural. It's right on a rail line that could be put into use again. It has a history of heavy industry. No one lives near it.”

The developer and an allied group, Mendocino County Tomorrow, claim that the project would capture much of the \$169 million in annual sales that now go to Sonoma and Humboldt counties, as well as create 700 permanent jobs. Both Costco and Target have been mentioned as potential anchors for the DDA project. Because the Masonite site is within the county's redevelopment project area, the project would provide up to \$74 million in tax increment, according to supporters.

An analysis by the Mendocino County administrative office, however, disputed DDR's numbers. “With the current absence of specific project information, any attempts at revenue projections, tax revenue reallocation projections or overall impacts on the county budget are

purely hypothetical and impossible to address in an accurate manner,” the report stated.

Opponents of Measure A argue that there are more appropriate, commercially zoned sites in the City of Ukiah that could accommodate both Costco and Target. Opponents also say the DDR project would capture 40% of existing sales countywide, causing significant damage to businesses in both Ukiah and Willits.

The county's analysis and another by the Local Agency Formation Commission raised questions about public services to site, especially water, wastewater and fire. The developer says the concerns are unfounded. For example, an on-site well could serve the entire project and would be dedicated to the local water district, according to DDR's campaign material.

Here is a rundown of other land-use measures on the November 3 ballot.

- Modesto voters will vote on five advisory measures regarding extension of sewer service to five areas totaling 3,000 acres. Most of the land is north of town and largely undeveloped.

- Voters in the City of Maywood will decide two advisory measures regarding a proposed site for a new Los Angeles Unified School District high school. Measure MS asks voters to support the district's plan to buy 9.4 acres at Slauson and King avenues, the site of the proposed school. Currently, 112 apartment units, 10 houses, a Veterans of Foreign Wars post and several commercial buildings occupy the site. Measure SC asks whether the district should “fully and adequately” investigate other sites.

- In the Marin County town of San Anselmo, voters will decide on an ordinance preventing the proliferation of “monster homes” in the “flatlands” by restricting the ratio of a house's square footage to the parcel of land. The City Council approved the floor-area ratio ordinance last year. Opponents, who forced the referendum, say the measure would harm small lot owners and prohibit even minor additions to many existing houses that are already at the maximum ratio.

- San Francisco will vote on two signage measures. Proposition D would relax existing restrictions to permit illuminated billboards and video signs on Market Street between Fifth and Seventh streets. In contrast, Proposition E prohibits signs and placards on all city-owned street furniture and buildings, except advertising already permitted by contract.

- Measure N in East Palo Alto overhauls the city's ordinance limiting rent increases and restricting evictions. The city's largest landlord, Page Mill Properties, which has been involved in extensive litigation with the city over the amount of permissible rent increases, unsuccessfully sued to keep the measure off the ballot.

- In Walnut Creek, Measure I would amend the city's general plan by allowing a two-story retail anchor store to be built at Broadway Plaza. The measure has become a referendum on a long-proposed Neiman Marcus store.

- In the Ventura County city of Fillmore, the owners of El Dorado Mobile Home Park have placed a somewhat confusing measure on the ballot that, among other things, would sharply limit city discretion over the conversion of the park to condominium ownership. The city has refused to approve the proposed conversion, which tenants oppose, until park owners complete a number of upgrades to the park's infrastructure. ■

## Choosing California's Best Street

My ire often rises when the national media or some big-time organization ignores California. Don't they know how important we on the whacky West Coast are?

When the American Planning Association released a list of the 10 best streets in the country (<http://planning.org/greatplaces/streets/2009/index.htm>) and not a single California street was on it, my outrage cranked up. At first. Then I got to thinking: What is the best street in California? Should it be among the APA's top 10?

The first street that came to mind was The Embarcadero in San Francisco. Where an awful freeway once blighted the waterfront, spectacular views of the bay are now available. The restored Ferry Building (<http://www.ferrybuildingmarketplace.com/history.php>) looks grand, and the area around it teems with activity. But for reasons that escape me, The Embarcadero has a number of dead spaces on its inland side. And if you keep going north, you'll wind up at Pier 39 and Fisherman's Wharf, two of the worst tourist traps anywhere.

Market Street should be San Francisco's grand boulevard, but it's not. The city has been trying to figure out what to do with the thoroughfare for about 60 years. It recently started prohibiting automobiles on a few blocks of Market as a way to spruce up its image. As the *Chronicle* (<http://www.sfgate.com/cgi-bin/article.cgi?f=c/a/2009/09/10/MNN119KOK8.DTL>) described it: "The traffic changes are part of Mayor Gavin Newsom's administration's larger vision to turn dirty, crowded Market Street into a world-class thoroughfare akin to Barcelona's Las Ramblas or New York City's Broadway."

Uh huh. Check back in 2069.

Speaking of Broadway, the boulevard of that name in downtown Los Angeles certainly could be one of the country's best streets. It's definitely the setting for one of the great international street scenes, with food, art, music and fashion from around the world overloading the senses. Many of the street's glorious pre-war movie houses still stand. But conditions and uses in the historic structures remain spotty, and Broadway overall has too many vacant or underused buildings (<http://www.bringingbackbroadway.com/index.htm>). What most holds Broadway back from greatness, though, is its physical infrastructure – sidewalks, landscaping, street furniture, public spaces. All should be better.

In the self-proclaimed Finest City – San Diego for those who don't remember the time before the City Hall scandals and real estate collapse – it's hard to identify a street that stands out. It certainly isn't Harbor, which is designed for cars, cars. Market and Broadway have potential, but they could use more care and investment. Fourth and Fifth avenues through the Gaslamp Quarter are a lot of fun, but only for

a few blocks. My favorite street in San Diego is probably Sixth Avenue just north of I-5. Glorious Balboa Park (<http://www.balboapark.org/>) runs along the east side of the street, and the edges of the Park West and Middletown neighborhoods occupy the west side. But the west side of Sixth really needs more of interest to hold the street together.

In the state's mid-sized cities, Palo Alto's University Avenue comes to mind, as do College and Telegraph avenues in Berkeley. As befitting their cities, University is clean and orderly, while College and Telegraph are messy and unpredictable. All three offer lively street scenes, but all three can be choked with traffic for what seems like days at a time.

Some Gold Rush towns sport well-preserved streets, such as Broad in Nevada City and Main in Placerville. But some of these corridors almost feel frozen in time, while others are so full of galleries, antique stores and overpriced bistros (read: touristy schlock), it's hard to take them seriously as "places."

A number of beach towns are home to fun streets. West Balboa and Newport boulevards in Newport Beach, and North Manhattan Avenue in Manhattan Beach certainly represent SoCal beach culture. Santa Cruz had to rebuild Pacific Avenue after the 1989 Loma Prieta earthquake, and the results are both more inviting and less authentic. But if your version of a great street has widely mixed uses and fine architecture, the beach town streets generally fall short.

California does have two corridors that planners everywhere often try to mimic: Colorado Boulevard in Pasadena and State Street in Santa Barbara. These streets are the central thoroughfares in the state's two best downtowns (<http://www.cp-dr.com/node/1782>), and they are both full of life and history. The APA list, however, seems to focus on underdogs, so acclaimed streets

in wealthy towns are unlikely candidates.

All that said, my favorite street in California just may be North Euclid Avenue in Ontario. Listed on the National Register of Historic Places, Euclid has been Ontario's main drag since the city's founding in the 1880s. A wide street with a heavily landscaped median offering great views of the rugged San Gabriel Mountains, North Euclid is the very definition of a grand boulevard. The northern stretch is lined with historic craftsman homes and civic buildings, including Chaffey High School's remarkable campus. The southern end (the boulevard becomes South Euclid near the railroad tracks and quickly loses much of its charm) is a central piece of Ontario's rebounding downtown. One of the great things about North Euclid is that in a 20-minute walk, you can witness 19th century splendor, 20th century success and failure, and 21st century promise. What more could you want from a single street?

– PAUL SHIGLEY | OCTOBER 14, 2009 ■



Ontario's North Euclid Avenue today and in 1885.

