

Tax, Budgeting, CEQA Initiatives Proposed

Proponents Gather Signatures On Scores Of Ballot Measure For November

BY PAUL SHIGLEY

California voters could overhaul the state and local tax system, as well as the state budgeting process, in November. Ballot initiatives that would constrict state and local government funding, and, conversely, dramatically increase state and local government revenues are in circulation for signatures.

In addition, a ballot measure backed by conservative lawmakers that would suspend AB 32 (the Global Warming Solutions Act of 2006) until the unemployment rate drops to 5.5% for a year is in circulation. Also proposed in late January was an initiative that would permit only the attorney general's office – and not citizens – to challenge environmental impact reports.

As of February 2, two dozen initiatives related to state and local revenues or the state budget had been cleared for circulation by the secretary of state's office. Included in that total are redundancies, as ballot measure proponents often submit multiple versions of an initiative before settling on one. Although none of the measures has

yet qualified for the ballot, it appears likely voters will decide some weighty tax and spending measures with definite ramifications for planning and development.

"We certainly have the potential for a whole lot of issues to be decided by voters this year," said Cheryl Katz, co-author of *The Coming Age of Direct Democracy* and vice president of the polling firm Baldassare Associates. "In California it's still the most successful model because of the difficulty of getting the gridlocked Legislature to act."

The number of initiatives in circulation for signatures varies almost daily as advocates submit new proposals, the attorney general's office prepares ballot titles and summaries, the secretary of state's office completes its ministerial review, and deadlines for gathering signatures pass. As of February 3, 74 proposed initiatives were in circulation and another 15 were in the attorney general's office for awaiting title and summary. Those numbers are considerable, but they are not records, according to a secretary of state's

– CONTINUED ON PAGE 4

Deficit-Plagued State Continues At Full Speed On Environmental Regulation

insight
WILLIAM FULTON

The distance between California's growing budget problems and California's ambitious environmental protection agenda continues to increase.

The consequences of the state's chronic budget deficit – currently \$20 billion per year or more with no end in sight – continue to chew up everything and everybody in its path: local governments, transit agencies, the prison system, welfare recipients, school districts.

Everything, that is, except an aggressive new generation of laws and regulations aimed at taking California's environmental protection efforts to a new level. Even as government services and payments are being cut left and right, the state and its agencies are moving forward with

– CONTINUED ON PAGE 5

IN BRIEF

Alameda voters reject Navy base reuse plan..... Page 2

IN BRIEF

Advocacy groups question mortgage standards..... Page 3

CP&DR LEGAL DIGEST

Plastic bag manufacturers make a "fair argument"..... Page 6

CP&DR LEGAL DIGEST

Redevelopment agencies lose tax increment to schools..... Page 7

PLACES

Instant downtown can be a real downtown..... Page 8

FROM THE BLOG

Walkscore becomes sales and planning tool..... Page 10

City of Alameda voters have overwhelmingly rejected a plan to redevelop Alameda Naval Air Station. In a February 2 special election, 85.4% of voters said “no” to Measure B, which would have permitted developer SunCal Companies to move forward with a housing and industrial project on about 1,000 acres of Navy real estate.

The vote was only the latest of many setbacks for reuse of what is known as Alameda Point, the western end of the Alameda island that juts into the bay only a few miles east of downtown San Francisco. The Navy closed the 1,700-acre base in 1997. Since then, Catellus has mostly finished redevelopment of two smaller portions of the base with about 900 housing units, an industrial park and some retail space. However, the approximately 1,000 acres where the Navy’s runways are located remains untouched. SunCal, which signed a master development agreement with the city in 2007 (see *CP&DR Places*, February 2008), is at least the fourth developer to take a run at the site.

SunCal advanced a plan calling for about 4,800 housing units, 3 million square feet of industrial and office space, 145 acres of parks and open space, and public facilities ranging from a 58-acre sports field complex to a new ferry terminal to a library and schools. To implement the plan, SunCal needed an exception to 1973 and 1991 ballot measures that, respectively, prohibit residential units other than single-family homes and duplexes, and limit residential density to 21 units an acre. The developer qualified an initiative for the ballot that would have lifted the housing restrictions only for Alameda Point, and which would have ratified provisions in a development agreement, including a \$200 million cap on SunCal’s contributions to public facilities.

Opponents argued that the project would overwhelm the city with traffic, especially in and near the Posey Tube, a tunnel that connects Alameda to Oakland. They also questioned the \$200 million cap, a decrease in required affordable housing units from 25% to 15%, and what opponents saw as a lack of guarantees that SunCal would see the project through to completion. Opponents insisted that job growth, not housing, should be the focus

on base reuse. Only one of five Alameda councilmembers endorsed the SunCal plan. The developer spent more than \$1 million campaigning for Measure B, but the vote was 13,419 opposed and 2,300 in support.

After the election, SunCal representatives said the company would continue to press ahead at the site. A few weeks before the election, the company submitted a greatly revised plan to the city that would reportedly comply with the 1973 and 1991 ballot measures.

Characterized as “the last piece in the puzzle” for Chula Vista bayfront redevelopment, a land swap between the San Diego Unified Port District and developer Pacifica Holdings has been approved by the district and the City of Chula Vista.

The port district, the city and other stakeholders have been working on a plan for the 550-acre Chula Vista bayfront since 2003. The project received a major setback in late 2008, when Gaylord Entertainment dropped its plans for a large convention center and 2,000-room resort hotel on the site (see *CP&DR In Brief*, December 2008; *Local Watch*, October 2006). Very tentative proposals to use a portion of the land for a San Diego Chargers football stadium failed to gain traction.

Under the deal approved on February 2, Pacifica will trade 97 acres it owns near Sweetwater Marsh National Wildlife Refuge and Chula Vista Nature Center for 35 acres the port district owns near J Street. In addition, the government agencies approved an agreement establishing a 1,200-foot buffer between potential new residences on the former port property and the existing Goodrich Aerostructures industrial operation. According to backers, the deal directs development to a more appropriate location away from sensitive habitat, while also preserving industrial uses.

“We just took two enormous steps ahead,” Chula Vista Mayor Cheryl Cox said. “This is a massive opportunity and the step to the next step.”

Still, Chula Vista bayfront redevelopment remains a ways off. The master plan needs approval by the port district, the city and the Coastal Commission, and an environmental impact report must be certified. The bayfront master plan is

available on the port district website: <http://www.portofsandiego.org/chula-vista-bayfront-master-plan/747-objectives.html>.

San Diego County Board of Supervisors Chairwoman Dianne Jacob has asked the state Public Utilities Commission to reconsider its approval of the Sunrise Powerlink transmission corridor because of its potential to make the unincorporated community of Alpine into “a ghost town” due to years of construction.

San Diego Gas & Electric’s 120-mile Sunrise Powerlink corridor would provide connections to new solar, biofuel and other power plants in the Imperial County desert. Environmentalists have fought the project because of its impact to fragile open spaces. But in Alpine, a small town along Interstate 8, the power lines would be placed underground along Alpine Boulevard for 6 miles. Construction for the lines could have the town’s main thoroughfare torn up for at least two years.

Jacob and Alpine residents protest that they did not learn about this potential alignment until very late in the process, when SDG&E abandoned its preferred route through Anza-Borrego Desert State Park. The utility company maintains the route was thoroughly publicized and analyzed, and it has urged the PUC not to reconsider its December 2008 approval of the project. Litigation over Sunrise Powerlink continues.

Meanwhile, the Imperial County Board of Supervisors approved a resolution restating its support for the Sunrise Powerlink project. With the highest unemployment rate in the country, Imperial County is hopeful for jobs from construction and operation of new power plants.

A \$400 million economic stimulus grant from the federal government for the proposed Transbay Terminal in San Francisco will provide the final piece of financing for construction of the first, \$1.2 billion phase of the terminal project. However, federal transportation officials appear to have stepped into the middle of a dispute between local officials and the California High Speed Rail Authority over the precise terminus for high-speed rail in San Francisco by siding with the locals. In addition, one rail authority board

– CONTINUED ON PAGE 3



is published semi-monthly by

Solimar Research Group
Post Office Box 24618
Ventura, California 93002

Telephone: 805/643-7700
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

Eric Belgau
Associate Publisher/
Marketing Manager

Paul Shigley
Editor

Morris Newman
Kenneth Jost
Contributing Editors

Robin Andersen
Circulation Manager

member, former judge and state Sen. Quentin Kopp, said that only the rail authority may allocate the \$400 million to the San Francisco project.

The \$4 billion Transbay Terminal is proposed to be a 900,000-square-foot station for high-speed rail, CalTrain commuter rail, and local and regional buses (see *CP&DR Public Development*, August 2004). The facility would replace a dilapidated and undersized terminal. Groundbreaking was originally scheduled for 2008, but litigation, financing issues and engineering problems have caused delays.

Only days after federal officials promised a \$171 million loan for the project, U.S. Transportation Secretary Ray LaHood announced on January 28 the Transbay Terminal project would receive a \$400 million stimulus grant as part of \$2.25 billion for the state's high-speed rail system. LaHood insisted the money was designated for a terminal that would serve as the San Francisco terminus of the high-speed rail line. But the rail authority disagrees with the alignment and terminal plans adopted by the local Transbay Joint Powers Authority.

Kopp told the *San Francisco Chronicle* that the rail authority will decide how to spend the \$2.25 billion federal grant, and that no federal money may be spent on the Transbay Terminal until the high speed rail authority completes an analysis of alternatives in 2011.

Local road and street maintenance needs an additional \$71 billion investment over the next 10 years, according to a study prepared by the California State Association of Counties and the League of California Cities. The study identified \$99.7 billion worth of maintenance needed to roads, streets and their essential components, such as storm drains, sidewalks and signals. However, only \$28.3 billion is expected to be available.

The additional \$71 billion would permit all facilities to attain a "best management practices" (BMP) condition, under which basic preventive maintenance measures – slurry seals and thin overlays, for example – would be adequate to keep roads in good condition. "It costs twelve times less to maintain a BMP pavement compared with a pavement that is at the end of its service life," the report by Nichols Consulting Engineers stated. "Even a modest resurfacing is four times costlier than a pavement in the BMP condition."

The study is the first to comprehensively assess local street and road conditions in California, according to the local government organizations.

The study found that the average pavement condition is "at risk," and that conditions will worsen based on recent funding trends. An additional \$7 billion a year for the local system equates to a 38-cent increase in the gas tax.

It's official: 2009 was the slowest year for new housing construction since the 1940s. Builders pulled permits for only 36,209 housing units in 2009, according to the Construction Industry Research Board. That was a little more than half of the 64,962 housing starts in 2008, which had been the post-war record low.

The 2009 housing starts were composed of 25,046 single-family homes and 11,163 multi-family units. The Riverside-San Bernardino-Ontario metropolitan area had the most new homes with 6,681. In second place was Los Angeles-Long Beach-Glendale with 5,610, while San Diego was third with 2,989 units. Not one metro area experienced an increase in homebuilding activity in 2009 compared with 2008. The greatest slippage was in Merced, which saw housing starts drop from 473 in 2008 to 84 last year. During the mid-decade peak, local governments in Merced County often permitted about that many new units in one week.

Transportation costs associated with a community are a good predictor of housing foreclosure rates, according to a new study commissioned by the Natural Resources Defense Council (NRDC). The peer-reviewed statistical analysis found that, after accounting for variable factors, foreclosure rates in automobile-dependent fringe neighborhoods are higher than in "location efficient" neighborhoods in which residents spend less of their income on transportation, according to the NRDC.

The study looked at 40,000 mortgages in the San Francisco, Chicago and Jacksonville, Florida, regions. "In all three cities, the study found statistically sound results that the probability of mortgage foreclosure increases as neighborhood vehicle ownership levels rise, after controlling for income," a briefing paper on the study says. The problem, according Jennifer Henry, of the NRDC's Chicago office, is that people who must drive everywhere "have much less economic flexibility" in difficult economic times.

The NRDC makes three recommendations based on the findings: Land use, infrastructure and transportation policy should encourage development of location-efficient communities; mortgage underwriting practices should favor purchases of

location-efficient homes; lenders and researchers should perform further research to refine underwriting models. A briefing paper about the study is available on the NRDC website, www.nrdc.org/energy/10012001.asp.

The NRDC publicized its study at the same time the Congress for New Urbanism (CNU) stepped up its campaign to reform Fannie Mae and Freddie Mac lending standards. According to CNU, the government-backed mortgage agencies will not finance developments that have more than 20% commercial use, meaning mixed-use project developers and buyers do not have access to Fannie and Freddie loans.

"Fannie Mae and Freddie Mac enforce rules that have made Main Street almost impossible to build in America," complained CNU President and CEO John Norquist. He pointed to the 2008 study produced by CEOs for Cities called "Driven to the Brink" that strongly suggested high gasoline prices helped pop the housing bubble because exurban commuters could no longer afford both their mortgage and their gas bills. Norquist and other CNU leaders want Congress and the Obama administration to encourage lending programs that favor walkable, location-efficient development.

Opponents and supporters of a proposed luxury resort and housing development in the City of Healdsburg have signed an agreement outlining what a new environmental impact report should address.

A Sonoma County Superior Court judge in December ruled that the EIR for the Saggio Hills project was deficient because it did not address water demand for tree planting, failed to consider impacts on nearby public open space, and lacked a sufficient range of project alternatives. The city in 2008 approved the project, proposed to include a 130-room, high-end resort and 70 large-lot houses on a portion of a 258-acre site at the north end of town. Proponents said the project would provide economic benefits as well as new parkland and 14 acres for future affordable housing development in the small wine country town.

Rather than appealing the judge's ruling, developers Robert Green and Tony Korman reached an agreement with the lead opposition group, Healdsburg Citizens for Sustainable Solutions, on the parameters for a new EIR, with the apparent intent of streamlining the process and avoiding additional litigation. Opponents insist the number of houses in the project should be reduced to about two dozen. ■

Voters May Have Say On Taxes, Budgeting

– CONTINUED FROM PAGE 1

office spokeswoman.

What is certain is that at least five measures will appear on the June primary ballot. Proposition 13 would exclude seismic retrofits from new valuation for tax purposes; Proposition 14 would create open primaries; Proposition 15 would provide for publicly funded campaigns; Proposition 16 would require two-thirds voter approval to expand or create public electricity service; Proposition 17 concerns automobile insurance. Although the deadline for citizen initiatives for the June ballot was January 28, lawmakers could still place measures on the ballot. Gov. Schwarzenegger has talked about getting state budgeting measures on the June ballot, including a plan that would ensure the state spends more on universities than prisons.

Despite the initiatives that are in circulation, John Matsusaka, president of the University of Southern California's Initiative & Referendum Institute, contended the state is actually "in a somewhat slow period" for tax measures.

"It is not well understood what causes the number of ballot propositions to fluctuate over time, but part of it has to do with the degree of popular dissatisfaction with elected officials. Voters turn to initiatives and referendums when they don't think the Legislature is doing its job," Matsusaka said.

If Matsusaka is correct, the system should be flooded with initiatives, as a Public Policy Institute of California survey released in late January found the state Legislature's approval rate at only 18% and the governor's at 30%. That same poll found that 84% of respondents favor major or minor changes to the state and local tax systems, with 72% saying voters – not elected leaders – should decide what those changes are. But the poll also found that vast majorities do not know how the state government is funded or what it spends most of its money on.

Among the proposed initiatives in circulation:

- Several measures proposed by Republican lobbyist and activist Thomas Hiltachk that would alter how the state calculates funding for schools, community colleges and transportation. Among other things, the measures would increase the amount of money spent on debt retirement, according to the official analysis.

- A measure from the California Chamber of Commerce that would extend voter approval requirements to more local levies and charges, and require two-thirds approval in the Legislature for anything that increases taxes.

- A measure by the Howard Jarvis Taxpayers Association that would prohibit the Legislature from raising any taxes without voter approval. Republican operatives Steve Lucas and Josiah Keane have proposed a similar measure.

- A measure from Democratic operatives Remcho, Johansen & Purcell that would permit local government entities to seek majority voter approval for a 1-cent sales tax increase to implement a "countywide strategic plan" that "increases efficiency and improves the outcomes of local services." The measure would also prohibit the state from borrowing or appropriating any local government, redevelopment and local transportation revenues.

- A separate Remcho measure that would permit the Legislature to approve a state budget with a majority vote, eliminating the two-thirds approval requirement. The measure also calls for two-year budgets and prohibits lawmakers from creating new expenditures of more than \$25 million unless the offsetting revenues or spending cuts are identified.

- A Remcho measure that would increase commercial, nonagricultural

property taxes to 1.55% of valuation, with the additional estimated \$4 billion going to K-12 schools, community colleges and state universities.

- A Remcho measure that would implement the long-discussed "split roll" by requiring that commercial property be reassessed at fair market value at least once every three years, with 90% of the estimated \$3.4 billion in new revenue directed to the state's general fund.

- A Remcho proposal to lower the vote requirement on local infrastructure bonds from two-thirds to 55%.

- Measures from the Bay Area Council business organization that would permit voters to call for a state constitutional convention and to actually convene a convention.

- A measure from local government and transit organizations that would bar the state from taking any local funds used for local government services, redevelopment projects, or transportation projects and services.

- A measure backed by environmental groups to increase state vehicle license fees by \$18, with the \$500 million of revenue going to state parks.

- A proposal that would reduce the Legislature's session to no more than 95 days per year and cut lawmakers' salaries by at least half.

Cleared for signatures on February 3, the climate change ballot measure seeks to reverse state policy spearheaded by Schwarzenegger. The "California Jobs Initiative," is backed by the Assembly Republican Caucus and U.S. Rep. Tom McClintock (R-Elk Grove) and would suspend AB 32 until the unemployment rate, now at about 12.5%, drops to 5.5% for four consecutive quarters. Approval of the initiative would likely also force suspension of SB 375, the 2008 measure that calls for regional transportation and land use planning to reduce greenhouse gas emissions.

"It's easy to be green when you've got food on the table," Assemblyman Bill Berryhill (R-Ceres) told the *Modesto Bee*. "Most of these things were passed in good times. We're in a different time now."

The California Environmental Quality Act (CEQA) measure awaiting review in the attorney general's office comes from Orange County developer Timothy Strader Sr., chairman of Starpointe Ventures. The measure would amend CEQA to prohibit citizen enforcement of the law.

"Giving the attorney general of California the exclusive right to challenge certified EIRs will put an end to hundreds of frivolous lawsuits, which stall job creation and drive up housing prices for California families," the measure's preamble declares. The measure would also prohibit even the attorney general from challenging an EIR based on climate change or greenhouse gas emissions.

Already on the November ballot is an \$11.1 billion water bond that was part of a water legislation package approved last fall (see *CP&DR*, November 15, 2009)

Baldassare Associates' Katz said she has not yet done polling on any specific measures, so it is difficult to tell which measures will gain political traction. In general, measures that appeal to populist sentiment fare well, she said. June 24 is the deadline to qualify a citizen initiative for the November election. ■

■ Contacts:

John Matsusaka, USC Initiative and Referendum Institute, (213) 740-6495.

Cheryl Katz, Baldassare Associate, (510) 701-5758.

Public Policy Institute of California survey: www.ppic.org/main/publication.asp?i=924.

Secretary of State's ballot measures update: www.sos.ca.gov/elections/elections_j.htm.

– CONTINUED FROM PAGE 1

implementing AB 32, the greenhouse gas emissions reduction law, and all of its offspring (including SB 375, the regional planning bill). These measures will affect not only land use patterns, as these pages often describe, but they will also force a big ramping up of efforts to cut electricity usage.

Meanwhile, regional water quality control boards around the state are moving forward with a new generation of much tougher permits focused on “nonpoint source pollution” – meaning, in simpler terms, stormwater runoff. For all the hullabaloo about AB 32 and SB 375, the new stormwater permits – recently adopted in both Orange County and the Los Angeles-Ventura region – may have a more immediate on-the-ground impact on how planning and development functions in the state.

And the weird thing is, hardly anybody is talking about the budget and the environment together. Yes, some land use nerds have pointed out that it’s going to be tougher to hit the greenhouse gas emissions reduction targets if the state cuts funding for public transit. And some conservative activists are pushing for a suspension of AB 32 while the economy is lousy. But that’s it. The state’s budget crisis continues to decimate our government structure. Meanwhile, on another planet, the state’s environmental regulators push forward aggressively.

There are understandable political reasons for this disconnect. Whereas the state’s financial problems seem intractable, movement on environmental regulation does not. The Democrats who control the legislature are perfectly willing to move forward with new environmental regulation even in bad times. And the moderate Republican in the governor’s chair understands that environmentalism is good politics in California, even in bad times.

Yet it’s amazing how real and persistent this disconnect is. I was struck by it at the recent UCLA Extension Land Use Law and Planning Conference, the premiere land use event in Southern California each year. The legislative review – pulled off with great energy and competence by Peter Detwiler of the Senate Local Government Committee and Bill Abbott of Abbott & Kindermann – was littered with discussions of the state budget crisis and how it is affecting land use. The subsequent panel on stormwater regulations – which featured an acrimonious back-and-forth between developers and environmentalists – appeared to be taking place on a completely different planet (see *CP&DR Blog*, February 1, 2010).

Maybe the thing to do is to separate out the environmental protection efforts that can actually help the economy from those that might hurt it, at least in the short run, and see what lessons may be learned for applying the carrots and sticks at the state’s disposal.

Although environmental protection is often airily advertised as a matter of making different personal choices or forcing corporations to be more responsible, the down-and-dirty fact is that it’s mostly a matter of capital investment. Removing pollutants from smokestacks means you have to install scrubbers. Capturing wind or solar energy means you have to build and install turbines or solar panels. Reducing overall energy consumption means a whole variety of capital investments,

ranging from weatherization to replacing old HVAC systems. Reducing water use means installing drip irrigation – not too hard for the average homeowner, but an enormous cost for the average farmer. Reducing polluted stormwater runoff means building greener stormwater facilities, such as bioswales instead of culverts.

Inevitably, a lot of these capital investments will be made over the course of time. Smokestacks will be replaced, as will irrigation systems, stormwater systems and HVAC systems.

The trick to both environmental protection and economic prosperity is to use both the sticks and the carrots government has available to drive those capital investments in a certain direction on a certain

timeline. An aggressive regulation may force technological innovation by requiring that new capital investments, in fact, be greener than old ones. Oftentimes, however, that’s not enough, because the payback period on green capital investments may be so long. So low-cost financing programs – from the government or water purveyors or electrical utilities – might also be necessary to bridge the gap.

California is actually pretty good at lining up the incentives and penalties to get this kind of capital investment in certain areas, especially energy efficiency. Take, for example, the energy efficiency financing programs being created under AB 811. Under the provisions of AB 811, local governments can create Mello-Roos-style districts that will help provide low-cost, long-term financing for homeowners who wish to green their homes through solar panels or HVAC upgrades. The AB 811 method has succeeded in places as diverse as Berkeley

and Palm Desert and is moving to new locations fast. It wouldn’t work without the government carrot of low-cost financing (assuming anybody will buy the AB 811 bonds, but that’s another story), but it also wouldn’t be moving as fast if it were not for California’s climate change bill, which essentially forces reductions in energy consumption.

Now, contrast this experience with the implementation of the new stormwater permits in Orange, Los Angeles, and Ventura counties. The regional water quality control boards are tightening the screws, and the local governments and developers are scrambling to figure out how to pay for the increased regulation. A familiar scenario is emerging: Regulators push the problem onto developers, who try to push the problem onto the local governments, who try to push the problem onto the taxpayers, who are wondering why the developers aren’t footing the bill.

The problem here is that water quality, unlike energy efficiency, is a completely stick-based system without a single carrot in sight. On the energy efficiency front, there is also a tough regulator – the California Air Resources Board. But there are also other government agencies, principally the California Public Utilities Commission and the California Energy Commission, that are accustomed to dealing with the problem of the long payback period for capital investments that improve the environment. Maybe it’s time the state began to line up carrots and sticks on water quality, as well as on other land use-related environmental issues. The savings in lawyer costs alone ought to be enough to pay off the bonds. ■

“Whereas the state’s financial problems seem intractable, movement on environmental regulation does not.”

legal digest

Low Threshold For 'Fair Argument' Reaffirmed

Court Says Manhattan Beach Plastic Bag Law Requires EIR

BY LESLIE Z. WALKER

A coalition of plastic bag producers avoided, at least for the moment, a major blow to business by using the California Environmental Quality Act (CEQA) to delay implementation of an ordinance banning the distribution of plastic bags in the City of Manhattan Beach.

In a 2-1 decision, the Court of Appeal for the Second Appellate District demonstrated that substantial evidence of a fair argument includes any evidence in the record, even a report from the Scottish government evaluating a plastic bag tax. In *Save the Plastic Bag Coalition v. City of Manhattan Beach*, the appellate court found that substantial evidence supported a fair argument that an ordinance prohibiting the use of plastic bags in the city may require the preparation of an environmental impact report (EIR).

The coastal city of Manhattan Beach in July 2008 adopted Ordinance No. 2115, which prohibited certain retailers and establishments from using plastic bags in order to preserve the marine environment by reducing the number of plastic bags making their way into and polluting the ocean.

The city prepared an initial study for the ordinance. Based on the initial study, the city determined the ordinance was not a project involving any significant impacts upon the environment and prepared a negative declaration. The city acknowledged the ordinance may result in greater paper bag use, which could have negative environmental effects, including increased power plant, paper mill and recycling plant emissions; increased traffic involved in shipping the paper bags to retail establishments; and increased emissions from trucks carrying the heavier, bulkier paper bags. The initial statement found

that reducing the use of plastic bags in the city would have a modest positive impact on the migration of plastic refuse into the ocean, and that the impacts of the ordinance with respect to air quality, traffic and landfill capacity due to the increased use of paper bags would be less than significant. The city determined there was no substantial evidence the project may have a significant effect on the environment, and therefore adopted a negative declaration.

An association of plastic bag manufacturers brought suit, arguing the ordinance may result in the increased use of paper bags, which in turn would result in significant environmental impacts. The association challenged the use of a negative declaration, pointing to five reports in the record as substantial evidence that the project may have a significant effect on the environment: a 2005 report commissioned by the Scottish government in response to a bill in Scottish Parliament to impose a levy on lightweight plastic carrier bags; a 2007 study commissioned by the Progressive Bag Alliance to assess the life cycle of three types of grocery bags; a 2008 "Use Less Stuff" report; a 1990 report prepared by Franklin Associates, Ltd.; and a 2007 Los Angeles County report.

The trial court found that the association presented substantial evidence of a fair argument that the ordinance may have a significant environmental impact and therefore the city had to prepare an EIR. The city appealed.

The appellate court first addressed the association's standing to assert the claim (the ability to seek relief in court). The court found the association had standing under the public right/duty exception, which provides that a citizen interested in having the laws executed and the duty in question enforced need not show that he has any legal or special interest in the result. The court stated, "This

is not a case in which the plaintiff's interest is purely commercial and competitive."

The court proceeded to determine whether the evidence in the record met the low threshold requiring the preparation of an EIR. The court explained that it is the plaintiff who has the burden of demonstrating the existence of substantial evidence of a fair argument that a project may have a significant effect on the environment.

The court found that four of the five reports cited by the association – all except the Los Angeles County study of paper and plastic bag consumption – supported the conclusions that prohibiting plastic bags is likely to lead to increased use of paper and reusable bags; paper bags have a greater negative environmental effect as compared to plastic bags; and these negative environmental effects include increased nonrenewable energy and water consumption, greenhouse gas emissions, solid waste production, and acid rain. This constituted substantial evidence of a fair argument that the plastic bag distribution ordinance may have a significant environmental effect, meeting the low threshold for the preparation of an environmental impact report, the court concluded.

Justice Richard Mosk's dissent presented tempting logic. He wrote, "Requiring the small city of Manhattan Beach ... to expend public resources to prepare an environmental impact report (EIR) for enacting what the city believes is an environmentally friendly ordinance phasing out the retail *distribution* (not use) of plastic carryout bags within the city and promoting the use of *reusable bags* (not paper bags) stretches the California Environmental Quality Act and the requirement for an EIR to an absurdity. ... This action to require an EIR was generated by the plastic bag industry for its economic interest."

Whether or not

– CONTINUED ON PAGE 7

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economic interests spurred the litigation, this case shows us just how low the bar actually is for CEQA's fair argument standard. ■

■ The case:

Save the Plastic Bag Coalition v. City of Manhattan Beach, No. B215788, 2010 DJDAR 1485. Filed January 27, 2010.

■ The Lawyers:

For the association: Stephen Joseph, (415) 577-6660.
For the city: Robert Wadden, Jr., city attorney, (310) 545-5621.

redevelopment

L.A. School District Wins Dispute Over Tax Pass-Through Payments

BY CORI BADGLEY

Counties and cities must let go of another share of property tax revenues to school districts under the redevelopment law's distribution of the property tax increment.

The case at hand involved a tug-of-war between a county and a school district over a share of the property tax increment distributed by redevelopment agencies. In the wake of Proposition 13, property tax revenues are limited and their allocation is coveted by local government, special districts and school districts. Under redevelopment law, redevelopment agencies must give a portion of the incremental increase in property tax revenues to local entities, including schools, based on the percentage of property tax revenue received by the entity in that fiscal year. These are known as "pass-through payments" from redevelopment agencies.

In this case, the Los Angeles Unified School District argued that it was entitled to a larger share of the property tax increment than it had been allocated because the defendants, which were 13 redevelopment agencies, the County of Los Angeles and the City of Los Angeles (collectively "county"), failed to take in account certain property taxes received by the school district. The trial court disagreed with the school district, and the Second District Court of Appeal reversed.

The argument in this case centered around the overlap between two statutes: the pass-through legislation under Health & Safety Code § 33607.5, and the Educational Revenue Augmentation Fund (Revenue & Taxation Code §§ 97.2, 97.3), which is known as ERAF. The Legislature enacted ERAF to require the distribution of a portion of property taxes, along with other funds, to schools, to the detriment of county and city coffers.

Health & Safety Code § 33607.5 deals with the allocation of the property tax increment, which is the increase in property tax revenues resulting from the redevelopment of property. In order to ensure that local entities are not financially burdened by the adoption of redevelopment plans, state lawmakers enacted pass-through legislation (Health & Safety Code § 33607.5) whereby redevelopment agencies must, according to the court, "share or pass-through a portion of the property tax increment to local taxing entities, including schools." This portion of the property tax increment is based on the proportion of property taxes allocated to the entity in the same fiscal year that the property tax increment is allocated.

In this case, the county did not take into account the amount of property taxes received by the school district through ERAF when calculating the percentages of property taxes received by each local entity. Because the county's calculation of the percentage of property tax revenue received by the school excluded the additional ERAF amount, the pass-through payment allocated to the school district was too small, the school district argued. The school district sued the county on the grounds that the ERAF funds had to be included in the pass-through calculation.

On appeal, the Second District held that the county acted unlawfully in excluding the ERAF allocations. According to the court, subdivision (d)(5) of §§ 97.2 and 97.3 of the Revenue & Taxation Code clearly and unambiguously includes ERAF distributions as property tax revenue, and therefore, "any property tax revenue deemed allocated to ERAFs under subdivision (d)(5) necessarily qualifies as property tax revenue to the

school that received it." The court did point out that any money allocated through the ERAF to the school that was not property tax revenue should be excluded from the pass-through calculation.

Thus, the court concluded that the county's calculations were unlawful and remanded the matter to Los Angeles County Superior Court to determine the right to reimbursement. ■

■ The Case:

Los Angeles Unified School District v. County of Los Angeles, No. B213703, 2010 DJDAR 1422. Filed January 27, 2010.

■ The Lawyers:

For the school district: Gregory Luke, Strumwasser & Woocher, (310) 576-1233.
For the county: Paul Gale, Troutman Sanders, (949) 622-2704.



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info@urbaninsight.com

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This is a message to all California cities:

Take your hats off to Chula Vista. This city of 210,000 people between San Diego and the Mexican border has adopted a plan for an all-new downtown in the Otay Ranch district that makes most other downtown plans seem tentative and incomplete. Perhaps another California community has the political will to approve something equally forward-looking; for the time being, the Otay Ranch Eastern Urban Center is among the plans that are raising the proverbial bar in city planning.

Although the plan, prepared by RTKL's Los Angeles office, is well executed, that plan itself is not the most significant aspect of the prosaically named Eastern Urban Center. The plan, in fact, contains little that is revolutionary or surprising. The real significance here is that the city and the developer, the Oliver McMillin Company of San Diego, actually seem intent on building the thing. In this regard, Chula Vista has an advantage over most other cities in the Golden State (or the state formerly known as golden, before the credit rating agencies noticed we have run out of money).

Otay Ranch is a 5,000-acre project that's been in development for more than 10 years. The Eastern Urban Center, as one might gather, is the intended downtown for this mushrooming community. Much remains under-developed. All of San Diego County is growing quickly, and Chula Vista by itself expects a population of 280,000 people by 2030. In other words, there is enough demand for housing, neighborhood-serving retail and commercial buildings, at least on paper, to make the project feasible.

In earlier columns, I've referred to such projects as "instant downtowns." And like many other downtowns, both new and old, the Eastern Urban Center – I refuse to call it EUC or "Uke," – wants to be a residential neighborhood. The plan envisions nearly 3,000 dwelling units, many of them in mixed-use formats. (The high density, mixed-use districts predominate in the upper and upper left-hand side of the maps on page 9, while the right-hand and lower areas are mostly residential.)

In many ways, the site plan displays some of the features that have grown familiar since the advent of new urbanism and her unacknowledged half-sister, the soft and squishy new urbanism lite that some developers like to hawk to unwary city officials. Like many other plans influenced by recent planning trends, the plan is arranged



around a newly minted Main Street replete with parks, mixed-use buildings and retail. Many plans promise pedestrian friendliness; this one delivers. The evidence is the "hierarchy of open spaces" that starts with some sensitively scaled, not-too-large parks and plazas along Main Street and that threads its way throughout the entire project in the form of landscaped sidewalks and trails.

One unusual aspect of the plan is the use of height averaging for multi-story buildings. Instead of imposing a hard-and-fast height limit to any given building, the plan proposes an average overall height, which allows

developers some flexibility to build slightly over or under the nominal height limit and density. This is one way to maintain a sense of scale on a given street while remaining attractive to investors.

One possible quibble with the plan is its inward looking-ness. That is, the plan seems to look inward to its own internal Main Street, rather than beefing up commercial development along existing commercial streets, notably Birch Road along the northern edge of the plan and Eastlake Parkway on the east. Nathan Cherry, a vice president of RTKL's Los Angeles office, defends this position by pointing out that the existing streets are essentially suburban strips – a "lifestyle center" surrounded by acres of asphalt is under construction on the north side of Birch Road – and the formality of the Eastern Urban Center



This north-facing artist's rendering shows the density and mix of uses envisioned in Chula Vista's Eastern Urban Center plan.

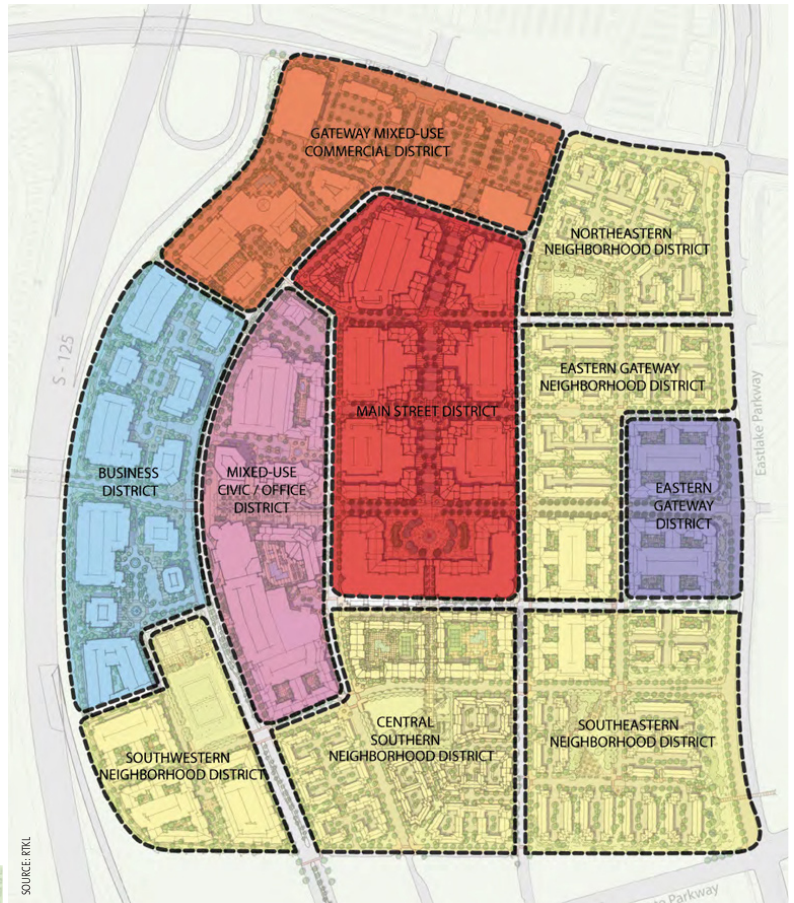
would not comport well with the missing teeth and yawning parking lots of informal strip urbanism. It's difficult to achieve a cohesive urban design if planners do not control both sides of the street. Experienced retail developers tend to shun locations that have retail on one side of the street only, because those streets feel unfinished and uncomfortably open-ended. Also potentially

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discomfiting in the long run is the dramatic difference in both density and scale between the the new downtown and the low-rise, low-density suburbia that surrounds it. In time, of course, we can reasonably expect surrounding neighborhoods to gain density, as well.

In asking other cities to doff their hats to Chula Vista, we recognize that the real heroes of this plan are Chula Vista’s planning staff and elected officials who spent years developing plans for the “Uke” and many surrounding districts. It’s one thing to conceive a nice plan; it’s another thing for cities to build good plans without destructive compromises. Planning, after all, is about action, not tossing another elegant fantasy onto a pile of discarded plans. Insofar as the current market is dismal, we can only hope that both the city and the developer survive until both commercial space and housing are back in demand. That long wait should give the city enough time to plan carefully – and to come up with a better name than Eastern Urban Center.



Development standards and the urban form would vary by district in the Eastern Urban Center.

On a personal note: This column represents the last time that CP&DR’s longtime Editor Paul Shigley will be editing this column. Paul has been a tolerant, supportive and, above all, accurate editor to this somewhat wayward columnist. His thorough knowledge of California geography – including the layouts of many different cities – has prevented many mortifying mistakes from going into print. (I think at one point, I asserted that caimans, a species of crocodilian, could be found nesting in certain Orange County wetlands. I meant to say cormorants.) For that reason and countless more I owe him a great debt. ■

Walkscore As A Planning Tool

According to walkscore.com, I work in a walker's paradise. The walkscore of our office in Ventura is 95. I also live in a pretty good walking environment. My duplex has a walkscore of 78 – and that's way better than the walkscore of the cavernous suburban house I used to live in, which was 3. So, what's all that worth?

The answer is something. Your walkscore now shows up on Zillow.com and Zillow.com when somebody checks out your house. Recent real estate research has found that houses with high walkscores command a price premium, all other things being equal.

The permutations are endless – as we learned this afternoon at the New Partners for Smart Growth conference in Seattle.

At a panel this afternoon, Matt Lerner, the chief technology officer of Front Seat – creator of walkscore.com – was one of several folks who talked about how walkscore is affecting real estate markets and planning processes. Not only does your walkscore show up on Zillow and Zillow.com now, real estate agents in urban areas are using high walkscores in ads. The clear implication is that walkability is a selling point – and walkscore.com is pushing the idea more and more.

“Our whole theory of change with walkscore is that people who otherwise wouldn't care about walking or transit are hungry for information for real estate.” Lerner said. “This is a way to talk to them in way that will affect their future carbon footprint and their health.” He noted that, other than LEED, “there are no smart growth metrics in the real estate listings.”

He said walkscore is adding transit accessibility, roadway networks and “real” walking routes (rather than as-the-crow-flies), and provides its data to any researcher who wants to use it. In particular, he said,

walkscore plans to add road width, road speed, and density of intersections as measurements of connectivity, not just distance. Lerner also said walkscore can be used over time to show which neighborhoods are getting more walkable and which are getting less walkable.

It's also possible to use walkscore on planning projects. Harriet Tregoning, planning director for the District of Columbia, said she is using walkability as a metric in neighborhood planning – and said that even re-planning of Edge City employment centers such as Tysons Corners (which, by the way, has a walkscore of 80) can use walkscore as a way to measure outcomes.

Tregoning said walkscore holds great potential as a way to inform discussions about plans. “Everybody wants all that stuff [meaning coffee shops, libraries, bookstores, etc.] walking distance to their house,” she said. “It's hard to explain that at four units per acre you're not going to get it, and that vast parking lots won't get it for you either. Walkscore is a way to show the you have to have enough people and enough foot traffic to get it.”

A number of questioners asked whether walkscore was going to move toward the idea of “placescore.” Lerner said they were considering it and had even thought about creating a “Jane Jacobs score” by converting Jacobs's criteria for vibrant neighborhoods into an algorithm. But, he said, “It starts to feel a little more political because we'd be saying to people, your neighborhood isn't healthy. Walkscore is more objective. Some realtors tell us their clients like a low walkscore because it's the get-away-from-it-all score.”

– BILL FULTON | FEBRUARY 04, 2010 ■

Franchise Burger Revenues Versus Small Town Charm

Winters – one of the most charming towns in the Central Valley – is considering whether to accept the town's first franchise fast-food outlet. I almost never take sides in these things, but I'm hoping the city's leaders say no to the proposed Burger King.

It wasn't too long ago that Winters was little more than a struggling Yolo County farm town. In recent years, though, civic leaders, property owners and merchants have revitalized the downtown. It's now a lively community center that features galleries and boutiques for visitors, shops and services oriented to locals, and enough variety in restaurants and watering holes to satisfy just about everybody.

You'd never know anything about the rise of Winters as a vibrant town if all you did was drive through on the I-505 freeway. Except for a lone gas station at the offramp, Winters has no presence on I-505, even though the city limits extend to the freeway. If you want to grab something to eat or a decent cup of coffee, you've got to get off the freeway, drive a short distance into town and then – gasp! – get out of your car and walk into a non-franchise operation.

A few years ago, I wrote about how swell it is for people like me – who need strong coffee for frequent long-distance drives – that so many towns have an instantly identifiable Starbucks. But I still believe that having the same darn Starbucks store everywhere is bad for people who actually live in those towns. For some reason, Winters has escaped this

phenomenon. Yes, the town does have a Subway, a Roundtable and a Pizza Factory. But it doesn't have the usual array of franchise boxes and parking lots jammed against the freeway ramps. That sets Winters apart in the Central Valley.

Of course, cities can't pay police officers or pave streets with charm. Cities need actual money, and that's one of the biggest arguments for the Burger King/76 gas station project proposed by Singh's Foodservice. A busy stop on the interstate can produce meaningful revenue for a small town such as Winters. And having freeway ramps full of franchise offerings doesn't necessarily toll the death bell for a downtown. A favorite Central Valley small city downtown is nearby Woodland, whose I-5 freeway ramps offer all the usual McFood.

Still, Winters feels a little fragile. If the drive-through burger joint/gas station is the start of a new freeway-oriented commercial district, the implications for the rest of town are not good. Such is the nature of “fiscalized” land use planning. Revenue needs often trump long-term community building.

Sounds like a decision on the Burger King is still a little ways off. If Winters says no, I promise I'll do my part by finding my way to Steady Eddy's for a sandwich and cup of coffee the next time I'm driving down I-505. We'll all be better off.

– PAUL SHIGLEY | FEBRUARY 2, 2010 ■

