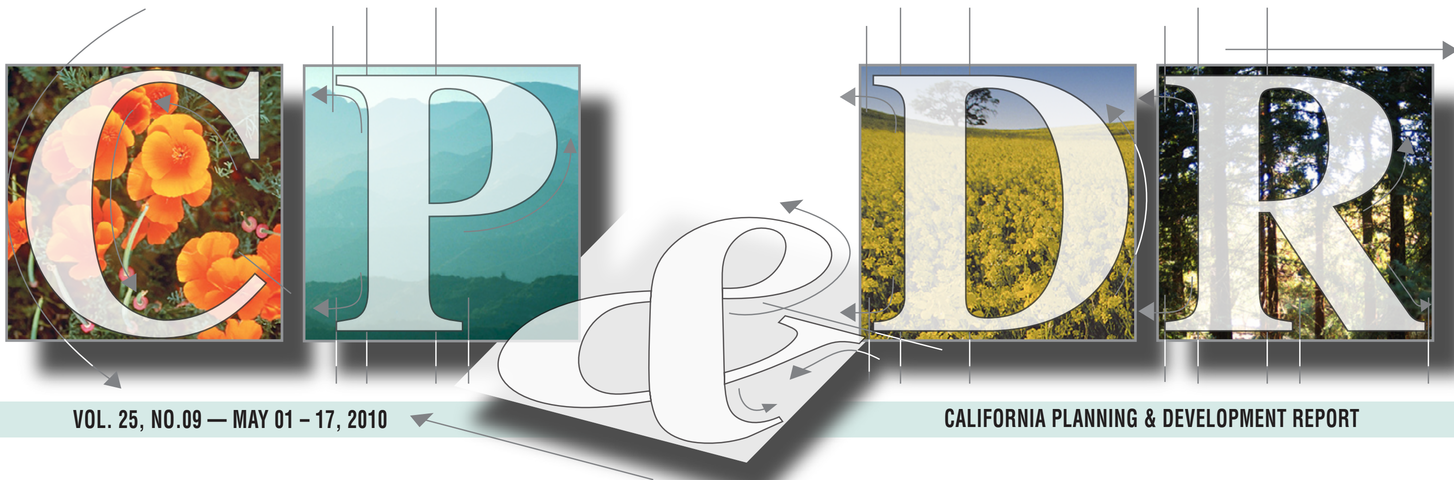

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CALIFORNIA PLANNING & DEVELOPMENT REPORT

Redevelopment Agencies Ponder Next Move

Loss Of $2.05 Billion In Tax Increments Threatens Projects Statewide

BY JOSH STEPHENS

California's redevelopment agencies are pondering grim scenarios, including layoffs and project postponements, after a court ruling that forced them to give $2.05 billion to the state in early May. The state's redevelopment association plans to appeal the ruling by Sacramento County Superior Court Judge Lloyd Connelly – but most of them had to write big checks back to their county treasurer on May 10 to comply with the ruling.

The Third District Court of Appeals ruled against the California Redevelopment Association's request for a temporary stay on transferring tax increment funds from redevelopment agencies to the state for the purpose of easing the state's $20.7 billion deficit. In the wake of that ruling, California's redevelopment agencies were forced to hand over a collective $1.7 billion on May 10, with another payment of just over $300 million slated for next year.

At least four agencies – in Monrovia, Placentia, Richmond – have refused to make their three assigned payments. They either consider the payment a bad investment and are willing to accept penalties in exchange for being able to continue with their projects or because they simply do not have the funds.

While this is the ninth such transfer of funds in recent memory, others were "modest" by comparison, according to John Shirey, executive director of the California Redevelopment Association. In some cases, the giveback represented between one-third and one-half of their tax increment.

The $2.05 billion price tag came about through legislative negotiations and has been divvied up according to agencies' tax increments – regardless of the agencies' indebtedness, operating expenses, or project pipelines.

The result is that some agencies are feeling more pain than others. The San Francisco Redvelopment Agency cut a check to the state for $28 million. The San Jose Redevelopment Agency paid $62.9 million of an annual tax increment of roughly $200 million. Lora Kutka, chief financial officer of the Fresno Redevelopment Agnecy, said that her agency's payment of $6.7 million repre- – CONTINUED ON PAGE 7

Stalled Federal Transportation Bill Puts Local Planning Funds On Hold

insight

WILLIAM FULTON

With state and local government revenues shrinking throughout California, planners are increasingly looking to the federal government – and especially transportation funds – to pay for local planning efforts, especially if they involve infill and transit-oriented development efforts. But the two major possible sources of funding – the transportation reauthorization bill and the climate bill – are both stalled with little hope of passage anytime soon.

The climate bill has been caught, at least for the moment, in the crossfire of the immigration debate. So let's get back to that later and focus instead on the bill that ought to have no trouble passing: the transportation reauthorization bill.

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inbrief

The League of California Cities board of directors deferred taking action at this time on recommended revisions to the League's current positions on AB 32 and SB 375, concerning climate change. The changes had been recommended by a special League Task Force after study of the issue by multiple league policy committees. The changes recommended specific actions by Gov. Arnold Schwarzenegger and the California Air Resources Board (ARB) to delay certain deadlines and take other actions with respect to AB 32 and to suspend or delay the implementation of SB 375 until state funding is provided for the implementation of its mandates.

"Cities across the state are leaders in addressing the threats posed by climate change, adopting climate change action plans, using alternative fuels to power city facilities and vehicles, and planning for future development with climate change in mind, " said League President and Hemet Council Member Robin Lowe in a statement. "The League will continue to work with him and ARB to make sure the implementation of AB 32 is done with respect for the challenges facing our private employers who are key to the recovery of our economy and that the cost of SB 375 is not shifted to city governments."

In 2008, the League did support the separate, but related bill, SB 375, which requires the preparation of regional sustainable communities' strategies in order to identify areas in which future California Environmental Quality Act relief and transportation incentives will be made available to help reduce greenhouse gas emissions (See *CP&DR* Vol. 25, No. 7 April 2010). The league's support was contingent on the state keeping its promise to fund the cost of these regional strategies, which it has not done to date. The board directed league staff to continue to press for state funding and to work closely with other stakeholders to hold the state to its commitment.

A solar power plant planned in San Bernardino County has encountered a Catch-22. Developed by Abengoa Solar Inc. of Spain, the $1.2 billion plant is planned for 1,765 acres of former alfalfa fields outside of Barstow. The site was chosen in part because it contained no major visual resources and no pristine habitat. Though the California Energy Commission has effectively signed off on the plant's lack of environmental impact, it has recommended in a recent staff report that Abengoa replace the farmland that the plant will consume.

If built, the facility will use parabolic trough technology using solar power to boil a heat transfer fluid and be capable of powering up to 90,000 homes in the Barstow area. The CEC says the project would help the state progress towards its goals of producing 33 percent of its energy from renewable sources by 2020.

The report calls for Abengoa to purchase up to 1,588 acres of farmland elsewhere in the state – along with water rights for its irrigation. The recommendation is meant to comply with state regulations regarding the preservation of farmland and protection of the state's food supply. Abengoa executives say that the purchase – which may run around $11 million – will not necessarily impede the plant's development, but company and county officials say that the recommendation is an undue hindrance.

An earlier staff report described the land as "fallow" and did not mention the possibility that Abengoa would have to be concerned with farmland preservation. Only 128 acres are currently farmed.

San Bernardino county officials have indicated that they may pursue a new zoning policy that would make it easier for companies such as Abengoa to convert farmland into sites for renewable energy generation.

The California Geological Survey has released a new surface fault activity map – the first since 1994 – that depicts more than 50 newly identified earthquake faults throughout the state and over 15,000 in total. The maps are intended to be used by local officials and residents for everything from emergency preparedness to land use decisions. Though the 50 new faults are a small fraction of the state's total, the new maps are more detailed than any previous generations and have been posted on the CGS website for easy access by the general public. http://quake.ca.gov/gmaps/FAM/faultactivitymap.html

"These maps are used to make a lot of other maps, to map landslides, areas where you have liquefaction because of earthquakes, for tsunami coastal mapping," state geologist John Parrish told the *Los Angeles Times*. "They can be used to make decisions on where to build schools and hospitals, where you need a higher standard of construction. They can tell you what kind of a surface you're building on, and how close you are to a fault."

The maps include not only depictions of fault lines but also information about geological features that surround the faults. The maps, which are the fourth generation that CGS has produced, are part of an ongoing effort to increase public awareness of seismic dangers throughout the state.

The Community Redevelopment Agency has gone Hollywood. Last week the Board of Commissioners approved former Paramount Studios executive Christine Essel to as the agency's new chief executive officer. She replaces interim CEO Calivin Hollis who, in turn, stepped in upon the departure six months ago of Cecilia Estolano.

Essel was senior vice president of government and community affairs at Paramount and has been involved with numerous public projects. As a former commissioner and chair of CRA/LA's board from 1992 to 1999, Essel was involved with major redevelopment projects such as Staples Center and Hollywood and Highland. Her previous work with CRA/LA also includes serving as chair of the Community Advisory Committee for CRA/LA's Hollywood Project Area.

Her jump to the public sector is one of the first for a high-level executive from the city's signature industry.

Essel has served on a number of boards, including chairing the California Film Commission for nearly a decade, helping to establish the state's first film incentive programs. She has also served as an Airport Commissioner, overseeing the modernization of LAX. – CONTINUED ON PAGE 3

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inbrief

– CONTINUED FROM PAGE 2

Recently Essel served as the chair of the Central City Association and with FilmLA. In addition, Essel was a member and president of the Board of Alternative Living for the Aging.

Last year she ran for a seat on the Los Angeles City Council, losing to Paul Kerkorian.

"Combining their experience and expertise in real estate development and public affairs, Chris and Cal are the right team to lead the Community Redevelopment Agency's efforts to create more jobs for Los Angeles," said Mayor Antonio Villaraigosa in a statement. "Chris and Cal will help drive the City's new economic development and business policy."

One of Essel's first tasks at the helm of CRA/LA will be to cope with the $84 million that it must pay the state over the next two years as part of the statewide transfer of tax increment funds from agencies to local schools.

"Taking redevelopment funds to balance the state's budget will seriously impair our agency's ability to fund the redevelopment projects and programs that…are critically needed in our city," Hollis told *CP&DR*.

The Santa Cruz County Regional Transportation Commission (RTC) unanimously agreed to purchase the Santa Cruz Branch Rail Line (Branch Line) from the current owner, Union Pacific for a negotiated price of $14.2 million for the 32-mile Branch Line with a commitment to invest $5 million to make improvements to the Branch Line. This action caps more than nine years of negotiations and assessments of the property's condition.

Staff made it clear that the commission's action was only to purchase the rail corridor and implement recreational rail service from Santa Cruz to Davenport, not to implement commuter rail or build a trail along side the tracks, as some have speculated. These and other potential projects may be feasible and possible in the future on segments of the corridor if the property is preserved as a continuous transportation corridor.

Commissioners expressed optimism about the future potential of the 130 year old transportation corridor which, for many decades, has been restricted for use exclusively by freight rail service. The corridor spans many of the area's top attractions – including parks, community centers, schools, beaches and villages – and is within a half-mile of almost half of the county's residential population.

The line became economically obsolete with the recent closure of a Cemex cement plant in Davenport, which had been its only major freight customer.

Representative Albio Sires of New Jersey has introduced HR 3734 the Urban Revitalization and Livable Communities Act, which would increase by $445 million annually the amount of federal funds available for the construction of urban parks. The measure would provide federal grants for communities to rehabilitate existing and develop new urban parks and recreational infrastructure. Maintenance funds would also be available. States and localities would be required to provide matching funds.

Under the legislation, the secretary of Housing and Urban Development (HUD) would give priority to projects that connect children and other community members to the outdoors for physical activity; connect to public transportation; and contain safe biking and walking trails or routes. Notably, eligible projects should also use environmentally beneficial features such as "sustainable landscape features," tree canopy coverage, improved storm water management practices, and increased green infrastructure, which are all techniques that landscape architects excel at employing. The measure also encourages and provides grants for community involvement and planning opportunities.

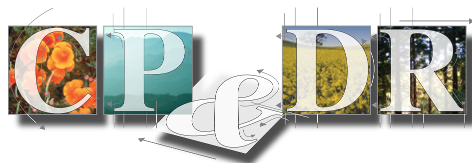
HR 3734 is modeled after the Urban Parks and Recreation Recovery program, whose funds expired in 2002. The American Society of Landscape Architects estimate that the act's funds could pay for the construction estimates, maintenance, and rehabilitation of up to 2,300 parks per year nationwide.

A plan to increase the production of affordable housing in Patterson has backfired on the city, to the tune of $947,500. That's the amount in legal fees and refunds the city will have to pay following settlement of a lawsuit filed by developer Morrison Homes.

Morrison had agreed to develop 214 units of affordable housing within a larger development called Patterson Gardens. While the project was in the planning stages, the city council increased the affordable housing development fee from $734 to nearly $21,000 per unit. The increase was designed to dissuade developers from building housing that was legally designated as affordable and instead build low-price market-rate housing on its own.

Morrison paid the new fees on 34 units but then sued. In 2007 the city won the first suit but lost on appeal in 2009 (see *CP&DR Legal Digest*, April 2009). Morrison and the city reached a development this month when the California Supreme Court decline to review the case.

The city has since rescinded its affordable housing fee and instituted an inclusionary zoning policy. ■



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insight WILLIAM FULTON

– CONTINUED FROM PAGE 1

The so-called T-bill has to be reauthorized every six years – and in all the cycles since 1991 (1997 and 2003), the bill has moved further and further away from its original focus on highways and other hard infrastructure. There are always huge debates over what it should fund – highways versus rail, capacity versus environmental enhancements – but there has never been any doubt that it will pass. Until now. The bill hasn't passed yet and doesn't seem likely to pass before the November election – if then.

The problem, simply put, is money. Between increasing fuel economy because of regulation and decreasing travel because of the recession, the federal gas tax doesn't generate enough money anymore. After decades in surplus, it's now in deficit, borrowing from the federal government's "general fund" on a regular basis to make ends meet. Since everybody loves transportation pork – Democrats and Republicans alike – there's only one way out of this problem, which is to find what folks inside the Beltway euphemistically call an "enhanced revenue source."

But that means either raising the gas tax or squeezing money out of the climate bill's "cap-and-trade" provisions for transportation.

Nobody wants to increase the gas tax before the November election – least of all the Republicans, who are seeking to regain control of the House by running against tax-and-spend Democrats. So that leaves two scenarios.

The first one is for the lame-duck Democratic congress to pass the gas tax after the election. This may work politically for everybody – even the Republicans, who will then have plenty of transportation revenue to play around with but can wash their hands of responsibility for raising taxes.

The second is a long, slow decline of the federal transportation reauthorization system. It's possible that no federal transportation reauthorization bill will be passed in 2009, even after the election, or in 2010. So what happens? The previous authorization bill bumps along, getting temporarily extended by Congress indefinitely, and every year Congress faces the question of whether to fund it fully through a general fund subsidy or simply not appropriating all the money that's been authorized. This is not an uncommon scenario in federal programs, but it's a scenario that was unimaginable only a few years ago for the transportation bill.

The conventional wisdom in Washington is that the system is broken because the gas tax no longer provides sufficient revenue for everybody's appetite. This is true, but there may be a deeper problem here – which is that the 20-year-old "TEA" concept in federal transportation may have run its course.

Old-timers will remember that the passage of "ISTEA" in 1991 (the Intermodal Surface Transportation Efficiency Act) was heralded as a revolution federal transportation policy – giving unprecedented powers to Metropolitan Planning Organizations, creating the environmental enhancement program, and providing unprecedented flexibility in spending federal dollars. The changes came about largely as a result of a revolution in the Bay Area, where the Metropolitan Transportation Commission demanded and got more flexibility to fund, say, bike paths over freeway expansions. (Bush signed the bill as a "jobs stimulus" during a recession, but never mind about that.) The TEA concept was carried forward in the 1997 and 2003 reauthorizations.

Yet the problem with the TEA concept is that it never contained a compelling alternative to the old pavement philosophy. As some commentators noted as far back as the mid-1990s, the TEA bills created a system that allowed MPOs to reject the highway-construction model and replace it with … a whole bunch of cool stuff that we really like. Which has never really added up to an alternative transportation system.

In the era of climate change, an alternative has begun to emerge – the idea that transportation should not be a separate idea but, rather, is one component of the goal of giving people proximity and access to things people need. In some cases, people will have to travel some distance to get what they need (a job, loaf of bread) and in most cases those folks will have to drive a car. But another option is simply to put people and stuff closer together, so that folks can walk, or ride a shuttle, or at least drive their car shorter distances to get from one thing to another.

> "In the era of climate change, an alternative has begun to emerge – the idea that transportation should not be a separate idea but, rather, is one component of the goal of giving people proximity and access to things people need."

That's why federal transportation funds are so frequently used these days for things like local land-use planning projects. (It's a system that, with full disclosure in mind, I benefit from in my day job as a planning consultant.) But it's also a way of looking at things that makes more sense from an integrated point of view.

Federal policies tend to be very functionally segregated, so it may never be possible to truly intertwine transportation with other aspects of community-building. But this kind of alternative vision could build support for a gas tax – showing that it is possible to improve access without adding lanes and increasing congestion all at the same time.

It's not clear at not that this point whether the climate bill will play a role in funding all this stuff. Since the burning of transportation fuels accounts for some 40% of greenhouse gas emissions, you'd think that reducing the need for transportation would be a goal in the climate bill. But transit advocates have consistently been outfoxed by deep-pockets folks like the coal industry (*Insight CP&DR*, April 2008). And, in any event, the climate bill is – as it were – on ice right now because Sen. Lindsey Graham from South Carolina has broken with his northeastern counterparts over immigration law.

So even though the land use alternative ought to be compelling in both the transportation and climate change arenas, it's not likely to move either bill forward toward passage this year. Which means that, for the moment, we'll just keep muddling along. ■

legal digest

Court Rules Against Refinery In First-Ever GHG Decision

Future Plans For GHG Mitigation Do Not Meet CEQA Requirements

BY LESLIE Z. WALKER

In the first-ever appellate court decision regarding the California Environmental Quality Act and climate change, the First District Court of Appeal has held that the future development of a plan for greenhouse gas mitigation constituted improperly deferred mitigation. For that reason and others, the court ruled the environmental impact report for an oil refinery project was invalid.

The City of Richmond and Chevron Products Company gave the First District Court of Appeal the opportunity to break new legal ground regarding an environmental impact report's treatment of greenhouse gas emissions (GHG). The court in *Communities for a Better Environment v. City of Richmond* found the EIR prepared for the construction of an energy and hydrogen renewal project inadequate in its project description and its intended strategy for mitigating GHGs.

Chevron proposed the project in order to upgrade its Richmond refinery. In July 2008, the City Council voted, 5-4, to approve the project. The city imposed numerous conditions to address project impacts and concluded that all of the project's significant environmental effects had been eliminated or substantially lessened where feasible.

A collection of environmental groups, led by Communities for a Better Environment, challenged the approval based on the California Environmental Quality Act (CEQA). The Contra Costa County Superior Court found the EIR was deficient because 1) the project description was unclear or inconsistent as to whether the project would enable Chevron to process a heavier crude slate than it was currently processing; 2) the city had improperly deferred the formulation of GHG mitigation measures; and 3) Chevron had improperly piecemealed the project by failing to include a hydrogen pipeline as part of the project. The city and Chevron appealed.

The factors that likely influenced the appellate court's decision include:

• A deal in which Chevron would pay the city $61 million dollars to fund civic improvement; the city would fast track additional project permits.

• The fact that the project as described in its Security and Exchange Commission documentation, provided under oath, contradicted the project description in the EIR.

• The city's delay in concluding that the project's GHG emissions would create a significant impact on the environment, coupled with the fact that the plan for mitigating this contribution would not be developed until one year after the issuance of the project's conditional use permit.

This case is significant because it is the first appellate case requiring the quantification and mitigation of greenhouse gas emissions for a project analyzed prior to the adoption of the California Environmental Quality Act guidelines relating to GHG (see *CP&DR Environment Watch*, January 1, 2010). Many jurisdictions have prepared, or are preparing, climate action plans to guide GHG emission mitigation, but this decision suggests that future development of such plans may not serve as sufficient mitigation.

Project Description

The appellate court first considered the adequacy of the project description. The environmental groups argued that the EIR omitted pertinent information. At issue was whether or not the project would enable the refinery to process heavier crude. According to the EIR, the "project would not alter the refinery's current design for processing intermediate and light crudes." As a result, the EIR did not contain any data regarding the current crude mix processed at the refinery and did not analyze the environmental impacts of processing heavier crude.

Some evidence, however, indicated the project would allow the refinery to process heavier crude. For example, the EIR explained that the project is proposed within the context of "a crude oil supply that is *increasingly heavier*," and consequently, the project was "designed to allow more flexibility in refining future crude supplies." Further, a disclosure document submitted to the Securities and Exchange Commission following the 2007 fiscal year cited the central purpose of the project as enabling the processing of heavier crude.

The court concluded the EIR failed CEQA's informational purpose because the project description was inadequate with respect to whether the project would enable the refinery to process heavier crude, and failed to properly establish and analyze baseline conditions for measuring the project's potential impacts.

Deferred Mitigation Of GHG

The court found the EIR improperly deferred the development of greenhouse gas mitigation measures. The court relied on the Global Warming Solutions Act of 2006 (Health & Safety Code, § 38500 *et seq.*, better known as AB 32) and a "white paper" prepared by the California Air Pollution Control Officers Association as evidence that "climate change impacts are significant environmental impacts requiring analysis under CEQA." The court criticized the timing of what it characterized as the city's "post-EIR" determination that project's 898,000 metric ton increase in carbon dioxide emissions was significant.

The court focused on the mitigation measure proposed after the city did make a finding of significance.

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The mitigation measure required Chevron to submit to the city "a plan for achieving complete reduction of GHG emissions" within one year of project approval. The EIR certified by the City Council concluded that implementation of the mitigation measure would "result in no net increase in GHG emissions over the project baseline." In other words, the mitigation measure would reduce the GHG impact to less than significant.

The court found this to be a classic case of deferred mitigation. "Numerous cases illustrate that reliance on tentative plans for future mitigation after completion of the CEQA process significantly undermines CEQA's goal of full disclosure and informed decision making," Presiding Justice Ignazio Ruvolo wrote for the unanimous three-judge panel.

The court noted the decisions in *California Native Plant Society v. City of Rancho Cordova*, (2009) 172 Cal.App.4th 703 (see *CP&DR Legal Digest*, May 2009), and *Sacramento Old City Association v. City Council*, (1991) 220 Cal.App.3d 1011, allow a lead agency to defer the formulation of specific mitigation measures, but only if the agency first:

- Undertook a complete analysis of the significant environmental impact;
- Proposed potential mitigation measures early in the planning process; and
- Articulated specific performance criteria that would ensure that adequate mitigation measures were eventually implemented.

Richmond performed none of these tasks and instead relied on the fact that scientific information about GHG and techniques for mitigating GHG impacts were constantly expanding during the years the project was under review, making it difficult to decide which specific actions to take. The court rejected this approach.

"The difficulties caused by evolving technologies and scientific protocols do not justify a lead agency's failure to met its responsibilities under CEQA by not meet even attempting to formulate a legally adequate mitigation plan," Ruvolo wrote.

Finally, the court noted that the inadequacy of the project description was a more fundamental flaw than the inadequacy of the GHG mitigation measure. But because the EIR must be revised anyway, Ruvolo wrote, "[T]he revised EIR should take advantage of any pertinent new information in analyzing the project's potential greenhouse gas emissions and their cumulative impact on climate change, as well as defining legally adequate mitigation measures to avoid those impact." The court directed the parties to new impacts CEQA Guidelines § 15064.4 relating to the determination of significance of a project's GHG emissions and § 15183.5 relating to tiering.

Piecemealing

The environmental groups also asserted the city had improperly piecemealed the project by failing to include and analyze a proposed hydrogen pipeline that would transport excess hydrogen to other hydrogen consumers as part of the project. The law prohibits agencies and applicants from chopping a project into smaller pieces to avoid the appearance a project will cause environmental impacts. Here, however, the court found that the project and the proposed pipeline would perform entirely independent and unrelated functions and, therefore, their separate treatment did not constitute illegal piecemealing under CEQA. ■

■ The Case:
Communities for a Better Environment v. City of Richmond, No. A125618, 2010 DJDAR 6136. Filed April 26, 2010.

■ The Lawyers:
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ceqa

State Supremes To Hear CEQA Case On Plastic Bags

BY PAUL SHIGLEY

After recently clearing its docket of California Environmental Quality Act cases, the state Supreme Court has accepted a new CEQA case for review.

All seven high court justices voted to review the Second District Court of Appeal's decision in *Save the Plastic Bag Coalition v. City of Manhattan Beach*. In January, the appellate panel ruled 2-1 that Manhattan Beach should have completed an environmental impact report before adopting an ordinance banning the distribution of plastic shopping bags within the city limits (see *CP&DR Legal Digest*, February 1, 2010). The court ruled that an association of plastic bag manufacturers had legal standing to bring the lawsuit, and that the association presented substantial evidence to support a fair argument that the ordinance would have environmental impacts.

The city argues that the coalition brought the suit purely to protect its commercial interests, which is not permissible under CEQA. The city also argues there is no substantial evidence the ban could harm the environment.

The state Supreme Court accepted two questions for consideration: Did the association of plastic bag manufacturers have standing to challenge a local ordinance banning the use of plastic bags? Did the trial court err in ruling the ordinance invalid for the failure to prepare an environmental impact report?

The Supreme Court's acceptance of the case means the Second District's opinion no longer stands.

The case is *Save the Plastic Bag Coalition v. City of Manhattan Beach*, No. 180720. ■

Redevelopment Agencies Shift Funding Priorities

– CONTINUED FROM PAGE 1

sents roughly half its net tax increment. Agencies have stated that the transfers will consume their operating budgets and "cripple" redevelopment--and the job and economic growth that is supposed to accompany it.

In the aggregate, the transfer will affect countless projects that are already underway, and the lack of funds may mean that agencies cannot dedicate time and expense to the planning of new projects that would, in turn, create more tax revenue when complete. The CRA contends that each dollar that a redevelopment agency spends generates up to $13 in economic activity. Moreover, affordable housing will suffer considerably.

"We expect about a $630 million shift will move away from the low- and moderate-incoming housing fund," said Julie Spezia, executive director of advocacy group Housing California. "That equates to 8,400 homes and almost 10,000 jobs statewide. We're really concerned that this sweep is happening at a really poor time and is going to hurt the state's economy and revenue overall."

The funds will go the state's Supplemental Educational Revenue Augmentation Fund and will be earmarked for K-12 schools that serve or are located in the respective redevelopment project areas from which funds have been culled. In its legal challenge, the CRA contended that the transfer of funds violated Article XVI, Section 16 of the State Constitution, which provides for the local reinvestment of tax increments generated through redevelopment activities.

Connelly, who had ruled in favor of a challenge to a similar proposed transfer last year, disagreed and ruled that the transfer was constitutional so long as the funds served the areas from which they were gathered. Connelly is former mayor of Sacramento and state legislator.

The transfer was mandated last year in Assembly Trailer Bill ABX4 26, which arose from negotiations between Governor Arnold Schwarzenegger and legislative leaders.

Whether the size of the transfer represents an appropriate sacrifice or an egregious imposition is a question for the legislature. "I don't think there's a single metric for that," said Marianne O'Malley, principal fiscal analyst in Legislative Analyst's Office. "Ultimately it's the job of the legislature to look at all the needs of California and figure out a way of funding them. I think those are policy calls that we elect legislators to do."

Some agencies, such as San Francisco, consider themselves lucky to be able to weather a storm that many agencies were simply unable to plan for.

Although the impact on this year's projects and operating budgets are bound to be significant throughout the state, Shirey said that the long-term implications of the ruling that authorized the transfer are profoundly troubling.

"What Judge Connelly ruled is that the legislature can define redevelopment to be whatever it wants to be, and under that kind of sweeping nod to the legislature, what it could mean is that the legislature starts using redevelopment for any purpose that it wants," said Shirey. "Every year will be open season on redevelopment by the legislature and the governor, and redevelopment agencies will never have any ability to do long-term planning."

In the short term, agencies are coping in a variety of ways. Fortunate ones such as the San Francisco Redevelopment Agency, are financing their transfers through bonds and therefore has avoided, for the time being, cuts to any projects.

"We are in a very fortunate position relative to a lot of our sister agencies in that our debt coverage ratio allows us to finance the payment to the state," said Fred Blackwell, executive director of the San Francisco Redevelopment Agency, of his $28 million payment. "It's a one-time deal for us. We didn't want to forego stuff that was already in the pipeline, but it's not sustainable."

Other agencies, however, are turning to far more drastic measures, especially given that most, if not all, are seeing lower tax increments because of the recession. Most commonly, they are cutting back on infrastructure improvements, which, unlike the development of commercial projects, do not hold the promise of generating property tax revenue.

"We had to basically cut our budget in half from where we were earlier in the year, plus the double-whammy of the economy being in the shape it's in," said San Jose Redevelopment Director Harry Mavrogenes.

"On a project-specific basis, we have to ask, what's the upside?" said Ontario Redevelopment Director John Andrews. "That future upside is increment revenue, as opposed to a project where it's a traffic signal improvement or curb and gutter improvement. It's going to create some more difficult choices." Andrews said that he would be having some "difficult conversations" with existing and potential project partners.

Despite these hardships – and the fact that it has pledged to file an appeal – the CRA advised its member agencies to pay their share of the SERAF as of the May 10 deadline even though it believes that the decision is unconstitutional.

"We did recommend to everyone that they make those payments," said Shirey. "We did that because we follow the law. As a result of the court's decision and the previous action taken by the state, that is the law. We're not going to engage in the hypocrisy that the state engages in by not following law."

The firms that refused to pay said they simply didn't have enough cash to write the check. "For us to pay the $3 million ransom to the state, we would have to borrow money," said Monrovia City Manager Scott Ochoa of what he called the Monrovia City Council's "principled stand" against taking money from other city programs. "If these deals mature, we'll sell our holdings, generate proceeds, and with that be able to pay the obligation to the state, however distasteful that might be."

In Monrovia, major projects such as Station Square, an 80-acre, 700-unit transit-oriented development near a future light rail station, might have to be put on hold if the agency pays the SERAF before it can raise more cash.

"If the state is not above paying out IOU's, I don't see why they should be above accepting IOUs," added Ochoa. In Richmond, officials say that they were simply tapped out.

"It's not because we're saying 'we don't like what you did,'" said Richmond Community and Economic Development Director Steve Duran. "We're in a financial situation where we don't have any money to pay."

These agencies that refuse to pay are subject to a so-called "death penalty" detailed in ABX4 26 that prevents them from undertaking any new projects until the transfer is paid.

Regardless of the SERAF's impact on the state's agencies, many are questioning why local funds should be sacrificed for the sake of a problem for which they blame Sacramento.

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Ballotmeasures

Brentwood's Measure F Tests Definition Of 'Control'

Potential development of 1,300 homes at issue in decision to expand city's urban growth limit.

Even as commuters have grown weary of the long drive from the western edge of the Central Valley to the employment centers of the Bay Area, a group of landowners in Brentwood see robust development opportunities. The formerly diminutive Contra Costa County city, now of 51,000, is hotly debating what its next round of expansion will look like.

At issue is the fate of a 740-acre tract of largely undeveloped land, which lies to the west of the county urban limit line that governs Brentwood but is nonetheless already addressed in its general plan. That plan calls for up to 579 homes to be built on the property, which is owned by only five landowners, in the event that the land was annexed by the city. Measure F, however, would expand the urban limit line and in so doing authorize a 20-year development agreement for up to 1,300 homes and 30 acres of commercial development.

The agreement itself would not, however, permit development, which would still be subject to environmental review, and approval by the city, the water board, and other agencies.

Unique to Contra Costa County, the urban limit line is a planning tool by which the county designates land, both incorporated and unincorporated, for development. The urban limit line used to be an informal policy, but since 2007 the county Local Area Formation Commission has promised to honor it (See *CP&DR*, April 1999). This is, in fact, the latest in many battles over the future of inland Contra Costa County and its uneasy role as bedroom community serving the East Bay and San Francisco (See *Insight CP&DR*, September 2000).

"Brentwood will have its own urban limit line that it will control," said Tom Koch, consultant and spokesperson for the pro-Measure F campaign. "Currently Brentwood does not have that authority."

Representatives of the Brentwood Department of Community Development declined to be interviewed for this article.

Proponents have agreed to a number of concessions designed to assure residents that, if Measure F passes on June 8, all 1,300 homes – and their estimated 4,000 residents – would not appear overnight and would not adversely affect the community. Provisions included in the measure an in a recently negotiated development agreement include assurance that the area would not be occupied until 2015 and that developers would improve surrounding roads, provide community benefits such as parks, and fund municipal paramedic services.

These concessions are not enough for opponents, who contend that any future development should simply abide by the city's existing general plan and that the measure represents an unfortunate case of ballot-box planning.

"We understand that it may be developed in the future; it's in our general plan for that purpose," said Brentwood resident and Measure F opponent Kathy Griffin. "It's not like we're not saying that it's pristine farmland or it should be preserved for open space. Our argument is that you're replacing our general plan and doubling the number of housing units."

Measure F's proponents contend, however, that failure to extend the urban limit line now may mean that Brentwood will forfeit the ability to control the land in the future. They contend that the neighboring city of Antioch may try to annex it or that Contra Costa County will go ahead and authorize development there.

"It's clear that the land is going to be developed by one or the other," said Koch. Opponents of the measure call these concerns far-fetched.

"There are so many hoops for [Antioch] to do that," said Griffin.

"They'd have to do a planning process, they'd have to do an environmental report, they'd have to get LAFCO to take it out of our sphere of influence under our protest and put it into their sphere of influence...then they would have to take it to a vote of their people to get it into their urban limit line.

"To just imply that Antioch can just come in and build something is simply misleading."

Griffin insists that she does not oppose growth but does think that Measure F calls for too much density. She also contends that many of the concessions that proponents are making would be required by the existing general plan and are, in fact, not particularly generous in light of the increased density.

They include a $2,000 per house fee for community athletic facilities; land that could be developed for parks and schools; a $3,000 per house fee for employment generation, such as job-training programs; a fee for paramedics; and requisite road improvements. The city's fiscal analysis estimates that at full build-out the city would net $800,000 annually, with $2 million in revenues and $1.2 million in additional expenses from the development; the city could also receive up to $45.7 million in impact fees.

"If you look at their development agreement, most of the items they're touting as over and above [are] at contribution levels you're expected to make with a development of this size," said Griffin.

Though the battle over Measure F is being fought against the backdrop of tremendous growth in the Bay Area's inland suburbs, Griffin said that the measure is following an old pattern. In 2005 Brentwood voters defeated Measure L, which would have expanded the urban limit line to the north, and then in 2006 approved a measure that reaffirmed the city's existing (and still current) urban limit line. ■

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–BALLOT MEASURES CONTINUES ON PAGE 9

Eastvale Will Decide Whether It Can Afford Cityhood

Measure A cityhood vote hinges on city's ability to pay net neutrality payments to Riverside County.

Riverside County has gained the dubious distinction of being one of the foreclosure capitals of California, if not the country.

One bright spot, however, has been the unincorporated community of Eastvale, which has grown from an exurb of scattered homesteads a decade ago to a major unincorporated bedroom community of roughly 40,000 residents.

"Eastvale is really leading Riverside County in its ascendance from the recession," said Jeff DeGrandpre, president of the Eastvale Incorporation Committee.

On June 8 Eastvale residents will consider Measure A, a multi-part ballot measure to decide whether the community, located in the northwest corner of the county adjacent to the City of Norco, will become the county's 27th city.

Eastvale is already more than halfway to its projected built-out population of 68,000, and it will have the option of continuing to follow a general plan set forth in the Riverside County Integrated Project. Additionally, proponents say they seek local control over opportunities to promote new commercial developments and contract with the Riverside County Sheriff for dedicated service.

"We're all pretty happy with the way Eastvale looks right now," said DeGrandpre. "We have residential, commercial, and light industrial to come. We're doing this to keep our tax dollars here."

While both opponents and supporters of Measure A say that they favor cityhood and the local control that it would bring, they differ over the issue of whether current economic conditions make this the right time to incorporate. In addition to bearing its own operating expenses, the city of Eastvale will have to pay roughly $1.5 million annually, for 30 years, in net neutrality payments designed to compensate Riverside County for the loss of tax revenue that it will incur upon incorporation.

Analysis revealed that Eastvale would not be able to pay the entire amount from its general fund but will have to dip into its fire fund as well, a move that concerns opponents but still conforms to state requirements.

Opponents of Measure A, however, fear that this payment may doom the city to fiscal ruin from Day One because it is both more generous than it ought to be based on prevailing economic conditions.

"The base year around which the neutrality fees were negotiated was 2008," said Irene Long, one of the leaders of Not Now Eastvale. "The county's revenues have shrunk dramatically, so if we're tied into paying them lose revenues for 2008…we're automatically giving away more money than we need to."

Both Long and DeGrandpre are running to serve on the would-be Eastvale City Council.

Long also contends that proponents of incorporation provided different sets of revenue projections to county officials and that the revisions created a more optimistic picture than the original numbers that appeared in the incorporation committee's Comprehensive Fiscal Analysis. Even so, Long said that the city will have to go to extraordinary lengths to pay what she considers generous net neutrality payments.

"For some never explained reason they decided to throw in what I call the 'signing bonus'…they would give whatever was left of our fire fund, but no less than 15 percent, to the county as a gift," added Long. "We're in the red from the very first full year of incorporation."

An October 2009 Local Agency Formation Commission staff report, signed by Executive Officer George J. Spiliotis, could not make a recommendation of fiscal viability, and a follow-up report in January maintained that position despite what it acknowledged as "positive fiscal changes" that emerged from subsequent negotiations between the Eastvale Incorporation Committee (EIC) and the county.

A July 2009 incorporation study committed by EIC found that "the feasibility of the incorporation is inconclusive: neither clearly feasible, nor clearly infeasible" and that feasibility would ultimately depend on "policy decisions."

LAFCO Executive Officer George Spiliotis said that the city would in fact be viable as of its first year, according to information that was presented to the commission after the publication of the initial reports on the CFA.

"There was testimony presented by proponents that allayed the commission's concerns regarding staffing, and they ended up approving it," said George Spiliotis, Executive Officer of the Riverside County Local Agency Formation Commission. "They presented information using some of predicted surplus funds and assigned staffing to those funds."

"LAFCO's concerns have been largely alleviated," said Field. "Their staff report indicates that they are, I believe, comfortable with the fiscal analysis as it stands now." Field and DeGrandpre both cited retail and residential projects that are in the pipeline that will contribute to future tax receipts.

Furthermore, Spiliotis said that the use of fire funds would meet state requirements.

"There's no problem," said Spiliotis. "I don't know if you can say it's normal. Each revenue neutrality negotiation is unique, but I do not believe that is unprecedented."

For opponents of Measure A, the negotiations that led to the finding of viability were not nearly transparent enough and in fact were based on questionable data. Not NOW Eastvale, which acknowledges "the now simple fact that almost everyone wants Eastvale to become a city one day" cites the October 2009 Comprehensive Financial Analysis in finding that the city will run a deficit in years 2-10 of incorporation, resulting in a negative operating reserve of $3 million by the 10th year. The Not Now group wants to put cityhood on old until the economy picks up.

"The main benefit to [voting no] is that we won't be locked into giving away this money," said Long. "That gives us time to renegotiate. I think 2011 is a good year to lock in based on anticipated drop in revenue and then put it back on the ballot in 2012."

Supporters, however, contend that, even in light of the recession, the incorporated city will be no worse off than any other city in the state and, with projected growth, will be on firm footing before long. Proponents also claim that cityhood will not affect residents' taxes.

The revenue neutrality agreement was the best agreement we could possibly have made," said DeGrandpre. "When they started it was in perpetuity. We knocked [the county] down from infinity to 30 years. Do I like it? Not necessarily, but it's the law."

While DeGrandpre said that his group's analysis points to a potential $4 million surplus in the first year, others are expressing more cautious optimism and yet still contend that the moment is ripe for Eastvale to incorporate.

"There are different ways to look at the right moment: political vs. absolute best economic time," said Field. "Even though from an economic standpoint, this probably isn't the perfect time to – CONTINUED ON PAGE 10

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do it, if you can do it now and succeed… that's a pretty firm foundation for the future."

Moreover, supporters of Measure A contend that a defeat of Measure A will simply mean that the would-be city will have to go through years' more hassle and expense to craft a new measure and a new agreement, at which point it might not be any better off than it would be under Measure A.

"We'd have to start the process all over again," said DeGrandpre. "We'd have to spend roughly $140,000 again, do studies again, collect signatures again. The math doesn't work out." ■

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Eastvale Incorporation Documents, http://www.lafco.org/opencms/quick_links/eastvaleincorporationdocuments.html.

2009 Decision Set Stage For Funding Raid

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"Given the state that the California budget is in, everybody should be expected to share the pain," said Blackwell. "On the other hand, I think that redevelopment agencies were disproportionately affected in a negative way. Many in the Legislature end up looking at development and land use activities and comparing them to things like health and safety and come to the conclusion that economic and redevelopment activities are more expendable."

"I think it's short-sighted," he added. "In times like these, redevelopment agencies are often the only real local stimulus tools that local governments have."

While last year's court victory temporarily retained what the CRA considers the sanctity of local funds, it actually set the stage for a careful crafting of ABX4 26 that eliminated the clauses that concerned Judge Connelly last year in such a way that the legislature was able to blur the historical distinction between a tax increment and the rest of the property tax pool. Last year's ruling was, thus, a Pyrrhic victory for redevelopment agencies.

"What the judge did when he ruled in our favor the last time around was basically to provide a roadmap for the legislature on how to do the taking in a way that was constitutional," said Blackwell. "And they followed that roadmap to a T."

In effect, what the legislature decided – and what Connolly endorsed – was the legislature's ability to decide how to spend increment money within the project area, at least with regard to schools.

"In terms of redevelopment, the agencies effectively modify the allocation of the property tax, and some revenues that otherwise would go to cities, counties, special districts and schools go to the redevelopment agency," said O'Malley of the LAO. This interpretation squares with what some consider to be the state's legitimate claim to all property tax funds.

"I am of the belief that you can't separate the state budget from local government. You need to look at the totality of public services," said Jean Ross, executive director of independent watchdog group the California Budget Project. "In the whole series of policy decisions made since the voters passed Prop 13, they really have intertwined state and local government finance."

The redevelopment community, however, considers even the transfer to local schools to be an affront to the spirit of redevelopment law. And they say that the legislature is simply taking advantage of redevelopment agencies' ready access to funds.

"We view the issue as one of constitutionality," said Shirey. "We're not saying that we're worse off or better off than any function or entity that's having money cut, or having money stolen from us, as we are. This money is going to schools that are in redevelopment project areas, ignoring the fact that schools have nothing to do with the redevelopment purpose."

The legislature's rationale, however, contends not only that schools conform to the definition of redevelopment but in fact have their own implicit economic value that may or may not be equal to that of the projects that redevelopment agencies support.

"The fundamental question isn't would reducing redevelopment have an effect, but would preserving schools funding have an effect too?" said O'Malley.

While those effects play out in the coming months, the CRA is hoping to address its concerns for the fate of long-term planning through a legal appeal and a ballot measure that has qualified for the November ballot which is intended to reaffirm the use of tax increment funds for redevelopment and prevent such future transfers. ■

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The Supreme Court's Urban Tilt

President Obama has now nominated two women to serve on the U.S. Supreme Court – and the addition of Sonia Sotomayor and Elena Kagan will definitely give the court a new tilt. But the tilt isn't about gender. It's about geography. In Sotomayor (*Insight CP&DR*, August 2009) and Kagan, Obama has selected two women who have lived their whole lives in big cities – they're both from New York, though from very different backgrounds (Sotomayor's from the Bronx).

And that means they are likely to give the Supreme Court an urban spin that it hasn't seen since the Roosevelt/Kennedy/Johnson era, when the court included urban veterans like Felix Frankfurter (who grew up on the Lower East Side in New York) and Thurgood Marshall (from Baltimore). Even Kagan's predecessor, John Paul Stevens (*Insight CP&DR*, April 2010), who was from Chicago, wasn't this gritty; after all, he always wore bow ties.

Other than Princeton, where they both went to college (though at different times, as did First Lady Michelle Obama), Sotomayor and Kagan have never lived outside big cities. Sotomayor lived her entire life in New York City until she took her seat on the Supreme Court last fall. Kagan's life has consisted of Manhattan, Cambridge (just outside Boston), Chicago (where she taught law school with Obama), and Washington, D.C.

Indeed, all three women on the Supreme Court are New York urbanites, including Ruth Bader Ginsburg, who grew up in Brooklyn and subsequently taught at Columbia University in Manhattan.

How will the urban spin affect a court that is already deeply divided over major social and cultural issues? Though it isn't often discussed, there has always been tension between urban ideas and suburban/small-town/rural ideas on the Supreme Court.

In the land use arena, the victory for planning in the seminal case of *Euclid v. Ambler* in 1926, which upheld the constitutionality of zoning, was largely the result of the fear that affluent justices from small towns had about urban immigrant populations. "The constantly increasing density of our urban populations, the multiplying forms of industry and the growing complexity of our civilization make it necessary for the State, either directly or through some public agency by its sanction, to limit individual activities to a greater extent than formerly," wrote Justice George Sutherland for a very conservative, business-oriented court. An urban tilt might affect a number of divisive issues – such as gun rights, which often reflect differences in urban and rural viewpoints. However, it might also tilt land use issues toward government involvement and away from property rights, as urbanites – living in a more crowded and complicated world – tend to accept more regulation than suburbanites and rural dwellers.

Of course, Kagan's confirmation wouldn't change the delicate balance of power on the court. The scales are generally still tipped by which way Justice Anthony Kennedy swings in any given case. And Kennedy's not from Manhattan, the Bronx, or Brooklyn. He's from Sacramento.

– BILL FULTON | MAY 10, 2010

Drill Baby Drill? I Don't Think So

The ongoing catastrophe in the Gulf of Mexico may be the best thing ever to happen to the renewable energy industry.

I hope that doesn't sound crass. Really, I'm not celebrating in any way a disaster that has already killed 11 oil platform workers and is threatening the livelihoods of countless people in the fishing and tourism industries.

But history teaches us that the Santa Barbara oil spill of 1969 was one of the galvanizing incidents of the environmental movement. That spill also was caused by the blowout of an offshore oil well. Three million gallons of crude oil spilled into Santa Barbara channel, coating miles of coastline and thousands of birds. You can almost draw a direct line from that event to the California Environmental Quality Act to the California Coastal Act. In fact, many of our cornerstone state and federal environmental laws stem from the early- and mid-1970s, when the environmental movement was ascendant.

Last month's Gulf Coast oil rig blowout occurred just as the Obama administration began moving to open up more coastal areas to drilling. But what the president is now calling a "potentially unprecedented environmental disaster" has put all offshore drilling plans on hold, possibly forever. That includes Gov. Schwarzenegger's proposal to permit additional drilling in the Santa Barbara Channel to generate revenue for parks. In fact, on Tuesday, May 4, the governor withdrew his support for the offshore drilling proposal. "Why would we want to take that risk?" he asked.

If the Gulf fishing industry is indeed put out of commission, tar balls roll onto land from Galveston to Tampa, and our televisions fill with images of dead birds and fish, nobody is going to be chanting "drill baby drill." Rather, I suspect there will be a huge surge of interest in placing solar panels on every structure, erecting wind turbines all over the place, and fueling cars with electricity and alcohol.

Even if, somehow, the oil spill doesn't turn into an environmental disaster – and here's hoping that it doesn't – I still think the petroleum industry will have a public relations disaster on its hands, especially in California.

One other likely casualty of the oil spill: the oil industry-funded initiative that would overturn AB 32 (*CP&DR*, Vol. 25, No. 7 April 2010). Campaign advisors working against the initiative already have just about all the headlines and images that they will need.

– PAUL SHIGLEY | MAY 7, 2010