CP&DR

VOL. 25, NO.15 — AUGUST 01, 2010 CALIFORNIA PLANNING & DEVELOPMENT REPORT

Irvine Embraces Infill

6,000 Residential Units To Be Added To City's Core

BY JOSH STEPHENS

Jamboree Road might not become the next Park Avenue, but a new vision plan recently completed by the City of Irvine signals a major shift away from the suburban lifestyle of Orange County. One of the early cities to pioneer the strict segregation of office-park style commercial development from master-planned residential areas, Irvine will be allowing thousands of new residential units into its business core in the coming decades.

The Irvine Business Complex vision plan calls for increasing residential density and creating mixed-use neighborhoods throughout a 2,000-acre swath along the 405 freeway and south of John Wayne Airport. The area is currently occupied almost exclusively by commercial and industrial uses. Prior to the adoption of the vision plan, up to 9,000 units had been slated for the area, many of which have already been built or permitted.

The plan increases that number by 6,000, to 15,000 total. The plan also provides for 6 million square feet of office, industrial, and retail space that will be interspersed among the residential development, thus breaking down the strict segregation of land uses that have long characterized Southern California cities.

With nearly 90,000 jobs and over 4,500 businesses, Irvine's business core is already one of Southern California's largest employment centers. The city claims that it has a stark jobs-housing imbalance, with three jobs for every one residential unit. The vision plan aims to provide housing for workers to live near their jobs and provides for neighborhood amenities including parks and retail.

Upon full build-out – in an estimated 20 years – the area will be one of the most densely populated in the county. What it may not be, however, is a cohesive, walkable community, according to its most outspoken critic on the Irvine City Councilmember, Christina Shea.

Shea said she is concerned that haphazard development within the IBC might not knit the community together but instead create residential pockets without effective internal connections.

"The plan is really not a complete overlay plan. You're going to have many businesses and older residential – CONTINUED ON PAGE 10

Cantil-Sakauye Brings Fact-Based, Moderate Approach To CEQA

insight

WILLIAM FULTON

As *CP&DR's* Senior Editor Paul Shigley pointed out last week in his blog [], retiring Chief Justice Ronald George of the California Supreme Court gained a well-earned reputation as a centrist and a unifier.

Now it will be up to his presumed successor, Tani Cantil-Sakauye, to carry George's approach forward at a time when significant planning and development litigation is likely to emerge. Schwarzenegger's climate change law, AB 32, is likely to meet some serious challenges in court over the next few years, especially as it is applied through the California Environmental Quality Act. SB 375, the regional planning side- – CONTINUED ON PAGE 6

inbrief

Ending a 14-year saga over growth and affordable housing in the East Bay City of Pleasanton, the Pleasanton City Council has voted, 4-0, to nullify a housing cap that was approved by city voters in 1996. That cap limited new homes in the city to 29,000. Housing advocates Urban Habitat sued the city, claiming that that number did not enable the city to fulfill its obligation to provide affordable housing. A March 17 court ruling that essentially found in favor of Urban Habitat (*CP&DR Blog,* March 26, 2010 [ ]). The ruling in Alameda County Superior Court ordered the city to plan for the construction of 3,777 units, including 2,525 affordable units, by 2014. The City Council vote approves the settlement and includes an agreement to pay $1.9 million in attorneys' fees to Public Advocates Inc., the firm that represented Urban Habitat. Much of the city's new affordable housing is expected to be built near its BART station. While the settlement obligates the city to plan for affordable housing, it does not obligate it to subsidize its development.

The San Bernardino County Board of Supervisors has approved, on a 3-1 vote, the development of an 80-acre open-air compost facility near the town of Hinkley in the High Desert. The vote is the second time that the project has been approved. However, earlier this year a court overturned the board's initial 2007 approval, which was the subject of a lawsuit by Hinkley residents (*CP&DR Legal Digest*, Vol. 25, No. 11 [ ]). A Superior Court found in favor of plaintiffs, who claimed that the EIR for the facility – capable of receiving 2,000 daily tons of sewage sludge that would cure in the desert sun and turn into usable compost – include an insufficient alternatives analysis. Following that verdict, developer Nursery Products LLP updated its EIR accordingly, which was approved by the board. Boardmembers who supported the project cited its potential to eliminate up to 2 million truck trips that would otherwise have to haul sludge from the Inland Empire to faraway sites in Kern County and Arizona.

The City of Los Angeles broke ground last week on its long-anticipated "Civic Park" in downtown. The $56 million park replaces an unsightly 12-acre site called the County Mall, which is full of garages and miscellaneous landscaping, but is bounded by some of the city's most prominent civic institutions, including City Hall, the Music Center, and Disney Hall. The park is being funded largely through a $50 million grant from the Related Companies, which is developing the adjacent mixed use Grand Avenue Project [ ] in collaboration with the Community Redevelopment Agency. That project, which has been promised some controversial subsidies, is currently stalled mainly due to the economic downturn. Los Angeles architects Rios Clementi Hale have designed the civic park as a place for gathering and passive recreation, with lawns, fountains, and promenades. The park will provide some of the only truly public space in downtown Los Angeles; the closest equivalent is Pershing Square, an unwelcoming public plaza that has been named one of the ten worst plazas in the United States by the Project for Public Spaces. Backers hope that programming such as coffee outlets and musical performances will activate the park. Construction is expected to take three years.

Following the announcement that electric car maker Tesla Motors would take over a former Toyota/GM factory in Fremont (*CP&DR* Vol. 25, No. 12 [ ]), the city last month began the process of designating the factory and 1,250 acres a redevelopment project area. The area is currently dominated by industrial uses but city leaders expect that the advent of clean tech industries and a BART rail extension expected to arrive in 2014 will make the area attractive for residential and mixed commercial uses. Toyota is selling portions of the 400-acre factory that Tesla does not intend to use. The study is expected to take two years; if successful, it will lead to the designation of the city's fifth redevelopment area.

With the departure of former Planning and Development Director Richard Brucker from Pasadena to the County of Los Angeles, Pasadena City Manager Michael Beck has proposed that the Planning and Development Department be split into two separate agencies. Supporters of the move say that the two functions create a conflict of interest, between the development division, which is charged with promoting economic development, and the planning department, which guides land use. The city is currently conducting a search for Brucker's replacement.

The Federal Emergency Management Agency has released new flood maps for Napa County. The maps are more detailed than previous versions and may displayed heightened or reduced flood risk for various areas. Salvador Creek has been mapped for the first time, and many areas surrounding it have been found to be at high risk of flooding. All property owners in high-risk flood zones are required to have flood insurance. The new maps will become effective on September 29, 2010.

City of Napa Official Flood Map Page [ ].

After losing a $70 million federal grant, the Bay Area Rapid Transit District has devised a funding scheme to put the Oakland Airport BART connector back on track. The funding will come from a hodgepodge of federal loans, a grant from the High Speed Rail Authority, and BART's own reserves. Federal funding was revoked after federal officials found that BART had not sufficiently studied the project's impact on low-income communities.

Citing the importance of exports to the nation's economic recovery – and a stalwart connection between exports and metropolitan areas – the Brookings Institution released today a report analyzing the role of metro areas in the nation's export economy. According to Brookings, metro areas account for 84 percent of the nation's exports, many of which have ties to California. The report includes several categories of rankings, and in almost every case California cities figure prominently on the lists. According to number of export-related jobs, Los Angeles-Long Beach-Santa Ana ranks first, with 560,475 jobs. San Jose-Sunnyvale-Santa Clara ranks eighth with 201,634 jobs. Ranked by total value of exports, the Los Angeles area ranks second to New York City, $78 billion to $85 billion. With $30 billion in exports, San Francisco-Oakland-Fremont ranks sixth. Beyond the top-10, the San Jose area ranks 11th, San Diego ranks 17th, and – CONTINUED ON PAGE 3

CP&DR

is published semi-monthly by

Solimar Research Group
Post Office Box 24618
Ventura, California 93002

Telephone: 805/701-CPDR (2737)
Facsimile: 805/643-7782

Subscription Price: $238 per year

ISSN No. 0891-382X

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Riverside-San Bernardino ranks 23rd, Sacramento ranks 47th, Oxnard-Thousand Oaks-Ventura ranks 51st, and agricultural areas of Modesto and Stockton rank 91st and 92nd respectively.

Link to report [ ].

Tulare County's general plan and re-circulated draft environmental impact report contain "serious and critical deficiencies...that undermine both the Plan and the DEIR and render them legally inadequate and ineffective as tools for implementing the county's goals," according to a recent letter from Deputy Attorney General Susan Fiering on behalf of Attorney General Jerry Brown. The letter praises the county's goal of maintaining its agricultural and natural resources but says that the plan itself does not lay out a clear enough set of policies and goals and does not adequately guide growth in the county; it also notes that many deficiencies that were noted in a 2008 letter from Brown persist in the new DEIR. Fiering also warns that the general plan does not clearly identify the extent of future growth and therefore cannot evaluate that growth as a "project" pursuant with CEQA. This shortcoming leads to the critique that the 27 significant and unavoidable negative impacts of the plan cannot be deemed as such because the plan's claims are unsupported.

The City of Clovis has ushered in a new era in development in the largely residential Central Valley city by approving a zoning change that allows for small-lot subdivisions. The approval applies to only four subdivisions in the Loma Vista portion of the city, but it sets a precedent for the entire area, which at full build-out could house 30,000 residents. The Clovis City Council approved 841 homes on 153 acres – relatively dense for an area that would have contained only 600 homes under the city's standard zoning.

The developers of the massive, and controversial, Napa Pipe development (*CP&DR* Vol. 25, No. 7, April 1, 2010 [ ]) have announced that they will alter their planned water sources in their effort to gain county approval for the 2,600-unit mixed use development near the City of Napa. Developers Napa Redevelopment Partners now intend to use surface water rather than groundwater to supply the development. The switch is intended to satisfy critics who are wary of tapping into the county's dwindling groundwater reserves. The developers have secured an option to purchase up to 1,000 acre-feet of water from the Sacramento Delta annually; the project is expected to require 600 annual acre-feet. Developers would still have to make a deal with the North Bay Aqueduct to transport the water. County officials had expected to complete their review of the project's EIR by late fall, but this change may push the timetable back.

Sacramento's beleaguered K Street Mall may be reaching the end of a long and winding road of redevelopment (*CP&DR Blog* April 2009 [ ]) following the selection of a redevelopment plan for the mall's 700 and 800 block. The city council voted, 5-4, to negotiate with a team consisting of developers D&S and David Taylor. Their proposal calls for 200 residential units plus shops and restaurants to be developed along the two downtown blocks. Though more modest in scope than the plan for a year-round market proposed by Rubicon Partners, the winning project was considered the most "realistic" according to at least one council member. The city is expected to hand over roughly $42 million of acquired properties, and D&S/Taylor's plan calls for $16 million in city funding, half of which it will repay.

Gov. Arnold Schwarzenegger has appointed Fran Inman, senior vice president at Los Angeles-based developer Majestic Realty Corp., to the California Transportation Commission. Inman has spearheaded the Majestic's involvement with infrastructure issues and has served on several infrastructure-related commissions, including the Public Infrastructure Advisory Committee and the Los Angeles Area Chamber of Commerce's transportation committee. She also is a founder of FuturePorts, an organization promoting upgrades at the ports of Los Angeles and Long Beach. Last year she became chair of the Los Angeles Chamber. Majestic recently sparked controversy by getting a CEQA exemption for an NFL football stadium that is has proposed for the City of Industry.

Industrial marijuana cultivation has received initial approval by the Oakland City Council. Last month the council voted, 5-2, to issue four permits for indoor marijuana farms of virtually any size, meaning that farms could occupy such large facilities as warehouses or former factories. The move is intended to help the city regulate cultivation – which allegedly takes place rampantly throughout the city – and to raise revenue through annual permit fees of $211,000 per facility. Critics of the ordinance are urging the council to adopt a companion ordinance that would allow permits for small- and medium-sized growing operations, lest small growers get pushed out by the large, industrial growers.

The skyline of Santa Ana will be dramatically altered with the construction of a 37-story office tower recently approved by the Santa Ana City Council. Developer Michael Harrah has been seeking final approval for the One Broadway Plaza tower since 2004, when the city council initially approved the project. Since then Harrah has negotiated with the city over some of the project's provisions, including the elimination of a provision that required him to have half the space leased before groundbreaking. When complete the tower will be the tallest building in Orange County. ■

First Amendment Prevails Over Procedural Constraints

Court Rules City Must Reconsider 'Cabaret' Business Application

BY KATHERINE J. HART

In a case involving the City of Stanton's "sensitive use ordinance," the Fourth District Court of Appeal has ruled that the city's handling of an application for an adult business was flawed.

On December 1, 2008, Musa Madain submitted tenant improvement plans for a proposed adult cabaret on Katella Avenue. At the same time, he allegedly also attempted to submit the appropriate application and fee for an adult business. However, Madain claims he was told by city staff at the planning counter that the application and fee were not necessary. Two weeks later, Madain received a letter from the city manager stating his tenant improvements were rejected on the grounds his application was incomplete and that it was proposed within 300 feet of a "planned" church.

Madain learned that, in those two intervening weeks, city staff had purportedly encouraged the church to file an application promptly so as to preempt Madain's application under the sensitive use ordinance. Madain appealed the city manager's decision to the City Council on the grounds that the city improperly applied the sensitive use ordinance and that he had been unjustifiably deterred from filing his application and deprived of an opportunity to establish priority over the church.

At the City Council hearing, the council took testimony from Madain and the city manager, but no other city staff members with direct knowledge regarding the submittal of the application officially appeared. The council closed the hearing and denied Madain's appeal. He filed a lawsuit in Orange County Superior Court, lost there, and filed his appeal with the Fourth District Court of Appeal.

The court considered whether the City Council proceeded without or in excess of its jurisdiction, whether there was a fair hearing, and whether the council abused its discretion. The court never answered the question as to whether the council erred in interpreting the city's sensitive use ordinance as providing protection to the church (or any other religious institution) from the moment it applies for a permit to operate in a particular location. Instead, the court focused on whether the council properly considered Madain's allegations that city staff members had manipulated the process to ensure the church's application was given priority over Mr. Madain's application. Pointing to *Sierra Club v. City of Hayward*, (1981) 28 Cal.3d 840, 859, the court held that the City Council should have considered Madain's assertions of wrong-doing and resolved the question of whether Madain had in fact attempted to file a complete application on December 2, 2008.

On these facts, and because the proposed activity enjoys First Amendment freedom of expression protection, the court held that the city abused its discretion by failing to make findings as to which application had priority. The court ordered the city to vacate its denial of Madain's application, and to reconsider his application and his contention that he was ready to file an adult business application on December 2, 2008.

Presiding Justice David Sills wrote an illuminating concurring opinion. Sills wrote that the court's endorsement of the rule that whichever land use proposal is first in the door should have priority, with a few minor conditions, was merely an observation – and not law. Sills also cautioned two things. First, he said, the majority opinion should not be read for the proposition that the application for a permit means that land use is now "planned." Such an interpretation would run contrary to well-established land use law, he wrote. Second, the case should be limited to its facts, Sills wrote. The record does not concern the city's general plan nor the extent to which the sensitive use ordinance could operate as a *de facto* amendment to the city's general plan, he noted.

The key point of this case is that applications for activities protected by the First Amendment are entitled to extraordinary protections. Specifically, when rejecting on a procedural basis an application for a protected activity, a city or county should make additional findings over and above those otherwise required in anticipation of judicial review. ■

■ The Case:
Madain v. City of Stanton, No. G042218, 2010 DJDAR 9539. Filed June 23, 2010.

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takings

Farm's Appeal Options Dry Up

BY CORI M. BADGLEY

After nearly a decade of conflict, Adam Bros. Farming, Inc.'s quest to receive compensation from the County of Santa Barbara has finally come to an end with a Ninth Circuit ruling in favor of the county.

In 1999 the county had ordered Adams Bros. to cease farming on 95 of its 286 acres near Orcutt because those 95 acres had been designated as wetlands. Adam Bros. originally brought suit in California Superior Court claiming that the wetlands designation was faulty, – CONTINUED ON PAGE 5

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that it decreased the value and usefulness of their farmland, and that it violated the federal Equal Protection, Due Process and Takings clauses. Adam sought damages and declaratory and injunctive relief.

The Superior Court found the takings claims were not ripe, and Adam amended its complaint to eliminate those claims. At trial, the jury found that the county had in fact conspired to designate 95 acres as wetlands in an attempt to suppress the value of the land. The court awarded Adam Bros. declaratory and injunctive relief and a jury awarded Adam Bros. $5.6 million in punitive and general damages. [ ]

The county then appealed, and the appellate court eliminated the damages. It did, however, uphold the declaratory and injunctive relief, holding that the wetlands delineation was contrary to law.

In an effort to obtain compensation from the county, Adam Bros. then went to federal court alleging violations of the federal Takings Clause. Adam Bros. lost at the district court based on procedural issues and appealed. The Ninth Circuit Court of Appeal also ruled against Adam Bros. based on procedural issues in this case, thus effectively exhausting the plaintif's legal options.

According to the Ninth Circuit, Adam Bros.'s takings claim was barred by the doctrine of *res judicata*. *Res judicata* bars a plaintiff from re-adjudicating claims that have already been decided by another court. In this case, the Ninth Circuit found that the claims adjudicated by the state court involved the same underlying facts, and the fact that Adam decided to amend its complaint by eliminating the takings claims did not bar the application of *res judicata* to those claims. Therefore, Adam will not be receiving compensation for the county's faulty wetlands delineation. ■

■ The Case:
Adam Bros. Farming, Inc. v. County of Santa Barbara (2010) 604 F.3d 1142.

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redevelopment

Circumstantial Evidence Not Enough To Prove Blight

BY CORI M. BADGLEY

Mere conclusions and assumptions do not amount to substantial evidence to support a finding of physical blight, an appellate court has ruled in upholding a challenge by the County of Los Angeles against the City of Glendora.

In this case, the county challenged blight findings adopted by the City of Glendora, including the Glendora Redevelopment Agency. Upholding precedent set by *Evans v. City of San Jose* (2005) 128 Cal.App.4th 1123, 1131, in which the judge ruled that "a finding that a project area is blighted is the absolute prerequisite for redevelopment," the court found that the blight findings were not supported by substantial evidence, and therefore, Glendora lacked any eminent domain authority in this instance.

Over the years, Glendora's redevelopment area had grown from one to five project areas. In 2006, Glendora adopted an ordinance approving the redevelopment plan for four of the five project areas. As required, the ordinance concluded that blight existed in all four project areas. This conclusion was generally based on a report by consultant Robert Miars concerning blight data in Project Area 3, and reports by GRC Redevelopment Consultants completed in 2004 and 2006 concerning Project Areas 1, 2 and 5. The county opposed the adoption of the ordinance during the administrative process, and shortly after the ordinance was adopted, the county filed this lawsuit challenging Glendora's blight findings.

After the trial court found in favor of the County, Glendora appealed. On appeal, the court focused on the second of four statutory elements needed to make a finding of blight, namely "the area must be 'characterized by' one or more conditions of *physical* blight, as statutorily defined" as established in *County of Los Angeles*, 185 Cal.App.4th at 832. As to the other three elements, the court found that the area was clearly urbanized (the first element), and the court found it unnecessary to address the third and fourth statutory elements of economic blight and community burden because the required finding of physical blight under the second element was not substantiated.

Government Code section 33031, subdivision (a) outlines four conditions that constitute physical blight. Those four conditions are the following:

(1) Buildings in which it is unsafe or unhealthy for persons to live or work…;

(2) Factors that prevent or substantially hinder the viable use or capacity of buildings or lots…;

(3) Adjacent or nearby uses that are incompatible with each other and which prevent the economic development of those parcels or other portions of the project area;

(4) The existence of subdivided lots of irregular form and shape and inadequate size for proper usefulness and development that are in multiple ownership. (Gov. Code, § 33031, subd. (a).)

The appellate court emphasized that each of the blight findings, including the physical blight conditions, requires that the agency show a causal connection between the evidence and the actual finding. For example, merely showing a code violation does not equate to a finding that a building is unsafe. Instead, there must be evidence in the record showing how the code violation results in an unsafe building. After going through each of the possible physical blight conditions, the court concluded that Glendora failed to show any causal connection between the actual evidence – such as code violations, sewage problems, roof and exterior building damage, defective design, and building age – and the four physical conditions that constitute physical blight.

In once instance, Glendora asserted that the buildings could *possibly* contain asbestos and lead-based paint and *may* have substandard wiring issues based on the year they were built. Regarding such claims, the court stated, "[m]ost of these blight claims do not rest on evidence; instead, they rely on assumptions based on building age" (*County of Los Angeles*,

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185 Cal.App.4th at 842). Assumptions and presumptions do not amount to substantial evidence of unsafe or unhealthy conditions.

Based on the lack of causal connection, the court held that the blight findings in Glendora's ordinance were not supported by substantial evidence, and therefore, Glendora was not authorized to exercise any eminent domain power. This case acts as a reminder that mere conclusions and assumptions do not amount to substantial evidence in any administrative decision. The actual connection between the evidence and the findings is necessary. More specifically, this case provides practical examples of how to craft the blight findings and the evidence that should be included in the record. ■

■ The Case:
County of Los Angeles v. Glendora Redevelopment Project (2010) Cal.Rptr.3d ___ Cal.App.6th ____.

■ The Lawyers:
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kick of AB 32 that provides a streamlined CEQA process for certain projects, may also generate litigation in the years ahead.

Cantil-Sakauye's record as an appellate judge suggests that she is, as advertised, a moderate – careful, non-ideological, tending to deal with the specific facts of a case rather than broad legal theories. Like so many California judges lacking civil litigation experience, she has struggled with CEQA, which may be one of the reasons she has focused on the factual elements of CEQA cases. Read as a whole, her body of work on these cases suggests she might give a slight advantage to property owners over the government in a CEQA case, all other things being equal.

George served as chief justice longer than anyone in the last century, and his calm and centrist approach was a welcome change from the rollercoaster of the previous 20 years, when the court was dominated by super-liberal Chief Justice Rose Bird, who was eventually voted out of office, and then by super-conservative Chief Justice Malcolm Lucas, who was appointed by Ronald Reagan and ascended to the chiefship when Bird was ousted. The Bird court expanded governmental land use powers dramatically, especially in interpreting the CEQA, and the Lucas court subsequently pulled those powers back – most notably in *Citizens of Goleta Valley v. Board of Supervisors*, 52 Cal.3d 533 (1990), which put local judges on notice that CEQA was not to be used to kill projects.

Cantil-Sakauye had little experience practicing law before Gov. George Deukmejian appointed her to the bench in 1990– just about the time the *Citizens of Goleta Valley* case was handed down. Coming out of law school at UC Davis – which has a strong program in natural resources law and has produced many CEQA experts – she worked for a few years as a prosecutor in the Sacramento County District Attorney's Office before becoming a deputy to Deukmejian's legal affairs secretary, Vance Ray. She was a trial judge in Sacramento for 15 years before Schwarzenegger elevated her to the Court of Appeal in 2005.

Deukmejian, a former attorney general, appointed a lot of prosecutors to the bench and more than a few of them have struggled with all areas of civil law and planning and development law in particular. Land use law is highly specialized and CEQA in particular is a complicated and peculiar animal – so much so that state law requires each county to designate "CEQA judges." Cantil-Sakauye was never designated as a CEQA judge by the Sacramento County Superior Court; for most of her 15 years there, her colleague James T. Ford held that distinction.

Prosecutors tend to be conservative, yet their experience teaches them to trust the government's judgment. Therefore many former prosecutors have tended to side with the government agencies that are the defendants in CEQA cases, rather than the environmental groups that are so often the plaintiffs.

Cantil-Sakauye doesn't quite fit this definition. Since her ascension to the Third District Court of Appeals, she has written four opinions that have captured *CP&DR*'s attention. Unsurprisingly for an appellate court whose territory covers the Central Valley, three of them dealt primarily with natural resources issues. And three of the four – though not the same three – were CEQA cases. Her record in these cases shows her to be highly case-specific, focusing on the facts in each case and steering clear of opportunities to score ideological points.

Perhaps the best example of her non-ideological approach was her ruling in the only non-CEQA case whose opinion she wrote – a quirky takings case called *Herzberg v. County of Plumas*, 133 Cal.App.4th 1 (2005), which was issued in her first year on the appellate court.

If ever there was an opportunity to show pro-property rights zealousness, *Herzberg* was it. In the 1980s, Plumas County has passed an ordinance making it illegal for property owners in certain "open range" grazing areas to seize an animal that had strayed onto their property unless their property was fenced in. Represented by strident property rights lawyer Ronald Zumbrun, property owner Jack Herzberg sued, arguing that the ordinance required him to build a fence and, among other things, was an unconstitutional taking of his property because the cattle wandering onto his property created a physical occupation. Herzberg lost in the trial court and appealed to the Third District.

But Cantil-Sakauye didn't bite. She noted that the ordinance didn't require Herzberg to fence in his property and that he had other legal recourse besides confiscating the stray animals. She also knocked down the takings argument by citing cases all the way back to the granddaddy of them all, the 1978 U. S. Supreme Court ruling in *Penn Central.* She concluded that Herzberg had not been robbed of all economic use of his property, as takings law requires, because "the only potential economic burden of this ordinance is the occasional

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use of and damage to property caused by wandering cattle as they move on. Plaintiffs have not shown, nor can we perceive how plaintiffs could show, this limited burden interferences with their reasonable investment-backed expectations in buying this particular property within a traditional open grazing area when plaintiffs can always avoid it by fencing their property." [ ]

In other words, far from requiring Herzberg to fence in his property and trampling on his property rights, the ordinance protected Herzberg by allowing him to built a fence to keep stray animals out in an area otherwise designated for open grazing.

In all three CEQA cases, Cantil-Sakauye had to deal with the typical problem: a lawsuit filed to deal with a political, rather than a legal, difference. In one case, a city tried to shoot down a CEQA plaintiff opposed to a local Walmart based on standing. In a second case, local enviros pushed the envelope in arguing that an initial contract over the possible sale of water was subject to CEQA. In the third and most interesting case, the California Farm Bureau Federation fought a state effort to turn agricultural land into wetlands and habitat by arguing that the action was subject to CEQA.

The Walmart case, *Citizens for Open Government v. City of Lodi*, 144 Cal. App. 4th 865 (2006), was pretty straightforward. Citizens for Open Government had sued Lodi over the EIR on a local Walmart, but the city challenged the group's standing because the group had appealed based on issues raised by a different organization in the administrative hearing. Cantil-Sakauye disposed of this one quickly by noting that even the city's own notice to the group had stated it could appeal based on somebody else's issues [ ].

The water contract case involved one of the most controversial natural resource issues in far northern California in recent years – the 2003 decision by the McCloud Community Services District (in Siskiyou County) to sell up to 1,600 acre-feet of water per year to a bottled water company owned by Nestlé. (Nestlé sells dozens of brands of bottled water, including Calistoga and Arrowhead.) Local residents sued, claiming that the contract between the McCloud and Nestlé was subject to CEQA. In Third District ruling, Cantil-Sakauye disagreed, saying that execution of the contract was conditional on many future steps, including CEQA analysis [ ].

In so doing, she relied on a pretty well-known CEQA case from nearby Shasta County, *Stand Tall on Principles (STOP) v. Shasta Union High Sch. Dist.*(1991) 235 Cal.App.3d 772, in which the Third District ruled that the selection of a site for a high school was not subject to CEQA so long as CEQA analysis was completed before the project was constructed. It is interesting to note that in the '70s and '80s the *STOP* case easily could have gone the other way, but the Third District's ruling in *STOP* came down less than a year after the California Supreme Court's forceful ruling in *Citizens of Goleta* Valley, telling lower courts to rein in the environmentalists – and less than a year after Cantil-Sakauye was first appointed to the bench in Sacramento.

The third CEQA case is by far the most interesting, because the Farm Bureau – not always the biggest defender of CEQA – went to court to force the state to do a CEQA analysis on conversion of farmland to habitat. Despite this somewhat manipulative use of a CEQA lawsuit, Cantil-Sakauye agreed with the Farm Bureau – and read the law and the CEQA guidelines very narrowly in order to do so.

California Farm Bureau Federation v. California Wildlife Conservation Board, 143 Cal App.4th 173, was decided a month after the Lodi case and three months before the Nestlé case. It involved an agreement between the Wildlife Conservation Board and a Colusa County farmer named Leroy Traynham for the WCB to buy a conservation easement on 235 acres of Traynham's property to expand a wetlands and riparian habitat corridor in the Lower Colusa Trough, an area important to waterfowl. A plan to restore the wetlands and habitat was approved – including, quite literally, the construction of new wetlands – and the Department of Fish & Game approved a CEQA exemption for the project. (Most of the property in question would be flooded as a seasonal wetland.)

The Farm Bureau Federation sued, claiming the land conversion should not be exempt from CEQA. In a long and very detailed opinion, Cantil-Sakauye agreed with the Farm Bureau, interpreting four potential CEQA exemptions narrowly along the way.

The most important exemption the state had put forth as a rationale for skipping CEQA was a so-called Class 13 Categorical Exemption, contained in the CEQA Guidelines, which provides an exemption for "the acquisition of land for fish and wildlife purposes including (a) preservation of fish and wildlife habitat; (b) establishing ecological reserves … and (c) preserving access to public lands and waters where the purpose of the acquisition is to preserve the land in its natural condition."

In her opinion, Cantil-Sakauye interpreted these provisions quite literally, concluding that the conversion of farmland to wetlands and habitat with the help of heavy construction equipment did not constitute preserving existing habitat, preserving land in its natural condition, or establishing ecological reserves. She even quoted Webster's Dictionary for a definition of "preserve:" "The language simply does not stretch to cover acquisitions for the purpose of physically constructing or creating and activity managing new wildlife habitat." [ ]

After dispensing with a couple of less-strongly-argued exemptions, she even rejected what is commonly known as the "common sense exemption," which permits a CEQA exemption if "it can be seen with certainty that the project will not have a significant effect on the environment."

Though the state asserted that converting farmland to wetlands and habitat quite obviously meets this criterion, Cantil-Sakauye did not agree. "In fact, this project is not a mere passive change in use, a cession of farming on the property," she wrote. "This project involves the physical reshaping of the land to create wetlands and upland for habitat." She then went into detail about how this reshaping would occur and how it might alter the environment.

If you ran across this kind of reasoning in a decision by somebody like the dense-but-reliably-conservative Samuel Alito [ ], you'd conclude that he had burrowed deeply into the facts of the case in order to justify his conservative bias without actually revealing it too obviously. But with Cantil-Sakauye, it's hard to come to the same conclusion. Maybe she is fundamentally pro-landowner and will find any way – even rejecting CEQA exemptions – to get the government out of the way. More likely, like so many Republican-appointed judges these days, she's a case judge, focusing on the facts of the case and often interpreting the underlying laws almost too literally to reach a conclusion.

Of course, Cantil-Sakauye has not written a takings or CEQA decision in the last 3½ years; all four of the decisions described her came in her first two years on the bench. So perhaps her thinking has evolved. And it may be that over time she – like so many Supreme Court justices – will grow in a direction we can't predict and take the court with her. I'm betting that she won't. I'm betting that she will get the California Supreme Court to stick to the knitting on CEQA and takings cases, and not lift her head up very far out of the facts of the case at hand. That's likely to add up to a court that respects precedent and doesn't push too hard in one direction or the other in the years ahead. ■

ENVIRONMENT WATCH

JOSH STEPHENS

Stanford Campus Plan Would Protect 5,000 Acres

Like any visionary railroad baron, Leland Stanford hung on to some of the land at the end of the line – in his case, the original Transcontinental Railroad. Stanford might not have imagined, however, that the ultimate fate of much of his land would depend not on the iron horse but instead on frogs, salamanders, and trout.

In the century since the Gov. Stanford first deeded land to the university that bears his name, several of its native species have qualified for protection under the federal Endangered Species Act, thus restricting Stanford University's ability to develop or otherwise use the land to fulfill its academic mission. The Stanford Habitat Conservation Plan is intended to ensure the land's long-term protection even as the university grows.

Developed in collaboration with the U.S. Fish and Wildlife Service, the HCP would preserve, via conservation easement, key components of roughly 5,000 acres of open space in the foothills above Palo Alto while permitting potential development or other disruptive uses on up to 180 acres.

"Targeting the high-quality areas for the five covered species that we have in the plan…puts a comprehensive structure to it and expands the conservation work we've done," said Catherine Palter, Stanford's associate director of Land Use and Environmental Planning. Those species include the red-legged frog, tiger salamander, steelhead trout, western pond turtle, and San Francisco garter snake.

For opponents, though, 180 acres of developable acres is too many, even on a campus as large as Stanford's.

Critics of the plan are particularly concerned about its vague description of where development might take place. The permanently protected acres include riparian corridors and oak-studded hillsides within roughly 300 feet of San Francisquito Creek and tributary streams, which provide key habitat for the endangered species; the plan also includes a tiger salamander preserve that is off-limits to all development.

The plan is intended to preserve and enhance habitat for endangered species and provide an "umbrella of protection" for other species on the land. The plan outlines monitoring and restoration activities that the university will conduct and commits the university to long-term stewardship of the land. In return, the university gets federal permission to "take" – harm, kill, or otherwise disrupt – endangered species on up to 180 acres that could be sprinkled almost anywhere on wide swaths of land, deep into the foothills and relatively far from the main campus.

This lack of specificity troubles Brian Schmidt, legislative advocate for the Committee for Green Foothills.

"Nobody knows where they (the developable acres) are," said Schmidt. "They could potentially be extremely important."

Schmidt added that the HCP provides for more developable acres than Stanford's own "Sustainable Stanford" plan calls for and therefore opens more habitat than is necessary. That plan, however, has only a 25-year time horizon, as opposed to the HCP's 50 years.

"They seem to make a projection that they're still going to be developing between 1 and 3 acres of habitat a year," said Schmidt. "I think they're overestimating the amount of impact that they're anticipating and are trying to get permits for." Schmidt said that he would prefer to see Stanford identify a smaller and more defined area for potential habitat disruption.

The plan's architects insist, however, that giving the university a single, blanket clearance to disrupt those 180 acres is preferable to a more haphazard alternative.

"It puts down a comprehensive and cohesive strategy to conserve endangered species," said Sheila Larsen, senior staff biologist with the Sacramento Office of the U.S. Fish & Wildlife Service "Otherwise, they would be coming in on a project-by-project basis." Larsen said that without the HCP, development – or lack thereof – in the foothills would take place on a "piecemeal" basis.

The draft HCP was completed in July 2009 and the draft Environmental Impact Statement was released in April 16, 2010. A 90-day public comment period on the EIS was to have ended July 15 but has been extended to Aug. 30.

The federal permissions to disrupt endangered species do not, however, preclude local regulations or the need for analysis mandated by the state or counties.

"This plan does not, for instance, absolve them of their responsibilities under CEQA to do their appropriate CEQA documents for the construction of any buildings," said Larsen.

Stanford's Palter said that potential development governed by the HCP should not be confused with the university's long-term development plans for its main campus. The university intends to concentrate virtually all new development within the existing campus footprint. However, she said that the university wanted to reserve the right to disrupt habitat either for the purpose of development or even for academic projects that might be so disruptive as to require a permit.

"On the one hand, we don't have anything planned," said Palter. "But on the other, if something should be proposed in the future and receives its local land-use approvals we know how it would be mitigated under the HCP for Endangered Species Act compliance."

Larsen insisted that by keeping the riparian corridors off-limits, any development or academic activities would have relatively low impacts.

"The plan provides for a certain amount of…avoidance and minimization, which includes siting most of those 180 acres outside of environmentally sensitive areas," said Larsen.

Palter admitted that the university has no specific plans for those acres – many of which are not contiguous with the main campus – but noted that with a 50-year plan the university wanted to maintain a degree of flexibility.

Regardless of whether the university will exercise its right to use those acres, the HCP calls for the university to oversee conservation efforts on the entire 5,000 acres. It mandates the establishment of a land trust but does not include specific details regarding the administration or independence of the trust. Critics of the plan contend that anything short of an independent board might enable the university to shirk its obligations to preserve the land properly.

"There's no detail about how that land trust would be organized and how it would maintain its independence and its ability to enforce easements against Stanford, especially if Stanford is the body that's organizing it," said Schmidt.

Schmidt called on Stanford to establish an independent board and to give the trust sufficient financing for it to be able to bring lawsuits against the university if needed. The HCP does not lay out those details, but Palter said that the HCP would require the trust to submit annual reports to Fish and Wildlife to ensure compliance.

One of the more controversial issues that has arisen in the discussion of the HCP is actually not in the HCP itself. The environmental group Beyond Searsville Dam, headed by

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Activists Want Stanford To Study Dam Removal

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environmental consultant Matt Stoecker, is concerned about the fate of the obsolete Searsville Dam, a 65-foot high, 275-wide dam that dates back to 1892. Impounding the waters of San Francisquito Creek, the dam serves no useful purpose, and the lake behind it is now 90 percent sediment.

The university has agreed to dredge the lake and to study options for fish passage so that steelhead trout can surmount the dam, but Beyond Searsville Dam has called for the university to take stronger action. Stoecker ultimately wants the university to remove the dam entirely. Stoecker said that he sees the drafting of the HCP as an opportunity to get the university to commit to its removal, especially because the HCP covers land and riparian features that are surrounding and affected by the dam.

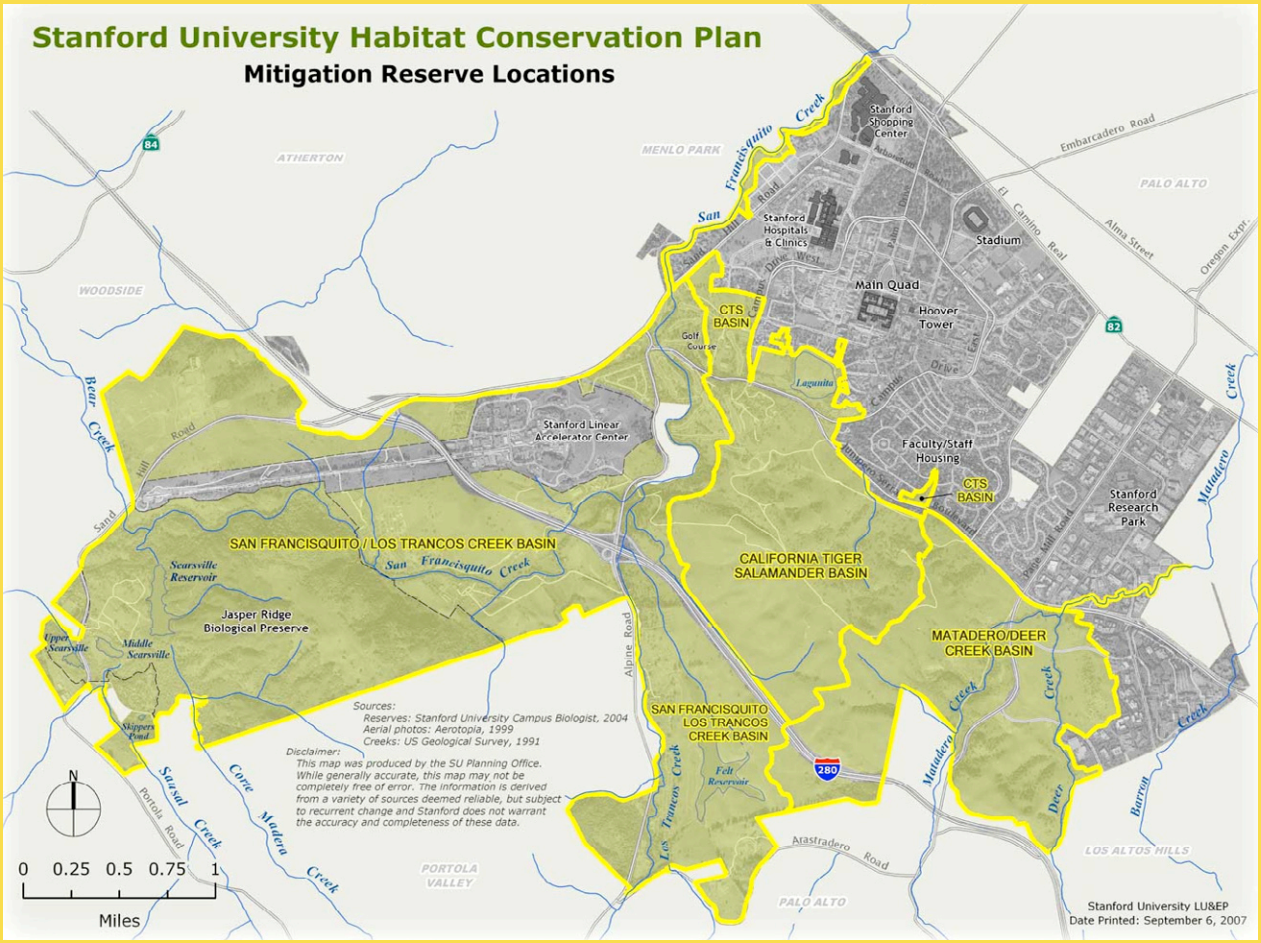
"What we're really asking for is a collaborative process and doing a study just to see if dam removal is feasible and how best to do it," said Stoecker. "You'd think one of the world's leading institutions would be interested in having all the data."

Stanford's Palter, however, said that dam removal is simply too complex and costly for the university to commit to anything of the sort at the present time and therefore is not included in the HCP at all.

"It's unrelated, but we're hearing the comments because the HCP is out for public review," said Palter. "It's not in the HCP because the HCP needs to have very definite plans for what's called covered activities." ■

■ Contacts and Resources:

Stanford HCP Draft Environmental Impact Statement
http://swr.nmfs.noaa.gov/nepa.htm#The_Draft_Environmental_Impact_Statement_%28EIS%29_
Stanford HCP Official Site: http://hcp.stanford.edu
Sheila Larsen, Senior Staff Biologist. Sacramento Office of the U.S. Fish & Wildlife Service, (916) 414-6600.
Catherine Palter, Associate Director of Land Use and Environmental Planning, Stanford University, (650) 723-0199.
Brian Schmidt, Legislative Advocate, Committee for Green Foothills, (650) 968-7243, http://www.greenfoothills.org/index.shtml
Matt Stoecker, Beyond Searsville Dam, (650) 380-2965, http://www.beyondsearsvilledam.org



The Stanford Habitat Conservation Plan would protect species on 5,000 acres adjacent to the university's main campus.

Irvine Plans For Mixed Use Infill

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(developments) that aren't participating in this plan," said Shea. "If it was completely redesigned and everything was going to be new and blending…I think it would be marvelous."

Thus, the IBC faces the increasingly common challenge of retrofitting an already built-up area with infill.

"It's going to be almost a mish-mash of new and old," said Shea.

To some, that "mish-mash" simply means that the city has the flexibility to allow for incremental development and to gently wean itself off its history of greenfield development.

"In a planning area that's as diverse as this, where you have very industrial areas in certain places and emerging mixed use cores in other areas…a plan needs to be specific enough to last through the environmental process but also flexible enough to apply equally across the entire planning area," said Patrick Strader, an attorney who collaborated with the city on drafting the vision plan.

Moreover, the very age of the IBC all but requires the introduction of new development. Chris Lynch, vice president of Business and Economic Development Irvine Chamber of Commerce, said that much of the current inventory in the IBC area is "from a different era" and nearing the end of its useful life.

"It's going to give an impetus to re-landscape this area without having to go through the formality of a redevelopment district," said Lynch.

Culminating a planning process begun in 2005, the Irvine City Council approved both the environmental impact report for the IBC and a general plan amendment with a mixed use overlay zoning code. Both resolutions were read twice, on July 13 and July 26, and passed without opposing votes.

"In the early 2000s we were seeing more pressures for development in the IBC," said Tim Gherich, manager of Development & Planning Services. "As opposed to dealing with developments on a case-by-case basis, the council decided to put a hold on (development) and look at a larger vision for that area."

The approved general plan element replaces a former density cap of 52 residential units per acre with a new density *floor* of 30 units per acre. Ultimately, the plan does not create a net gain in intensity because the newly approved residential development was offset by an equivalent reduction in approved commercial and industrial development.

"It's a trade-off between residential and non-residential," said Gehrich.

If developers pursue density bonuses for affordable housing, per SB 1818, the number of residential units could increase by another 2,000 units.

The IBC may also help Irvine meet housing goals assigned to it by the Southern California Association of Governments' 2004 regional housing needs assessment. SCAG has called for the city to add 35,000 units, including 21,000 affordable units. The city has vehemently contested those numbers and sued SCAG over them (*CP&DR* Vol. 22, No. 9 [ ]). The city claimed that the SCAG numbers represent a disproportioned burden on the city in light of its population – with 40 percent of the assigned housing burden but only 6 percent of the county's population. However, in October a Superior Court judge ruled in favor of the regional planning agency.

While Lynch said that the vision plan has garnered praise from the city's business community, Shea said that she is concerned that the IBC places an undue burden on the area's residential developers. The plan calls for infrastructure retrofits and other expenses that will be passed on to developers at a rate of roughly $75,000 per unit.

"I just do not think it's fair that the residen-

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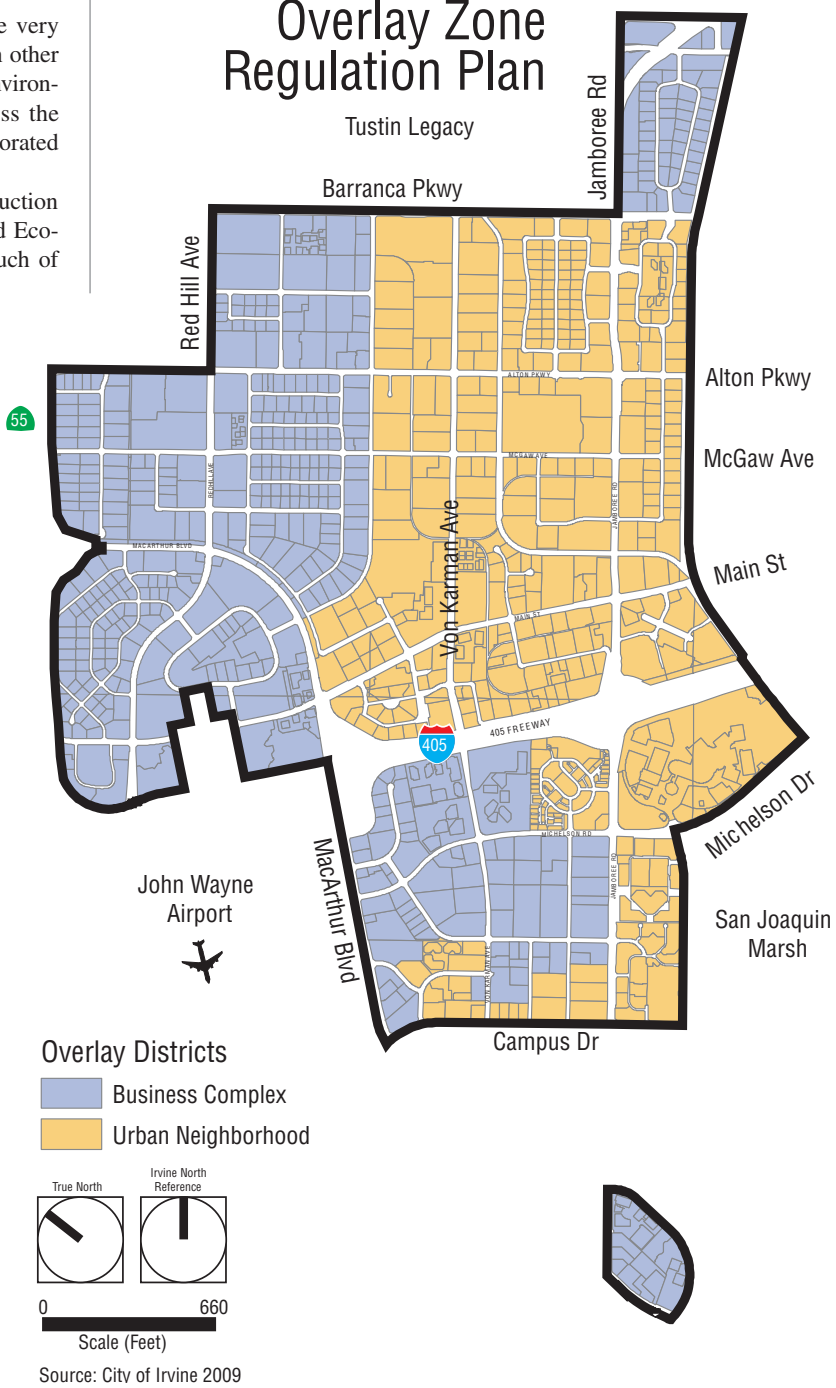

Airport Signs Off On IBC Plan

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tial developers have to pay the entire $80 million exaction," said Shea. "Why aren't they having to chip in for this overlay plan?"

Some of that expense stems from opposition from neighboring cities of Tustin and Newport Beach. Both cities sued Irvine on the grounds that traffic from IBC would put undue strain on those cities' roads and other infrastructure. The city has already paid $3.6 million in impact fees to Newport Beach and has agreed to give Tustin between $4.5 and $6.5 million.

Plans for high-rise office and apartment buildings also gave the John Wayne Airport Land Commission pause shortly before the ordinances came before the council. However, the plan was altered to keep taller buildings away from flight paths.

"The city put in the plan that no buildings would penetrate the imaginary obstruction surface," said Kari Rigoni, executive officer of the Orange County Airport Land Commission. "That's calculated based on FAA regulations. That satisfied the commission."

Strader said that two industrial occupants of the IBC – Allergen pharmaceuticals and paint manufacturer Deft – had expressed reservations about the placement of residential development close to their factories. In response, the plan was altered to create 1,000-foot buffer zones.

For many of those companies' neighbors, the vision plan represents a chance to attract and retain a new generation of employees that are not necessarily looking for suburban single-family homes.

"We have a lot of video gaming companies here and their employees are very much interested in live-work areas," said Lynch. Paradoxically, the emphasis on residential development may "enhance the city's identity as a jobs center."

As a result, Lynch said that the IBC vision plan represents a major step in the city's maturation, away from the days when brand-new buildings were sprouting on virgin ranchland.

"There's still some greenfields left in the city, but really it's Phase II" of the city's maturation, said Lynch. "It's no longer so much filling things out, it's concentrating things, making them a little bit more dense, and combining living and working." ■

■ Contacts & Resources:

City of Irvine IBC Official Site and Documents, http://www.cityofirvine.org/cityhall/cd/planningactivities/ibc_graphics/default.asp

Chris Lynch, Vice President of Business and Economic Development, Irvine Chamber of Commerce (949) 660-9112, http://www.irvinechamber.com/

Kari Rigoni Executive Officer, John Wayne Airport Land Use Commission, (949) 252-5170.

Christina Shea, City Council Member, City of Irvine, (949) 724-6000, http://www.cityofirvine.org/council/bios/christina_shea.asp

Patrick Strader, The Law Offices of Patrick Strader, (949) 622-0422.

from the blog http://www.cp-dr.com/blog

Bell: The Latest 'Suburb Of Extraction'

More than a decade ago, when I was writing my book *The Reluctant Metropolis* [ ], I became so fascinated by the political changes in the so-called Hub Cities of southeast Los Angeles County that I wrote a chapter about them. Over time I came to love these towns – Huntington Park, Bell Gardens, Bell, Cudahy, Maywood – because they had a proud working-class history and an all-American optimism that had been renewed when their population shifted from mostly white to mostly Latino.

When it came time to write the chapter, however, I chose to call it "Suburbs of Extraction." As the Hub Cities had gone downhill after the Watts riots of 1965, it seemed to me that the primary economic activity in these communities was not consuming things or producing things, but extracting what little wealth remained, as a mining company might extract coal or copper. Apartment builders, casinos, scrap-metal recycling companies – all were in the extraction business. So too, I suspected, were some of the politicians.

I hoped I was wrong, of course. However, as we've seen in the current scandal in Bell – with its $800,000 city manager, its $450,000 police chief, its $100,000 councilmembers, and its more or less hostile takeover of neighboring Maywood – it's still possible to do well in the political extraction business in southeast L.A. County.

Most of us who run for local office know that we're buying this situation and we buy it willingly, along with the divorces, financial pressure, and strain with our day-job employers that inevitably follow. But there's always a temptation to ease the burden by finding some way – legal or illegal – to extract some extra money out of the system because the base pay is so poor.

So that's the motive, which is an understandable – if somewhat ugly – reflection of typical human feelings and emotions. But the real scandal, if there is one, lies in the way the supposedly "clean" California system provides the opportunity for public servants to shield their activities from public view.

There are almost 500 cities in California, most of them small. Californians like these cities, and believe that the existence of small cities protects them from the corrupting influence of big-city political machines. That's true – if the constituents are paying attention.

Except that so many Bell residents are immigrants ineligible to vote that the election is controlled by a very small number of people. Bell has 40,000 residents but only 9,000 registered voters. In the last City Council election (in March of 2009) only about 2,000 people voted and the winners received about 1,200 votes each. Such low turnouts mean not only that most people are not engaged in the question of who runs their city, but that city leaders know they don't really have to be accountable to most of their constituents.

The California system also discourages constituents from being watchdogs in that both the governmental and

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financial system is cumbersome and bafflingly complicated. It's hard to know what your city does or where your tax money goes. A complicated system belongs to those who understand it and, frankly, makes it possible for the insiders to game the system.

The best example of this in the Bell situation was the 2005 election to become a charter city. Under California law, "general law" cities are governed mostly by state law while cities with charters have more independence. For local residents, living in a charter city is usually a good thing, as it gives their city flexibility to respond to local circumstance. That's how Bell's 2005 charter vote was sold to the voters, but it ultimately paved the way for the city officials' outrageous salaries – without the voters even knowing.

So democracy only works, even in small cities, if people pay attention, and often times people aren't paying attention. But one of the most disturbing aspects of the Bell situation – at least to me, a former journalist – is how hard it is to figure out what's happening even if you are paying attention. In spite of the state's vaunted Brown Act open-meetings law, California governments are still not particularly transparent.

Odds are that when the District Attorney completes his investigation in Bell, he's going to find that no laws were broken. The system – which is mostly set up by the state – has a lot of exploitable weaknesses. Clever and unscrupulous people, operating in a town where nobody was paying attention, found the weaknesses and exploited them all.

How do you fix that? There are two ways. First, change the system. Second, make sure somebody's paying attention.

Attorney General Jerry Brown has talked about capping local government salaries, but it's hard to imagine how this would work. Who would cap them? At what amount? How and when would they be changed? Capping salaries would be emotionally satisfying to the electorate, but it's pretty easy to see the unintended consequences coming. It's probably better simply to require full disclosure. It would not be difficult to pass a law requiring all cities (and counties) to report the total compensation of their top managers to the state, and/or publish those figures on the web site.

There's precedent for this. The entire public pension debate in the state has been transformed by the simple fact that the California Pension Reform web site has a searchable database of all state and local retirees whose pensions exceed $100,000. More than any other single factor, this website database has put political pressure on state and local governments to reform pensions.

The thing about most extractive industries is that they aren't very sustainable. Sooner or later, the mine is played out, or all the developable land is gone. But tax revenue goes on forever – available to those clever and unscrupulous enough to grab a piece of it. It was sad enough to see the wonderful little towns in southeast Los Angeles County turn into suburbs of extraction through a series of economic and political upheavals a generation ago. It would be sadder still to see many more California cities turn into suburbs of extraction because so many governmental managers become industrious miners when nobody is paying attention.

– BILL FULTON | JULY 27, 2010

Modest Goals For New Los Angeles Planning Head

At a press conference at City Hall this morning Los Angeles Mayor Antonio Villaraigosa introduced Michael LoGrande, his nominee to success Gail Goldberg as the city's planning director. At some moments the rhetoric of the mayor and fellow speakers – including LoGrande, City Council Member Ed Reyes, and Planning Commissioner Bill Roschen, and affordable housing activist Jackie DuPont Walker – sounded as if they were building the world's next great city.

Other times, their emphasis on customer service made the city sound more like a Nordstrom store than the writhing metropolis that it is.

The nomination of LoGrande comes a only three weeks following the announcement of Goldberg's resignation. Goldberg [ ] had been the popular planning director in San Diego before arriving in Los Angeles and ushering what many hoped would be an era of smart growth and progressive planning in the original home of sprawl. Though Villaraigosa said that the department conducted a national search the mayor instead dug deep into the department's existing talent pool to tap LoGrande, a 13-year department veteran who has most recently served as chief zoning administrator.

If confirmed by the Los Angeles City Council, LoGrande will become one of the only – if not the only – planning director in California not to hold AICP certification. Nevertheless, Villaraigosa said that LoGrande's name came up continually when stakeholders both in and outside of the department were consulted.

It's worth noting that while LoGrande had clearly braced himself for his introduction to the spotlight, the mayor has rarely looked more relaxed. Villaraigosa recently suffered a nasty bicycle accident that left his right arm in a cast, so he appeared with shirt untucked and partially unbuttoned as if he was the mayor of Key West. He joked about the need to make the city more bicycle-friendly and offered kisses in lieu of handshakes (no one took him up on that one). Hanging loose is, perhaps, a fitting attitude for a mayor who has endured his share of indiscretions and literally taken his lumps, not the least of which is the replacement of a planning director who had, four years ago, embodied his highest hopes for the city.

Not surprisingly, much of Villaraigosa's rhetoric about the city's future has remained consistent. The motto of "do real planning" has been around long enough to have gone from inspiration to albatross. Even so, the mayor today once again presented the city's challenge as that of walking a "tightrope between boundless ambition of the city's stakeholders to build a new urban paradigm…..brimming with mixed-use, transit-oriented development to create a more dynamic skyline."

At the same time, Villaraigosa introduced LoGrande as "the person most qualified to reform the department from the bottom up."

"Michael will be able to hit the ground running on the first day," said Villaraigosa. "Nobody knows the inner workings of the department, the different neighborhoods of LA, and city bureaucracy better than he does."

In brief prepared remarks, LoGrande acknowledged the convergence of architecture, urban design, and outreach but otherwise did not lay out a broad vision for planning in the city. Instead, he emphasized, transparency, collaboration, predictability, and completion of the city's 35 community plans. He praised the department's staff and expressed optimism that the department's crushing budget cuts would not impair their ability to streamline case processing and reach out to stakeholders.

"We want to show Los Angeles that we're open for business," said LoGrande. "So whether you're doing an addition to your house and need to come across the counter and talk to

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a planner or you have an issue with maybe a business that needs to be talked about...we're here to work with you and the other city departments to make them happen."

Most notably, he will be expected to implement the city's "12 to 2" system, by which Planning will serve as a single point of contact, thus enabling developers to avoid trips to multiple city departments. This had been a goal of Goldberg, whose enthusiasm brought new public attention to the formerly low-key department. LoGrande made it clear that his first priorities would center on in-house reform.

LoGrande briefly responded to criticism that his bureaucratic background did not prepare him well for the political tumult and that his desire to create more certainty for developers would equal hasty approvals.

"People may think because of my past title as chief zoning administrator think that I'm somehow really tied into the entitlement process and the status quo, which is really far from the truth," said LoGrande. "I'm a consensus builder, I like to reach out to people."

A rough transcript of LoGrande's prepared remarks

"I'm looking forward to collaborating with the city remarks and various communities and stakeholders throughout los Angeles to make sure that we have a really vital planning department that looks at architecture, urban design, quality plans, and make sure that there's a contract with the community and the development community to ensure that when developers come to neighborhods, they know what to expect. They've shaped them and actually worked with the departments and the city family to make sure that we have a credible process but also an engaged process where people are informed, can roll up their sleeves and work in collaboration with the department to make sure that we grow the city for the next century."

"I'm very excited for this position. One thing I'm really, really proud of is the staff we have in the planning department. We have some of the best staff in the nation. That staff is ready to engage with our neighbors and our diverse group of people we have in Los Angeles to move us forward. We have to have dialogs in various communities to see what they want to see in their neighborhoods and we have the tools inside to bring those forward."

"We've got some very, very tough budget years. A lot of the staff is on furloughs. There's been early retirement program. But we want to show Los Angeles that we're open for business. So whether you're doing an addition to your house and need to come across the counter and talk to a planner or you have an issue with maybe a business that needs to be talked about about some of the conditions they have to operate to coexist well within the community. We're here to work with you and the other city departments to make them happen."

– JOSH STEPHENS| JULY 26, 2010 ■

Architects' Goal: Clean Water For The Least Fortunate

The day after Spain won the World Cup in Johannesburg, I met Monday with architects David Turnbull and Jane Harrison, a husband-and-wife team who put together a demonstration project at the Port of Los Angeles in San Pedro called "Pitch: Africa."

The project sounds downright prosaic: It's essentially about low-tech strategies for capturing rainwater to support impoverished farmers in Africa, who have poor access to water of any kind, let alone drinking water but great enthusiasm for soccer. (The location of the demonstration project in California may have been a nod to the local Annenberg Foundation, which sponsored Pitch Africa; the large asphalt parking lot of Berth 87 at the port allowed a large area in which to stage the project free of cost.) The conversation I had with Turnbull and Harrison – he currently teaches at Princeton, she at Columbia – was one of the most stimulating and far-ranging conversations I have had in months.

"Pitch" in this context means playing field. The pitch is a small, temporary soccer stadium, elevated about 10 feet off the ground, with conventional bleachers on either side. The smaller-than-regulation size soccer field measures about 80 by 64 feet.

The size of the stadium is meant to reflect the dimensions of the water-collection tank housed beneath the playing field. (The current construction was actually a scale model of a proposed soccer field-plus-water collection and purification plant in Africa, which could hold 1 million liters of water.) The choice of a soccer stadium hints at the designers' concerns about making the water collection system compatible with existing structures. In the loose-knit urbanism of rural, agrarian Africa, a soccer field makes a good fit in a market area, without introducing any foreign-looking infrastructure into traditional contexts.

The playing surface is floored in permeable plastic tiles that allow water to percolate to the holding tank below. The reservoir gravity-feeds the water to a group of five-gallon tanks containing sand located directly beneath it. With the help of several other low-tech filtering devices, the rainwater can be made fit to drink. One of the many extraordinary gadgets, which can be virtually anywhere in the world with native materials is a filter made of clay and sawdust (!). When fired in a kiln, the sawdust burns away, leaving a very fine system of pores throughout the clay matrix; some of the pores are small enough to sift out potentially lethal contaminants, such as E. coli bacteria.

Another clever clay gadget is a bowl glazed on one side only; the water in the bowl is attracted to the porous, non-glazed side of the bowl, which induces evaporation, cooling the walls of the clay pot along with the water inside it. A related clay gadget is a primitive refrigerator, that consists essentially of two or more clay vessels, one nested inside the other like babushka dolls. This device creates a multiple cycle of evaporative cooling, that can keep food fresh for a day or two.

Granted, Africa probably needs these technologies more acutely as anyplace else. But the simplicity and cheapness of this technology (simple in its outcome, that is, not in the underlying research) has meaning for us in California. Los Angeles County has proposed an ordinance for all households and businesses to capture their storm runoff. Business interests have predictably pushed back against the proposed regs, claiming that capturing runoff would add an onerous cost to small business. Turnbull's and Harrison's demonstration project shows how an unintrusive, inexpensive technology can help Los Angeles County, which, like many places in sub-Saharan Africa, has adequate rainfall but captures almost none of it.

How, then, to incorporate the water works in a way that will not make the filtering apparatus one more piece of clunky, anti-social, neighborhood-destroying infrastructure? Well, hide it inside of public buildings, schools, hospitals. Or build a soc-

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cer field next to the traditional marketplace, so people can collect drinking water in 1 gallon jugs, rather than walk 25 miles, in some cases, to the nearest drinking water. Provision of water is thus an urban planning issue that can be sensitive to local culture and context.

The availability of water where previous unavailable can also have a huge impact on education in Africa. One example: the ready availability of water for personal hygiene would make it possible for adolescent girls to attend school. (Because of the lack of toilets and water, girls often must skip school when they menstruate – if they go at all.) So water is a feminist issue too.

In addition, all of us by now are aware that rivers that supply water to entire nations are diminishing, while population continues to spike worldwide. I believe that our children will witness resource wars, including wars over the mountains (i.e. Himalayas) that provide the headwaters for important rivers. So providing a new source of water becomes a geo-political issue, as well.

To say I was inspired would be overly mild. I was radicalized. To hell with "star-chitects." This is what architects should be doing: Using design skills to solve real problems. Amen, and pass the potable water.

Here's a video[] of the demonstration project.

Annenberg Foundation Pitch: Africa page []

– MORRIS NEWMAN| JULY 25, 2010

George Leaves Legacy As Centrist, Unifier

California Supreme Court Chief Justice Ronald George is probably most widely known for his 2008 majority opinion striking down the state's prohibition on same-sex marriages, and for his 2009 opinion begrudgingly upholding voters' ability to ban same-sex marriage and effectively reverse the court's earlier ruling. But in land use planning and development circles, George's legacy is one of centrism and consensus. Time and again, George has corralled all of his colleagues into unanimous decisions on sticky land use regulatory issues.

In light of George's announcement last week that he will not seek re-election this November, a quick review of the George court's land use decisions is in order.

In 2003, a state appellate court ruled that the method of choosing Coastal Commission members was constitutionally flawed because members appointed by the Assembly and Senate served at-will terms of office. The ruling had the potential to devastate the commission's ongoing regulatory activities. State lawmakers responded by changing the system to provide their appointees with fixed four-year terms.

The state Supreme Court in *Marine Forests Soc'y v. California Coastal Comm'n* [], 36 Cal. 4th 1 (2005) overturned the appellate panel's decision. Although the high court questioned the original, at-will terms for appointees, the court focused its ruling on the amended, fixed-term appointments. The new version was just fine, the court determined. What's more, George went out of his way in his opinion to confirm the legitimacy of past Coastal Commission decisions. George's decision angered property rights activists who had battled the Commission for decades, but what the chief justice did was prevent chaos. A less-clear ruling could have opened the commission to all sorts of legal and administrative challenges.

In 2007, the court issued a ruling for planners and, one could argue, for community control. The case involved a City of Hanford zoning regulation that prohibited most furniture sales in a planned commercial (PC) zoning district. The regulation was intended to help preserve the economic viability of downtown Hanford, which had nice collection of furniture stores in its mix of uses. A retailer located in the PC district challenged the ordinance as an unconstitutional limit on economic activity and won at the Fifth District Court of Appeal.

But George led the state high court's unanimous reversal. "In the present case, it is clear that the zoning ordinance's general prohibition on the sale of furniture in the PC district – although concededly intended, at least in part, to regulate competition – was adopted to promote the legitimate public purpose of preserving the economic viability of the Hanford downtown business district, rather than to serve any impermissible private anti-competitive purpose," George wrote in *Hernandez v. City of Hanford* [], 41 Ca. 4th 279 (2007). Again, the court headed off chaos, as the Fifth District's decision could have been used as a basis to challenge all sorts of Euclidian zoning regulation.

During recent years, the state high court has taken an unprecedented interest in the fine details of the California Environmental Quality Act (CEQA). The court has issued nine CEQA decision during the past four years (including one case dealing more with timber harvest plans than CEQA), and eight of those nine decisions were by 7-0. One ruling had a single judge's concurring opinion, and one ruling brought a lone dissent. It's true the court hasn't had a real wildcard from the left or right since Janice Rogers Brown departed in 2005. Still, only through the chief justice's leadership could the seven-member court find unanimity on nearly every CEQA issue. And, taken as a whole, the CEQA decisions carve a path right down the middle. Neither environmentalists nor developers are on a big winning streak at the court.

This isn't to say the George court hasn't had sharp disagreements on land use law. On issues of due process for property owners and the taking of private property, the court has often split 4-3 or 5-2 in favor of regulators, with George in the majority. In general, though, those rulings upheld the regulatory system devised by voters or legislators, and implemented by various agencies. The rulings were conservative in that they did not significantly depart from legal precedent or well-established practices.

One final point: Some recent U.S. Supreme Court decisions on land use matters have provided very little useful direction for planners, developers or anyone else involved. In the most recent decision, involving the rather bizarre notion of "judicial takings," [] it's difficult to figure out even who won.

At the California Supreme Court – at least during the George years – there has been little need to parse tea leaves or ask law professors to select the winner. Decisions may be fairly narrowly drawn, but they are clear and often useful to practitioners. Let's hope such decisions keep coming under the state's next chief justice.

– PAUL SHIGLEY| JULY 20, 2010