

# Tsunami Maps Depict Extreme High-Water Mark

## Data Intended For Emergency Management May Inform Coastal Planning Strategies

BY JOSH STEPHENS

California has a yet another seismic threat to prepare for, thanks to a set of new maps that depict a ferocious line of water that may, if earth moves in just the wrong way, someday surge inland along the state’s coastline. Experts are saying that these new maps should be used to plan for emergency evacuations, not changes in land use planning. In at least one case, however, the Coastal Commission is already considering policies that would take tsunamis into account when approving developments.

Approximating maximum inundation for a worst-case scenario tsunami, the line washes over all of Newport Bay and Marina del Rey, wipes out parts of downtown Santa Cruz, and makes half of Seal Beach disappear. Some of the state’s most fabled real estate from La Jolla to Malibu to Montecito would wash out with the tide. It would yet again pummel Crescent City, itself the victim of the nation’s most destructive and deadly recorded tsunami, a 20-foot wave that struck on Good Friday, 1964.

### An Unpredictable Threat

Hardly an inch of the state’s 1,200-mile coastline is shielded from tsunamis, which can be triggered by local events – earthquakes and underwater landslides – or by those that occur almost anywhere in the Pacific basin.

“Earthquakes are pretty localized,” said Rick Wilson, engineering geologist with the California Geological Survey. “But for distant tsunamis that come across the Pacific, we’re dealing with our entire coastline in California.”

The 130 maps, which cover over 90 percent of the state’s populated coastline, culminate a multi-year collaboration between the California Geological Survey, the University of Southern California Tsunami Research Center, and the California Governor’s Office of Emergency Services, to marry the most current seismic data with precise measurements of offshore bathymetry and coastal topography.

The maps assign to the tsunami threat – CONTINUED ON PAGE 4

# Local Planning Funds Will Flow Through Water Bond

*insight*  
WILLIAM FULTON

The old saying in government is that in order to understand what’s going on, you’ve got to follow the money. In local planning throughout California, that’s becoming increasingly easy to do. Local government revenues – property tax, sales tax, development fees, redevelopment funds – are in steep decline. Cities and counties are laying off planners, canceling or truncating planning contracts, and punting as much work as they can into the future.

Increasingly, the money to plan the future of California’s communities is flowing from the state and federal governments. At the federal level, the troika of agencies charged by the Obama Administration with promoting “sustainable communities” – HUD, Transportation, and EPA – CONTINUED ON PAGE 5

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**Playa Vista Phase 2 Wins Approval.** For the second time in six years, the Los Angeles City Council has approved the second phase of Playa Vista, the massive mixed-use development that has raised controversy and inspired opposition for the better part of the past three decades. Located just inland from Marina del Rey on the 1,000-acre former site of Hughes Aircraft, Playa Vista's first phase is nearing full build-out.

Initially approved in 2004, Phase II has been on hold since 2007, when an appellate court ruled that it found problems with its environmental impact report.

The re-approval – which amends the city's General Plan – passed on a 12-2 vote on March 26, with Bill Rosendahl, whose council district includes Playa Vista, voting against. Opponents have long criticized the project for, among other things, being too dense, generating too much traffic, setting aside too little green space, and destroying wildlife habitat (see *CP&DR*, Oct. 2003)

Whereas Phase I is largely residential, Phase II, named "The Village," envisions a holistic urban environment with the inclusion of a shopping center, office park, and 2,800 housing units on a total of 111 acres. A proposal to build a movie studio for Dreamworks Pictures in Phase II has been abandoned.

**Study Contends Conservation Does Not Reduce Housing Stock.** Housing advocates and conservationists need not see each other as the enemy, according to a study released this month on the relationship between land protection and the creation of housing in the Silicon Valley. The study analyzed the 41,000 protected hectares of open space in the southern half of the San Francisco Bay region, between San Jose and San Bruno, and con-

cluded that conservation encroached on relatively little buildable land.

Led by Carrie Denning, of Stanford University's Spatial History Project, the study sought to determine whether the over 700,000 protected hectares in the greater Bay Area was correlated with the region's high housing prices. Denning and her team collected housing data to envision what would have been built if those areas had not been set aside for conservation.

The study concluded that only 51,000 units – in an study area that encompasses 790,000 existing units – have not been built as a direct result of conservation; the authors consider this number to be a "relatively minor" factor in the area's housing prices.

The conclusions stem from the finding that the vast majority of conserved land is either too steep, wet, or unstable to have supported housing in the first place or that development on those lands would have taken place at relatively low densities, thus resulting in a relatively small net loss of would-be units.

**Interior Department Eyes Four California Sites for Monument Status.** An internal but widely leaked memorandum from the Department of the Interior lists 14 areas in the west that are worthy of National Monument Status, including four sites in California. National Monuments provide protection roughly equivalent to that of National Park status but typically receive less funding than national parks. National Monuments can be designated by presidential order and do not require approval of Congress.

The largest of the four sites is the 3 million-acre expanse of the Modoc Plateau, in the extreme northeastern corner of the state. The memo calls it the second-largest unprotected area in the state and

cites its "unbroken vistas, abundant wildlife, and... undisturbed landscape." The proposed area encompasses the Skeddadle Mountains.

The second-largest of the proposed monuments is Berryessa Snow Mountains, a rugged wilderness stretching roughly north-northwestward, parallel to Interstate 5, from Davis to Snow Mountain in the Mendocino National Forest. Calling Berryessa Snow "one of Northern California's most biologically diverse landscapes," The Wilderness Society has been lobbying for its protection. The area is home to bald eagles, black bears, tule elk, and includes 7,000-foot Snow Mountain and Cache Creek, which has been designated a Wild and Scenic River.

The memo also recommends monument status for the Bodie Hills and its well preserved ghost town of Bodie, at the northern end of the Owens Valley. Finally, the memo calls for an expansion of the Cascade-Siskiyou National Monument. Created in 2000, the current monument is located in southern Oregon, and the memo notes that it was arbitrarily cut off at the California border.

The memo does not include a timeline or commentary on the likelihood that any sites will in fact receive National Monument designation. It does, however, call for an "assessment of public and Congressional support."

**Ballot Initiative to Salvage Local Funding Gains Support.** More than 820,000 signatures have been gathered to help qualify the Local Taxpayer, Public Safety and Transportation Act for the November 2010 statewide ballot. The initiative attempts to safeguard funds, approved by ballot initiatives, that have been diverted from local entities to the state budget. Supporters of the measure contend that the state has borrowed roughly \$5 billion to help close its budget gap and – CONTINUED ON PAGE 3

Due to logistical difficulties this month, this double-issue replaces both issues for the month of March. *CP&DR* apologizes for the disruption and thanks you for your understanding.

We will return to regular biweekly publication next month.

We have also been experiencing some technical difficulties with our online subscription database. If you have received any notices that you believe to be in error, please do not hesitate to contact us at [info@cp-dr.com](mailto:info@cp-dr.com).

– JOSH STEPHENS ■

## editor's note



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that these cuts have hurt local emergency response, medical services, transit and roads, and other local services.

The measure would eliminate provisions that allow the state to divert such funds, even in times of budget emergencies.

To qualify for the ballot, the measure needs just under 700,000 valid signatures; Californians to Protect Local Taxpayers and Vital Services, the group that is organizing the signature drive, reports that it has already collected over 820,000 signatures. The mayors of nine of the state's ten largest cities have signed a letter pledging their support for the measure.

**Los Angeles Light Rail Takes Two Steps Forward, One Step Back.** The month the Los Angeles County Metropolitan Transportation Authority approved funding for two major light rail projects on opposite ends of the county: Phase II of the Expo Line, a 6.6-mile, \$1.5 million extension between Culver City and Santa Monica as well as the 11-mile, \$690 million Foothill Extension of the Gold Line from Sierra Madre to Azusa. The initial phase of the Expo Line, from downtown Los Angeles to Culver City, is currently under construction.

Both projects are funded by Measure R, a county sales tax initiative, and are the first of several major capital projects that the tax will fund.

The Gold Line Foothill Extension has received consistent, enthusiastic support from a coalition of cities in the San Gabriel Valley and Inland Empire. The extension will include stops in Arcadia, Monrovia, Duarte, Irwindale, and Azusa. It is scheduled for completion in 2014, will create an unbroken U-shaped line running from East Los Angeles, through downtown, northward to Pasadena and finally eastward to Azusa.

The Expo Line, however, has been mired in controversy. Last week a group of homeowners filed suit against Metro, contending that Metro disregarded the line's impact on local traffic and that several crossings should be grade-separated. Metro insists

that the crossings are appropriate for traffic levels and has vowed to fight the suit.

**Sacramento Considers Proposals for K Street Mall.** Seeking to revitalize two blocks of the strategically located but underutilized K Street pedestrian mall in downtown Sacramento, the Sacramento City Council held a session this month to consider proposals from four development teams. The mall has languished in part because of a glut of retail space in the Sacramento region and has been in limbo as local officials have tried, so far unsuccessfully, to locate a new basketball arena at one end (*CP&DR Blog*, Nov. 17, 2009).

Two of the four proposals, from Bridge Housing and D&S Development, focus on housing, with 136 and 345 units, respectively. Those proposals would retain and seek to revitalize existing storefronts. Developer David Taylor has proposed a mix of new development, including about 50,000 square feet each of new retail and office space.

Rubicon Partners seeks more a more dramatic transformation. It has proposed a grab-bag of developments and urban amenities, including 400 units of housing, 250,000 square feet of offices, a hotel, grocery, permanent farmers' market, and a 2,000-seat entertainment venue.

Final recommendations are expected to go to the city council in May.

**Las Vegas High-Speed Rail Anticipates Groundbreaking This Summer.** Though it still awaits certification of its EIR and approval from a variety of federal and state agencies, DesertXpress Enterprises has announced that it intends to begin construction of a high-speed rail line between Victorville and Las Vegas before by this summer. The 185-mile, \$4 billion line is being privately funded and designed to link up with the state high-speed rail system. If groundbreaking goes as planned, revenue service could begin as early as 2014.

DesertXpress plans a station in the City of Victorville with a 15,000-space parking lot along the

Interstate 15 corridor that traditionally handles the bulk of traffic between Southern California and Las Vegas. Three station sites are under consideration, as are several alignment alternatives.

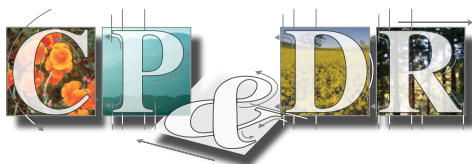
The alignment will depend on the federal government's Record of Decision, which will be handed down by the Federal Railroad Administration in cooperation with the Federal Highway Administration, Bureau of Land Management, Surface Transportation Board, and National Park Service.

**Against the recommendation** of the San Diego County Planning Commission, the San Diego County Board of Supervisors rejected a proposed 2,700-home development on 2,300 acres along Interstate 15 near Escondido. The Merriam Mountains project was seen by some as a key piece of the county's economic recovery and its efforts to provide housing for the one million-plus residents that the county expects to add by 2050.

Stonegate Development Group, which had been working on the project for roughly a decade, contended that the project would create construction jobs and stimulate the North County, but opponents were wary of the project's density and its generation of greenhouse gas emissions. The development would have included some commercial, retail, and open space but would have been surrounded by low-density development and open space.

Supervisor Ron Roberts cast what is considered the crucial no vote, with Supervisors Bill Horn and Greg Cox already having pledged their support prior to the vote. Supervisors Diane Jacob and Pam Slater-Price. Roberts said that he voted against the project because the county is still updating its General Plan and, in particular, is trying to devise a strategy to address greenhouse gas emissions generated by commuting. Current zoning allows for only 375 homes on the site, and the site is not near major transit routes.

Stonegate has not indicated whether it will revise the plan or scrap the project altogether. ■



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# Asian Tsunami Inspired California Preparedness Effort

– CONTINUED FROM PAGE 1

a visual element that is absent from the prediction of earthquakes. Contrary to this discomfiting picture, however, researchers and state officials alike caution that the maps' projections in no way mean that the state's coastal communities and nearly 1 million coastal residents should permanently decamp for higher ground.

Memories of the 2004 south Asian tsunami – and of the statewide warnings that were sounded after the February 25 Chilean earthquake – make clear the destructive threat of tsunamis. The maps were prompted by recommendations in a 2005 risk assessment report published by the state Seismic Safety Commission. That report, which was prompted by the south Asian event, noted that roughly 80 tsunamis have struck California over the past 150 years and that two of them were destructive. Overall, the report concluded that tsunamis represent a “significant threat to life and property in California.”

But tsunamis' infrequency and unpredictability render them, according to the current research, too speculative a threat to warrant changes in coastal land use patterns for the foreseeable future.

“These maps were not produced for land use planning and we don't suggest they be used for that,” said Aggeliki Barberopoulou, engineering professor at USC and co-leader of the mapping project. “There is no time factor in these maps in the sense that this is not a 50- or 100-year occurrence like we have with flood maps. Maps used for land use

planning purposes would have a time factor.”

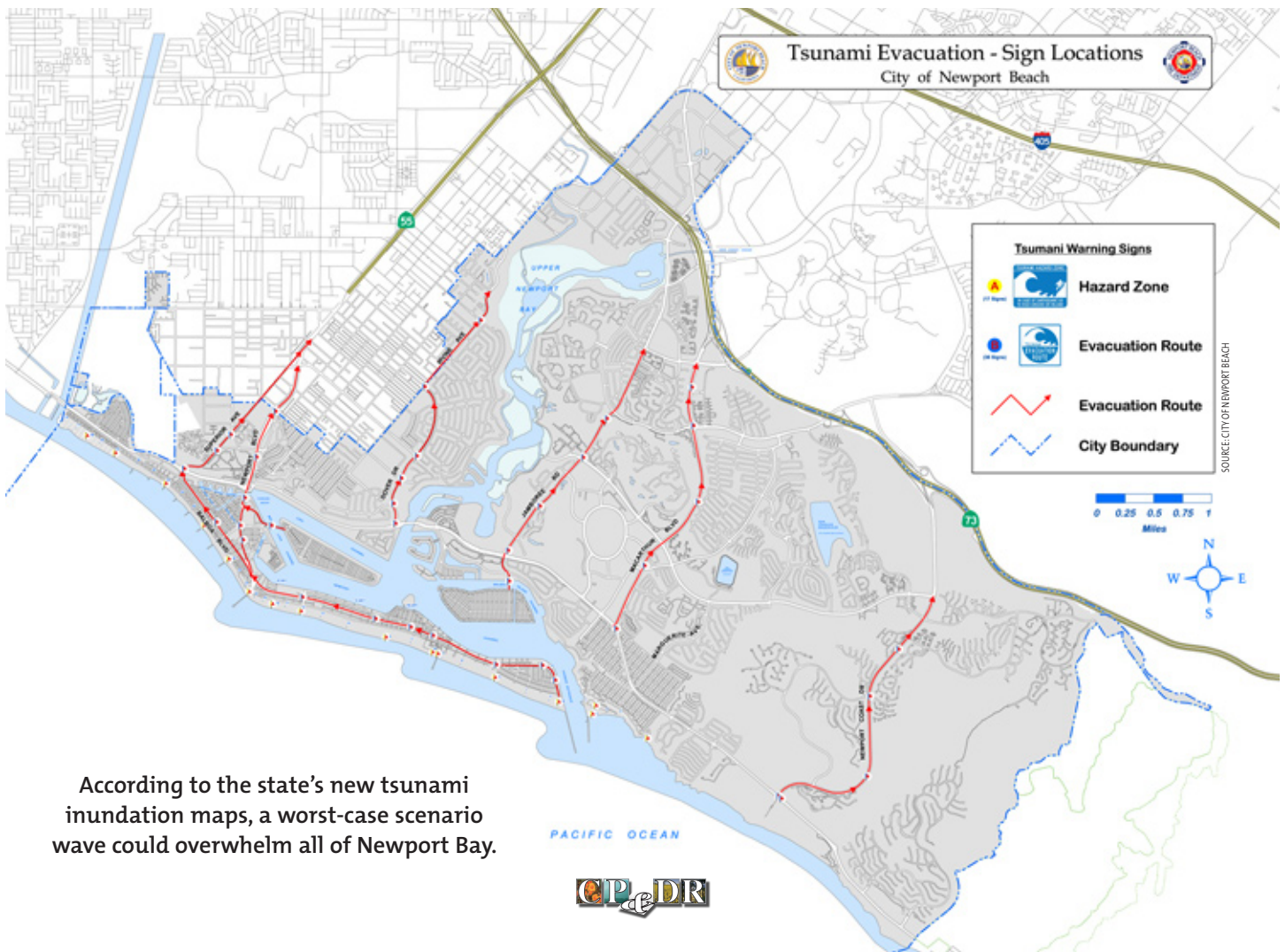
## Worst-Case Scenario

Since their unveiling in December, the maps have been distributed primarily to county emergency management agencies, which, in turn, have distributed them to their coastal communities. The maps' sole explicit function is to help those agencies craft emergency management plans, including notification systems, signage, and evacuation routes. California's warnings come mainly from the West Coast/Alaska Tsunami Warning Center, run by the National Oceanographic and Atmospheric Administration.

“I consider these maps a prerequisite for evacuation planning and adequate response on the part of cities and counties on the coast,” said Jim Goltz, Earthquake and Tsunami Program Manager at the California Emergency Management Agency. “It's up to [local officials] to develop evacuation maps, evacuation plans, places where people are safe, and to post signs to indicate where there is a tsunami hazard.”

“We are focusing on them purely as emergency management tools,” said Susan Asturias, senior emergency services coordinator for San Diego County. “We know they're not legal documents for land use.”

The maps apply data from complex models to GIS maps, drafts of which were sent to local officials for their – CONTINUED ON PAGE 12



According to the state's new tsunami inundation maps, a worst-case scenario wave could overwhelm all of Newport Bay.



— are seeking additional funds from Congress and ramping up new programs. Meanwhile, the state’s general fund is all but bankrupt. In the near future, then, virtually all of California’s planning efforts will depend on bond money.

As of February, the state had authorized \$151 billion in general obligation bonds, \$48 billion of which has yet to be issued. Much of that money will affect planning, directly or indirectly.

In the immediate future, there’s Proposition 84, the 2006 water quality bond issue which still has some \$60 million earmarked for local planning for elements such as parks and natural resource protection. About a third of the money will be given away this year. (Some money has already been meted out to regional planning agencies — known as metropolitan planning organizations (MPOs) in federal transportation lingo — to fund improved computer modeling of growth scenarios.) And in the longer term, there’s the both state and federal money for the California High Speed Rail system — more than \$10 billion so far — much of which is sure to be peeled off to plan the areas near the high-speed rail stations.

On one level, the Prop. 84 and High Speed Rail funds may save planning in California by providing “bridge” funding to keep planning projects going until the economy recovers. But on another level, these funds may well shift planning priorities in California away from local governments to the regional agencies and Sacramento — which will inevitably mean less focus on conventional planning and more focus on planning transit station areas and planning for reductions in greenhouse gas emissions.

The Prop 84 funds are in the hands of a newly formed state entity called the Strategic Growth Council (SGC) — a collection of four Cabinet secretaries, plus the director of the Governor’s Office of Planning & Research, and one public member appointed by the governor, former Gap executive Bob Fisher. (SGC is staffed, for now, by OPR, though that agency may be eliminated as part of the next round of budget cuts.) Proposition 84 originally contained planning money intended mainly to promote the conservation of resources, such as air and water quality, agricultural land, and energy efficiency. Recently, however, the law that created SGC (see *CP&DR Insight*, March 2008) has specifically broadened Prop 84’s mandate to include greenhouse gas emissions reductions pursuant to AB 32.

The Strategic Growth Council spent most of the fall and winter figuring out how to dole out the \$65 million in funds — debating, for example, whether to tie the funds closely to SB 375 implementation or, alternatively, whether to give local governments wide latitude to pursue whatever plans they wish. The final guidelines for the planning grants are scheduled to be adopted in mid-March, with proposals due to SGC by the end of May. The allowable grants range in size from \$100,000 to \$1 million. (SGC recently adopted final guidelines for a separate pot of money for “urban greening” grants, and those proposals are due at the end of April.)

In its final draft guidelines, the Strategic Growth Council came down kind of in the middle of the state-vs.-local debate — still lean-

ing toward supporting local planning, but earmarking some funds for regional purposes as well. One thing is for sure, however: there’s a definite AB 32/SB 375 slant to the Strategic Growth Council’s guidelines.

The proposed final guidelines include three focus areas:

- Local “sustainable” planning, including things like general plans, climate action plans, and zoning codes. In this round, these efforts will get about \$14 million statewide.

- Regional planning that supports the efforts of regional planning agencies in implementing SB 375, such as blueprint or sustainable communities plans. SGC has earmarked \$4 million in this round for these efforts.

- Regional planning involving multiple players — not just the regional planning agencies but also other agencies as well. This could include innovative efforts such as regional carbon offset programs, blueprint programs for rural areas, or climate action plans that include whole counties and/or multiple agencies. Some \$2 million has been earmarked in this round for these purposes.

These specific categories mark a change from the draft guidelines that were issued last fall, which were much broader in scope and did not call out different focus areas. When the draft guidelines were first issued, the feedback generally fell into two categories.

The first was a suggestion that most of the money — even money to do local plans — should flow through the regional planning agencies, which are responsible for implementing SB 375. This suggestion came, not surprisingly, from the regional planning agencies themselves, who are increasingly driving planning in the state by a series of “smart growth” grant programs.

The second was a suggestion from smart growth advocates that the program focus on down-and-dirty implementation tools such as form-based codes, rather than on broad

planning documents.

In the end, SGC mostly stuck to its original game plan of earmarking the money for local governments to do local plans, rather than turning the money over to the regional planning agencies. But it did so with a strong focus on climate change — and at least an implicit guideline that the local plans should support SB 375 and planning for greenhouse gas emissions reductions.

And can \$14 million make a difference? In the big picture, it’s not that much money. It will pay for maybe 10-15 general plans or, possibly, 30 or so specific plans or zoning overhauls. It really all depends on whether the Strategic Growth Council is truly strategic about distributing the funds. In ordinary times, this kind of grant money would probably flow only to those cities and counties highly motivated to do something different — a new kind of plan, or one focused on climate issues. In desperate times, the money is much more likely to flow to localities that wouldn’t otherwise be thinking about these issues but that are willing to give them a look for the sake of qualifying for a grant. These localities that could serve as unusual test cases for innovative planning. ■

“ The state’s general fund is all but bankrupt. In the near future, then, virtually all of California’s planning efforts will depend on bond money. ”

# legal digest

## Local CEQA Appeals Not Exempt From Filing Fees

### City Of Glendora Rejected Appeal For Lack Of Payment

BY KATHERINE J. HART

Upholding a 27-year-old California Supreme Court determination, the Second District Court of Appeal has ruled that local agencies may impose a fee for the filing of an administrative appeal of a California Environmental Quality Act (CEQA) decision.

In the case at hand, the City of Glendora Planning Commission adopted an addendum to a negative declaration, stating that the project could cause no significant impacts, and approved a 125-bed assisted living facility on February 12, 2008. Glendora resident and project opponent Erica Landmann-Johnsey wanted to appeal the commission's decision to approve the project without an environmental impact report to City Council, but she was required to pay a \$2,000 appeal fee. She went ahead with her appeal and paid the fee under protest. The City Council subsequently denied her appeal.

In response, Landmann-Johnsey and the organization Friends of Glendora filed a writ of mandate alleging, among other things, that the city violated CEQA when it assessed the \$2,000 fee. The city demurred on the ground that the complaint was filed outside the 120-day statute of limitations from the date the City Council instituted the fee for such appeals; the fee, imposed for a variety of appeals, began in

2004. The city also argued that charging such a fee was in compliance with CEQA pursuant to the California Supreme Court's decision in *Sea & Sage Audubon Society, Inc. v. Planning Commission*, (1983) 34 Cal.3d 412. The trial court ruled for the city, and the Court of Appeal affirmed.

In conducting its analysis, the Court of Appeal reviewed *Sea & Sage Audubon*. In that case, the petitioners appealed to the Anaheim City Council a city Planning Commission decision to certify an environmental impact report and approve subdivision maps for a community development project. The petitioners contended the EIR was inadequate. The petitioners, however, did not pay an appeal fee to the city, and the city rejected the appeal (the opinion is conspicuously vague on whether the reject was due directly to the absence or the lateness of the fee – or both). The petitioners filed a writ of mandamus to compel the city to vacate the approval of the project. The city moved for summary judgment, arguing that petitioners never officially filed an appeal with the city and therefore failed to exhaust their administrative remedies. After losing at the trial court, the petitioners appealed on the ground that the city's fee for filing the administrative appeal was invalid. The California Supreme Court rejected that argument, citing Government Code § 66452.5, which authorizes a city to permit interested persons to appeal a decision

of a planning commission, and Government Code § 66451.2, which authorizes cities to establish reasonable fees for procedures associated with the processing of maps and other local ordinances.

In an attempt to distinguish her case from the *Sea & Sage Audubon* case, Landmann-Johnsey argued that Public Resources Code § 21151, subdivision (c) – which creates the right to appeal a lead agency's CEQA document – does not indicate a fee is required to make such an appeal. Thus, she argued, the city may not impose a fee for administrative CEQA-based appeals such as hers.

The Second District rejected this interpretation, instead finding that the California Supreme Court did not require a specific statutory authorization under CEQA for the appeal of a planning commission decision to the city council. The court of appeal also found that a section of CEQA (Public Resources Code § 21083.1) did not prohibit agencies from imposing reasonable fees for filing administrative appeals of decisions. The law must be construed in a practical and common sense way, the court concluded. ■

■ The Case:

*Friends of Glendora v. City of Glendora*, No. B215114, 2010 DJDAR 2010 DJDAR 3134. Filed March 1, 2010.

■ The Lawyers:

For Friends of Glendora: Cory J. Briggs, (909) 949-7115.

For the city: D. Wayne Leech, (626) 443-0061.

### ceqa

## First District Upholds CEQA Distinction Between 'Agreement' and 'Project'

BY CORI BADGLEY

In yet another California Environmental Quality Act case involving whether an agreement between a tribe and a city constitutes a

"project," the First District Court of Appeal has held that the law did not apply to an agreement requiring a city's formal support of a proposed casino in exchange for the

tribe's funding of undefined city services and improvements.

To ensure that an agency does not stray from the Califor- – CONTINUED ON PAGE 7

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nia Environmental Quality Act (CEQA), the agency must first ask itself in relation to any action: “Is it a project?” Only “projects” are subject to CEQA; if something is not a project, no environmental review is necessary. In this case, the city determined in 2006 that a municipal services agreement between the Scotts Valley Band of Pomo Indians of California and the East Bay city of San Pablo did not constitute a project and CEQA did not apply. Various neighborhood and environmental groups brought a writ of mandate challenging the city’s determination.

### Case Background

The Scotts Valley Band of Pomo Indians is a landless tribe that intends to establish its casino in San Pablo in lieu of building one on territory that it controls directly. The Scotts Valley casino would be located near an existing casino in San Pablo operated by the Lytton Band of Pomo Indians.

In this case, the agreement required the Scotts Valley Band to make payments for fire, police and public works services, while the City of San Pablo in turn agreed to support the tribe’s fee-to-trust application submitted to the federal government. The agreement specifically stated that it would not result in any physical changes to the environment and that the city would comply with CEQA at a future date for any project requiring environmental review.

The petitioners, led by Parchester Village Neighborhood Council, asserted that the following components of the agreement constituted a “project” under CEQA, and, therefore, that the court should void the agreement and require environmental review: 1) the proposed construction of the casino; 2) the city’s support of the fee-to-trust application; 3) fire improvements; and 4) transportation improvements. The court, however, held that the agreement did not constitute a project because the city had no authority over the casino and the remainder of the agreement merely involved funding mechanisms and did not involve alternations to the built or natural environments.

### Court’s Decision

The court began its discussion by quoting Public Resources Code § 21065, which defines a project: “An activity which may cause either a direct physical change in the environment, and which is any of the following: (a) An activity directly undertaken by any public agency. (b) An activity undertaken by a person which is supported, in whole or

in part, through contracts, grants, subsidies, loans or other forms of assistance from one or more public agencies. (c) An activity that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.”

Agreements between federally recognized tribes and municipalities relating to the acquisition of trust lands for the construction of casinos have a history of CEQA litigation. Although the courts have determined that, because of tribes’ semi-autonomy, the acquisition of the lands and the construction of the casinos are not governed by CEQA, the agreement itself may require environmental review if the agreement commits the agency/municipality to a specific action. In *County of Amador v. City of Plymouth*, (2007) 149 Cal.App.4th 1089, the court ruled an agreement was a project because the city had to vacate a city road and remodel a fire station (see *CP&DR Legal Digest*, August 2007). In *Citizens to Enforce CEQA v. City of Rohnert Park*, (2005) 131 Cal.App.4th 1594, the court decided the agreement was not a project because it merely authorized a funding mechanism (see *CP&DR Legal Digest*, October 2005).

In relation to the petitioners’ contentions regarding the casino and the city’s support of the fee-to-trust application, the court cited previous decisions concerning agreements with tribes and, consistent with those cases, found that the agreement does not constitute a project. The agreement gave the city no authority over the fee-to-trust application or casino construction. And, although the federal government must consult with the city as it considers the tribe’s application, this consultation does not give the city any power regarding whether the application is granted, according to the court. Additionally, the court held that the agreement’s requirement that the city support the tribe’s proposed application and casino did not change the fact that the city had no authority over the tribe’s proposed actions.

As to the agreement’s provisions regarding fire services and transportation, the court determined that those provisions only provided funding mechanisms, which were too speculative to constitute a project. Petitioners specifically asserted that the agreement required the establishment of a fire protection and emergency response agreement (by which the city would respond to emergencies at the casino), which would result in the construction of fire facilities and the addition of turn lanes or other traffic mitigations. According to petitioners, both of these

requirements committed the city to specified actions.

The court disagreed, finding that the potential construction of fire facilities in the future was too speculative to constitute a project. The court stated: “As a practical matter, we find it difficult to conceive of how an EIR [environmental impact report] could be used to sensibly evaluate a project that has not yet been assigned a physical location.”

In regards to the traffic improvements, the court noted that most of the mitigation items came out of the federal environmental impact statement process, and none of the traffic improvements would be within the city’s boundaries. Therefore, the city had no immediate authority over either the planning or implementation of these improvements. If, as the petitioners asserted, the city becomes the agency to build or accept the improvements, then the improvement may constitute a project. However, according to the court, the possibility that the city would be involved in the improvements was speculative at this time.

The court concluded that the city’s mere demonstration of support for the tribe’s proposed casino, and the tribe’s agreement to pay the city for certain future services, did not fit into the definition of a project under Public Resources Code § 21065. ■

#### ■ The Case:

*Parchester Village Neighborhood Council v. City of Richmond*, No. A123859, 2010 DJDAR 2830. Filed February 24, 2010.

#### ■ The Lawyers:

For Parchester Village: Stephan Volker, (510) 496-0600.

For the city: George Yuhas, Orrick, Herrington & Sutcliffe, (415) 773-5700.



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## ceqa

## Existing Conditions, Not Permits, Provide Baseline For Air Impacts

BY KATHERINE J. HART

The California Supreme Court has ruled that a project's air impacts are to be measured against existing ambient conditions, not against a permitted level of operations for the emitter. The unanimous ruling upholds an appellate court's decision that a proposed expansion of a ConocoPhillips oil refinery in Wilmington and Carson must be measured against on-the-ground conditions and, therefore, requires an environmental impact report (see *CP&DR Legal Digest*, March 2008).

In 2003, ConocoPhillips proposed to modify and augment existing facilities in order to produce an ultra-low sulfur diesel fuel. These changes would entail, among other modifications, a substantial increase in the operation of its cogeneration plant and boilers, which were subject to existing permits limiting their rate of heat production. ConocoPhillips applied to the South Coast Air Quality Management District for a permit to make the modifications.

SCAQMD prepared an initial study and then a negative declaration, concluding the project would not have any adverse environmental impacts. However, during the environmental review process, the environmental justice group Communities for a Better Environment (CBE) submitted evidence that the project would increase nitrogen oxide (NOx) emissions by more than 600 pounds per day and that this amount could cause adverse health affects in surrounding neighborhoods.

In response to this CBE's contentions, SCAQMD determined the increased steam generation from the cogeneration plant, in addition to other newly proposed activities, would create between 201 and 420 pounds per day of additional NOx emissions. Although the district had adopted a threshold of significance for NOx of 55 pounds per day, it determined that the revised

increase was acceptable because the project would not have a significant environmental impact because the increased steam generation would not exceed the maximum rate of heat production allowed under the existing permits. CBE nevertheless filed suit against SCAQM, with ConocoPhillips as a real party in interest. The two mounted a joint defense.

The Supreme Court analyzed two questions: First, whether the prior operating permits established a baseline for review under the California Environmental Quality Act (CEQA) of a "new project." Second, whether the record supported a fair argument that the project would have significant adverse effects on the environment and, therefore, require preparation of an environmental impact report (EIR).

On the first question, the district and ConocoPhillips argued that using the pre-project NOx emissions as a baseline for analyzing the project's effects would violate vested rights held by ConocoPhillips to operate its boilers at permitted levels. The court disagreed, citing § 15125(a) of the CEQA Guidelines. "[T]he impacts of a proposed project are ordinarily to be compared to the actual environmental conditions existing at the time of CEQA analysis, rather than to allowable conditions defined by a plan or regulatory framework," Justice Kathryn Mickle Werdegar wrote for the court.

SCAQMD and ConocoPhillips contended that using the existing conditions as the baseline for analysis would violate the statute of limitations, because CEQA analysis of the diesel fuel project should not constitute review of the district's previous approval of the boiler permits. Again, the court disagreed. It noted that CBE did not attempt to set aside the district's approval of the boiler permits – only approval of the ultra-low sulfur diesel

fuel project, which was timely challenged.

Finally, SCAQMD and ConocoPhillips argued that numerous Court of Appeal decisions supported the use of maximum operational levels allowed under a permit as a CEQA baseline. This is known as the Fairview line of cases (see *CP&DR Legal Digest*, April 1999). The court rejected this argument and factually distinguished the ConocoPhillips project from the projects in the Court of Appeal cases. The latter had involved modification of a previously analyzed project or the continued operation of equipment without significant expansion of use, the court determined.

"We conclude the district's use of the maximum capacity levels set in prior boiler permits, rather than the actually existing levels of emissions from the boilers, as a baseline to analyze NOx emissions from the diesel project was inconsistent with CEQA and the CEQA Guidelines," Werdegar wrote.

On the second issue – whether the record provided substantial evidence of a fair argument that the project would have significant adverse effects – the court held that the district's own negative declaration provided evidence the project would have substantial air impacts. Thus, an EIR should have been prepared. The court remanded the issue of how to calculate the true baseline to the district for analysis in the project EIR. ■

■ The Case:

*Communities for a Better Environment v. South Coast Air Quality Management District*, No. S161190, 2010 DJDAR 3872. Filed March 15, 2010.

■ The Lawyers:

For CBE: Adrienne Bloch, (510) 302-0430.

For the South Coast Air Quality Management District: Bradley Hogin, Woodruff, Spradlin & Smart, (714) 558-7000.

For ConocoPhillips: Jocelyn Thompson, Alston & Bird, (213) 576-1104.

**Covered by chaparral and dry brush,** the foothills of the San Gabriel Mountains in Los Angeles and San Bernardino counties are at a perennial risk of wildfire. And when the seasonal Santa Ana winds sweep through, they bring Apocalyptic storms of fire and ash that rain down on, and sometimes consume, the communities that press up against these slopes.

Into that path comes a proposal the G. Miller Development Company to build 110 luxury homes on 670 rugged acres just outside the Rancho Cucamonga city limits and bordering San Bernardino National Forest. Known currently as Carrari Ranch, it's a plan that many locals call a dangerous gamble, one that will place hundreds of new residents – and local emergency responders – in heart of fire country.

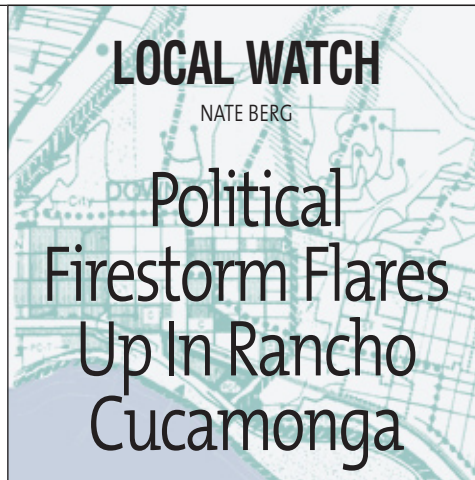
More than 30 residents spoke out against the project at an August 2009 Rancho Cucamonga Planning Commission hearing. None spoke out in favor. And yet, the project remains under consideration as the Rancho Cucamonga Planning Commission awaits the release of a revised environmental impact report. The proposal calls for Rancho Cucamonga to annex the land.

But it's not just the fire risk that has locals up in arms about the proposed development. What has them uneasy about the plan is the big name behind it: U.S. Congressman Gary Miller. A Republican who has represented nearby communities of Brea, Diamond Bar and Yorba Linda since 1998, Miller is also the sole proprietor of the development company that bears his name. Though Miller's job gives him no direct jurisdiction over local land use, neighbors worry that his influence and reported close relationship with Rancho Cucamonga Mayor Donald Kurth are enabling the looming approval of a project that some consider a disaster waiting to happen.

"We all know that there are fires, floods and earthquakes," said Danae Delaney, an opponent of the project who's part of the Rancho Cucamonga Conservancy. "That area is a high fire risk, a high flood risk, and in an earthquake zone with many faultlines running through." Delaney said that the homes would themselves be a risk to their occupants, and if a blaze were to threaten the homes, "It's just putting our fire personnel and our emergency rescue personnel more at risk," said Delaney.

In 2003, a fire known as the Grand Prix burned nearly 8,000 acres in and around Rancho Cucamonga, prompting the evacuation of nearly 2,000 homes, 13 of which were destroyed. City estimates put the damage from that fire at more than \$7 million. The next year, a fire destroyed the Carrari Ranch Christmas Tree farm – which, before its crop went up in smoke, occupied the very site that Miller's company is now trying to develop.

Since long before he was elected to Congress, Miller has been a prominent developer in the Inland Empire. His company bought the Christmas tree farm from the Carrari family in 2004 after the fire wiped



out their business. Miller has not publicly released details of the sale, but various reports put the final price tag at \$2 million. Whether or not Miller ends up developing the site himself, opponents fear that, at the very least, he might flip the property upon receiving city approvals.

"He wants an approved tract map," said Frank Schiavone, a long-time resident who has been a vocal opponent of the project at Carrari Ranch since it was announced in 2005. "I don't think I'm coming from another planet when I say that a property with an approved tract map is going to be worth a heck of a lot more than just a plain old piece of property."

Miller's office declined to comment for this article.

Final approval of the project is still six to nine months away, according to Candyce Burnett, a senior planner at the City of Rancho Cucamonga. Burnett is currently working with Miller's company on a revised scope of work for the project, which released a draft environmental impact report in June 2009. The new scope of work includes additional studies that would demonstrate acceptable environmental impacts.

"Additional studies are dealing with fire safety, as well as a downstream stability study," said Burnett. Though the last major fire was in 2003, she said the area is at regular risk of wildfire during the dry and windy season. "That's why we're looking at the additional fire studies to look at evacuation procedures and the potential for apparatus to fight fires in that area."

The project scope would require annexation of the 670-acre site into the city of Rancho Cucamonga, adoption of the specific plan crafted for the 342-acre project site, an amendment to the city's general plan, and a development district agreement. The proposed residential lots range from 10,200 square feet to a little more than one acre each, and the

entire project has an average density of 1.9 dwelling units per acre. About 200 acres of open space will also be included.

Another of the more contentious aspects of the project is the required inclusion of 41 acres of fuel modification in the hillsides around the development – a requirement that opponents view as proof of the site's inherent danger.

"It's just dangerous," said Delaney. "I think it's irresponsible to build in an area where you know there's a greater risk of having a natural disaster."

She and others in town are also upset about the aesthetic ramifications. The Carrari Ranch site is located on a hillside that is visible from almost every part of Rancho Cucamonga. And though there is a handful of homes sprinkled up in the foothills around the elevation of Miller's proposed project, some say the sight of a 110-home gated community would be hard to miss.

"We can only go so far up into the foothills. There's a lot of scenic beauty looking up, and if it gets developed we're not going to have that," said Delaney.

But getting – CONTINUED ON PAGE 10



U.S. Rep. Gary Miller

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those homes up into the hills won't be easy. Due to the parcel's rugged terrain, the development will require the movement of about 7 million cubic yards of dirt to fill in areas and create an area flat enough to build homes. It would also alter a landscape that is currently wild.

"I'm looking at it from an environmentalist's point of view," said Schiavone. "There's a very rare habitat there. There's sensitive species there. And I'm sure nothing's going to be done to mitigate the environmental damage this project is going to cause."

Despite the local concerns, the project seems to be moving forward. Burnett expects the additional studies will be complete in a few months, clearing the way for a revised environmental impact report. Work on the project could begin by year's end. The first residents could move in within five years.

For the vocal opponents in Rancho Cucamonga, the project seems unstoppable. Schiavone said he feels there's little he and other community members can do to halt a project with so much power behind it. However, he concedes that he has seen no proof of abuse of power on the part of Miller – but he still believes it.

"The way Congressman Miller is going about this is what really bothers a lot of people," said Schiavone. "Obviously he's throwing his weight around." ■

■ Contacts:

- Congressman Gary Miller  
(Washington, DC): 202-225-3201.
- Candyce Burnett, City of Rancho Cucamonga: 909-477-2750.
- Frank Schiavone: 909-987-6805.
- Danae Delaney: 909-758-0282.



The Carrari Ranch development would occupy a portion of a 670-acre site in the foothills above Rancho Cucamonga.

# State Seeks 1.5 Million Missing People In 2010 Census

BY JOSH STEPHENS

This month more Census forms will arrive in California mailboxes than in those of any other state. And, while anxieties about response rates and undercounts persist nationwide, it is likely that California will fill out and submit more of them than will any other state. In its rawest state, the resulting data will give planners their most fundamental piece of data – the sheer number of people the state must accommodate.

At the same time, this year's Census will lay some disputes to rest while, possibly, kicking up new ones that may persist for the next ten years.

The most pressing issue, therefore, for California's demographers and planners to find out exactly how many people live in the state – a figure that is currently disputed to the tune of 1.5 million people. That's the difference between the 38.3 million residents that the California Department of Finance estimated as of January 1, 2009 and the 36.7 million that the Census Bureau estimated at the same time. Though both figures are based on the 33.8 million logged in the 2000 Census they have diverged over the past decade due to differing estimates of domestic in- and out-migration.

That number is "unprecedented," said Hans Johnson, associate director at the California Public Policy Institute. "It's a phenomenal difference. There's no doubt that as a state our population growth has slowed compared to previous decades—the key question is how much."

The desire to bridge this gap, and avoid the perennial threat of an undercount, has prompted cities across the state to embark on campaigns to encourage residents to respond quickly and accurately. April 1 is "Census Day," the official point of reference on which responses are to be based.

"The Census Bureau has basically been saying that people have been leaving California in greater numbers than people have been coming to California," said Mary Heim, chief of the Demographic Research Unit at the California Department of Finance. "We don't think it is to the extent that the Census Bureau thinks people have been leaving the state."

While Heim and others are curious to find out from the 2010 whether their numbers are correct, they of course carry more than trivial value. They will determine how many House seats the state will pick up – two if the state estimates are correct and none if the Census Bureau estimates are confirmed. The latter scenario would be the first time since 1920 that the state did not gain seats.

The data will also serve as the baseline for all future demographic projections conducted by the Department of Finance. Most importantly for local and regional planners concrete, the Census will provide authoritative figures on which to base everything from transportation models to the Regional Housing Needs Assessments (RHNA) process, which attempts to prescribe the amount and location of housing that a given region needs to accommodate population growth.

"That process looks at what kind of housing is there, what's the population, and that process depends on the Department of Finance's projections," said Gordon Garry, director of research and analysis at the Sacramento Area Council of Governments. "We're hoping that this Census bridges [the] divide between the Department of Finance and Census. For our RHNA process that's one less data problem."

Other problems, however, may arise at a finer level of detail.

What the Census will not include is the long-form questions that have, since 1940, asked one-sixth of American households to reveal fine details about their lives. The long form was scrapped following the 2000 Census, so planners who are accustomed to relying on detailed, nuanced

Census data to analyze and plan their communities may not get the detail that they expect.

"It's going to be the thinnest Census ever conducted," said Dowell Myers, professor of Urban Planning and Demographics at USC. "The most important thing for planning is the homeownership data. Except, first they threw out air conditioning, then they threw out bathrooms, now they've thrown out the whole housing unit. The only question left is, are you an owner or a renter?"

Instead, everyone will receive the standard Short Form, asking for age, sex, race, ethnicity, household size and homeownership. "That doesn't give planners a lot to work with," said Myers. From that data planners will be able to get occupied housing counts and derive average household size and vacancy rates, according to Heim.

More detailed information will come from the American Communities Survey, a monthly survey of 250,000 households nationwide that was fully implemented by the Census Bureau in 2006. The Census Bureau will be compiling three- and five-year averages of survey data – with the Census as a baseline – in order to replace the long form. However, even though the ACS is ongoing and not decennial like the Census, its comparatively small sample size has made some researchers wary of its reliability.

Because ACS takes only a sample of households, it will have a wider margin of error than will the Census, which is presumed to have a nearly perfect response rate. PPIC's Johnson noted that this sampling problem may affect small cities and counties more than it will large ones and put California at less of a disadvantage than it does more rural states. Even so, the absolute discrepancies and margins of error may be significant.

"I have real reservations (about ACS)," said Heim. "I think we don't totally grasp how you use five-year averages, three-year averages, and annual data. It's like a whole new world out there."

"That's a challenge for people who study things like poverty concentrations," said Johnson. "You cannot look at the Census to get that anymore."

Additionally, the short form obscures some data that planners consider crucial to creating the next generation of transportation plans. SACOG's Garry said that fine details about household demographics can have big impacts on travel patterns, thus making the combined data from the Census and ACS crucial to regional planning.

"(Regional planning agencies) are going to be caught holding the bag figuring this out," said Myers.

"Our new travel models are much more travel-behavior based we've gone to another level of detail," said Garry. "It turns out that the kind of household makes a big difference in the travel demand and how [residents] respond to how far away things are and job locations and what kind of transportation choice will they make."

Even with the "thin" short form and questions about how the ACS and Census will match up, demographers are hoping that the deluge of fresh data will answer lingering questions and confirm predictions about what has, by many estimates, been an usual decade for the state.

The Census may offer a macro-level account of the recession and foreclosure crisis by allowing analysts to extrapolate the rate of vacancies that have been caused by foreclosures.

"Are people doubling up?" said Heim. "Are multiple families in one housing unit?"

On the other hand, the Census may reveal less housing density thanks not to economic conditions but rather to the aging of the population and the settling of the state's immigrant popula-

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tion, both of which have a tendency to reduce household sizes. The numbers may, therefore, indicate a trend that would give smart growth advocates pause.

“One reason density has increased in the past wasn’t that we were building more housing units but that we had more people living in housing units,” said Johnson. “Over time as immigrants adapt to life in the United States they might start living in smaller households.”

Moreover, Heim noted that elderly residents are becoming a larger percentage of the state’s population. They tend to live alone or in pairs and therefore have less per-unit density than would nuclear families. Eventually, however, those homes will turn over. Concerns therefore persist about the combination of demographic and economic trends and the ability of the next generation of would-be homeowners to fill the state’s existing housing stock.

“The projections are interesting but also threatening,” said Myers. “Older baby boomers are going to be selling, progressively. Are there

going to be enough younger homeowners to pay for that built-up equity over the past few decades?”

Statewide, the Census will assign hard numbers to the trends that have defined the state’s development over the past ten years.

“Things that I’ll be looking at include changes in inland vs. coastal areas, north vs. south and some of the regional patterns,” said Johnson. “And looking specifically at what were the big changes in terms of racial and ethnic mix? How much have cities been transformed?”

From there, California’s planners can begin to think about how the state will – and should – be transformed in the next ten years. ■

■ Contacts:

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Hans Johnson, Associate Director, PPIC (415) 291-4460. [www.ppic.org](http://www.ppic.org).

Prof. Dowell Myers, USC School of Policy, Planning, and Development (213) 740-7095.

[www.rcf.usc.edu/~dowell/](http://www.rcf.usc.edu/~dowell/)

## Planners Contemplate Applications Of Tsunami Maps

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review before the final drafts were published. The result, Goltz said, is a much more refined picture than the state has ever had before. But even precise maps do not present a clear prescription for emergency management.

“They come at different directions, different levels of magnitude, and each particular location along the coastline is different in its topography and its bathymetry,” said Dan Larkin, Director of Emergency Services for Humboldt County. “The whole subject is so complex that it’s extremely difficult to come out with a one-size-fits all evacuation plan.”

Though the maps’ inundation lines can be viewed as an unbroken whole, the chance of a tsunami striking the entire state at once are essentially zero. Typically, tsunamis will strike in localized areas, so while the maps may be geographically accurate, they make no claims about frequency or the extent of a single event.

“I don’t see these particular maps as being applicable to land use planning because they present a worst-case scenario of the maximum run-up of a tsunami should we get the Big One, or somebody else gets the Big One and we get the run-up,” said Sidnie L. Olson, interim director of community development for the City of Eureka. “That’s like Humboldt County trying to plan for a magnitude 10 earthquake. If we were planning for that, we wouldn’t allow anyone to live there.”

Previous to these maps’ publication, the north coast counties of Humboldt and Del Norte had relied on locally generated maps and have developed intensive response strategies in light of their historic experience with tsunamis. The Cascadia subduction zone – a particularly active tectonic plate boundary stretching from Northern California southern British Columbia – makes the north coast, according to Goltz, a relative “magnet for tsunamis,” which can arrive from such quake-prone areas as Alaska’s Aleutian Islands.

However, Southern California too has seen its share of tsunamis, including four that hit Newport Beach in the 1930s and one that hit Santa Barbara in 1812 with such ferocity that it compelled local Native American to move uphill, according to Wilson, of the CGS.

“We knew that in some areas, say, Orange County and L.A. we were going to see very large inundations from worst-case scenarios that would impact a lot of homes,” said Wilson. The key here is that we don’t really know how often these large events occur.”

Whether, and when, a major threat will arise remains for the next round of maps and studies to assess. These additional maps and studies will attempt to assign probabilities to tsunamis of different sizes and locations by, in part, delving into the geological record to assess the frequency of prehistoric tsunami events. The state’s Seismic Hazards Mapping Act, adopted in 1991, requires that the state catalog all seismic dangers to the extent that technology and funding allow. Until researchers can assign credible time horizons to potential tsunamis should planners, any efforts to retard development in potential inundation zones would be overly cautious.

“To a certain degree, we’re going to get down to an exercise of acceptable risk,” said Baskin. “Do we plan for an event that happens every three or four hundred years or do we accept that that’s just beyond our time horizon?”

Nevertheless, some north coast officials are particularly attuned to the threat of tsunamis and their implications for long-term planning. To them, the maps, however unclear their time frame may be, represent a threat that should not be ignored.

“These maps might be a starting point to have a discussion as far as critical facilities that we consider how we want to deal with them,” said Olson, of Eureka. Olson said that currently, the maximum inundation zone includes Eureka’s sewage treatment plant, a stretch of Highway 101; “our entire industrial waterfront

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**The state’s 2007 Multi-Hazard Mitigation Plan calls for coastal communities to post information through methods such as signage.**

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would be wiped out,” she said.

**Land Use Policy**

Avoiding such a wipeout in the first place is already influencing policy in the region. The Coastal Commission has recently proposed local policies for Del Norte County that would direct planners to take tsunami risk into account. Working off of maps devised at Humboldt State University – maps which are, according to Larkin, in close agreement with the new statewide maps – the commission’s North Coast Office has recently suggested modifications to its policy for Del Norte County that would anticipate tsunami risk. “There are specific policies in there that are addressing the creation of new units by subdivision that would be prone to tsunami risk,” said Jim Baskin, coastal planner with the California Coastal Commissions North Coast Office. “If they can’t show that their floor elevation couldn’t be shown to be one foot higher than inundation risk, that might be grounds for disapproval.”

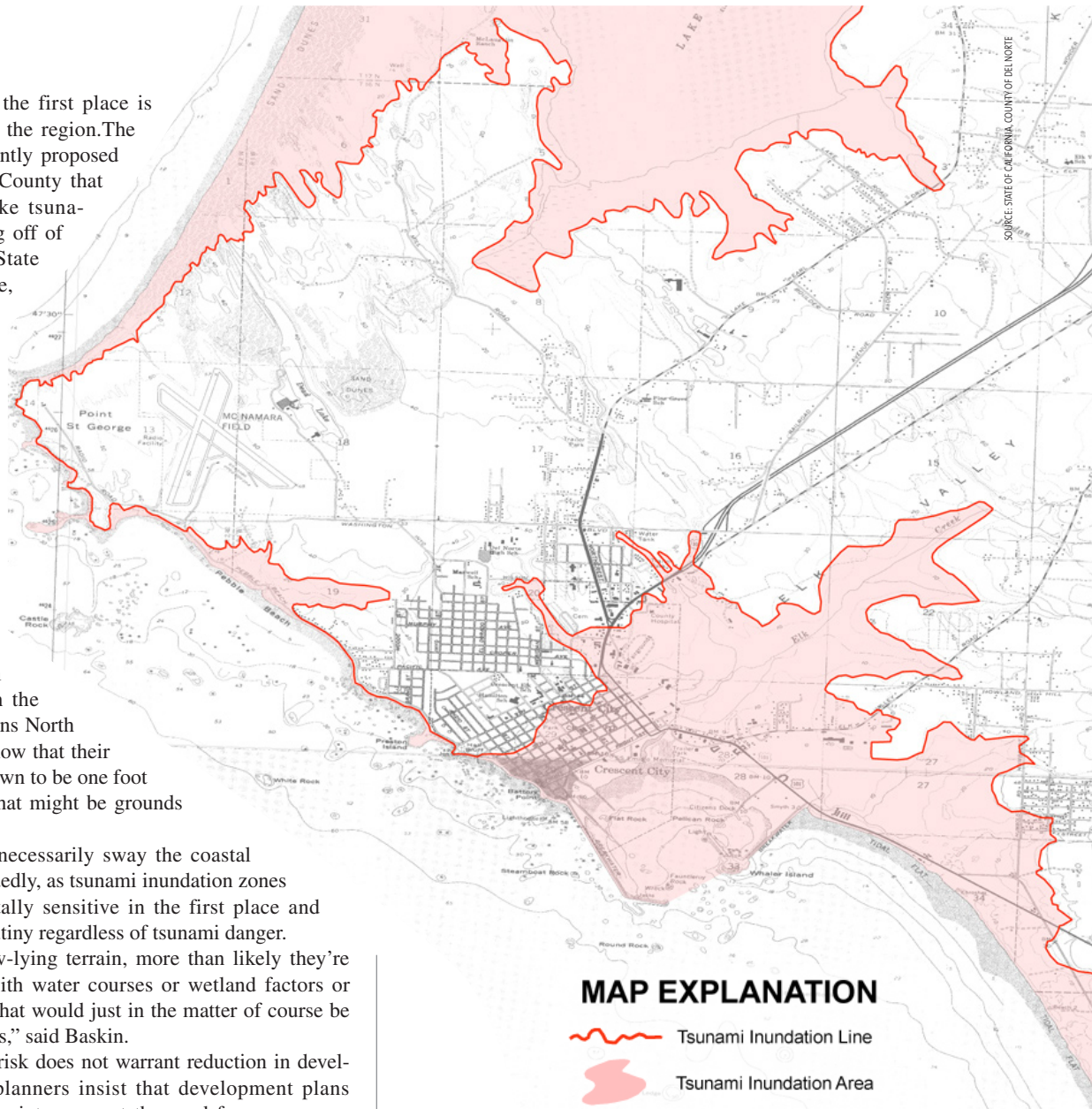
These policies would not necessarily sway the coastal permitting process single handedly, as tsunami inundation zones are likely to be environmentally sensitive in the first place and therefore subject to heavy scrutiny regardless of tsunami danger.

“Just by virtue of their low-lying terrain, more than likely they’re going to be corresponding with water courses or wetland factors or stream course characteristics that would just in the matter of course be environmentally sensitive areas,” said Baskin.

Moreover, even if tsunami risk does not warrant reduction in development per se, emergency planners insist that development plans and approvals should still take into account the need for emergency-response infrastructure, such as evacuation routes and staging areas.

“Certainly if there was a development in an area that was inundation-prone, that development would need to include in terms of its permitting some sort of tsunami safety plan,” said Baskin. “For example, the occupants of a hotel they need to be aware of the evacuation routes and high ground.”

In order to bring continuity to these efforts and coordinate efforts between land use officials and emergency management officials, CalEMA officials intend to engage planners in their effort both to explain the maps’ limitations and to anticipate the next round of research, which may, upon completion bear on coastal development in certain parts of the state. Wilson said that, pursuant to the Seismic Hazards Mapping Act, the next stage will be to assign probabilities and time-frames to the maps in order to give land-use planners proper context. The state intends to involve planners in that discussion and, in the meantime, make efforts to educate the planning community about the



**Crescent City was decimated by the Good Friday tsunami of 1964. Officials there are considering tighter rules on development in inundation zones.**

implications of the current maps.

“Over the next year our plan is to have a workshop with the land use planning community to not necessarily unveil the existing maps but to explain why and what we’ll be doing in the next several years to make a better set of maps for their use,” said Wilson. ■

■ **Contacts & Resources:**

- Tsunami Program, California Department of Conservation. [www.conservation.ca.gov/cgs/geologic\\_hazards/Tsunami](http://www.conservation.ca.gov/cgs/geologic_hazards/Tsunami).
- Aggeliki Barberopoulou, USC Tsunami Research Center (213) 740-5129.
- Jim Baskin, California Coastal Commission North Coast Office (707) 445-7833.
- Jim Goltz, Earthquake and Tsunami Program Manager, CalEMA (916) 845-8510.
- Rick Wilson, California Geological Survey (916) 445-1923.

## Regional Planning Scores Victory Over Local Control In Pleasanton

Regional planning has just won a round in its age-old battle against local prerogative.

Earlier this month, an Alameda County Superior Court judge struck down voter-approved housing caps in the City of Pleasanton and ordered the city to zone more land to accommodate the city's fair share of housing. Judge Frank Roesch sided with affordable housing advocates, who have pressed Pleasanton for years over what they consider exclusionary housing policies.

The ruling strikes me as very important – but not quite as important as some people might think. It's not such a big deal because this was a Superior Court ruling that applies only to one city. Unless the case is appealed and a Court of Appeal publishes a similar decision, no legal precedent for any other city has been established.

Still, the ruling is a big deal for two reasons: It emboldens affordable housing advocates, and it may portend future skirmishes as regional planning imperatives continue to take hold in California.

First, a little background on Pleasanton, a city of nearly 70,000 people in Alameda County. In 1986, city voters approved a growth management ordinance and housing cap. In 1998, they modified the earlier restrictions by approving Measure GG, which limited annual housing permits to 750 units per year and – most importantly – established 29,000 units as the maximum number of units in town. In 2008, voters approved Measure PP, which reaffirmed Measure GG and tightened the definition of a housing unit. Over the years, the city has grown into a substantial job center thanks to development of business parks. By one estimate, at least 40,000 people commute to Pleasanton on a daily basis.

Meanwhile, in 2001, the Association of Bay Area Governments (ABAG) determined that Pleasanton's share of the Regional Housing Needs Allocation (RHNA) for the 1999-2006 period was 5,059 units, including 2,423 units for very low, low- or moderate-income households. As you might imagine, this was not a popular mandate in Pleasanton. Despite studies and promises, city officials never zoned adequate land to accommodate the RHNA housing numbers. The Department of Housing and Community Development refused to certify the city's 2003 housing element update.

The San Francisco-based group Urban Habitat Program sued to enforce the housing element law in 2006. The group first had to win a procedural battle to even get its claims heard by a judge (see *CP&DR Legal Digest*, September 2008).

Judge Roesch's ruling on those claims is straightforward. "It is self-evident that the city cannot comply with the state statute requiring the

city to accommodate its RHNA when the city is not permitted by its local law, Measure GG, to allow the number of housing units to be built that would satisfy the RHNA," he wrote. "The question of which law prevails is elementary. State law preempts whenever local laws contradict state law."

Roesch ordered the city to strike Measures GG, PP and QQ (another 2008 initiative) from all planning documents and to zone land for housing pursuant to the 1999-2006 RHNA. He also ordered the city to halt issuing non-residential building permits until its general plan complies with state law.

The ruling was a home run for the housing advocates.

"This is the first time that a court has ordered a jurisdiction to rezone sites to meet the need identified in the previous RHNA," said Richard Marcantonio, attorney for Urban Habitat Program. Other cities also failed to zone adequate land during the last RHNA round, and even more cities in the ABAG region missed last year's deadline for updating housing elements. I can guarantee that Marcantonio knows which cities.

I strongly suspect that many of the cities dodging the housing law are hoping Pleasanton does not appeal Roesch's decision because a similar ruling by an appellate court could establish a precedent that those cities don't want to see. At this point, Pleasanton has not announced a course of action. It's too early to appeal because Urban Habitat Program claims of housing discrimination are still pending. A City of Pleasanton spokeswoman said officials have no comment.

However, former Pleasanton Mayor and Councilman Tom Pico, speaking on KQED radio's "Forum," defended the city's growth policies and called the RHNA process "seriously flawed" because it penalizes the city for having a BART station and employment centers. There's nothing wrong, he said, with putting the housing for Pleasanton's workers in the neighboring cities of Dublin and Livermore. He further contended the city is nearly at buildout. Pico was not speaking for the city, but it is exactly that sort of attitude that has gotten Pleasanton in its current pickle.

In approving SB 375, the Legislature made regional planning an even greater priority than it has been under the housing element law. The idea behind SB 375 is to force cities with transit and jobs – cities like Pleasanton – to accept lots of new housing as a way to reduce greenhouse gas emissions from cars. In other words, the conflict that continues to play out in Pleasanton could become commonplace around California.

– PAUL SHIGLEY | MARCH 26, 2010 ■

## Low-Cost Housing Goes Affordably Green In Chula Vista

Hey you, Mr./Ms. Conventional Apartment Developer! Yes, you. Don't attempt to ignore me by rolling up your construction-loan documents and sticking them in your ears. Open those eyes, tightly shut as the credit market for new luxury condominiums, and take a look: A 42-unit rental complex for low-to-moderate income households in Chula Vista has put you to shame, by building what appears to be the greenest building possible, and on a stringent budget. Known as Los Vecinos, the year-old project has earned a Platinum LEED rating, and boasts the highest-ever score among all the housing types evaluated by the national green-building group. So, Mr./Ms. what's your excuse now for not going green.

True, Los Vecinos, which opened last year, was able to tap subsidies unavailable to commercial builders – but so do all other low-income developments. So don't let the presence of subsidies fool you: This project is money-smart. After tax credits and rebates from the city, state and federal agencies, the net increase in cost for green materials, including extensive photovoltaic panels, was only about \$235,000. That's less than 2 percent of the \$17.7 million development cost.

How were these economics possible? The answer, according to a Wakeland Housing Development Corp., the San Diego-based non-profit that built Los Vecinos, was primarily the homebuilder's willingness to embrace green-building standards in the

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first place – the rest takes care of itself, to a large extent. “The amazing part of the going-green process was how simple it turned out to be,” says Wakeland’s executive director, Ken Sauder. “Many of the decisions were common sense,” he adds. Green materials are also falling in price, as demand slowly steps up.

Further, the non-profit homebuilder, which plans to continue owning Los Vecinos, can achieve continuous savings in maintenance costs through the use of sustainable materials, which are also highly durable. In short, sustainable construction is an investment in long-term fiscal soundness of a low-income housing development, by lowering costs without damaging the living standards of working-class renters. In fact, the lives of many renters may likely be improved by living in an environment that is adequately heated, cooled, and ventilated.

As in nearly all low-cost housing developments, Los Vecinos had many funding sources. Here’s how the numbers work: Those include \$9.44 million in tax credit equity, a \$1.9 million permanent loan from the California Community Reinvestment Corp., \$228,000 of deferred development fees, a \$263,234 solar-power rebate from the local utility, \$167,000 in business investment tax credits and a \$5.6 million subsidy from the city.

In addition to the solar rebate mentioned above, Los Vecinos also benefitted from other incentives that the state offers to builders of low-income housing. The total project cost of going green, before subsidies and incentives, was \$568,000, or \$13,537 per unit. Those costs include the added price of green construction materials, plus about \$50,000 for a LEED consultant. TCAC lowered that cost by \$275,962 by awarding Los Vecinos a 4 percent increase in its basis cost, qualifying the project for a higher level of tax credit equity. In other words, the project’s overall tax credit increase in value, making the project even more attractive to investors, who often want to buy up as many credits as they can. The homebuilders also project \$10,000 in expected rebates from San Diego Gas & Electric. When the arithmetic is done, the total increase in cost above that of conventional construction is only \$328,088, or \$7,907 per unit.

Sauder, the homebuilder, admits that he was nervous when first contemplating green construction. “I knew there were higher costs involved,” he said. Currently, Wakefield appears committed to sustainable, energy-saving projects. The non-profit recently completed the 77-unit Parkside complex in downtown San Diego, which qualifies the homebuilder likes to describe as transit-oriented (it’s within walking distance of the San Diego trolley.) and a positive example of urban

infill, like a bright new dental plate in an old mouth. This new project is aiming for a LEED Gold certification.

Of course, when the budget is tight, and the developer is paying a premium for green materials, something has to give. In this case that something is architecture. This shortcoming shows up most glaringly in an undistinguished, unadorned façade. Even so, the exterior scores minor points by breaking up the bulk of the building into a set of vertical masses that resemble a row of two-story townhouses from a distance. Up close, the minimal detail unintentionally seems to broadcast this is a “project.” In an ideal world, that is, one with bigger budgets, beautiful design would crown the achievement of inventive sustainability. But austerity of design does not detract from the significance of Los Vecinos. It’s might not be as fancy as a high-end market-rate complex, but in a world on the brink of environmental catastrophe, what would you rather have: lavish design or lower heating costs?

Let’s get back to hectoring the conventional homebuilder, the one who says all this green stuff is too expensive and too complicated. She is no longer allowed to say, “I’d like to build sustainably, but gosh, I just can’t afford it. It’s the market holding me back, you know.” (At least, I’d like to stop hearing those excuses.) The market, of course, and not idealism will be the means to induce apartment developers do the right thing, i.e. when investors start asking for those amenities. That brings us to a cultural issue: that is, the culture of real estate investment.

The value of apartment buildings, like other kinds of commercial real estate, is based on the income they produce after expenses. Unfortunately, money saved on maintenance and energy costs rarely figure into such calculations, because building owners often pass along utility costs to their renters. In addition, construction lenders, who are often not imaginative people, dislike the idea of extending more on construction loans without a corresponding increase in rental income. (This myopic, penny-wise-pound-foolish attitude is apparently common throughout the industry: I have heard of property managers who balk at paying more for energy-saving light bulbs, even though those bulbs demonstrably last longer and save money in the long run.) Until investors awaken to the dollar value of sustainability, developers should equip themselves with spreadsheets to show their lenders that lower utility costs make the developer a better loan prospect. Meanwhile, apartment developers should set aside their excuses, and find a way to build their projects as well as a low-income complex in Chula Vista.

– MORRIS NEWMAN | MARCH 1, 2010 ■

## California Voters Need Crash Course In Effects Of Prop 13

With yet another \$20 billion deficit looming, the State of California government appears to be on the verge of a complete meltdown. Dealing with this situation would be trying under any circumstances, but everything is made more difficult by two things: Proposition 13, and voters’ failure to understand the consequences of Proposition 13.

During the last few weeks, I had separate conversations with two people – one a Republican and the other, I assume, a Democrat – with many years of experience in public service and the private sector. Neither conversation started with Proposition 13 or tax policy, but both discussions ended up there. All of us lamented the public’s lack of understanding. What the public doesn’t understand is that a law that passed handily in 1978 hasn’t made the state any more efficient or anyone – except for commercial property owners and a few immobile homeowners – any richer.

Then came the results of the latest Field Poll, which disheartens me further. I’m not necessarily talking about people’s opinion for solving the State of California’s latest budget crisis. (Half of the respondents would rely mostly or totally on spending cuts.) I’m talking about this: 63% said state government is not responsive to voters’ needs, yet 75% said constitutional changes are not needed if state lawmakers would simply work together. Essentially, the poll respondents said the system is fine, but the participants are failing.

Obviously, state lawmakers from both parties should work together more cooperatively. But that’s only a prerequisite; it’s not the solution. I think the poll is one more indication that the public does not know what the state government does or how it spends its money. Field Poll Director Mark DiCamillo told the *San Francisco Chronicle* that respondents’ solution to the budget problem “may

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be a pipe dream.”

So let's lay this out. The 2009-10 state budget is \$109.7 billion. Estimated expenditures in 2008-09 were \$118.1 billion, and actual expenditures in 2007-08 were \$129.7 billion, according to the Legislative Analyst's Office. Of the current year's \$109.7 billion budget, \$25.1 billion lies in "special funds," the majority of which is dedicated to transportation. The big problem is the general fund, which is budgeted at \$84.6 billion this year. That's down about 17% from two years ago.

What does the state spend the general fund on? Health programs account for 19% of the general fund, and social services and criminal justice (mostly prisons) are about 10% each. Meanwhile, 40% goes to K-12 education, and 12.4% goes to universities and community colleges.

Why does the state spend such a large proportion of its money on education? Proposition 13.

When voters approved Proposition 13 in 1978, they limited property taxes to 1% of assessed value, the effect of which was to cut local funding for school districts by about two-thirds. At that time, the Brown administration and the Legislature could have shrugged and said, "OK, if that's what you want..." School districts could have laid off two-thirds of their teachers, and those remaining would have had 90-student classrooms.

But Sacramento recognized that response would have been an utter disaster. So the state stepped in and, using money from its general fund, made up for the shortfall in local revenues. Almost overnight the state became the majority funder of K-12 and community college education. When the Deukmejian administration inched toward cutting these state education funds, voters responded by approving Proposition 98, which now guarantees education a percentage of the state general fund – thus enshrining education funding in the state's budget the exact same way that voters enshrined the 1% property tax limit through Proposition 13.

Do voters understand all this funding mix? Not at all. People think that prisons or welfare make up the majority of state spending. A Public Policy Institute of California poll recently found that only 16% of respondents – one out of six! – could identify K-12 education as the biggest piece of the state budget. The other 84% don't know where to begin to balance the budget. My Republican friend, who served several years in the Schwarzenegger administration, says she grew frustrated with the public's determination that the budget deficit could be solved by slashing the state bureaucracy. You could lay off half of the State of California's employees, she says, and the budget still wouldn't be balanced. That's because what the state does primarily is funnel money to school districts and counties. It's a result of Proposition 13.

But Proposition 13 was passed 32 years ago. Easy enough for it to slip out of the state's collective memory – except that there are reminders everywhere you look.

Not long ago, my wife and I chatted with friends who are moving from an unincorporated area to a city. They wondered how their property taxes would change. We explained that under Proposition 13, their taxes would be 1% of assessed value, and that amount could increase no more than 2% annually thereafter. My wife and I then asked what was on their tax bill now. Any bonds or special assessments? Our explanation and questions met with blank stares – even though our friends are college graduates, California natives, longtime homeowners and old enough to have voted for Proposition 13. They don't have a clue what's on their tax bill or where the money goes. The only thing they are sure of is that "the government" wastes most of it.

I don't intend to sound like one of those pointy-headed intellectuals, because I ain't. I do wonder, however, about California's policy options when voters understand so little about the system they have created.

– PAUL SHIGLEY | MARCH 3, 2010 ■

## Redevelopment Agencies Circle the Wagons, Fight for Funding

For many cities, redevelopment relies on public-private partnerships, innovative financing, and design integrated with existing surroundings which, in turn, often support the hot topics of smart growth, transit-oriented development, and climate change adaptation. However, in the recent downturn, the tools that are typically available to redevelopment agencies have been limited – partially because of economic constraints – well, actually all because of economic constraints.

Here at the 2010 California Redevelopment Association conference in Pasadena, attendance has been strong. Over 1,000 people are expected to attend, making this the 4th highest attendance in CRA conference history. Not bad for a group whose tax increment revenue has slumped in the current cycle of decreased sales tax revenues and property values – and then threatened by the state for a possible "raid" of \$2.5 billion in local redevelopment dollars over the current and upcoming fiscal years.

The conference led off by call to action by CRA Executive Director John Shirey. Already in litigation with the state over the its takeover of redevelopment funds, CRA appears to be on the defense. The CRA has developed a strategic plan, which really seems to be a call to arms, the main components of which are:

- Fight to Protect Redevelopment Funding. This is reflected in the CRA's current litigation with the state.
- Support Statewide Ballot Initiative(s) to Protect Redevelopment Funding. CRA is partnering with the League of California Cities, California Transit Association, and the California Alliance for Jobs to support the *Local Taxpayer, Public Safety, and Transportation Protection*

*Act of 2010*, currently in the signature-gathering phase for qualification on the November 2010 ballot.

- Broaden Base of Support for Redevelopment. Increased outreach to business groups, labor, environmental groups, and other advocacy groups.
- Increase Awareness of Redevelopment Benefits and Accomplishments.
- Increase Participation of Local Elected Officials in CRA. Many electeds and city managers/administrators do not actively participate in Association advocacy efforts.

Other thoughts from the panel following the presentation of the strategy were particularly strong from Cal Hollis, interim director of the Community Redevelopment Agency Los Angeles, and Cecilia Estolano, former head of CRA/LA and now working with the nonprofit Green for All. They focused on the need for redevelopment agencies to shift priorities for long-term sustainability. Hollis noted that CRA/LA staff are actually working with Small Business Association staff in a greater economic development capacity – the current need is not to build – but to fill buildings and put people to work. Estolano is taking her new position at Green for All to heart – emphasizing that redevelopment agencies need to place a greater emphasis on sustainability, addressing inequalities and ensuring equal access to good development. Estolano stated that "making redevelopment about people and talking about creating opportunities for new Californians" will bring redevelopment to the forefront of the conversation.

– ALLISON JOE | MARCH 10, 2010 ■

## As Cities Forge Ahead, Journalism Faces Its Own Rebuilding

In planning, as with anything else, the progress does not arrive merely with the flow of time. The enthusiasm and ideas that swept over these pages in the first decade of this century – smart growth, downtown revitalization, AB 32, SB 375, and all the rest – are now met with delay, deferral, and, in some cases, bankruptcy. And yet, even in melow times, any moment can be a crucial moment in planning.

Buildings may take their time, but deals, laws, and policies can be enacted at any time and yet have long-reaching, sometimes unanticipated effects. (Just ask Suzette Kelo, or the authors of CEQA.) Development, deterioration, and even stasis can mean triumph – or tragedy – for many people. One neighborhood group cries victory, while another is condemned to live in the shadow of something awful. Such are the stories of land use, albeit at their most melodramatic.

The prospect that California will never run out of land use stories – a prospect so axiomatic as to hardly require mention – has held firm ever since *CP&DR* started chronicling them 25 years ago. Cities, in fact, are on the rise, and planning is heeding the call to manage larger populations while conserving resources. But, as I assume editorship of this publication, what is far less certain is the future of journalism.

Planning and journalism share a potent relationship. All of us who write, blog, and otherwise muse on land use enjoy the juxtaposition between the ephemeral nature of media and the permanence of the things that we cover. Stories come and go (and sometimes plans do too), but, roads, buildings, and communities remain. This permanence requires that we get our stories right the first time (and hundredth time as well, depending how many CEQA suits get filed).

Though all journalists draw satisfaction from their role in the democratic process, rarely is the connection between reporting and the real world so direct as with land use. Buildings cannot hide, but they sometimes require journalists to help them speak. Good stories – well researched, clearly written, objectively recounted – can inspire the ideas, revelations, debates, and even protests that can make or break plans and developments. We journalists, and we at *CP&DR*, believe that in the aggregate we will leave an indirect, but distinct, legacy not in our words themselves but in the betterment of a great, if challenged, state.

Even as California considers selling a kidney to replenish its coffers, the regeneration of the built environment (as well as the despoilment of the natural environment) will continue.

A generation ago, cities were the ones facing their demise while the morning paper ran memorable headlines about rivers catching fire and presidents telling them to “drop dead.” Now both papers and cities have reversed their courses, each having heeded the call of history to now head in the opposite direction as they were before. Indeed, whether they prefer downtown lofts or Barbie’s Dream House, people will always need places in which to live, work, and dream. But lately it seems that they may consider journalism expendable.

My arrival at *CP&DR* comes at the pivot of journalistic history, from ink to bytes, and, to an extent, from professionalism to amateurism (the latter of which can indeed be excellent). You can’t build a mixed-use, transit-oriented temple to New Urbanism without a few bricks, but you

certainly can certainly disseminate information, analysis, and opinion without paper. What serious journalists cling to, absent the financial and editorial bulwarks that used to surround print media, is the conviction that objectivity, originality, clarity, expertise, eloquence, balance – and all the other hallmarks of our profession – will persevere in the digital era and that readers will respond accordingly.

I have written my share of blogs and other informal pieces, and I will continue doing so on the *CP&DR* website. But a fundamental difference separates blogging from reporting. As a friend of mine, *New York Times* reporter Nicholas Confessore, trenchantly noted in an article several years ago, when blogs were just emerging, “If every newspaper went out of business tomorrow, blogs would have nothing to blog about.”

And that’s where *CP&DR* comes in. We may not hit the pavement on broadsheet for a million daily readers, but we will always strive to publish original, high-quality news pieces that give our readers something new to muse over, act upon, and, indeed, blog about. Sometimes we will fall short, but, we hope, sometimes we will hit our mark.

This is the motivation that brings me to these pages. Succeeding Paul Shigley, whom I admire greatly, I believe that journalism has a future, and I believe that focused publications like *CP&DR* can have a tremendous impact, especially now that the stalwarts of our industry are struggling. Whether a locally focused article reaches a small group thoughtful, active people with an intense interest or whether something else flows off our pages, gets swept into the main current of the Internet, and gets blogged, tweeted, and draw up into the great Internet cloud, we hope to do justice to both our topics and our profession.

As for what *CP&DR* will cover under my tenure, we know that plenty of familiar themes and topics will recur – just as they did in the decade that Paul Shigley covered. But, most likely, the best stories will be the unexpected ones – the ones that come out of nowhere or, better yet, come from you, our readers, and our network of sources and supporters on the ground. One of the great things about covering someplace as vast and diverse as California that we will never run out of stories to tell.

Ultimately, my inspiration stems from California itself. On that topic, I disclose my bias wholeheartedly. It is one of the world’s great sub-national entities, and it deserves publications like *CP&DR*. The land use community here is most obviously bound up in common laws, policies, and landscapes, and less obviously in common styles, cultures, and politics. Above all else, we are bound in common by a spirit of aspiration.

I write this greeting, incongruously, from a lecture hall in Cambridge, Mass. It’s a fine, if drizzly, place. But, with a heyday reaching back three centuries, it feels different from California. Hopes and dreams really are drawn to California, and they need a worthy landscape in which to flourish. It is an exceptional place, and in the volumes to come, I look forward to capturing a few of its crucial moments and seeing a few of its dreams come true.

–JOSH STEPHENS | MARCH 11, 2010 ■

