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Cash-Strapped Agencies Get Prop. 84 Windfall

Coveted State Funds Will Help Local Governments Plan For SB 375

BY JOSH STEPHENS

When Proposition 84 passed in 2006, it reflected a booming economy from another era. Providing $5.4 billion for clean water, parks, and open space the measure was seen as an important way to protect the state's natural resources at a time before many were worried about $28 billion deficits or maxing out the state's bonding capacity.

Prop. 84's primary focus is on waterways and water management. However, it also includes a small set-aside for innovative planning that is proving to be a godsend to planning departments that are suffering unprecedented budget cuts.

Last month, the Strategic Growth Council approved the first round of Sustainable Communities Planning Grants. The council allocated roughly $23 million to 40 projects across the state. In many cases, this infusion of cash from Sacramento has given life to long-range planning activities and special projects that, despite the impetus of new statewide smart-growth incentives, otherwise would have been shelved indefinitely.

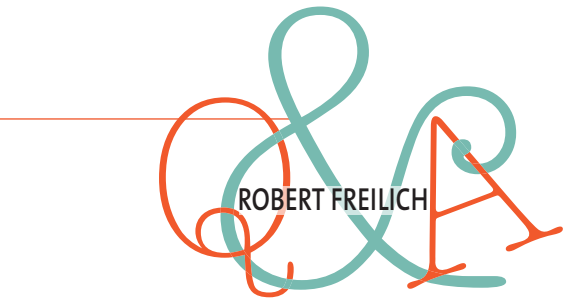
The economic crisis comes at an unfortunate time for cities and regional agencies, such as councils of government, that are gearing up to comply with SB 375, the 2008 law that promotes mitigation of greenhouse gases through smart-growth principles.

"(Applicants are) trying to do something that will help them not only meet their SB 375 targets but also really look at improving the quality of life in their communities," said Heather Fargo, executive policy officer at SGC.

Many of the municipal recipients are updating general plans or specific plans that seek to foster density and create greater harmony between density and transportation. Many of the MPO recipients will be creating region-wide blueprints and Sustainable Communities Strategies, per SB 375.

Stakeholders will continue to debate whether SB 375's regional targets are strong enough, too strong, or just right. However, localities are almost unanimous in expressing the – CONTINUED ON PAGE 11

Robert Freilich On The Evolution Of Sustainable Planning



One of the country's leading experts on land use law, attorney Robert Freilich has tried cases and designed plans in hundreds of cities and witnessed the legal and conceptual evolution of planning. In 1999 he co-authored From Sprawl to Smart Growth: Successful Legal, Planning and Environmental Systems, *which heralded the mainstreaming of the smart growth movement. His update,* From Sprawl to Sustainability: Smart Growth, New Urbanism, Green Development, and Renewable Energy, *published last year by the American Bar Association, encompasses the revolution that took place last decade when environmental sustainability, climate change mitigation, and smart growth combined for a powerful new paradigm in* – CONTINUED ON PAGE 12

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Governor Proposes Elimination Of Redevelopment Agencies

As expected, the budget proposed by Gov. Jerry Brown calls for the wholesale elimination of redevelopment agencies. This dramatic move would free up roughly $5 billion in annual tax increments that redevelopment agencies control and would redirect those increments to fund a range of local services.

The proposal has set off what will likely be an ongoing debate over the value of redevelopment as it has been implemented in the 59 years since California voters approved a constitutional amendment allowing the use of tax increment financing to combat blight.

While the governor described the proposed budget as "a tough budget for tough times," redevelopment officials have already launched their counter-offensive. John Shirey, executive director of the California Redevelopment Association, called the proposal " smoke and mirrors that will bring little financial gain for the State, but will cause widespread and significant economic pain in communities throughout California."

The proposed budget's chapter on Tax Relief and Local Government includes a wide-ranging indictment of redevelopment. The budget offers the following reasons, among others, why redevelopment fails to live up to its promise:

• Because redevelopment agencies keep the incremental monies that are generated within redevelopment, even tax increases that stem simply from inflation or property value increases – rather than direct agency intervention – end up in agency coffers. Meanwhile, the base tax that is distributed to other recipients remains the same and loses real value over time. The budget claims that over time, the increment kept by agencies can "dwarf" the base tax revenue that goes to local services like schools.

• According to a 1988 study by the Public Policy Institute of California, "fewer than one quarter of the (redevelopment) projects came close to being responsible for the property taxes they received. These projects were also the ones with the most vacant land."

• Redevelopment agencies have failed to develop affordable housing, which is supposed to consume 20 percent of agencies' income. Instead, many agencies have built up large balances.

• In the aggregate, redevelopment agencies do not create a net increase in development. Development that occurs in redevelopment project areas would have occurred elsewhere in the state.

The budget lists the following relative detriments of the diverting the tax increment:

• Diversion of tax increment not only diverts a total of $5 billion from other taxing agencies but also creates a complicated system by which the state must "backfill" and compensate K-14 schools at a cost of approximately $1.8 billion annually.

• Local services such as law enforcement and emergency response rely largely on property taxes and local sales taxes. While the former is expected to stabilize, the latter is expected to take years before returning to pre-recession levels.

The budget proposes the following steps to disbanding redevelopment agencies and redistributing their tax increments:

• By July, existing agencies would be disbanded and their debts would be gradually retired by local successor agencies.

• Starting in 2012-13, the amount of tax increment remaining after paying pre-existing debts and contractual obligation would be distributed to cities, counties, and K-14 schools in amounts proportionate to their share of the base countywide property tax. The net gain for these entities is estimated to be $3 billion annually.

• Monies left in agencies' coffers that are earmarked for low- and moderate-income housing would be shifted to local housing authorities for the same purpose.

• Fund future local economic development projects via a 55% voter approval for limited tax increases and bonding against local revenues for projects that are currently done by redevelopment agencies.

This announcement comes on the heels of what redevelopment officials considered a disastrous year. In May a judge upheld a 2009 law ordering the transfer of $2.01 billion in tax increment (see *CP&DR* Vol. 25, No. 9, May 2010 [ ]) from agencies statewide to help fund schools. Agencies were then ordered to pay $1.7 billion of that payment, with the rest due this year.

"Without decisive action, the state's severe budget problems will persist, threatening economic recovery, job growth, public education and the quality of life in California," said Gov. Brown in a statement. "The adoption of this budget will position the state to lead the country as it slowly recovers from the Great Recession."

Redevelopment officials contend, however, that the current system and the use of tax increments can stoke that recovery.

"The state and local governments have very few tools to stimulate the economy, but redevelopment is the exception," said the CRA's Shirey in a statement. "Redevelopment is already a locally-governed service which generates hundreds of thousands of jobs."

The governor's spending plan assumes that all statutory changes to implement budget actions will be adopted by the legislature in March, allowing the necessary ballot measures to be put before the people at a June special election.

Please visit *CP&DR* for continuing coverage of this proposal and reactions from around the sate. ■

Governor's Budget Calls For Further Cuts Affecting Land Use

The dissolution of redevelopment agencies may be the biggest bombshell that Gov. Jerry Brown dropped on the land use community. But it is not the only one. He is also targeting the Williamson Act, Enterprise Zones, and fire safety in order to help close the state's $28 billion deficit.

Enterprise Zones

Like redevelopment project areas, Enterprise Zones are intended to stoke economic development in disadvantaged areas. However, rather than using tax increment financing and being orchestrated by a public agency, Enterprise Zones simply confer tax credits and other financial incentives on businesses that set up shop within the zones.

The proposed budget calls for the elimination of all Enterprise Zones and related benefits. Similar zones such as Targeted Tax Areas, Manufacturing Enhancement Areas, and Local Agency Military Base Recovery Areas would also be eliminated. Because these zones – CONTINUED ON PAGE 3

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involve relatively straightforward tax credits, the savings estimate is relatively straightforward: $343 million in 2010-11 and $581 million in 2011-12.

The proposed budget includes the rationale that local economic development strategies should be managed locally. These strategies are, in fact, not of "statewide interest" "because the primary benefit of these zones is to shift economic activity from one geographic region within California to another geographic region within California," according to the budget draft.

As with redevelopment agencies, the draft budget also includes some scathing criticism of Enterprise Zones:

• The Legislative Analyst's Office "California's Enterprise Zone Programs" – 2005 found that EZs have little if any impact on the creation of new economic activity or employment. That activity would have occurred elsewhere, according to the analysis.

• The Public Policy Institute of California found "Do California Enterprise Zones Create Jobs?" – 2009 that there was "no statistically significant effect on either employment levels or employment growth rates" within enterprise zones as compared to neighboring areas.

• The greatest benefits of Enterprise Zones may not accrue to the companies or localities but in fact to the consulting and accounting firms that facilitate the relocation of a business to an Enterprise Zone.

Enterprise Zones were established in 1984, with a maximum of 42 zones throughout the state at any one time. Zones are approved for 15-year terms. Gov. Arnold Schwarzenegger presided over on an Enterprise Zone bonanza, approving 36 in his two terms. New Enterprise Zones were approved in Anaheim, the Santa Clarita Valley, and the Los Angeles Harbor area just last month.

California Land Conservation (Williamson) Act

A relatively minor item in the state budget, the Williamson Act for farmland protection cost the state $35 million in 2009-10.

Under the Williamson Act, owners of farmland can voluntarily agree to keep their land in agricultural production for as open space – rather than convert it to other uses – for a specified period in exchange for an artificially low tax assessment. The 1972 Open Space Subvention Act provides for the state to reimburse local governments for lost property tax revenue.

The governor proposes the permanent suspension of Williamson Act subventions. The budget invites localities to run the program as they see fit.

Wildlands Fire Protection

The Department of Forestry and Fire Protection (Cal Fire) provides wildland fire protection services in over 31 million acres of state responsibility areas (SRAs). Although the number of acres in SRAs has been relatively constant since the 1950's, the composition of SRAs has greatly changed. Population and urban development in SRAs has grown significantly in recent decades, increasing fire risks and state costs.

Under this proposal, responsibility for fire protection and medical emergency response in these populated wildland areas will be assumed by local government. The budget insists that jurisdictions making land use decisions which result in housing development encroaching in wildland areas also provide the necessary emergency response services associated with more highly populated land use patterns. In other words, local jurisdictions may not be able to approve development in unincorporated areas without also planning and paying for fire protection.

It is estimated that this proposal will result in the realignment of up to $250 million of Cal Fire's fire protection program to local governments. ■

A settlement between Lennar Urban, the San Francisco Redevelopment Agency, the city, and the environmental groups has put to rest one of the final points of contention surrounding the massive development at the shuttered Hunters Point Naval Shipyard (see *CP&DR* Vol. 25, No. 16 [ ]). Plaintiffs had sued over concerns about a bridge planned to cross Yosemite Slough, saying that it would interfere with wildlife. The settlement agreement calls for developer Lennar Urban to reduce the environmental impact of the bridge and take measures to upgrade and restore the slough. Lennar Urban considers the bridge crucial to the 10,500-unit development. One more lawsuit remains before the project is clear of legal hurdles.

The Yurok tribe is reportedly pushing legislation that would give them control of 1,200 acres in Redwood National Park and thousands more public acres for an economic development and nation-building plan. According to the *Los Angeles Times*, the tribe hopes to establish a recreational community with eco-lodges, boating on the Klamath River, and retail establishments. The tribe's reservation already shares a slice of land with the national park but the joint management of a national park with a tribe-run travel destination would be unprecedented. The tribe, which lived along the north coast before being confined to a reservation in 1855, is reportedly asking U.S. Rep. Mike Thompson (D-St. Helena) to introduce legislation that would give them the 1,200 acres of Redwood NP plus another 1,200-acre parcel of Six Rivers National Forest. The Yurok tribe has yet to publicly announce its plans.

The University of Southern California has issued a proposal to purchase the land on which the Los Angeles Memorial Coliseum sits, plus other land in the Exposition Park complex. Adjacent to the USC campus, the Coliseum serves as the university's football stadium. It is owned under a joint powers agreement by the City of Los Angeles, Los Angeles County, and the state and is governed by a commission with representatives from all three jurisdictions. If the university buys the land, the commission would continue to govern the stadium at least through 2054, which is when the current lease expires.

Pepperdine University has announced plans for a major upgrade and expansion of its Malibu-adjacent campus. The plans call for nearly 500 new dormitory beds, a 2,000-seat stadium, and new buildings. Though the campus is technically located in unincorporated county land, the university is reaching out to the City of Malibu, which is directly affected by its presence in the upscale beach area.

Several San Diego City Council members are moving to oust Mayor Jerry Sanders from his position as executive director of the city's redevelopment agency. As part of a 2006 restructuring that gave more power to the mayor's office, Sanders assumed temporary control of the agency. Council members say that recent negotiations to secure redevelopment monies for a new football stadium were not conducted transparently. They hope to replace Sanders after granting only a 60-day extension, meaning that he would be ousted in early February. Sanders is the only elected official to serve as executive director for any of the state's 300-plus redevelopment agencies.

After years of squabbling over the fate of the world's largest artificial pleasure-craft marina, a major development plan for Marina del Rey has been approved, 3-1, by Los Angeles County planning commissioners. The plan would bring more retail, housing, and office space to the marina, which is governed by Los Angeles County but surrounded by the City of Los Angeles. Though the roughly mile-square marina area consists largely of water, it also has developable parcels between and surrounding its boat basins. County supervisors and the Coastal Commission still must approve the plan.

Walmart is collecting signatures to force a ballot initiative that would overturn a San Diego ordinance that effectively bars its Supercenters from operating in the city. Last month the San Diego City Council passed an ordinance requiring would-be stores of over 90,000 square feet to conduct studies to assess their economic and traffic impacts, including impacts to local jobs and wages. Walmart needs to gather at least 31,000 signatures to get the measure on the ballot. At that point, the City Council could choose to repeal the ordinance rather than stage a special election.

Four national forests in Southern California will be affected by an agreement between conservationists, the state

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of California, off-road vehicle users and the U.S. Forest Service to restrict development in 1 million acres that are currently roadless. The deal concludes a federal case brought by conservation groups challenging the Forest Service for failing to assess cumulative damage to the forests caused by road, trail and unauthorized route construction in pristine roadless areas. In 2009 a federal district court agreed with the groups, ruling that the plans violated the National Environmental Policy Act. The parties agreed to negotiate a settlement.

Under the agreement, federal and state agencies, conservationists and ORV users will work together to improve and protect the roadless areas. The Forest Service will reconsider protecting several of the areas permanently as wilderness. Parties will identify roads and trails that are degrading roadless areas; the Forest Service will prioritize these for decommissioning and restoration.

With the announcement of initial results from the 2010 US Census, the State of California is contending a key piece of data that the state's planners may need to determine the course of future growth: the actual population of the state. Leading up to the Census, the state Department of Finance had long contended that the most recent census numbers had underestimated the state's population by 1.5 million people (see *CP&DR* Vol. 25, Nos. 5-6, March 2010 [ ]). Last month the Census Bureau announced that California's population is 37.3 million – a 10% increase since the 2000 Census. However, these new Census figures still do not square with the state's estimate of 38.8 million residents, as of July 1, 2010. That discrepancy represents a significant amount of federal aid that the state might not get as well as a possible seat in the House of Representatives.

The U.S. Court of Appeals for the Ninth Circuit upheld, 2-1, an air pollution rule requiring San Joaquin Valley builders to mitigate air pollution associated with new housing projects and other large developments last month. The Ninth Circuit upheld a lower court decision that the San Joaquin Valley Air Pollution Control District rule is legal. The National Association of Home Builders had sought to overturn the rule, which requires them to compensate for indirect pollution such as smog caused by traffic increases from large new developments. Specifically, the rule requires developers to keep emissions 45 percent below the average amount of particulates typically emitted by certain piece of equipment. The Home Builders filed a challenge in federal district court in June 2007 seeking to invalidate the rule, claiming that only the federal government can regulate these activities. In 2008, the district court upheld the rule and the Home Builders appealed to the Ninth Circuit Federal Court of Appeals.

The Wilshire Grand Hotel in downtown Los Angeles recently announced an development agreement with the city to tear down the aging hotel and replace it with with a pair of luxury towers. The 45-story hotel would compete directly with the new Marriot/Ritz-Carlton built adjacent to the LA Live entertainment complex. Meanwhile, the 65-story office tower would be downtown's first office high rise to be built in 20 years. The area experienced a building boom before the recession, but most projects were residential. The site is owned by Korean Airlines and will be developed by LA heavywieght Thomas Properties Group. Demolition is slated for the end of this year. ■

Breached Agreement Could Bankrupt Mammoth Lakes

Town Scuttled Deal To Develop Hotel Near Airport; To Pay $32m

BY CORI BADGLEY

The Town of Mammoth Lakes has been ordered to pay more than $32 million for violating a development agreement.

In upholding a jury's award of damages to the developer, the Third District Court of Appeal made clear that local government agencies are treated like any other private contracting party when it comes to development agreements and can be held liable for damages if the agency breaches the agreement.

As previously established in *Building Industry Association of Central California v. City of Patterson*, (2009) 171 Cal.App.4th 886, (see *CP&DR Legal Digest*, April 2009 [ ]), the interpretation of development agreements is governed by contract law and not statutory interpretation principles. In the Mammoth Lakes case, that breach of a development agreement by a municipality came with a hefty price tag. Under contract law, there are no immunities protecting the municipality from having to pay up.

In 1997, Terrence Ballas and the Town of Mammoth Lakes entered into a development agreement whereby Ballas would lease the land encompassing and surrounding the airport from the town with an option to purchase. Ballas would operate the airport in conjunction with developing the land near the airport into a 250-unit condominium or hotel complex. In 2000, after Ballas helped form Mammoth Lakes Land Acquisition, LLC, and invested $15 million to $17 million in required airport improvements, the developer submitted an application for development of a residential condominium complex.

The development agreement stated: "Town and its agents, employees and contractors shall exercise discretionary approvals applicable to the project reasonably, in good faith, and in a timely manner." However, town officials disliked the residential concept, and, in 2004, the developer submitted another application for what is known as the Hot Creek project. The new proposal involved a time-share condominium hotel in which units could be rented out when the owners were not using them.

Meanwhile, the town had been working to gain Federal Aviation Administration (FAA) approval to expand the airport facilities to accommodate commercial jets. About the same time the revised development proposal came forth, the FAA – which, unbeknownst to Ballas, questioned the development agreement before it was approved in 1997 – stated that it would not approve the airport expansion. The FAA further advised that the town was in jeopardy of losing federal grant funding for airport improvements if a condominium/hotel complex were built on the surrounding property. Based on this admonition, the town proceeded to work against the Hot Creek project and refused to process the application without first resolving the FAA issues.

Mammoth Lakes Land Acquisition sued the town in 2006 for anticipatory breach of contract. A Mono County jury found in favor of the developer and awarded $30 million in damages for breach of contract. Subsequently, the judge also granted the developer $2.3 in attorneys fees under the prevailing party provision of the development agreement. The town appealed on three grounds: (1) The developer failed to exhaust its administrative remedies; (2) three clauses in the development agreement excused the town's performance; and (3) there was no substantial evidence to support the jury's determination of breach. The appellate court found none of the town's arguments meritorious and upheld the award for damages and attorneys fees.

On the first issue of exhaustion, the town argued the developer was required to engage in the administrative process before filing suit. The appellate court disagreed. The lawsuit, the court ruled, rested solely on the terms of the development agreement and whether the town breached those terms. Therefore, exhaustion of the administrative process was not required, and the principles of contract law applied.

"There was no remedy available to the developer in the administrative process," Justice George Nicholson wrote for the unanimous three-judge Third District panel. "[O]nce the developer gave notice of default [which occurred in early 2005] and the town failed to cure the default, there was no longer a proposed land use to adjudicate in the town's quasi-judicial administrative process."

On the second issue of excused performance, the court rejected all of the town's attempts to assert defenses under the agreement. The court found that development agreement clauses requiring compliance with governmental restrictions and FAA regulations provided no protection because the restrictions at issue were under the town's control, and the grant assurances between the FAA and the town did not constitute FAA regulations. Additionally, the developer knew nothing of the grant assurances between the town and the FAA and, thus, did not assume any responsibility in regards thereto, the court ruled.

On the third issue of substantial evidence, the appellate court found that evidence was adequate to support the jury's determination. Therefore, the appellate court affirmed the jury's award of damages and attorneys fees.

This case acts as a reminder to local agencies that develop-

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ment agreements cannot simply be dismissed after they are executed. Future consequences must be taken into account before the agreement is entered into, as with any other contractual agreement between private parties. ■

■ The Case:
Mammoth Lakes Land Acquisition, LLC v. Town of Mammoth Lakes, No. C059239, 2011 DJDAR 92. Filed December 30, 2010.

■ The Lawyers:
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ceqa

Historic Palo Alto Adobe Not Protected By CEQA

BY LESLIE Z. WALKER

A state appellate court has found that a provision of the Palo Alto municipal code requiring a 60-day delay prior to the issuance of a demolition permit did not render the permit approval a discretionary act requiring environmental review. The city properly treated the demolition permit as ministerial and exempt from the California Environmental Quality Act (CEQA), the Sixth District Court of Appeal ruled.

The ruling came in the long controversy over the fate of the Juana Briones House, the central portion of which was built during the 1840s as an adobe. The structure was built by Juana Briones de Miranda, a successful businesswoman and early settler of what became North Beach in San Francisco.

The History

In 1988, the owners of the Juana Briones House entered into a historic preservation contract with the City of Palo Alto pursuant to the Mills Act (Government Code, § 50280 *et seq*.) for a rolling 10-year term. The Mills Act provides property tax abatement in exchange for the owner's agreement to restrict the use of a historic or architecturally significant property. The city had designated the house a historic landmark the previous year. However, the Loma Prieta earthquake caused structural damage to the house in 1989, and the owners were unable to finance repairs. The house was sold to Daniel and Suzanne Meub, who renovated the house without securing permits and in violation of the Mills Act.

In 1996, Jaim Nulman and Avelyn Welczer purchased the house. After a year of unsuccessful negotiations with the city over property restoration, Nulman and Welczer informed the city that they would not renew their Mills Act contract and applied for a demolition permit in 1998.

Litigation Commences

When the city denied the permit, Nulman and Welczer requested a hearing. After the city refused to conduct a hearing, the property owners filed a lawsuit demanding the city either give them a hearing or grant the demolition permit. They also sought relief from further obligations under the Mills Act. The city cross-complained for enforcement of the Mills Act. The Santa Clara County Superior Court issued a writ of mandate compelling the city to conduct a hearing. The city appealed and the Sixth District upheld the lower court ruling in an unpublished decision.

The city's director of planning and community environment conducted the hearing in early 2007. He determined the project was ministerial and, therefore, not subject to CEQA, and he issued the demolition permit.

A group called Friends of Juana Briones House filed a lawsuit challenging the demolition permit approval. The trial court found for the group on the grounds that the demolition permit was discretionary and, thus, subject to CEQA. Nulman and Welczer appealed.

Palo Alto Municipal Code § 16.49.070 provides that a permit to demolish a historic structure outside of the downtown area "(a) requires a permit application and imposes a 60-day moratorium period, (b) requires referral to the city's Architectural Review Board or Historical Resources Board, and (c) permits an extension of the moratorium for up to one year." The property owners argued the section does not grant the city any discretion to decide whether to issue the permit or to determine how the demolition is carried out. Issuing the permit is a purely ministerial act, they argued. Under CEQA, only discretionary actions are subject to environmental review.

Friends argued the mandatory moratorium in section (a) qualifies the ordinance as discretionary because it gives the city time to consider alternatives.

A unanimous three-judge panel of the Sixth District found that under the Municipal Code the issuance of the demolition permit was ministerial because the decision involved only the use of fixed standards or objective measurements, and the city did not have the authority to impose conditions on approval of the permit that would render it discretionary.

Fixed Standards

The court distinguished the case from *San Diego Trust & Savings Bank v. Friends of Gill*, (1981) 121 Cal. App.3d 203, in which demolition permits were found to be discretionary solely because the San Diego Municipal Code authorized a demolition delay. In *Friends of Gill*, the relevant municipal code section required the city to investigate and confer with responsible parties, attempt to secure alternatives where appropriate, and take necessary steps for the preservation of the historical site. In comparison, Palo Alto Municipal Code § 16.49.070 requires no exercise of discretion by the city. This court concluded that the phrase imposing a delay on the issuance of the demolition permit did not cause the permit to be discretionary.

"[A]n agency's ability to impose delay does not make its decision discretionary," Justice Richard McAdams wrote for the court. Because there is no choice for the agency, the action in ministerial, he wrote.

Conditions of Approval

The city imposed six conditions on the approval of the permit, including the filing of a tree disclosure statement explaining how a significant tree would be protected. The property owners accepted these conditions, which Friends argued was evidence of the city's discretion.

However, the court found, "[C]onditions alone do not render a project discretionary." McAdams explained, "The pertinent inquiry is whether the appellants [the property owners] could '*legally compel* approval without any changes in

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the design of its project which might alleviate adverse environmental consequences,' (*Friends of Westwood v. City of Los Angeles* (1987) 191 Cal.App.3d 259, 267.) Here, appellants' right to the permit was not dependent on their voluntary concessions, and appellants could have compelled issuance of the demolition permit without them. Appellants' concessions thus do not change the ministerial nature of the permit." ■

■ The Case:
Friends of the Juana Briones House v. City of Palo Alto, No. H033275, 2010 DJDAR 17657. Filed November 22, 2010.

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ceqa

Road Project's Use Of Projected Traffic Estimates Violates CEQA

BY KATE J. HART

The City of Sunnyvale's analysis of a road improvement project's traffic and related impacts based on predicted conditions in 2020 violated the California Environmental Quality Act's requirement to compare a proposed project with existing conditions.

The Sunnyvale case offers the most recent California Environmental Quality Act (CEQA) decision on selecting a project baseline for environmental review. Although the city had some discretion over the baseline, the city had no authority to use a point 12 years in the future as the baseline, a unanimous three-judge panel of the Sixth District Court of Appeal ruled.

The City of Sunnyvale proposed to construct a four-lane, northerly extension of Mary Avenue, including light rail tracks, over the Bayshore and South Bay Freeways to Eleventh Avenue. The road and transit lines would serve an industrial area adjacent to the former Moffett Field Naval Air Station (see *CP&DR Economic Development*, October 15, 2009 [ ]). The city's environmental impact report adopted in 2008 analyzed the project and its impacts based on 2020 conditions, as opposed to present-day conditions.

A group called Sunnyvale West Neighborhood Association sued over the project's EIR. A Santa County Superior Court judge ruled in the group's favor and the city appealed. The Sixth District upheld the trial court's decision rejecting the city's argument that the project could be evaluated differently because it was a traffic congestion-relief project. The court found there is no provision in CEQA allowing the city to review the roadway infrastructure project differently than other projects. The court further found the administrative record was devoid of substantial evidence to support the city's decision to deviate from the norm of using current conditions as the baseline for project analysis.

The appellate court identified numerous flaws in the EIR regarding the traffic impacts analysis. For example, the EIR assumed that numerous roadway improvements in the project area would be in place by 2020, regardless of the proposed project. Additionally, the EIR lacked an analysis of how the project would change the level of service at various intersections under the existing conditions. Notably, the draft EIR found only one significant impact for traffic – deterioration of service at the intersection of Mary and Maude Avenues – and that impact was reduced to less than significant.

The noise analysis in the draft EIR was also problematic. For instance, the city did not compare potential noise impacts with the project versus noise impacts without the project. Instead, the EIR concluded that the project would be responsible for a traffic noise level increase of less than one decibel above the 24-hour average of noise levels expected as a result of general plan build-in 2020 traffic volumes. Such an increase would not be measurable or exceed the threshold for noise and, thus, the city concluded the project would not result in significant noise impacts. However, the EIR did not analyze the project's traffic-related noise impacts on the existing environment.

Additionally, the court found the air quality impacts were not properly analyzed. The draft EIR stated that the project would accommodate existing and future traffic, and would not create new traffic. The EIR concluded there would not be any significant air quality impacts associated with the project because (1) the project would improve long-term air quality by providing an alternate north-south route, alleviating congestion on some routes, and because (2) carbon monoxide would not exceed standards along Mary Avenue. However, the EIR did not describe existing air quality conditions in the project area so it was impossible to truly ascertain what the project's air quality impacts, the court concluded.

Oddly, the growth-inducement section of the EIR indicated that the project would cause growth, and that growth would result in increased traffic, noise, air pollution, and water pollution.

Essentially, all of the EIR's flaws were based on an improper baseline. The appellate court highlighted a peer review of the draft EIR in which a consultant questioned the baseline because a base year of 2020 could underestimate the impacts of the project, especially if the project were built before 2020. The peer review consultant recommended the draft EIR contain an analysis of existing conditions, which would likely include increased significant impacts that may or may not be mitigated.

The appellate court acknowledged that "an agency may exercise its discretion to apply appropriate methodology to determine the 'baseline' existing conditions." It listed as an example the instance when traffic congestion has temporarily decreased because of an unusually poor economy. In this event, an agency might use historical data and traffic modeling to determine generally existing conditions. Conversely, when evidence indicates traffic levels are expected to increase significantly due to other projects occurring in the area, projected traffic levels as of the expected date of project approval (not construction) may be appropriate.

In response to the city's argument that the proposed road extension warranted a different analysis because it was a "traffic congestion relief project," the court noted that there is no provision of CEQA or the CEQA Guidelines that allows roadway infrastructure to be evaluated differently than other projects.

"The statute requires the impact of any proposed project to be evaluated against a baseline of existing environmental conditions, which is

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the only way to identify the environmental effects specific to the project alone," Justice Franklin D. Elia wrote for the court.

The court emphasized that road infrastructure projects aimed at reducing regional traffic problems can still have growth-inducing impacts with indirect adverse impacts on the environment and could have adverse environmental impacts in the immediate vicinity, such as localized increases in traffic, noise and air pollution, which need to be analyzed by comparing the proposed project to existing conditions.

The court held that while deviations for the normal baseline standard of existing conditions may be permitted, the record in this case did not contain substantial evidence to support a deviation. Specifically, the court stated that a project manager's comments in writing and at a public hearing regarding why the city selected 2020 as its baseline did not constitute substantial evidence because "the year of the anticipated project completion was merely a guestimate."

Ultimately, the court decided that the city's failure to analyze the project's impacts based on existing conditions constituted a prejudicial abuse of discretion.

"While the analyses using the projected traffic conditions in 2020 certainly adds valuable information to the EIR, they are not a substitute for evaluating the project's traffic and related impacts on the existing conditions," Elia wrote. "Without a straightforward assessment of the project's full impact on existing conditions, the EIR process does not service its core informational purpose." ■

- The Case:
  Sunnyvale West Neighborhood Association v. City of Sunnyvale, No. H035135, 2010 DJDAR 18843. Filed December 16, 2010.
- The Lawyers:
  For Sunnyvale West: Alexander T. Henson, (831) 659-4100.
  For the city: David E. Kahn and Kathryn A. Berry, Office of the City Attorney, (408) 730-7464.

mello act

Coastal Act To Square Off Against Mello Act In Mobile Home Park Case

A case involving the relationship of the Subdivision Map Act with the Coastal Act and Mello Act has been accepted for review by the state Supreme Court.

Last year, the Second District Court of Appeal ruled that a section of the Subdivision Map Act governing the conversion of mobile home parks to residential subdivisions (specifically, Government Code § 66427.5) did not preempt the restrictions of the Coastal Act and the Mello Act. The Coastal Act seeks to protect natural resources along the coast, while the Mello Act attempts to prevent coastal exclusivity by ensuring a supply of low- and moderate-income housing in the coastal zone.

In *Pacific Palisades Bowl Mobile Estates, LLC v City of Los Angeles*, the court ruled that the conversion of a 170-unit mobile home park in which spaces are rented to a subdivision of individually owned spaces was subject to both the Coastal Act and Mello Act (see *CP&DR Legal Digest*, September 15-30, 2010 [ ]). Because compliance with those statutes could hinder the conversion, the property owner turned to the state high court.

The state Supreme Court framed two issues for review: (1) Do the Mello Act and the California Coastal Act apply to the conversion of a mobile home park to resident ownership if the park is located within the coastal zone? (2) Do the limits imposed by Government Code § 66427.5 on the scope of a hearing on an application for conversion of such a mobile home park prohibit the local authority from requiring compliance with the Mello Act and the Coastal Act?

Attorneys are still briefing the case, and no date has been set for oral argument. The case is *Pacific Palisades Bowl Mobile Estates v. City of Los Angeles*, No. S187243. ■

ENVIRONMENT WATCH

JAMES BRASUELL

Cemex Pushes For Aggregate Quarry In Fresno County

Even though the recession has brought construction in the Central Valley nearly to a standstill, one of the world's largest suppliers of building materials appears bullish on the region. Cemex Construction Materials, LP, has proposed an aggregate mine on a 2,036-acre site in Fresno County, inciting protest from both environmentalists and local Native American tribes.

The site of the proposed Jesse Morrow Mountain Mine and Reclamation Plan Project, 20 miles to the east of the city of Fresno and 15 miles west of Kings Canyon National Park, embodies many of the resource and land use planning challenges facing much of the state.

The process leading up to the final EIR has divided the Choinumni Tribe, a local Indian tribe whose ancestral lands are anchored by Jesse Morrow Mountain (*Wahillish* to the Choinumni). Local settlers massacred members of the Choinumni Tribe to the south of the mountain in 1852, and the final swath of land still owned by the 500-member tribe – the Choinumni Sacred Burial Grounds – lies on a two-acre plot to the north.

Early in the planning process, Cemex reached an agreement with John Davis, leader of the Kings River Choinumni Farm Tribe, by swapping a 40-acre parcel on the north side of the mountain in exchange for cooperation with the mining project.

Cemex considers the 40-acre parcel to be of greater cultural significance than the land on the southern end of the mountain, where Cemex would develop the project. Since that initial agreement was struck, a 150-member portion of the tribe – called the Traditional Choinumni Tribe – has opposed the project and the agreement.

According to Dave Singleton, program analyst for the state's Native American Heritage Commission, representatives from the Traditional Choinumni Tribe "didn't feel that the principles on behalf of Cemex respected their spiritual beliefs about the mountain – they feel strongly." Singleton added that Cemex has not improved efforts to consider all of the cultural consequences during the final EIR process in response to his agency's comments on the draft EIR.

According to Singleton, Cemex also has not engaged with other tribes in the area.

"Our concern is for all the culturally affiliated tribes that have an interest and have ancestral ties to that project and neighboring projects – it is a cultural landscape, not just Jesse Morrow Mountain," said Singleton.

He listed other cultural sites nearby, including the Wahtoke Village to the east of the mountain. In addition to the mountain's value to the Choinumni, the area is significant to the Western Mono tribe in the Sanger area and the Table Mountain Rancheria tribe in Friant.

Further complicating the consensus-building process are disputes about the economic benefits and the environmental impacts of the project. Cemex claims that it will minimize the impacts of the project while providing critical supplies to the building industry in the region.

The draft EIR, released for public comment in December 2009, describes an aggregate mining, processing, and distribution facility on land designated for rangeland and irrigated agriculture. Cemex owns approximately 2,036 acres of undeveloped land at the site, of which approximately 824 acres will be developed for the project. The 824 acres includes 400 acres for mining and 40 acres for recycling, ready-mix, and asphalt facilities. The remaining 384 acres would act as a buffer between the mining and processing areas and surrounding land uses. Cemex maintains that the mine would be consistent with the land use designated for the area in the county General Plan.

The Friends of Jesse Morrow Mountain – a local group that opposes the project to protect the cultural, historical, biological, water and visual significance of the mountain – contends that there will be significant and unavoidable impacts to aesthetics, air quality, cultural heritage, and vehicle traffic, as identified in the project's draft EIR.

Cemex claims, however, that regardless of how much emissions the plant produces, it will ultimately reduce greenhouse gas emissions because of its proximity to producers of cement and other building materials. The draft EIR for the project included greenhouse gas analysis that was the first of its kind in Fresno County.

According to Jennifer Borgen, spokesperson for Cemex, "Jesse Morrow Mountain's shorter distance to project sites immediately confers upon the county an ability to show reduced greenhouse gas emissions in compliance with new state laws ahead of dates extending to 2023, at no additional cost to city or county governments," adding that the project will save nearly 1,300,000 gallons of fuel annually compared to transporting aggregates from longer distances.

The mitigation of greenhouse emissions resulting from the project relative to other options is hard to evaluate, especially in light of a dearth of strategic policies for resource planning at the state or regional level. The most recent geological survey taken by the state pre-dates the downturn in the building industry and recent technological advancements in the production and sourcing of building materials.

The California Geological Survey (CGS) projects supply and demand for resources by region in the state. The most recent CGS study from 2007 found that Fresno County has a projected demand of 629 million tons of aggregate resources over the next 50 years, with 71 million tons permitted at the time of the study's release.

Since the release of that study, two new aggregate resource facilities have been permitted in Fresno County, and the collapse of the real estate market has slowed housing starts. Many project opponents wonder if the data employed by the state are simply obsolete.

The website for the Friends of Jesse Morrow Mountain includes independent analysis of the county's need for aggregate materials. The study, prepared by Richard Young, a retired NASA researcher residing in Dunlap, cites bad or obsolete projection methodology in the draft EIR and the CGS study.

Mike Prandini, executive officer of the Fresno/Madera Chapter of the Building Industry Association, acknowledges that there is no current shortage of aggregates because of the ongoing building slump in the region. Nevertheless, the BIA supports the mine because builders expect that the return of the housing industry and the construction of the California High Speed Rail project will soon require large amounts of aggregates, especially concrete.

"Builders are always concerned about aggregates," said Prandini. "Three of four years ago, there was a real problem getting concrete. Prices hit $100 a yard – normally it is $50-60 a yard."

Cemex and its predecessors have provided aggregates to the Fresno region since 1924 from the Rockfield Plant near Friant. With that mine reaching the end of its supply, Cemex intends the Jesse Morrow Mountain project to continue the company's production capacity in the region. Cemex decided on this site as the option with the least amount of environmental impact after also considering – CONTINUED ON PAGE 10

Cemex To Submit Final Quarry EIR In March

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a 3,000-acre site closer to the Kings River.

The Fresno County Planning Commission is expected to hear the final EIR for the project in March of 2011. With the controversial nature of the project in mind, the Planning Commission has announced that the public hearing period for the final EIR will last 30 days, instead of the legally required ten days. The county will conduct the CEQA review, with the possibility that the U.S. Army Corps of Engineers or the U.S. EPA intervene if the project does not satisfy the permitting criteria of industry regulations. ■

■ Contacts & Resources

Draft EIR: http://www.co.fresno.ca.us/departmentpage.aspx?id=4322

Friends of Jesse Morrow Mountain: http://www.jessemorrowmountain.com/slideshow/

CGS Survey: http://www.conservation.ca.gov/cgs/minerals/mlc/Pages/index.aspx

Briza Sholars, Planner III, Fresno County Public Works and Planning Department: (559) 262-4454.

Jennifer H. Borgen, Director of Communications, External; Cemex, (713) 722-1799; jenniferh.borgen@cemex.com.

Michael Prandini, Chief Executive, Building Industry Association – Fresno/Madera Chapter: (559) 600-4207.

Dave Singleton, Program Analyst, Native American Heritage Commission, (916) 653-6251.

A wide array of stakeholder groups have questioned the need for a major aggregate quarry between Fresno and Kings Canyon National Park.

Prop. 84 Funds Awarded To Diverse Range Of Projects

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complaint that SB 375 comes with almost no fiscal support from Sacramento. Many have lamented that SB 375 is an "unfunded mandate" that puts pressure on localities while offering scant assistance from the state.

"This is probably the first time that this kind of money, in this amount…has been available for planning efforts in a very long time," said Kim Murry, director of Long Range Planning for the City of San Luis Obispo. "It provides an alternative to funding this update that the city probably couldn't have taken on by itself given current budget constraints."

The city received $880,000 to update its land use and circulation element.

Prop. 84 funds are thus filling a crucial funding gap for many of the localities and agencies that received funding (three metropolitan planning organizations were given conditional awards). That leaves roughly 80% of approximately 188 applicants – totaling $94 million in requests – wanting for funds. SGC has not yet released a list of all applicants.

For many of the successful applicants, Prop. 84 funding has been approved for bread-and-butter projects that cities would normally fund in the normal course of business. These projects include area plans and general plan updates. In many cases, these updates have languished for lack of funding.

"General plans are often modified, sometimes updated, but there's no mandate stating when and how often they need to be, so it's very sporadic and all over the place," said Jena Price, Global Warming Coordinator at the Planning and Conservation League. "Disadvantaged communities…would otherwise be left in the dust."

Tales of desperation abound among some of the recipients who struggle just to keep their doors open. Cities in the Central Valley such as Corcoran and Merced have suffered double-blows of the recession and the region's perennially poor air quality. Corcoran received a relatively large grant of $450,000 for its general plan update.

In funding general plan updates, the SGC hopes that cities will come up with plans that are not just revisions of current plans but, in fact, revolutionary documents that serve as models for other cities.

"For a lot of people, even if they are just doing bread-and-butter general plan updates, (they are responding to) the new world and the need to look at climate change, energy conservation, TOD," said Fargo. "Those aren't necessarily things that they've had in their general plan before."

Some plans have been around since before climate change was even recognized as an environmental issue, much less a planning issue.

In Imperial County, tiny Calipatria – population 7,200, including 4,000 prison inmates – received $175,000 for an update of a general plan that has, because of the city's impoverishment, remained unchanged since 1992. Justina Gamboa-Arce, a contract city planner with the City of Calipatria, said that Calipatria's isolation and the county's own financial constraints meant that the city had no other option than to seek Prop. 84 funding.

"We pretty much knew if it didn't get funded through this program, there really isn't anything else out there," said Gamboa-Arce. "So if you don't get this, you're going to stay, in essence, another 20 years without a general plan update."

Twenty percent of the Sustainable Communities Planning Grants are earmarked for the benefit of economically disadvantaged communities, including Calipatria and Corcoran.

If the SGC had taken into account economically disadvantaged planning departments, then almost every project would have qualified for the earmark. Community Development Director Susan Atkins, of the City of Corcoran, described her city's level of disadvantage as "unbelievable."

Some recipients, however, are in less dire straits and are pursuing projects that might be considered experiments or luxuries. The City of Morgan Hill received $380,000 to create a plan to install solar power generators along a freeway right-of-way.

Upscale Santa Monica, whose planning department is on stable financial footing, has received an embarrassment of riches, not only from SGC, but also from the federal Department of Housing and Urban Development. The city received $550,000 in Prop. 84 funds for a neighborhood plan at the Memorial Park Station, which will be a stop on the Expo Line Phase 2. It also received an unrelated $625,000 Sustainable Communities Challenge Grant – a joint project of the federal departments of Housing and Urban Development and Transportation – to plan a transit village at Bergamot Station, the next station on the Expo Line.

Santa Monica officials speculate that their applications succeeded because both projects tie into a recent general plan update that promotes sustainability and smart growth principles holistically throughout the city.

"I think that it was easier for both the federal and the state agencies to see that we're already thinking this way, about how to integrate transportation and land use…we have stated goals," said Santa Monica Senior Planner, Liz Bar-El.

SGC officials say that some cities' goals were not so clear. Of the 188 applications, they said that they were able to reject many simply because – regardless of financial need – the applications were sloppy or because proposed projects simply did not meet the standards set out by the grant guidelines. Twenty-five such applications were deemed ineligible for consideration.

Though some cities may have been disappointed, the recipients cover a diverse geographic and socioeconomic range.

"There's a huge need out there and it does appear that they did disburse the funds as evenly as possible," said Atkins of the SGC's approach to the Central Valley.

Fargo said that, desperate as some other cities may be, there is hope for them later this year. She said that SGC will be accepting another round of applications this summer and that projects that got shut out in 2010 have a good chance of succeeding in 2011.

"The good news is that we do have two more funding cycles," said Fargo. "We're hoping people will look at what has been funded….and look at what they might do and how they might improve their application."

SGC may alter the selection process somewhat for the next round. In particular, Fargo said that so many applications included economically disadvantaged communities that a separate set-aside may not be necessary. Economic disadvantage will remain a selection criterion. For those jurisdictions that were passed up this year, Fargo said that some need almost no changes to be frontrunners this year. And she said that SGC staff will be available to help localities on their applications.

For both recipients and future applicants alike, officials caution that departments cannot become dependent on state funding, especially given the drastic budget cuts that Gov. Jerry Brown has proposed. Recipients say, however, that they are aware of the grants' constraints and are treating them as one-time windfalls that are unlikely to recur. Most, in fact, are hiring temporary outside consultants rather than rehiring or taking on new full-time staff members.

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planning. Now based in Los Angeles, Freilich spoke with CP&DR *about the decade just passed and the decade to come in California planning.*

CP&DR: The first edition came out over 10 years ago. What's changed?

FRIELICH: It's almost a new book. The original book dealt with how you locate growth to get the greatest impact in terms of reducing trip distances, using corridors, centers, infill, downtowns where there's already existing infrastructure. It did not deal with the major changes that have occurred in planning and development in the past 10 years. Smart growth is blending into sustainability. The whole concept of green development is almost brand-new this decade.

CP&DR: Would smart growth be as popular as it is without the climate change pressure? Or would we know how to address climate change without the smart growth movement? Are they intertwined?

FRIELICH: I honestly believe that smart growth, from a perspective of cutting down sprawl, was diminishing in its intensity. I think a lot of communities didn't really know how to deal with smart growth. For example, in California a lot of communities simply adopt initiatives – citizen initiatives or group initiatives – that basically want to reduce the amount of growth rather than coordinate where growth should be located and how it should be timed and fit into these other factors. I think in California smart growth got a bad name because it was really taken over by this anti-growth movement.

I think smart growth has been completely revived now because all the regional legislation in California – AB 32, SB 375 – all of these have reintroduced the whole smart growth framework, but from a regional perspective, which is very helpful.

CP&DR: In writing this version did anything surprise you? Did you encounter any innovations or problems or legal issues that you hadn't been aware of?

FRIELICH: On the positive side, I really was astonished to find out that the studies all over the country show that green development is actually a tremendous investment for the private sector. Green buildings sell 30 percent higher. Their rent occupancy rates are much higher. And their energy savings are tremendous. So you put the three together and it doesn't make any sense at all not to build green now if you're an investor or a developer.

On the negative side, I found that, in California, we still exempt cities and counties from following SB 375 sustainable communities strategy. Whether cities will be forced into following the regional plan because they're going to have to meet their affordable housing requirements but also because federal money is coming in for roads and transit – they are now requiring that those projects comply with the regional sustainable strategy. A city that follows the regional plan is going to get a lot more funding.

CP&DR: How does SB 375 rank nationwide? Is it a model for the rest of the country?

FRIELICH: Some states – Florida, Maryland, Colorado – have state legislation that guides this process. California is also innovative in that regard. But because of the federal transportation requirement that a project that gets funded federally has to meet regional needs, it exists in almost every metropolitan planning organization. Now regional plans for everything have to match. I think that's a real big plus.

The trouble with California is if they didn't want to make it mandatory on cities and counties, the state should have come up with a model code – zoning, subdivision, capital improvement – that the regions could look to so they'd have a guide. The regions are working hard on developing the strategies, but cities and counties are not going to adopt them. So we're going away from the SCS to the alternative strategies.

I think in the long term that's going to be fixed. I would even suggest that the regions prepare their own model legislation as part of their plans. But yes, SB 375 is a major step forward.

ROBERT FREILICH
CO-AUTHOR
FROM SUSTAINABILITY TO SPRAWL

CP&DR: What legal issues are planners going to face in 2011?

FRIELICH: I think we should focus on redevelopment. Redevelopment agencies are going to be under legal attack for a lot of reasons. First of all, their budgets are already being siphoned off. The state realized that when they granted all these tax increment financing laws allowing revenue to be siphoned off….when the state is in deficit now, their major tool is going to be reduced. (*Editor's note: This interview was conducted before the release of Gov. Jerry Brown's proposed budget.*)

The other thing that's going to be plaguing these redevelopment agencies are these issues of public purpose that we saw coming out of the *Kelo* decision in 2005. Cities are going to have to figure out new ways of dealing with growth. The state is going to have to come up with some changes in the way in which infill can occur without the use of redevelopment agencies.

The second area that we're going to see a lot of is saving agricultural land. In that regard I think are behind other states in the US. The main tool that we have for agricultural land is the Williamson Act contract, which simply defers property tax and then you have to repay it. It's a totally inadequate weapon. I think people won't enroll in these contracts if they don't see growth. Now you can give rights to environmentally restricted land and say you can transfer those rights to others, but where are the buyers? California has not set up public assessment district funding to do that. Most cities are happy to get any growth, so they're not going to stick a requirement to buy ag land on new development rights.

The third major area we're going to see increasing litigation on is in affordable housing. The density incentive laws and bonus laws are not working. Cities are not meeting their requirements and nobody is enforcing them. If I'm proposing affordable housing and I get denied, I can possibly bring a lawsuit. But (one-off lawsuits are) negligible compared to the need for affordable housing. I think there are going to be more challenges, especially because SB 375 is tied to a much stricter five-year housing element.

CP&DR: What else should planners in California be on the lookout for in 2011?

FRIELICH: The Planners have to be on the lookout for the major slashing of planning budgets. The state's in a bad way fiscally; we all know that. Planners need to shore up their political support to make sure that these programs aren't killed off. Starting all over again – hiring people all over again – would be a very long-term, difficult process.

The other thing that needs to happen right now is that codes are so complicated now. Most cities may have a green development code, but their zoning codes, their regulatory codes for development approvals take years for developers to go through that process. It's totally unnecessary.

Take CEQA: it's tremendous in its concept; the problem is in its implementation. Cities and counties can go through the process of developing an EIR but then they can abandon the project. Or they can look at all of these alternatives at great expense and then simply waive them for social and

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Planning Grants Anticipate Rebound In Development

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Overall, however, Fargo said that she sees Prop. 84 grants as job-generators for planners. And she said that a lousy economy for builders might prove to be an ideal time for innovative planning.

"The timing is great: because we are in this recession, we're not seeing a lot of building," said Fargo. "But when the market comes back, you're ready to go and you're able to have a lot of up-front work done." ■

■ Contacts & Resources

Sustainable Communities Planning Grants Funding Report [pdf]
http://www.sgc.ca.gov/docs/funding/2010FundingReport_November_23_2010.pdf

Susan Atkins, Community Development Director, City of Corcoran, (559) 992-2151.
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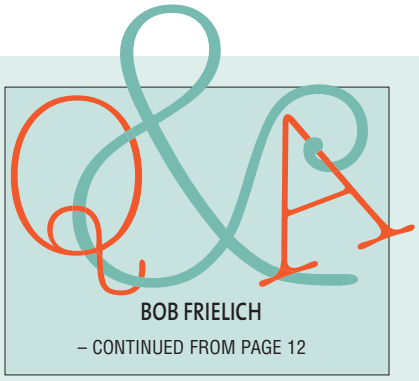
Kim Murry, City of San Luis Obispo, (805) 781-7100.
Jena Price, Global Warming Coordinator, Planning & Conservation League, (916) 313-4508, http://www.pcl.org/



BOB FRIELICH

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economic considerations. It's not a substantive act. It doesn't mandate good environment. It just mandates good analysis. It takes years because every interest group can litigate. And most cities now just push the costs on to private developers.

If you're going through development review, a planning amendment, a specific plan, zoning amendments, you may need subdivisions plats, conditional use permits: all of this should be heard at the same time. In many cities, these are all done sequentially. The net effect is to delay the project, even after the EIR because of all the permit processing.

CEQA becomes far more effective if regions are doing these Sustainable Communities Strategies and they're indicating the priority growth areas. Why should the developer in that area be forced to produce another EIR. It's already been done. If we really want to further the process, these are the types of amendments that the CEQA and development review process needs. This is where the planning profession needs to get its act together.

CP&DR: How do you sell streamlining to the stakeholders who might be resistant to the idea?

FRIELICH: I think the problem for the NIMBYs or the LULUs – is that they're not sure when a building goes into their community, is that the first of one or the first of a hundred? And if they don't know that, they're going to say, "stop the world, I want to get off." When we do plans and zoning now, we have to think about quotas, in terms of how much demand we can deal with over what period of time. If communities knew that, they'd be a lot more receptive to infill. ■

Pitfalls And Promise In Downtown L.A. Stadium

A National Football League team could be playing in downtown Los Angeles in less than five years.

So says Tim Leiweke, president of AEG, the development company owned by Phil Anschutz that wants to build a downtown football stadium.

Leiweke is pitching the stadium as an extension of the Los Angeles Convention Center that could be open 50 days a year for conventions and other big events, not simply for 10 pro football games. He says the development will be privately funded, but that he expects to get the same CEQA waiver that state lawmakers granted to developer Ed Roski Jr. for a proposed football stadium in Industry. The proposed stadium would generate a great deal of other investment in downtown Los Angeles with 25,000 new jobs as the upshot, according to Leiweke. He also promises a "green" stadium that would need little additional parking because of the proximity of the region's expanding transit system.

My initial reaction is to call BS. First, I'm skeptical of the potential design because I don't want to see another L.A. Live – another AEG project – in the same neighborhood. We've been very hard on L.A. Live (*CP&DR Blog* Oct. 18, 2010 [ ]) because it's an exclusive, anti-urban project in the downtown of the nation's second largest city. Second, I don't believe the football stadium will go forward without public subsidies of some kind. Fee waivers, tax abatements, free infrastructure, something will be expected, and we all know how eager elected officials are to do favors for the NFL (*CP&DR Blog* Oct. 18, 2010 [ ]). Third, we shouldn't get in the habit of exempting massive projects from state law (*CP&DR Blog* October 2009 [ ]) simply because they involve sports. If anyone can afford to play by the rules, it's Phil Anschutz and the NFL. Fourth, there's a grand and historic football stadium already in place less than two miles away. It's called the Los Angeles Memorial Coliseum. It's the only stadium to host two Olympic games, and it has been the home of USC's pro football team forever. For reasons I don't understand, the NFL thinks it is above the Coliseum.

All that said… I love the idea of a downtown football stadium. Seriously.

The biggest drawback to the proposed stadium in Industry is its overwhelmingly suburban nature. It would be one more gigantic attraction to which everyone would drive in an area that already has soul-crushing traffic congestion. And the stadium would not have a friendly relationship with anything around it other than the proposed retail and entertainment complex that was also exempted from CEQA.

A football stadium at the south end of downtown L.A. could be a great urban project. It could further activate a rebounding part of the city that is close to hotels, dining, nightclubs and services. There's already good transit service and people would use it if AEG truly doesn't build a ton more parking. Making the stadium an extension of the Los Angeles Convention Center would be a brilliant stroke, as the convention center is an under used facility that can't handle the biggest conventions.

The possibility also exists that the stadium would force L.A. Live to open up, because AEG is going to want to create inviting connections between the stadium and L.A. Live's restaurants and hotels.

I'll be the first to concede the difficulty of working an 80,000-seat football stadium into a city's urban fabric. If the stadium is walled off, physically or virtually, it becomes a dead zone. Also, I question whether a facility that's open even 50 days a year would be enough to trigger development of a bunch of new hotels and other amenities, as Leiweke indicates. Even if he is right, I wonder if downtown L.A. would not be better off with some new high-rise apartment buildings and a couple more supermarkets.

Yes, the project has myriad pitfalls, but I'm getting off track. This is a project that has great promise. It's a potential game changer (pardon the pun) for Los Angeles that deserves serious consideration. Now, let's make sure everyone gets a look at the details before some backroom deal is done.

– PAUL SHIGLEY | DECEMBER 29, 2010

Jerry Brown, Urban Hipster And Trend Setter?

This week Governor-elect Jerry Brown's office announced that the incoming governor would take part-time residence in the Eliot Building in Downtown Sacramento upon taking office in January.

The incoming governor's new digs, on the busy intersection of 16th Street (historic Highway 160) and J Streets, was one of the first modern mixed use projects in Sacramento. Bordering the unofficial boundaries of Sacramento's Downtown and Midtown areas, the former Chevrolet dealership was rehabbed by LoftWorks and Fulcrum Property in 2003 to create an 18-unit project with 11,000 sq. ft. of ground floor retail and 11,000 sq. ft of office space. The Governor-elect is expected to reside in a modest 1,450 sq. ft one-bedroom apartment – unfurnished for now. Although he intends to keep his home in Oakland, he is the first Governor in recent times to establish residence close to the capital since 1967, when Ronald and Nancy Reagan moved from the Governor's Mansion on 16th and H, now a State Historic Park.

(Governor Schwarzenegger occasionally stayed at the Hyatt Regency hotel in Sacramento (across from the Capital building) during the week, however most nights, Schwarzenegger chartered flights back to Los Angeles, at his own expense.)

In the 1970s during his first stint as governor, Jerry Brown lived in a sparse studio across the street from the Capitol building – reflective of his Jesuit training and overall economic aesthete. It was not motivated by desires to revitalize a blighted community, or encourage smart growth; rather, it was a practical and no-frills statement.

In an age when politicians often say one thing and do another, Brown's choice of residence reflects a refreshing consistency.

Brown's interest in revitalization and redevelopment was most prominent as mayor of Oakland, including his "10K" campaign to populate Downtown Oakland with 10,000 new residents, pushing policies forward to allow for higher density redevelopment projects, and even rehabbing a warehouse near the Jack London waterfront in 1995, which served as both a communal residence for him and eight others and nonprofit office space. As governor, Brown is likely to continue to push an urban agenda, using CEQA and other tools to encourage growth in infill areas and discourage growth in greenfield areas, including increased focus on SB 375 implementation (*CP&DR Insight* Oct. 29, 2010 [ ]).

These days, it appears that the Governor- – CONTINUED ON PAGE 15

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elect continues to embrace his urbanist leanings, and although he has stated that he doesn't intend to do much after-hours bar-hopping, the activity on the street might be attractive to Brown. Using the ubiquitous Walkscore tool, frequently used by planners as a metric (*CP&DR Blog* Feb. 4, 2010 [ ]) for identifying walkability of an address based on proximity to amenities and transit access, Brown's new digs will have a walkscore of 95 – actually the highest neighborhood score in Sacramento. Brown's previous urban residences generated lower walkscores (89 and 94 in his two lofts in Downtown Oakland), and 15 in his current home in the Oakland Hills area (approximated).

The governor's new apartment is a classic example of urban infill and adaptive reuse.

From a convenience perspective, Brown will be settling down within five blocks from his office at the State Capitol – with eateries, household services, small grocery stores, and even other residents – also a short walking distance from his new home. Brown joins the numerous state legislators, staffers, and even Sacramento mayor Kevin Johnson – all urban dwellers within close distance to their workplaces.

Gov. Brown lived in this modest apartment building during his first term in the 1970s.

The *Los Angeles Times* describes the immediate area as "at the intersection of two busy thoroughfares in the heart of what passes for a hip downtown. There's a sushi spot downstairs and a fancified burger joint down the block that offers Mac-N-Cheese as a topping." Which always leads us to think about what makes a neighborhood trendy? Is it the urbanity of people living and working in the same areas, or the toppings on a burger?

Is Brown's choice of a smaller dwelling in a higher-density project a sign of his interest in encouraging smart growth, or one of mere convenience? Probably both. Is Brown being trendy or merely following the mainstream? Will the term "hipster" refer to hip replacements rather than a guy in skinny jeans and a tumblr account? (Although *CP&DR* hasn't checked to see if JB is on tumblr yet…)

Hopefully it is less of a "trend" and more of a general option for those seeking to live a more compact lifestyle. Regardless, Brown's preference for urban places and walkable commutes to the office is to be commended.

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