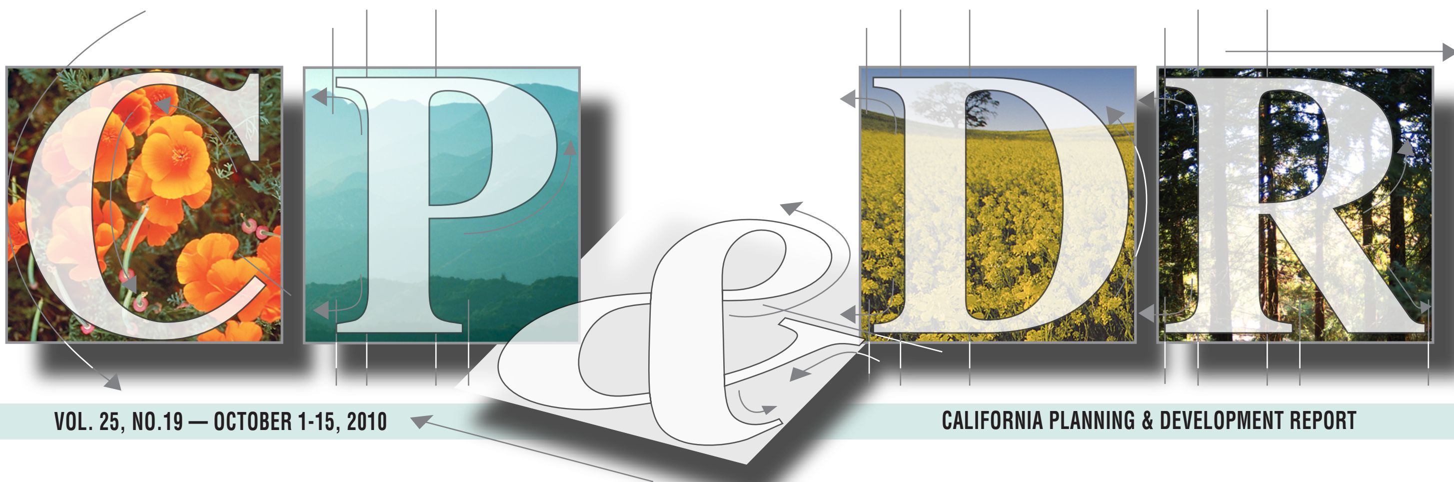

VOL. 25, NO.19 — OCTOBER 1-15, 2010

CALIFORNIA PLANNING & DEVELOPMENT REPORT

GHG Targets May Signal End Of Era Of Sprawl

ARB's Adopted SB 375 Targets Too Ambitious For Some

BY JOSH STEPHENS

The Air Resources Board's long-awaited greenhouse gas emissions targets probably are not perfect, to say the least. But they may be the closest thing California has to a consensus these days.

After two years' worth of recommendations, staff reports, committee meetings, research, computer modeling and input from literally all corners of the state, the ARB approved greenhouse gas emissions targets pursuant to SB 375 late last month. Many have called the target-setting process – resulting in goals of at least 7% per capita emissions reductions for the state's four biggest metropolitan planning organizations by 2020 – the most exhaustive, collaborative, and data-driven regional planning process in the history of the state, if not the country.

"I think that with these ambitious targets California absolutely may be on the verge of a paradigm shift where planning for sprawl that has dominated since the 1950s is on its way out," said Stuart Cohen, executive director of smart growth advocacy ground TransForm and member of the ARB's now-disbanded Regional Targets Advisory Committee. "These targets are ushering in a new focus on how we reduce not just GHGs – that's the leading indicator – but also a range of co-benefits."

Whether the shift is definitive is another story.

"SB 375 isn't like looking for the Holy Grail – as if you go to enough meetings you may find it," said Riverside Mayor Ron Loveridge, president of the National League of Cities and ARB member. "But there is no Holy Grail there. This is a developmental process."

The resulting targets direct the state's four largest MPOs to devise plans to reduce vehicle miles traveled (at least on a per-capita basis) and, in turn, limit their per-capita greenhouse gas emissions. The targets may turn out not to be prescriptions so much as benchmarks in the state's efforts to adopt more efficient land use patterns.

"For the last two years…the best thing about SB 375 is that it has generated a never-before-heard regional dialogue on the future of California," said Rick Bishop, executive director of the Western Riverside Council of Governments. "(Those discussions) have been fantastic, but they've been largely philosophical. I think (the targets) moves this one step closer to this being a real deal."

– CONTINUED ON PAGE 10

Prop 23, Whitman Cannot Slow Down Progressive Planning Laws

insight

WILLIAM FULTON

The entire California planning world now seems to revolve around combating climate change and reducing greenhouse gas emissions. But Proposition 23 – a long-term suspension of the state's climate-change law – is on the ballot this fall. The proposition is behind at the polls – but if it passes – will that be the end of SB 375, Sustainable Communities Strategies, greenhouse gas emissions analyses in environmental impact reports, and the whole industry that has been built up around climate change planning?

And even if Prop 23 fails, Republican Meg Whitman could be elected governor. And though Whitman opposes Prop. 23, she has promised to suspend parts of AB 32

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inbrief

In order to make way for new large-scale renewable energy projects in the Mojave Desert, biologists working with the U.S. Fish and Wildlife Service will be helping identify, relocate, and track a slew of protected reptile species.

In particular, the desert tortoises, whose species is "threatened with extinction," will be treated with extra care to determine if they are healthy enough to be relocated to new habitats. Those that are deemed fit will be outfitted with radio transmitters in order to keep tabs on their health down the road.

Given the delicate nature of desert ecosystems, some environmental groups have advocated that energy projects should be located on already degraded habitat, such as former farmland, instead of pristine public open space. However, energy companies contend that they require large swaths of space only available on public land.

One solar energy developer, BrightSource Energy Co. of Oakland, has already begun working under the Fish and Wildlife relocation plan en route to constructing a 370-megawatt solar powerplant. So far, BrightSource is going along with the tortoise relocation project, treating it as just one of several expected hurdles in implementing a project of this scale.

The League of California Cities has announced the new board officers who will form its 2010-2011 executive committee. This year's roster includes: Modesto Mayor Jim Ridenour as the League's president, Mountain View Council Member Mike Kasperzak as first vice president, and Pasadena Mayor Bill Bogaard as second vice president. Outgoing president Robin Lowe (Mayor of Hemet City) will now assume a non-officer position on the board.

As a hedge against drought and stricter environmental regulations on water use in California, two Southern California water agencies are working together to help meet one another's water needs.

The Metropolitan Water District of Southern California has arranged to store 150,000 acre-feet for Westlands Water District, a provider for hundreds of farms in Fresno and Kings Counties. Early this year, Central Valley farmers had already made planting decisions based on an expected water allotment, when a surge of precipitation in late Spring increased their share from local reservoirs.

In order to avoid surrendering their surplus at the end of the 2010 "water year" (Oct. 1st), Westlands is sending those billions of gallons through the California Aqueduct to Diamond Valley Lake in Hemet, CA. In exchange, the Southern California MWD will take one third of the share – a year's supply for roughly 100,000 families – and will benefit from helping to restore Diamond Valley Lake, whose water levels had dropped by one-half since 2008.

In an effort to shore up California's general fund, state officials were authorized in 2009 to seek private bids to buy state properties and lease them back to the state.

A year later, the state has received a top bid in excess of $2.2 billion for 24 structures, including key properties like the Ronald Reagan building in Los Angeles, as well as others throughout the state. With the only one bidder still in play, Department of General Services Acting Director Ron Diedrich will now undertake a detailed analysis to determine how the sale would affect California in the long run.

On that front, a number of former state officials have protested the sale on the grounds that it would sacrifice long run financial stability for a short-term financial band-aid.

Although the real estate market is generally depressed throughout the state, over 300 investors made offers on these state properties. Their prime locations and stable tenants make these state properties a relatively safe investment for the coming years.

The northern San Diego County city of Escondido is making a serious first pitch to build a minor league ballpark. The City Council's unanimous move to allocate $373,000 to an environmental review represents an important step towards constructing a stadium that could be home to Triple-A baseball games by 2012. After the vote, councilmembers were quick to add the caveat that this action was not an expression of unequivocal support for the project, which would cost about $50 million. Paid for out of redevelopment funds, the review will allow the Council to evaluate more closely the local impacts of repurposing an underused industrial site near I-15. A new stadium, city officials hope, would help broaden employment opportunities and diversify the local economic base.

If the stadium plan goes through, it is anticipated that the San Diego Padres owner Jeff Moorad would buy the Portland Beavers of the Pacific Coast League and move them to Escondido, just 30 miles from their Major League counterparts.

The Los Angeles City Council finally voted 13-0 to ban new supergraphic advertisements in Hollywood, following years of unfettered proliferation of giant vinyl graphics on the sides of large buildings. Despite this move, sixteen already approved supergraphics may appear in the area, to the dismay of local activist group, the Coalition to Ban Billboard Blight. The group also objected to the Council's continued allowance of digital billboards along major streets in the area. Conversely, the Hollywood Chamber of Commerce forewarned of projects that would be cancelled if developers were not able to obtain revenue from these advertisements. Council President Eric Garcetti countered that most development proposals in the area did not involve super graphics, and thus the ordinance would not hinder commercial and residential construction in Hollywood. The City's ban comes several months after a high profile crackdown on illegal supergraphics that included the arrest (and holding on $1-million bail) of a businessman suspected of erecting an eight-story movie ad on the side of a building.

Sixty years after an expanse of wildlife habitat was set aside for development and mineral extraction, the 1.5 square miles of open space is being returned to Joshua Tree National Park. Partnering with the Marine Corps and Copper Mountain College, the Joshua Tree Land Trust raised the $1.5 million needed to purchase the 900-plus acre parcel on the north side of Quail Mountain. All this time the land remained largely undisturbed, and so it contains many critical plant and animal species, in particular the type of desert tortoise threatened with extinction (the same one that has required solar projects in the California desert to exercise particular ecological diligence). President Franklin D. Roosevelt's original Joshua Tree set-aside of 825,000 acres was – CONTINUED ON PAGE 3

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inbrief

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reduced in 1950 to only 1/4 of its initial size to allow for mining and development. However, in 1994 the California Desert Protection Act returned over 200,000 acres to the preserve, but missed this key piece of Quail Mountain, for which winter rains bring streams and waterfalls.

This month the California Senate Office of Oversight and Outcomes released a report titled "Where Does the Affordable Housing Money Go? Administrative Spending by Redevelopment Agencies Lacks Accountability " [ ].

According to California law, these agencies are required to spend 20 percent of local property taxes on creating, rehabilitating, and preserving affordable housing (a statewide sum of $5.6 billion in 2007-08). However, the report found that, in practice, a substantial number of agencies are spending a disproportionate amount of redevelopment funds on overhead alone. In fact, 63 out of a total of 398 agencies were spending over 60 percent of their affordable housing funds on administrative costs (i.e. salaries, planning, studies, etc.).

The Oversight Office sought to determine how it came to be that so many redevelopment agencies use the lion's share of their affordable housing funds in this manner. The study performed an in-depth comparison of data from some of the worst offenders, referenced against a sample more representative of the remainder of agencies.

Their key findings identify seven of key factors that contribute to this misuse of funds, specifically: 1) the failure of current statutes to guarantee that redevelopment agencies will use at least 20 percent of funding for affordable housing; 2) lax documentation of the allocation of funds; 3) excessive discretion given to agencies to "determine" what overhead expenses are necessary; 4) generation and use of unreliable data that is then not verified independently; 5) outright questionable spending; 6) annual audits that are insufficiently rigorous; and 7) spending of funds on code enforcement not directly linked to affordable housing.

While much of the focus on Los Angeles County's Measure R has been on its investment in transit infrastructure, there are a few significant highway projects that don't get the same ink as 30-10 and the Subway to the Sea. One such project – that would connect Palmdale in northern LA County with Victorville in San Bernardino County – has received $33 million for environmental impact studies, helping to pave the way for the $6 billion project.

The primary objective of the proposed eight-lane High Desert Corridor highway is to provide an alternate shipping route that bypasses the heavily trafficked highways of the Los Angeles Basin. Specifically, by expanding the existing two-lane highway's capacity by 300-600%, trucks coming from the Central Valley would have more direct route to all destinations east of California via Interstate 15.

Though it is early in the scoping process, sustainable transportation advocates are already voicing their skepticism of building such a large and expensive highway in a relatively untouched part of the county.

The planned Expo rail line connecting Downtown Los Angeles with Santa Monica via an old freight corridor finds itself fighting off yet another in a series of legal challenges. A group of Westside residents adjacent to the Metro-owned right-of-way are now charging that the LA City Department of Transportation and Caltrans did not properly review the environmental impacts of a bike path along the rail line.

The community response to the suit (for and against) has broken down roughly along the lines of those who support the Expo line as it is currently planned. The group filing the suit, Neighbors for Smart Rail, had until now been fighting against the line's current at-grade configuration through a section of residential West Los Angeles.

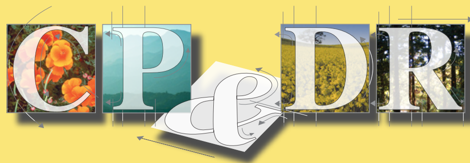
The agencies had initially applied for a Categorical Exclusion – a preliminary assertion that a given project would have a negligible impact – but is now being forced to revise that position, in light of the suit. In addition to challenging assumptions about the bike lane's effects on local ecosystems and about the installation of new lighting, the suit demands that the city study the traffic impacts of the bike lane where it crosses intersections.

Any delays in constructing the bike path may jeopardize its inclusion entirely, as the path is tied into the simultaneous construction of the rail line. Having to install it after the rail line could increase costs prohibitively.

Lawrence Berkeley National Laboratory, an official research facility, US Department of Energy, has outgrown its britches. Situated above the UC Berkeley campus, the facility is home to over four thousand workers on what is the smallest campus of any of the national laboratories.

With plans to expand operations as more clean-tech research funding comes in, the lab is searching for additional space to locate those projects and researchers. Moreover, many current researchers work at disparate locations throughout the East Bay, from downtown Oakland to Walnut Creek. The Lab's chief operations officer, Jim Krupnick, is looking for a location that will allow him to consolidate the workforce in order to improve collaboration and save money.

The challenge will be finding a site that is both big enough – 750,000 to 2 million square feet – and accessible from all parts of the Bay Area by freeway or BART. The Lab is considering locations ranging from Richmond in the north to Alameda at the south. A decision is likely to come by December, and anticipated completion of the project is set for 2015. ■



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Cal Stadium Project Can Proceed With Tiered EIR

EIR Need Not Cover All Phases To Comply With CEQA

BY WILLIAM ABBOTT

The Cal Bears scored a victory in a recent legal challenge to a planned expansion of athletic facilities near the historic University of California football stadium in Berkeley.

The project opponents' playbook included a long list of California Environmental Quality Act (CEQA) violations allegedly committed by the University of California (UC) Board of Regents. The blue and gold had a solid game plan. The regents used a tiered Environmental Impact Report (EIR), carrying forward relevant CEQA analysis from the first tier to a later document and providing detailed, site-specific analysis in the later tier.

The UC campuses utilize "long range development plans." The Berkeley campus 2020 long-range development plan and companion EIR were approved in 2005 (see *CP&DR Public Development*, June 2005 [ ]; *CP&DR In Brief*, July 2005 [ ]). To implement the plan, the university initiated an EIR for the "Integrated Projects" located within the southeast quadrant of the master plan area. These projects composed about 20% of the new gross square footage and 24% of the proposed new parking contemplated by the long-range plan. Contained within the Integrated Projects was a three-phased stadium project. Phase I involved a new athlete center. Completion of Phase I would accommodate relocation of sports facilities away from the stadium, at which time seismic repairs and upgrades to the stadium would take place as phases II and III.

At the time of EIR certification, only Phase I was presented to the regents for approval. On November 14, 2006, the full Board of Regents, sitting as the Grounds and Buildings Committee, recommended approval of the athlete center. Two days later, the board adopted the recommendation. On December 5, the Grounds and Buildings Committee (then consisting of 11 of 26 regents) certified the EIR, adopted a statement of overriding considerations because some project impacts could not be fully mitigated, and gave final approval to the athlete center project.

Various groups and individuals filed suit alleging violations of the Alquist-Priolo seismic safety act, and CEQA. Alameda County Superior Court Judge Barbara Miller granted a preliminary injunction preventing the athlete center from proceeding. After soliciting expert declarations from both parties addressing the building plans and the Alquist-Priolo Act claims, the court found for the project opponents on three of their Alquist-Priolo contentions and one CEQA claim. Tailoring a remedy to fit the violation, the court then ordered the regents to suspend approval of phases II and III until (1) the board either withdrew its proposal to increase the number of special events, or developed the evidence to support the conclusion that the impacts were significant and unavoidable, and (2) the board suspended approval of the athlete center until it could demonstrate the stadium alterations totaled less than 50% of the stadium value.

The regents quickly responded by eliminating the additional special events and the alterations to the stadium. Satisfied, the court dissolved the preliminary injunction, permitting construction to begin. Meanwhile, in the judicial equivalent of instant reply, the opponents filed a motion for a new trial and to set aside the judgment. This motion resulted in an amended judgment. The opponents then appealed, seeking an interim stay of construction, a request denied by the appellate court and California Supreme Court. On all Alquist-Priolo Act and CEQA issues, the First District Court of Appeal ruled favorably for the regents.

The Alquist-Priolo Act restricts construction activity on faults, including alterations to existing structures located on earthquake faults. The 77-year-old Memorial Stadium sits directly atop the Hayward fault. Although the athlete center would be physically separate from the stadium, the center's locker rooms and weight training facilities would be an integral part of future stadium activities. On an appeal of the trial court's procedure, the First District weighed the trial court's consideration of extra-record evidence to determine the question of Alquist-Priolo Act compliance. The extra-record evidence, via the declarations of experts, assisted the trial court in reviewing plans.

Because there was no formal proceedings dealing with the issue of Alquist-Priolo Act compliance, the appellate court concluded that this was the type of informal or ministerial decision recognized by the Supreme Court in *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, wherein extra-record evidence would be permissible because facts were in dispute. On the merits, the appellate court agreed with the trial court by ruling that the regents were not required to look at all three phases when determining whether or not the cost of the alteration exceeded 50% of the stadium's value – a Alquist-Priolo Act limitation on modifying structures located on faults.

The alleged CEQA violations ran the gamut: description of baseline geologic conditions, failure to recirculate the draft EIR, failure to disclose expert disagreement, project description, statement of objectives, adequacy of project alternatives, impacts to archaeological resources, biological impact analysis, findings, adequacy of the statement of overriding considerations. The opponents also challenged the sequencing, arguing that the regents approved the athlete Center prior to certifying the EIR. And opponents disputed the regents' delega-

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tion of EIR certification to the Grounds and Buildings Committee.

The unanimous three-judge appellate panel upheld all UC actions. In so doing, the appellate court applied a deferential standard of review, noting that perfection was not required. Not only did the EIR include analysis of required issues, the EIR employed the conservative practice of concluding that impacts were significant and unavoidable where there was meaningful potential for debate, a practice that served the university well on a number of arguments.

The appellate court concluded the regents were not required to recirculate the draft EIR based upon comment letters from the California Geological Survey and United States Geological Survey that recommended additional study, and ruled the letters did not constitute evidence contradicting the administrative record's geologic reports. Considering the various comment letters, Justice Martin Jenkins wrote, "Given the comprehensive public exchange regarding these impacts, we believe the underlying purposes of CEQA were adequately served even without additional public review of the EIR."

The project description was a challenge to the EIR preparers. This was a project EIR for the Integrated Projects, although less specificity was known as to the later elements. The court found that the minimal requirements for the project description (CEQA Guidelines § 15124) were met, and that additional detail could be inferred from the various topical discussions, such as those found in the transportation chapter. With respect to the later phases of the Integrated Projects that were less precisely stated, the EIR included a commitment to subsequent EIRs should the project description later prove to be inadequate – a strategy the appellate court accepted.

The appellate court disagreed with opponents' contention that the project objectives were too vague. While some components were broadly stated, the objectives were, in the opinion of the court, sufficient to permit meaningful development and consideration of alternatives. As to alternatives, the court upheld the regents' approach of looking at alternatives to the Integrated Projects as a whole, and noted the use of a matrix that compared the various alternatives.

The court also upheld the procedure for project approval. The regents had formally adopted rules regarding project approvals. As defined by these rules, approval took place on December 5, 2006, when the committee approved the project design, not on November 16, 2006, when the full board approved the project budget. The court upheld the process, largely based on the previously adopted rules. On the final procedural issue, the appellate court again deferred to the regents' rules that define the committee as the approving agency. As such, it was appropriate for the committee to certify the EIR, the court ruled.

The final issue for the appellate court was a review of the trial court's award of $51,000 in costs to UC for preparing the record. The trial court approved the costs but reduced the charge for the paralegal and adjusted the recovery to reflect the regents' degree of success on the merits (85%). The appellate court found no basis for modifying or reversing the award. ■

- The Case:
  California Oak Foundation v. The Regents of the University of California, No. 122511, 2010 DJDAR 14143. Filed September 3, 2010.
- The Lawyers:
  For California Oak Foundation: Stephan C. Volker, (510) 496-0600.
  For University of California: Kelly L. Drumm, UC Office of General Counsel, (510) 987-9800.

legal digest

Rulings Clarify Standards For Awarding of Attorney's Fees

California appellate courts have recently published two opinions regarding attorney's fees in land use cases. Not surprisingly, the party that won on the merits in the first case also won attorney's fees, while, in the second case, the party that lost on the merits was not awarded attorney's fees even though the losing party argued that it deserved the fees.

An environmental group and a citizens organization won attorney's fees in *Center for Biological Diversity v. County of San Bernardino*, which involved the approval of an open-air composting facility in the Mojave desert. The trial court determined that the environmental impact report was inadequate under the California Environmental Quality Act because the report did not adequately discuss project alternatives and water supply. The court further ruled that the Center for Biological Diversity and the group Help Hinkley were entitled to attorney's fees. The Fourth District Court of Appeal upheld the trial court's ruling earlier this year (see *CP&DR Legal Digest*, June 1, 2010 [ ]) but publish the portions of the opinion relating to attorney's fees only last month.

Project proponent Nursery Products, LLC, which defended the lawsuit, appealed the grant of attorney's fees on three grounds: (1) an important right was not enforced; (2) the decision did not confer a significant benefit; and (3) the amount awarded was too high.

Before discussing the merits of Nursery Products' arguments, the Fourth District Court of Appeal, Division One, first emphasized the broad discretion granted to a trial court when determining the amount of attorney's fees. The trial court's decision will be overturned only if it is an abuse of discretion.

The Fourth District quickly dismissed the first two arguments regarding an important right and significant benefit. The court cited several prior cases holding that enforcement of CEQA's procedural requirements satisfies the requirements for an award of attorney's fees under Code of Civil Procedure § 1021.5, the private attorney general statute.

The majority of the appellate court's discussion focused on the amount of the attorney's fees – $240,000 – which the appellate court upheld. Nursery Products' main argument was that the amount covered the litigation of all issues, although petitioners were successful on only two of the claims. The court rejected the contention.

"While a court has discretion to reduce fees in a CEQA case based on degree of success, it is, of course, not required to do so," Presiding Justice Judith McConnell wrote for the court.

Ultimately, the court ruled that the trial court had not abused its discretion and upheld the fees. Additionally, the appellate court held that the project opponents were also entitled to additional attorney's fees for the appeal and remanded that issue back to the trial court to determine the amount.

The second case was *Ebbetts Pass Forest Watch v. Califor-*

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nia Department of Forestry and Fire Protection. In this case, the Fifth Appellate District Court of Appeal faced the question of whether a petitioner that had lost its suit could still claim successful party status for purposes of attorney's fees under Code of Civil Procedure § 1021.5.

Two environmental organizations – Ebbetts Pass Forest Watch and Central Sierra Environmental Resource Center – had challenged three Tuolumne County timber harvest plans approved by the California Department of Forestry and Fire Protection (CDF) for Sierra Pacific Industries. Although the environmental groups won at the appellate court level, that decision was overturned by the state Supreme Court (see *CP&DR Legal Digest*, July 2008 [ ]).

The environmental groups argued that although the Supreme Court ruled the timber harvest plans at issue were sufficient, the court's opinion "clarified the law regarding CDF's authority and duty to analyze herbicide use." Based on the groups' logic, they were a "successful party" under § 1021.5.

Refusing to extend the definition of "successful party" to the limits urged by the environmentalists, a divided three-judge panel of the Fifth District held that the groups were not entitled to attorney's fees. According to the court, the groups failed to win on any of their primary contentions regarding the timber harvest plans, even if the Supreme Court's opinion on the merits resulted in clarification of the law.

"When the Supreme Court's agreement statements are read pragmatically and in context, they do not support the conclusion that plaintiffs succeeded on any significant issue in the litigation that achieved some of the benefit they sought in bringing suit," Presiding Justice James Ardaiz wrote for the court.

In a dissent, Justice Betty Dawson wrote that the environmental groups deserved an award of attorney's fees because the litigation caused the state Supreme Court create new law regarding CDF authority and the scope of timber harvest plans. The litigation also forced CDF to become more publicly accountable for reviewing the impacts of herbicide use, according to Dawson. ■

■ First Case:
Center for Biological Diversity v. County of San Bernardino, No. D056648, 185 Cal.App.4th 866. Originally filed May 25, 2010. Ordered published in full, June 23, 2010.

■ The Lawyers:
For Center for Biological Diversity: Helen Kang, Golden Gate University Environmental Law & Justice Clinic, (415) 442-6693.
For Nursery Products, LLC: Lisabeth D. Rothman, Brownstein Hyatt Farber Schreck, (310) 500-4600.

■ Second Case:
Ebbetts Pass Forest Watch v. California Department of Forestry and Fire Protection, No. F058062, CITE. Filed August 10, 2010.

■ The Lawyers:
For Ebbetts Pass Forest Watch: Thomas W. Lippe, Lippe, Gaffney, Wagner, (415) 777-5600.
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For Sierra Pacific: William M. Sloan, Morrison & Foerster, (415) 268-7209.

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New Land Use Laws 2010

The consensus in Sacramento is that among the state's overwhelming crisis, land use ranks as a low priority. The legislative session that ended Aug. 30 included relatively few land use bills and, of those, they were of relatively minor import. Peter Detwiler, staff director of the Senate Local Government Committee, said, "It was not a big year for planning and development legislation, for any number of reasons. Probably the $19 billion reason is the hole in the state budget." Peter Parkinson, vice president for policy at the California chapter of the American Planning Association said that this session's quietude may reflect "how dysfunctional things are in Sacramento or how preoccupied the Legislature is with budget issues."

A handful of bills did, however, make it to Governor Schwarzenegger's desk. The following is a summary of land use-related bills that were signed, plus a few notable vetoes and non-starters.

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Budget Crisis Overshadows Land Use Legislation

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Land Use Planning

• **SB 326** (Strickland). Would require cities and counties to include within the housing needs assessment portion of their housing elements a quantification of their existing and projected foreclosure rates and an analysis of the impact of foreclosures on housing needs. *Stalled on Senate floor.*

• **AB 602** (Feuer/Steinberg). Would have increased the statute of limitations for bringing suit to fix deficient housing elements from the current 90 days to five years. Schwarzenegger's veto effectively prioritized protecting local governments from "uncertainty" over reducing the uncertainty and reducing the lack of stability millions of families face when they're experiencing homelessness or unable to find affordable rents that fit within their budgets. *Vetoed.*

• **SB 812** (Ashburn). Requires local housing plans to include an analysis of the specific housing needs of people with developmental disabilities. *Approved.*

• **AB 987** (Ma). Doubles the current designation of a transit village development district to one-half mile from one-quarter mile, based on emerging research that suggests that transit-riders are willing to habitually walk up to one-half mile in order to reach a high-frequency transit stop such as light rail or subway. *Approved.*

• **SB 1019** (Correa). Extends the sunset date on the procedures for cities and counties to release subdivision performance securities to January 1, 2016. *Approved.*

• **SB 1042** (Walters). Repeals the 1917 law that allows counties to condemn private property for military bases. *Approved.*

• **SB 1141** (McLeod). Would have allowed a city in which an airport is located to assume the planning responsibilities of an airport land use commission if, prior to January 1, 2011, the board of supervisors of a county and city council of any city in which an airport was located made a determination that the proper land use planning could be accomplished by the city and other requirements are met. *Vetoed.*

• **SB 1189** (Correa). Would have required the Southern California Association of Governments, or a delegate subregion as applicable, to follow an alternate specified process for distributing the existing and projected regional housing need to cities and counties. *Died in Senate committee.*

• **AB 1965** (Yamada). Extends the sunset date on the procedures for lot line adjustments on Williamson Act land to January 1, 2013. *Approved.*

• **SB 1207** (Kehoe). Would have expanded the fire safety planning requirements in local general plans' safety elements. *Vetoed.*

• **AB 2425** (Hagman). Would have exempted the City of La Habra Heights from receiving an allocation of the regional housing need during its next housing element planning period. *Died in Assembly committee.*

• **AB 2530** (Nielsen). Allows counties to shorten Williamson Act contracts, revalue the contracted land, and receive the increased revenues. *Approved.*

• **AB 2650** (Buchanan). Prohibits medical marijuana establishments within 600 feet of schools statewide. *Approved.*

Housing

• **AB 183** (Caballero). Extends the state's tax credit for homebuyers by another $200 million. *Approved.*

• **SB 500** (Steinberg). Would have allowed the state to raise annual revenues for the state's housing trust fund. *Died in Senate committee.*

• **SB 662** (Yee). Would have allowed counties to increase marriage license fees to fund domestic violence shelters. *Vetoed.*

• **SB 1174** (Wolk). Would use previously authorized bond funds to create a pilot project to assist counties and cities in identifying and starting to addressing the lack of infrastructure and services provided to disadvantaged unincorporated communities within their areas. *Stalled in Assembly committee.*

• **SB 1445** (DeSaulnier). Would allow a fee increase of up to $4 annually on vehicle registration, subject to approval by voters, to fund to regional planning activities by councils of governments, metropolitan planning organizations and other specified local planning entities. *Stalled in Assembly committee.*

• **AB 1867** (Harkey). Allows a city or county to count against its housing need the conversion of existing homeownership units in complexes of three or more units to affordable rental housing. *Approved.*

• **AB 2293** (Torres). Would have assisted stalled Prop. 1C housing and infrastructure projects. *Vetoed.*

• **AB 2536** (Carter). Would have allowed the state's emergency and transitional housing program to fund supportive-home developments. *Vetoed.*

• **AB 2579** (Evans). Would establish an Infrastructure Financing and Development Commission charged with developing and recommending a plan to the governor and Legislature that provides for financing, building, and maintaining the infrastructure necessary to meet the needs of Californians up until 2050. *Stalled in Assembly committee.*

Office Of Planning And Research

• **SB 959** (Ducheny). Would have reestablished the Office of Planning and Research's permit assistance duties. *Vetoed.*

• **AB 2754** (J. Perez). Would have granted civil service status to the Office of Planning and Research's clearinghouse and planning staff, and designates OPR as the state's military liaison. *Vetoed.*

Redevelopment

• **AB 1641** (Hall). Clarifies that public housing may be included within redevelopment project areas. *Approved.*

• **AB 1791** (Monning). Would have allowed redevelopment agencies to subsidize commercial development on vacant land at the former Fort Ord. *Vetoed.*

• **AB 2531** (Fuentes). Would have allowed redevelopment agencies to pay for business development and job programs until January 1, 2018. *Vetoed.*

LAFCOs & Boundary Changes

• **AB 419** (Caballero). Will mesh state election laws with the Cortese-Knox-Hertzberg Act. *Approved.*

• **AB 711** (Calderon). Will appropriate $45,000 as a loan to the East Los Angeles Residents Association to pay for the proposed city incorporation proceedings. *Approved.*

• **AB 853** (Arambula). Would have expanded planning for, and expedited city annexations of, disadvantaged communities. *Vetoed.*

• **SB 1023** (Wiggins). Will create expedited procedures to convert Resort Improvement Districts and Municipal Improvement Districts into Community Services Districts. *Approved.*

– CONTINUED ON PAGE 8

No Game-Changing Laws In 2010

– CONTINUED FROM PAGE 7

Conservation/Environmental Protection/ CEQA

• **SB 51** (Ducheny). Establishes the Salton Sea Restoration Council as a state entity within the Natural Resources Agency to implement preferred alternatives outlined in the Salton Sea Ecosystem Restoration Program. *Approved.*

• **AB 301** (Fuentes). Would have required businesses licensed to bottle or sell water for human use from private water sources to report annually the total volume of water bottled or distributed, the source of the water, whether the source is privately or publicly owned, and the county of that source. *Vetoed.*

• **SB 346** (Kehoe). Phases out copper from automobile brakes by 2025 to remove the single largest source of toxic copper in our urban waterways. *Approved.*

• **AB 499** (Hill). Would have made clarifying amendments to the California Environmental Quality Act (CEQA) to ensure that all parties with a direct interest in a CEQA case are aware of a pending lawsuit and parties with no direct link to the case are not unnecessarily dragged into litigation. *Vetoed.*

• **AB 737** (Chesbro). Would have diverted more waste from landfills and reduced waste by requiring all commercial waste generators to establish recycling programs. *Vetoed.*

• **SB 1006** (Pavley). Clarifies the Strategic Growth grant eligibility list to include JPAs, MPOs, special districts and other local government organizations, in light of the demonstrated performance of JPAs and special districts in green projects. *Approved.*

• **SB 1124** (Negrete/McLeod). Will ensure that San Bernardino County fulfils its obligation to protect lands it purchased with state bond money from Proposition 70 passed in 1988. The County purchased the land two decades ago and promised to protect the land with easements. However, the easements were never placed. *Approved.*

• **SB 1142** (Wiggins). Creates a track within the Department of Conservation's California Farmland Conservancy Program to fund agricultural easements that can provide secondary conservation benefits such as flood protection and habitat preservation. *Approved.*

• **SB 1365** (Corbett). Allows the Department of Toxic Substances to test for lead and to enforce the federal Consumer Product Safety Improvement Act to ensure public safety. *Approved.*

• **AB 1405** (De Leon/M. Perez). Would have established a Community Benefits Fund to direct a portion of revenues from AB 32 implementation to help Californians who are least able to confront the expected impacts of the climate crisis at the local level. *Vetoed.*

• **SB 1433** (Leno). Would have adjusted ceilings for air pollution violations with inflation so the real value of statutory air penalties does not further decline. The ceiling for the most commonly used category (strict liability) has not been increased since 1982. *Vetoed.*

• **AB 1581** (Torres). Would have allowed big box stores to move into a vacant storefront and begin operating without environmental review detailing the implications arising from the stores presence, i.e. increased traffic and diesel pollution from delivery trucks. *Died in Assembly.*

• **AB 1963** (Nava). Improves the pesticide poisoning prevention program to protect farm workers who handle pesticides. Laboratories will be allowed to send test results electronically to the Department of Pesticide Regulation, providing state officials with the necessary information to monitor the existing pesticide poisoning prevention program and protect farm workers. *Approved.*

• **AB 2289** (Eng). Enacts critical updates to California's Smog Check program that will save money for consumers and the state and boost the emission benefits of the smog check program, removing 70 tons of pollution per day. *Approved.*

• **AB 2398** (J. Perez). Creates increased demand for recycled carpet products in California by increasing the state's recycled content requirement for carpet bought by the state (from 10% post-consumer recycled content to 25% post-consumer carpet content). Requires carpet manufacturers to prepare a carpet stewardship plan to meet the recycling targets. At request of the industry, the bill requires the plan to include a self-assessment mechanism that will allow the industry to finance its activities to increase recycling of carpets. *Approved.*

Building Codes/Green Buildings

• **AB 1405** (De Leon). Would have diverted 10% of fees levied on businesses under AB 32 regulations to Environmental Justice advocacy groups. *Vetoed.*

• **SB 1427** (Price). Requires a governmental entity, prior to imposing a fine for a property owner's failure to maintain a vacant property acquired by foreclosure, to provide the owner of the property with notice and an opportunity to correct the violation. *Approved.*

• **AB 1693** (Ma). Will modify the code adoption cycle and extend it to an 18-month process, adding three months to the interim update process. *Approved.*

• **AB 2670** (J. Perez). Would have mandated certain state buildings be evaluated using a private green building program without recognizing the state's own green building code. *Vetoed.*

Disadvantaged Communities

• **SB 194** (Florez). Would have extended the Community Development Block Grant system to large "entitlement communities" and attempted to ensure the representation and participation of citizens of disadvantaged unincorporated communities. *Vetoed*

Budget Trailer: Redevelopment, Williamson Act

• **SB 863** (Budget Committee). Would change Community Redevelopment Law to benefit two specific agencies. First, the Centre City Redevelopment Project in San Diego will be allowed to issue an unlimited amount of debt to fund a new $800 million football stadium, without having to comply with existing law. This law requires that older agencies seeking to increase their "debt cap" document remaining blight, spend the additional revenues to remove this blight, increase the percentage of funds set aside for housing to 30 percent, and focus these funds on homes affordable to lower-income households. Second, the Richmond Redevelopment Agency would gain a special reprieve from potential penalties for failing to make payments to schools required under last year's budget, because the agency's revenues dropped by 20% in 2009-10. It also provides "bridge" funding for counties that have given up Williamson Act subvention funds due to the provisions of SB 2530, which diverts some funding to the state. *Awaiting action by Governor.* ■

insight WILLIAM FULTON

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until the economy gets better. So could she kill SB 375 and the whole climate change planning effort if she wanted to?

The answer appears to be no. And the fact that the answer is no represents an important lesson in how policies that emerge in response to a law quickly become embedded in the fabric of our governmental structure.

AB 32 calls on California to reduce greenhouse gas emissions significantly – by 25% or so as soon as 2020. This target has triggered all kinds of other policies and actions on the part of the state, including the adoption of the low-carbon fuel standard, increased fuel efficiency standards, stronger building codes, a rethinking of how water is used, and all-but-mandatory requirements that local governments seem to minimize the increase in vehicle miles traveled associated with new development projects.

Proposition 23 represents a de-facto repeal of AB 32, because it would suspend the law until unemployment in California dropped to 5.5% for one year. Even in good times unemployment doesn't usually drop that low, at least not for that long. But passage of Prop 23 – or institution of Whitman's executive decision to suspend critical parts of it – won't change the planning landscape much in California. The reason is that climate change planning efforts, while initiated in response to AB 32, are now embedded in not only SB 375 but also SB 97. SB 97 ordered the state to include climate change considerations in the analyses under the California Environmental Quality Act. SB 375, of course, is the law that requires regional planning agencies to draft sustainable communities strategies designed to meet GHG emissions reduction targets set by the state.

“Passage of Prop 23 – or institution of Whitman's executive decision to suspend critical parts of it – won't change the planning landscape much in California.”

Although SB 375 gets all the publicity, it is SB 97 that has most affected daily planning practice in California.

One typical pattern under CEQA is that a new area of concern – or a new technique – is first identified by practitioners or lawyers, then memorialized permanently through a combination of legislative changes to CEQA and revisions to the CEQA Guidelines, which are done administratively by the Governor's Office of Planning & Research and the Natural Resources Agency. For example, this is how mitigated negative declarations became part of the fabric of CEQA. It's also how greenhouse gas emissions analysis became part of CEQA's fabric.

After AB 32 was passed, Attorney General Jerry Brown – who will be the next governor if Meg Whitman loses – sued San Bernardino County, claiming that because of the threat of global warming, greenhouse gas emissions had to be analyzed in the County's General Plan Environmental Impact Report. In a legal settlement reached in August of 2007 [ ], the County agreed to incorporate GHG considerations into its General Plan. CEQA practitioners interpreted the settlement as meaning that GHG analyses had to be part of CEQA practice – which, of course, was Brown's whole point in suing San Bernardino County in the first place.

Subsequently, the Legislature adopted SB 97, which essentially memorialized the need for GHG analysis in state law and ordered that the CEQA Guidelines be revised to set out requirements and procedures for GHG analysis. It is this law – not AB 32 – that forms the legal foundation for GHG analysis in the state and requires GHGs to be examined in every CEQA action.

The point is that even though SB 97 was drafted as a way to implement AB 32, it's now a separate law and therefore not likely to be affected by the passage of Proposition 23. Of course, if 23 passes somebody will file a lawsuit claiming that SB 97 is no longer valid. But it's likely that such challenge would fail because of the nature of CEQA. There is no reason to prohibit lead agencies and their environmental scientists from concluding, on their own, that increased greenhouse gas emissions is a potentially significant environmental issue that must be considered under CEQA.

Of course, Whitman – if she's elected – could try to change the CEQA guidelines to weaken the requirement to conduct GHG analysis. But it's unlikely she could get rid of it altogether.

Then there's SB 375. The guts of the law lays out the process that the Air Resources Board must follow to create 2020 and 2035 targets for GHG emissions reduction and then the process that the regional planning agencies must follow in creating Sustainable Communities Strategies.

But the law is so cleverly written that it can't be tied directly back to AB 32 – an intentional effort, no doubt, by Tom Adams, the brilliant labor/environmental law who drafted most of the bill. SB 375 has only two references to AB 32, and both are in the preamble. Never does SB 375 say that it is implementing AB 32, even though it establishes processes that would not be necessary for any other purpose. And, at the same time, SB 32 wraps itself around two other legally required processes that regional planning agencies engage in – the Regional Transportation Plan required under federal transportation law and the Regional Housing Needs Allocation process required under state Housing Element law. Quite simply, SB 375 seeks to leverage the process of reducing greenhouse gas emissions to achieve other planning goals required by those other two processes.

So there you have it. Proposition 23 or no Proposition 23, climate change planning is a permanent part of the California planning landscape. Meg Whitman can try to weaken this planning effort but it's unlikely that she can get rid of it – and, once in office, she may reveal herself to be a moderate Republican in the Schwarzenegger mold who sees political advantage to keeping environmental regulations strong. And as for Jerry Brown, he tipped his hand in the San Bernardino case: To him, climate change is the clearly cornerstone of California's planning in the 21st Century. ■

MPOs Now Turn To Sustainable Communities Strategies

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By now participants in the target-setting process have nearly hypnotized themselves with "ambitious but achievable," That mantra that has been used countless times to describe ARB's goals. Nearly every speaker at the Sept. 23 ARB meeting insisted on ambitious but achievable targets, but for some critics the adopted goals lack the right balance.

"They erred significantly on the side of aggressive and not so much on the side of achievable," said Richard Lyon, vice president for governmental affairs at the California Building Industry Association.

"Through the draft preliminary target ranges and the discussions we were having with the ARB and the four major MPOs we felt that targets in the rage of 4, 5, or even 6% were likely to be adopted and we felt that those were doable," said Lyon. "We were fine up to the time the staff-recommended final targets came out and were shocked to find that something significant happened between spoon and mouth." Lyon and other BIA officials have questioned the higher 2035 targets, saying that some of the regions themselves have projected that feasible 2035 targets could turn out to be as low as 3%.

The targets that the board adopted are consistent with those recommended by ARB staff in June. For 2020, three MPOs will be shooting for 7% per capita reductions: the San Diego Association of Governments, the Sacramento Area Council of Governments, and the Bay Area's Metropolitan Transportation Commission; the Southern California Association of Governments has been assigned an 8% target.

By 2035, the targets become more disparate, based in part on what each MPO said it could achieve according to its research and modeling. SANDAG and SCAG have been assigned targets of 13%, though SCAG's target is conditioned on further discussions between the agency and ARB. MTC and SACOG will be shooting for 15% and 16%, respectively.

Meanwhile, the eight MPOs of the San Joaquin Valley have been assigned "placeholder" targets of 5% in 2020 and 10% in 2035. The use of placeholders, which will be revisited in 2012, reflects unique, persistent challenges relating to air quality in the valley. The state's six remaining MPOs, which represent a small fraction of the state's population, are expected to make efforts to improve upon their own targets for those years but they are not directly addressed by the current goals that ARB has set out. The MPOs of Monterey Bay and Santa Barbara have already volunteered to model their goals after those of the big four.

"Every region has different models and different premises and variables built into them," said Mayor Ron Loveridge. "They're not always measuring the same thing from region to region."

Lyon said the final numbers and that they had not been sufficiently explained by ARB or vetted by stakeholders.

The most notable voice of dissent came from SCAG, whose Regional Council voted, 29-21, to recommend targets of 6% and 8% on the argument that the region simply would not be able to meet anything higher without incurring significant costs. Support for those lower targets was led by Simi Valley City Council Member Glen Becerra. Whether the region can achieve the ARB-approved targets or not does not necessarily depend on the Regional Council's perceptions.

"I don't think that the 6% and 8% were very scientific," said SCAG Executive Director Hasan Ikharta, regarding the Regional Council's discussion. "They just wanted to have lower targets to make sure that we could achieve them at the end of the day. I tried to tell our board that the discussion shouldn't be about 6%, 8%, 13%…it should be about a positive policy message that we're going to do our best."

"The differences of opinion capture the uncertainty about how this is going to work out," said Loveridge. "I thought it was important that we, particularly for 2035, have a very serious discussion between the CARB staff and the SCAG staff." Loveridge said he was not present for the Sept. 2 Regional Council vote.

Opponents of the adopted targets also point to early studies by MTC staff that, they say, implied that higher targets were achievable only through measures such as taxes and fees that would result in $9 per gallon gasoline prices and the impelled migration of some 200,000 suburban-dwellers to the region's center cities. In a Sept. 22 editorial in the *San Jose Mercury News,* MTC Board Members Jim Spering and Bill Dodd called 15% targets "extreme" and a "gross overreach." These concerns have been echoed by representatives of the Building Industry Association, which has supported SB 375 from the onset but has expressed reservations about the targets.

At the Sept. 23 ARB meeting, however, MTC Executive Director Steve Heminger explicitly refuted Spering's and Dodd's claims, saying that the MTC board overwhelmingly supported ARB staff's recommended targets and that achieving the targets would require nothing resembling draconian measures. He insisted that recent modeling and the likely implementation of a wide range of land use and transportation demand management (TDM) techniques would make the 7% targets viable.

Whatever the actual numbers, both sides are quick to point out that SB 375's GHG goals are just that: goals. The big four MPOs are now scheduled to move forward with their Sustainable Communities Strategies, which will lay out a planning blueprint that will be part of their Regional Transportation Plans and that will, it is hoped, guide member cities in their general plan updates. However, the 2035 SCAG targets are essentially placeholders and will revisited in the future, per SCAG's insistence.

Until then, the setting of targets represents, to some, a pivotal moment, when the discussions over models, stakeholders, and economic impacts give way to actual planning. In fact, even if the finalized targets are, for now, only symbolic, they are a powerful symbol of California's abandonment of the automobile-dominated suburbia that has been the the state's dominant pattern of land use since the end of World War II. Even SB 375's critics acknowledge that the state's future lies in more compact development rather than in greenfield subdivisions.

Whether this planning effort will pay dividends depends, in large part, on a host of economic factors, Bishop, whose organization is a SCAG subregion, said that communities in his area may be eager to grab SB 375's "low-hanging fruit," such as transportation demand management schemes to reduce VMTs via carpooling.

Especially in a relatively sprawling sub-region like Riverside County, the big infrastructure- and development-heavy strategies that could create denser, less auto-dependent communities, will not happen with the strike of a gavel, Bishop said.

But now that the discussions about the targets have ended for the time being, the work begins in earnest on implementing SB 375. SANDAG is the first MPO scheduled to release its Sustainable Communities Strategy, which is due in July of next year, as the first regional plan of its kind. ■

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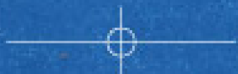

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Can Photovoltaics Create A Sunny Future For Brownfields?

Much has been written about the economic potential of alternative energy. So the proposal to build a 7,000-acre solar farm in Riverside County near Blythe struck me as notably promising. The new plant would be capable of generating 1,000 Mw, or more than all the photovoltaics that have been so far installed in California, according to a recent New York Times article.

Here's another wrinkle in the idea of photovoltaics as land use: Reusing brownfields as solar energy farms. That's the proposal put forward by a pair of Northeastern companies, who claim that formerly shunned lands can be profitably reused as "surface area" for fields of photovoltaic panels. This strategy would create a vector of two forward-looking causes in land use: Finding new uses for contaminated and unproductive (translate as "non-tax-generating") real estate while finding adequate acreage for photovoltaics to soak up the natural goodness of sunlight and make it into cheap (or at least competitively priced) electricity.

The proponents are Opel Solar, Inc. of Shelton, Ct., and Truenorth Solar & Environmental, L.L.C. of Toronto, Ontario. Some eye-opening numbers from the companies' a-press release (warning: I have not independently verified these numbers):

"The Environmental Protection Agency (EPA) has estimated that site cleanup revenue, for the companies doing the clean-up, can amount to approximately $6-8 billion annually as experts forecast that there may be as many as 4,000 brownfields in the United States, roughly the equivalent of 30,000 football fields. Add in Superfund sites and the Resource Conservation and Recovery Act sites and the total jumps to more than 14 million acres that could be redeveloped as renewable energy sites."

I have some dollars-and-cents questions for Opel Solar Chairman Leon Pierhal. (I've put out several requests for an interview, and I'll file a follow-up report when I get a better sense of how the whole thing "pencils out.")

For the time being, here are some of my basic questions/quandaries:

Do we need to clean up these sites before reusing them as solar energy farms? That costs money. The commonest and, arguably, most easily remediate type of contamination in soil is petrochemicals (i.e. old gas stations, underground storage tanks and drilling rigs, etc.) which can cost up to $25 per square foot to clean up. That's a reasonable cost for high-end development such as regional malls, big hotels, and Class A office buildings that can reliably throw off a lot of cash down the road. In some cases where the stuff is really awful, such as carcinogens, developers can sometimes "encapsulate" the crud by laying a sandwich of sand and asphalt on top of it. Add to that the cost of land, or the cost of leasing it.

So, this is my simplistic formula: Profit must be equal to, or greater than, (the cost of remediation) + (cost of PV equipment) + (cost of land). Granted, those numbers will likely vary widely from place to place.

Hopefully, those numbers would work in Arizona, where we could blanket the entire state just to make enough energy to keep air conditioners humming in Southern California. Northern California, for its part, could use Nevada for similar purposes. It's a win-win-win-win! (Just kidding….)

– MORRIS NEWMAN | SEPTEMBER 29, 2010

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Legislature Goes Tone Deaf To Redevelopment Abuse

The state Capitol is one weird place. Sometimes, I'm not sure if it's even of this earth.

At the moment when you think major redevelopment "reform" is on the horizon, state lawmakers instead rewrite inconvenient laws that were getting in the way of San Diego's desire to use redevelopment financing to build a football stadium, including a law requiring increased funding for affordable housing.

To step back just a bit: On September 30, the Senate Office of Oversight and Outcomes (a fairly new investigative entity) published a report titled "Where Does the Affordable Housing Money Go? Administrative Spending by Redevelopment Agencies Lacks Accountability." I'll be writing about the details of the report in coming days, but the investigation's message is obvious. Some redevelopment agencies are shirking their state-mandated responsibility to provide low- and moderate-income housing, and the state isn't doing anything about it.

The very next day, the *Los Angeles Times* ran the first of two stories detailing alleged redevelopment abuse by agencies all over the state. Both the Times and the Senate office documented how some redevelopment agencies – quite a few, but by no means a majority – were spending a large chunk of the 20% of redevelopment revenue that must be dedicated to low/mod housing on planning and administration, and not on actual housing units. A few other newspapers followed up with unflattering reports on their local redevelopment agencies.

The well-documented revelations had to please affordable housing advocates who have long complained that some redevelopment agencies do everything possible to avoid providing housing. On the other side, limited government advocates who have long complained that redevelopment is one giant sham had to be equally pleased. Either way, you would think that redevelopment reform – carefully crafted or the butcher block variety – would be the Legislature's immediate response.

You would be wrong.

Instead, in the dark of the night (actually it was the early hours of Friday morning, October 8), the Legislature approved SB 863 with no public review at all. The bill does two unrelated things for redevelopment.

First, it eliminates the dollar limit on the amount of tax increment that San Diego's Centre City Redevelopment Corporation may receive. (The CCDC is the city's downtown redevelopment agency.) The provision lifts the cap on the amount of debt that the CCDC may issue. With the cap gone, the agency is free to finance a football stadium for the San Diego Chargers, a stadium that could easily cost $1 billion. Apparently, the agency also has plans to finance a convention center expansion, additional downtown trolley lines and new parks.

Now, existing law permits redevelopment agencies to extend their life spans by 10 years – and, therefore, increase their revenue and finance limits – if the agencies are able to make new findings that blight cannot be eliminated without the extension, and if the agencies agree to increase the tax increment revenue set-aside for low/mod housing from 20% to 30%. San Diego city officials were in the midst of a study to document the remaining blight. But the last-second legislation lets the CCDC bypass both of those restrictions. No new blight findings, no increased housing set-aside.

A second provision in SB 863 concerns agencies that did not make payments required by the Legislature's shift of $2.05 billion from redevelopment agencies to school districts and the state over the 2009-10 and 2010-11 fiscal years. A handful of agencies did not make the first payment, which was due May 1 of this year. The legislation says that those agencies – so long as they notified the state Department of Finance in advance and saw property tax increment drop by at least 20% last fiscal year – may spread their payments over the next 30 years. It appears that only Richmond's redevelopment agency meets these qualifications. It's unclear whether Richmond may use low/mod housing money to make the payments.

Senate Bill 863 passed both houses of the Legislature with the requisite two-thirds vote for urgency legislation during the all-night session that concluded with passage of a 2010-2011 state budget. Although the San Diego redevelopment exemptions had been floating around for a while, even the savviest affordable housing lobbyists did not know the exact details of SB 863 until after lawmakers had already voted.

What do these redevelopment maneuverings have to do with the state budget? Nothing, other than they were part of the vote trading necessary to gain approval of the budget. Democrats apparently offered this to get Republican votes.

The CCDC generally gets high marks for its role in transforming downtown San Diego into a vibrant urban place. The agency has invested in infrastructure and many development projects, including the baseball stadium for the San Diego Padres – a stadium did its job of triggering private investment in a blighted neighborhood. A downtown football stadium, an even bigger convention center, more trolley lines and more parks sound great. But if they truly are great, why do they need exemptions from state law approved with no public review – and at the very moment when people are asking hard questions about redevelopment ?

Concern about redevelopment abuse is not going away. Somebody better grab the baby before the bathwater starts flying.

– PAUL SHIGLEY | OCTOBER 8, 2010 ■