CP&DR

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CALIFORNIA PLANNING & DEVELOPMENT REPORT

Redevelopment Supporters Gird for Legal Battle

BY JOSH STEPHENS

If Gov. Jerry Brown gets his way in the Legislature in the coming days, he and the state will face a conundrum to make a Zen master's head spin: Is it illegal to transfer funds from agencies that no longer exist?

The governor has thus far been unyielding in his effort to eliminate the state's redevelopment agencies. In doing so he hopes to recoup up to $1.7 billion to help offset the state's estimated $26 billion deficit. Negotiations are ongoing at the Capitol, with a handful of Republican legislators – the so-called "GOP 5" – still in discussions with the Democratic governor. A vote is expected any day now.

If approved, the governor's budget package would include a June vote on tax extensions; the logistics of that election require the Legislature to vote as soon as possible.

Meanwhile, a monumental coalition of local officials – representing essentially every locality in the state – led by the California Redevelopment Association and the League of California Cities – has led a vehement lobbying effort to dissuade the governor and legislators from dismantling a system that they say is crucial to the health of local economies and land use planning. If that effort fails, they have made it clear that they will sue to prevent the enactment of the governor's plan.

"The level of opposition to this proposal…is so strong that we will be following through with legal action," said Chris McKenzie, executive director of the League of California Cities. "Which, I hasten to add, we would prefer not to do."

The peculiarities of the California legislative process, however, may necessitate just that.

"It's a crappy system, this war of all against all," said Max Neiman, a senior research fellow at UC Berkeley's Institute of Governmental Studies. "But if that's what the game is, you have no choice but to arm yourself as best you can and duke it out."

The governor's office contends that such a battle would do little to help the state's dire financial situation.

"The bigger point is that legal obstruction and obfuscation won't ultimately get us any closer to addressing California's budget deficit," said Evan Westrup, spokesperson for the governor's office.

CRA and League of Cities officials say that they are on solid legal ground, most notably because of Proposition 22: The Local Taxpayer, Public Safety, and Transportation Protection Act. Prop. 22 passed this November, with 60.7% of the vote. Promoted in response to the state-mandated transfer of over $2 billion in redevelopment funds in fiscal years 2010 and 2011, Prop. 22 prohibits the state from transferring certain local funds, including those dedicated to redevelopment. Advocates of redevelopment say that, contrary to the governor's position, Prop. 22 implicitly forbids the sort of dissolution that the governor is seeking. – CONTINUED ON PAGE 8

Cities Shield Funds, Face Liquidation of Redevelopment Assets

Governor's budget plan would sell off agencies' real estate holdings

BY JOSH STEPHENS

As the clock ticks down to an imminent – but as yet unscheduled – vote on Gov. Jerry Brown's budget proposal, localities and their respective redevelopment agencies have been taking frantic evasive measures to try to shield funds and properties from liquidation and transfer to the state.

The language of the budget bill would not only eliminate redevelopment agencies but also liquidate all assets that are not yet under contract to be developed. This means that land holdings and infrastructure projects that are planned but do not have private partners may be fair game. In the past few weeks, and especially in the past few – CONTINUED ON PAGE 9

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inbrief

RELEASED LAST WEEK, the California State Auditor's review of the California Housing Finance Agency (CalHFA) has revealed several concerns. The agency incurred losses of $146 million and $189 million in fiscal years 2008-09 and 2009-10, respectively, which were due, in part, to high delinquency rates on CalHFA's single-family loans and the costs associated with its high levels of variable-rate debt, raised questions about the solvency of CalHFA. Although it will continue to face significant risks, its major housing programs and the fund it uses to pay its operating expenses will likely remain solvent. However, the fund set up to provide insurance on its mortgages will become insolvent by summer 2011. Some of the biggest threats to CalHFA's solvency are the amount of variable-rate bond debt it holds—which as of June 30, 2010, constituted 61 percent of CalHFA's total bond debt—and the interest-rate swap agreements (interest-rate swaps) it entered into to mitigate the risks associated with variable-rate bonds. The decisions approved by the CalHFA board of directors (board) to use variable-rate bonds and interest-rate swaps were a result of CalHFA's decision to pursue ever-increasing loan volume goals.

A CONGRESSIONAL BAN on earmarks has claimed its first casualty in California. The effort to convert Almaden Air Force Station (near San Jose) into a park has lost $2.4 million in federal funding. Those dollars would have gone to the removal of asbestos and lead paint, the demolition of buildings, and the reconstruction of an access road. The decommissioned Cold War era observation point sits atop the 3,500 foot peak of Mount Umunhum. Recognizing its potential as a scenic view point and recreation area, the open space district acquired the land in 1986 from the Defense Department for the relative bargain of $260,000. Despite the loss of those funds, there should be enough money set aside to strip the site's buildings of toxic materials and begin demolition. U.S. Representative Mike Honda (D-Campbell, Calif.), who helped secure the budget line, has vowed to find the necessary funding to complete the site's conversion. The entire project is expected to cost a total of $13 million. While the open space commission does have roughly $40 million dollars annually to spend, it is limited to spending that on new land acquisitions.

THE UNITED STATES COURT OF APPEALS for the Ninth Circuit today upheld transit planning and funding decisions made by the nine-county Bay Area's Metropolitan Transportation Commission, affirming a federal district court's 2008 ruling in Darensburg, et al v. Metropolitan Transportation Commission, that there was no intentional discrimination by MTC. In the lawsuit, which was filed in April 2005, plaintiffs Sylvia Darensburg, Virginia Martinez and Vivian Hain, along with Communities for a Better Environment and the Amalgamated Transit Union Number 192, alleged that MTC's funding decisions purposefully discriminated against AC Transit's minority riders. A summary judgment by U.S. Magistrate Judge Elizabeth D. Laporte in September 2005 dismissed both federal claims and held not only that there were no triable issues of fact showing intentional discrimination. The plaintiffs subsequently appealed the decision to the Ninth Circuit.

Affirming the lower court ruling on intentional discrimination, Appeals Court Judge Barry G. Silverman wrote, "plaintiffs' intentional discrimination claim relies on drawing equivalences, between 1) bus riders and minorities, and 2) between rail riders and whites, that are not borne out by the data." On the disparate impact claim, the Appeals Court ruled that the trial court erred in drawing inferences based on reliance on overall regional ridership statistics for existing bus and rail service. Judge Silverman wrote, "Simply because minorities represent a greater majority of bus riders as opposed to rail riders, the rejection of a particular new bus expansion project in favor of a new rail expansion project will not necessarily work to the detriment of minorities."

THE SANTA CLARA CITY COUNCIL has voted unanimously to give the council the legal authority to make planning decisions on the San Francisco 49ers potential new football stadium. After giving life to the Santa Clara Stadium Authority – made up of seven council members – the stadium planning body certified an environmental impact report and signed a declaration affirming the role of its redevelopment agency's in planning the stadium. The latter was designed to send a signal to Governor Brown that this $900 million project is acutely reliant upon $40 million in redevelopment funds. Supporters of Brown's plan to redistribute redevelopment dollars argue that building expensive stadiums has little to do with revelopment's mission of addressing blight.

THE NATIVE AMERICAN GROUP La Cuna de Aztlan Sacred Sites Protection Circle has sued in federal court to stop six large-scale solar power projects from going forward in the California desert. This comes following an effort by the Bureau of Land Management to fast-track various solar projects so that they can qualify for federal stimulus funds before the Dec. 31, 2010 deadline. The group filing the suit alleges that BLM staff had an agreement in place to consult with Native Americans charged with preserving historic sites, but that BLM ultimately failed to properly consult with tribes. And while the energy developers contend that they have made concessions, the Native American groups argue that these projects would inextricably alter sacred sites, some of which are up to 10,000 years old. The suit joins that of conservationists who worry about the effect of such projects on protected species like the desert tortoise.

AT THE END OF FEBRUARY, the very last dirt road in the California State Highway system was closed to the public for good. The decision to close SR 173 was prompted by a need to cut maintenance costs and a desire to restrict access to a less-than-safe road in the San Bernardino Mountains. In order to keep the road passable, Caltrans had been bringing in heavy equipment to smooth the road over several times a year. Even when it was passable, 173 was only wide enough for one car to pass at a time. Despite its closure to the public, access will remain available for emergency vehicles, the U.S. Forest Service, and flood control officials. Some local residents have complained that they will be losing one of only a handful of access roads through the San Bernardino Mountains.

THE CITIES OF WOODLAND AND DAVIS have signed a preliminary agreement to source drinking water from the Sacramento River. In the past, the two cities had tapped their groundwater resources, but those have become increasingly contaminated with fertilizer runoff and heavy metals. The agreement was made between the State Water Resources Control Board and the Woodland-Davis Clean Water Agency. While

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local water officials are thrilled, conservationists worry about tapping the Sacramento River ever further, as it is a critical habitat for various species and a source of water for the Sacramento-San Joaquin Delta. To protect the river in dry years, a "term 91" protocol will be in effect restricting the amount of pumping that the two cities can do. A total of $325 million in additional plumbing will be required, with ratepayers picking up the tab.

THE CITY OF LOS ANGELES has passed a sweeping new bike plan that calls for the addition of 1,680 miles of lanes, paths, and bike friendly streets. The plan's passage represents the culmination of recent increases in bike use and awareness in the state's largest city. The rollout of lanes is bolstered by an implementation plan that calls for 200 new miles every five years and a dedicated funding source that should total about $3 million each year for bike and pedestrian facilities. The proposed bike network is composed of three components. A citywide "backbone" network will connect neighborhoods along major thoroughfares; a neighborhood network will make safety enhancements for local streets; and a network of separated paths will operate like linear parks.

LOYOLA MARYMOUNT UNIVERSITY, in the West Los Angeles neighborhood of Westchester, has finally received approval for a 20-year master plan. After three years of planning and lobbying, the Los Angeles City Council approved the plan unanimously, 12-0. The plan allows the university, which enrolls nearly 9,000 students, to make needed campus improvements over the next 20 years within LMU's existing footprint. The plan includes building the new Life Sciences Building for the Frank R. Seaver College of Science and Engineering, relocating the recycling facility and adding parking spaces. The plan calls for the addition of over 1 million square feet of residential and academic space on the 142-acre campus. Lynne Scarboro, LMU's senior vice president for administration, said passage of the plan means that over the next 20 years, LMU will add more than 15,000 jobs to the Los Angeles area and an estimated $1.6 billion in economic activity. To garner neighborhood support, the university made concessions such as promising to maintain buffer zones and landscaping between campus buildings and surrounding houses.

IN RESPONSE TO THE RELEASE of a draft bill that would make the elimination of redevelopment official, the mayors of the state's nine largest cities today sent a stern letter to Gov. Jerry Brown asking him once again to reconsider his intention to eliminate their redevelopment agencies—along with nearly 400 others across the state. Warning of "disastrous impacts on cities, counties and the entire state economy," the mayors' letter focuses mainly on perceived administrative and logistical flaws in the governor's plan.

The mayors cite the following dangers of eliminating tax-increment financing and the 6-decade-old bureaucratic structure that administers those funds:

- "Successor agencies" that would assume RDA debt are ill-defined and could lack proper oversight, thus squandering funds dedicated to paying off existing debt obligations.
- Proposed oversight boards would not be sufficiently transparent or accountable to city governments.
- The immediate elimination of redevelopment agencies would amount to a hasty, poorly planned shakeup of local government: "This legislation effectively begins the realignment conversation in a piecemeal, tactical fashion with no strategic understanding of balance or sustainability."
- The legislation would prompt a "fire sale" of assets and put countless redevelopment deals in jeopardy, as private partners would be prompted to pull out. Likewise, agency employees with longstanding knowledge of existing and proposed deals would be let go. This would, say the mayors, damage the entire state real estate market.
- Finally, the mayors reiterated their substative objections to the governor's plan: that it would decimate needy communities, stunt the production of affordable housing, and make California an even chillier business climate.

The letter was signed by the mayors of Anaheim, Fresno, Long Beach, Los Angeles, Oakland, Sacramento, San Diego, San Jose, and Santa Ana.

CONSERVATION GROUPS have filed a lawsuit against the San Francisco Recreation and Park Department for killing federally protected threatened and endangered species at Sharp Park golf course, city-owned course located within Golden Gate National Recreation Area. The Wild Equity Institute, Center for Biological Diversity, National Parks Conservation Association, Surfrider Foundation, Sequoia Audubon Society and Sierra Club filed the suit in federal court under the Endangered Species Act to stop ongoing harm to the threatened California red-legged frog and the endangered San Francisco garter snake. "It's clear that the city's plan to protect endangered species at Sharp Park has failed miserably and it's time to stop this unnecessary harm to protected species," said Jeff Miller, conservation advocate for the Center for Biological Diversity, in a statement. The groups claim that evidence of harm to red-legged frogs at the golf course this winter shows that the Park Department's endangered species "compliance plan" has failed. In recent years, pumping and drawdown of wetland water levels after frogs have laid eggs brought notice of violations from the U.S. Fish and Wildlife Service. ■

Results from selected local March 8 elections related to land use:

✔ **BEVERLY HILLS**
Measure 2P - Approved

✘ **Measure 3P - Rejected**

2P Two Hours of Free Parking Initiative; approved, 3,168-1,963

3P Three Hours of Free Parking for Residents of Beverly Hills, Measure 3P; rejected, 1,436-3,539

Measure 2P, promoted by businesses in downtown Beverly Hills, appears headed for victory. It ensures two hours of free parking at several city-owned parking structures. Measure 3P, put on the ballot by the Beverly Hills City Council, appears headed for defeat. It had included the unusual provision of offering a certain amount of free downtown parking only to Beverly Hills residents.

✔ **JURUPA VALLEY**
(Riverside Co.)
Measure A - Approved

Jurupa Valley Incorporation Election; approved 3,193 - 2,715

This vote means that Jurupa Valley will become Riverside County's 28th city. The vote ends 19 years of efforts to achieve cityhood for what has been a loose association of communities in the fast-growing county. The city of roughly 90,000 residents will incorporate July 1, 2011.

✘ **SAN CLEMENTE**
Measure A - Rejected

Vote on the Playa Del Norte Development at North Beach

Rejected 6,922 - 9,424

This measure asked voters to affirm the City Council's decision to approve a mixed use development for a seaside parking lot. Opponents bemoaned the project's potential infringement on beach access.

✘ **WEST HOLLYWOOD**
Measure WH-A - Rejected

Tax Billboard Act

Rejected, 983 - 3,865

Promoted as a way for the city to generate millions of dollars in revenue by allowing and taxing "supergraphic" billboards on the Sunset Strip and Beverly Boulevards, this measure was criticized as a "Trojan Horse" that would allow visual blight.

Church Wins Latest Round in Zoning Dispute

Congregation seeks to locate in San Leandro neighborhood zoned for industrial use

BY WILLIAM W. ABBOTT

The Ninth U.S. Circuit Court of Appeals has aside a summary judgment in favor of a city in a dispute over a church's request to relocate and develop an expanded church facility in an industrial park.

The unanimous three-judge appellate panel ruled that District Court Judge Phyllis Hamilton's decision in favor of the City of San Leandro was erroneous, and the Ninth Circuit sent the case back to the trial court for further proceedings. The Ninth Circuit did not rule on the merits of the case.

As the membership of the Faith Fellowship Foursquare Church increased in the early 2000s, the church outgrew its existing facilities. The church began searching for a new location and eventually settled on property on Catalina Street in an industrial park. In March 2006, the Church entered into a purchase agreement for the Catalina Street property.

The city's general plan designated the industrial park for industrial and technological activity. The city's zoning code did not allow assembly uses in the applicable zoning district. City planners advised Faith Fellowship that churches and other assembly uses were allowed only in residential districts, and then only with a conditional use permit. Staff advised the church that, before the church could develop the Catalina Street property, the city would have to amend the zoning code for the industrial limited ("IL") classification, and rezone the property to the IL district.

After the church filed an application, city planners expressed reservations about the broader implications of allowing assembly uses in the IL zone. City officials then debated an alternative strategy: creating an overlay zone applicable to non-residential properties. Meanwhile, the church, in contract to purchase the Catalina property, was running out of time. In October of 2006, the church paid a non-refundable fee of $50,000 to extend the contract to the end of December 2006. At the end of December, the church closed the deal and took title to the property.

In March 2007, the city adopted an overlay zone and applied the overlay to 196 properties amounting to, collectively, more than 200 acres. The Catalina Street property was not eligible for the overlay because the property did not meet the ordinance's criteria. The church then filed an application to apply the overlay to the Catalina Street property. The City Council rejected the application in May 2007. Concurrent with the overlay zoning request, the church sought an assembly use permit for its property. Because the existing zoning did not permit assembly uses, the Planning Commission and City Council denied the request.

The church then filed a Religious Land Use and Institutionalized Persons Act (RLUIPA) lawsuit.

Judge Hamilton first found that the city's zoning ordinance was a neutral law of general application. Because a neutral law imposes only an incidental burden under RLUIPA, Hamilton ruled, RLUIPA's "strict scrutiny" standard of review did not apply. As a result of applying a standard of review favorable to the city, the District Court granted summary judgment for the city. She found that the city's stated interest of reserving the Catalina Street property for industrial uses was legitimate.

The appellate court first rejected the trial court's determination that, under RLUIPA and as a matter of law, the city's regulations could not impose a substantial burden on the church's exercise of religion. While the ordinance was facially neutral and of broad application, the "burden" was potentially triggered by the church's specific request for a rezoning and separate request for a conditional use permit, the Ninth Circuit found. To significantly burden the exercise of religion, the regulation must be more than an inconvenience, and must be "oppressive" to a "significant extent."

In the summary judgment proceeding at the District Court, the church offered evidence from a realtor and former city manager that there were no other suitable sites in the city to house the church's operations. This evidence included a real estate agent's analysis that none of the 196 parcels zoned with the overlay zone was of sufficient size to house the church's operations, which included concurrent services, children's programs and related ministries for up to 1,600 people at one time. While the District Court found the evidence to be less than persuasive, the appellate court concluded that the evidence was sufficient to defeat a summary judgment motion. The city's argument that these activities could have been conducted at separate locations did not overcome the church's position that its faith required that these activities be conducted simultaneously and physically together.

The Court of Appeals went on to address the District Court's additional determination that the city had provided a compelling government interest in preserving lands for employment uses, as called for in the general plan, and that the city's strategy was the least restrictive means of accomplishing that goal.

"Even if we assume without deciding that the city's interest is compelling, we believe there is a genuine issue of material fact as to whether the city used the least restrictive means to achieve its interest," wrote New York District Court Judge Kevin Thomas Duffy, sitting by assignment to the Ninth Circuit. "While the city may prefer to preserve the Catalina property for industrial use, the city presents no evidence that it could not achieve the same goals by using other property within its jurisdiction for that purpose."

Procedurally, the case goes back to trial at the District Court. ■

➤ The Case:
International Church of the Foursquare Gospel v. City of San Leandro, No. 09-15163, 2011 DJDAR 2503. Filed February 15, 2011.

➤ The Lawyers:
For the church: Kevin T. Snider and Matthew B. McReynolds, Pacific Justice Institute, (916) 857-6900.

Deed Requires Housing Developer to Pay Prevailing Wages

Deed for 248 Acres at Ft. Ord Comes with Wage Floor

BY CORI BADGLEY AND EMILIO CAMACHO

A DEVELOPER building a housing development on the site of the closed Fort Ord Army post in Monterey County was required to pay prevailing wages to construction workers, a state appellate court has ruled.

The California Court of Appeal, Sixth District, held that deeds for property acquired from the City of Marina Redevelopment Agency required the purchaser/developer to pay prevailing wages to construction workers, because the deeds incorporated a master resolution that explicitly mandates payment of prevailing wages.

In addition, the appellate court ruled that the plaintiffs who filed the lawsuit were entitled to $73,167.50 in attorney's fees.

Developer Cypress Marina Heights LP (CMH) acquired 248 acres of Fort Ord land from the Marina's Redevelopment Agency (MRDA) at fair market value – more than $10 million – for the development of the 1,050-unit Marina Heights project. The redevelopment agency had acquired the land from the Fort Ord Reuse Authority (FORA) for $1 per parcel. Covenants in the FORA/MRDA deeds required payment of the prevailing wage for Monterey County to workers on all "first generation construction" relating to development of the land, regardless of whether the projects were considered "public works" under the Labor Code. The Department of Industrial Relations sets prevailing wage rates for different regions of the state based largely on union-level wages in large cities. The prevailing wage requirement typically applies only to public works projects and private development projects that receive a public subsidy.

Cypress Marina Heights refused to commit to pay the prevailing wage to workers on the Marina Heights project and claimed that its purchase agreement with MRDA did not require payment of the prevailing wage. Two labor unions, a mechanical contractors association and two Marina residents filed suit against CMH, MRDA and other entities that had acquired Fort Ord property. In a motion for summary adjudication against only CMH, the trial court found that CMH was required to pay the prevailing wage. The court also awarded plaintiffs their attorney's fees under Code of Civil Procedure § 1021.5.

The unanimous, three-judge court of appeal panel affirmed the judgment by reasoning that the master resolution, approved in 1997 and included in the transfer of land, obligated MRDA to require CMH to pay the prevailing wage. The 2001 implementation agreement between FORA and the city mandated that any transfer of property acquired from FORA by MRDA must be done in compliance with the master resolution and must incorporate specific deed covenants.

Besides explicitly stating that the covenants would run with the land in perpetuity, the deeds also stated: "Grantee covenants for itself, its successors, and assigns and every successor in interest to the Property, or any part thereof, that Grantee and such successors and assigns shall comply with all provisions of the Implementation Agreement as if the Grantee were the referenced Jurisdiction under the Implementation Agreement and specifically agrees to comply with the Deed Restrictions and Covenants set forth in Exhibit F of the Implementation Agreement as if such Deed Restrictions and Covenants were separately recorded prior to the recordation of this Deed."

The court ruled "this language indisputably binds MRDA's successors in interest;" therefore, CMH was required to pay prevailing wages.

After affirming the trial court's ruling, the appellate court addressed the attorney's fees. The trial court had granted two summary adjudication motions: one against CMH and one against East Garrison Partners I, another Fort Ord developer. Finding that CMH was less culpable than East Garrison Partners, the trial court required CMH to pay 35% of the total attorney's fees amount and Garrison 65% .

On appeal, CMH argued that the award of attorney's fees was improper because the case did not enforce an important right affecting the public interest, as required under Code of Civil Procedure § 1021.5. CHM also argued that, even if an award of attorney's fees was proper, the amount was too great.

On the first issue, the appellate court said that, in determining the importance of the particular vindicated right, courts should realistically assess the significance of that right in relation to the achievement of fundamental legislative goals. In this case, the plaintiffs' enforcement of prevailing wage requirements did vindicate a public interest and revitalized a local economy, resulting in benefits to 900 construction workers. After determining that attorney's fees were appropriate, the court reasoned that the amount of the fee award was reasonable, given that only 35% of the requested amount was awarded against CMH. ■

➤ The Case:
Monterey/Santa Cruz County Bldg. & Constr. Trades Council v. Cypress Marina Heights LP, No. H034143, 2011 DJDAR 1324. Filed January 10, 2011. Ordered published January 24, 2011.

➤ The Lawyers:
For the Trades Council: John Jacobs Davis Jr., Davis Cowell & Bowe, (415) 597-7200.
For Cypress Marina Heights: Patrick Edward Breen, Allen, Matkins, (213) 622-5555.

Industrial City of Vernon Faces Municipal Death Penalty

Charges of corruption lead to unprecedented effort to force disincorporation

BY JOSH STEPHENS

When you are hog butcher for the world, you become Chicago. When you make bacon and sausages for Southern California, you face a rather different fate.

Assembly Speaker John Perez introduced last month AB 46, a bill that would take the singular action of forcing the disincorporation of a city that many consider noxious in more ways than one: the Los Angeles County city of Vernon.

For over 100 years Vernon has operated more as an industrial park than a traditional city, and city leaders have vowed to fight – and even sue – to maintain cityhood and its distinctive business environment.

Vernon's 1,800 or so businesses employ over 50,000 workers in factories, warehouses, food processing plants, and, perhaps most pungently, a Farmer John meat packing plant. Amid this industrial landscape live scarcely more than 90 citizens, who live in a handful of apartments, mostly owned by the city, among the railroad tracks and factories. They comprise Vernon's entire electorate, and as the landlord the city can determine who they are.

"It's nothing we would recognize as a city government, providing basic services to thousands of people," said Raphael Sonenshein, a scholar of Los Angeles-area policy and chair of the Cal State Fullerton Department of Political Science. "Basically it's kind of a holding company for the local businesses."

The 5-square mile city has faced vicious criticism over the decades, and especially over the past few years, for operating more as a fiefdom for a small number of public officials than as anything resembling a democratic entity. Charges of corruption, nepotism, election-tampering, and other forms of malfeasance have abounded, and city officials are currently facing indictment. In introducing AB 46 Speaker Perez has indicated that the city is inherently beyond reform.

"In any other city in California, this situation would be met with outrage by voters," said Shannon Murphy, spokesperson for Speaker Perez. "But Vernon is unlike any other city. Every resident lives in city-owned housing, so you don't really have an independent electorate."

> "[The City of Vernon] is nothing we would recognize as a city government, providing basic services to thousands of people. Basically it's kind of a holding company for the local businesses."
>
> – RAPHAEL SONENSHEIN, CAL STATE FULLERTON DEPT. OF POLITICAL SCIENCE

AB 46 would force the disincorporation of "all cities with a population of less than 150 residents," according to the text of the bill. The text goes on to acknowledge that the legislation would affect only the City of Vernon. If AB 46 passes, the city will be absorbed as an unincorporated area of Los Angeles County. The bill provides that the county board of supervisors may keep the city incorporated if they so choose.

AB 46 has received support from over 90 co-sponsors in the Legislature and a raft of civic entities, including the city councils of neighboring cities and the Los Angeles County Board of Supervisors. The Los Angeles City Council voted 12-0 to support the bill. Several unions and business groups associated with Vernon oppose the bill.

Murphy maintained that AB 46 had precedent in the past disincorporation of at least two California cities since the creation of the Local Agency Formation Commission system of incorporation in the 1960s. However, this would be the first time that the Legislature has forcibly disincorporated a city that could be considered a going concern. In the 1972 residents of the City of Cabazon approved their own disincorporation, and in 1973 Hornitos was disbanded by statute mainly because the Mariposa County hamlet had turned into a ghost town.

"The Vernon bill is entirely separate from that and completely different because it's imposing a forcible dissolution...presumably against the will of the city leaders and some business owners in the city of Vernon," said Paul A. Novak, executive officer of the Los Angeles County LAFCO.

Thus, this would be the boldest such move in recent memory, and the first disincorporation of any kind since the 2000 update of the Cortese-Knox-Hertzberg Act, which governs incorporation of cities and special districts throughout the state.

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>>>> City of Vernon May Become Ward of L.A. County

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Vernon city leaders deny that such extreme measures are warranted.

Fred MacFarlane, public information officer for the City of Vernon, said that city leaders are pursuing a variety of reform measures. They include the establishment of an independent housing authority and other measures to ensure that Vernon government is sufficiently transparent. Former state Attorney General John Van de Kamp is leading a study of ethics reforms that can be implemented if the city remains intact.

A recent report commissioned by the city contends that Vernon businesses pay out over $4.5 billion in annual wages and hundreds of millions in state and local tax revenue. The report suggests that – because of anticipated changes that county supervisors would impose – the passage of AB 46 would result in the loss of over 11,000 of those jobs and $420 million in wages.

"The businesses in Vernon look to the city to provide a structure to enable them to be competitive and profitable," said MacFarlane. MacFarlane pointed to the city's Class I fire department, which, he said, provides a level of service rivaled by only a few dozen other departments across the country. He said that Vernon businesses enjoy lower insurance rates because of the safety that the fire department provides. Similarly, Vernon's city-owned utility provides energy at a lower rate than do utilities in surrounding areas. If these, and other, industry-friendly amenities were to disappear, MacFarlane said that businesses would be harmed.

Others say that Vernon's business climate does not justify what they consider to be an undemocratic political structure. "We have many businesses in the County of Los Angeles and they can carry out their businesses and so on and still do it under a democratic government," said County Supervisor Gloria Molina, whose district encompasses Vernon.

Vernon city leaders, in conjunction with many Vernon-based businesses, are not relying only on economic arguments to combat AB 46.

MacFarlane said that city leaders consider AB 46 illegal because Vernon is a charter city and therefore entitled to self-rule under the state constitution.

"There is no provision in the state constitution that provides the state of California with the authority or the power to disincorporate a charter city," said MacFarlane. "That's not an implied power. Charter cities can be disincorporated, but they are disincorporated by a vote of the electors of the incorporated city." He added that the primary motivation for disincorporation is to treat Vernon "like an ATM" and transfer city revenues to county coffers.

Bill Chiat, executive director of the California Association of Local Agency Formation Commissions, said, however, that the law does not either expressly provide for, or forbid, the disincorporation of a charter city.

"The provisions in LAFCO law (Cortese-Knox-Hertzberg) for disincorporation do not differentiate between general law or charter city," said Chait. "However, LAFCO provisions do not provide for a forced disincorporation as called for in AB 46."

"Our local government policy experts and attorneys who deal with the constitutionality of bills on a daily basis are convinced state and federal precedent supports our position," said Murphy, speaking on behalf of Perez. "The fact is they are desperate to keep their corrupt status quo."

What will happen if and when AB 46 forces a change of status quo remains somewhat unclear. Most immediately, the city would come under county control 60 days after the passage of the bill. Thereafter, it could remain as a part of unincorporated county, or it could be annexed by any of the four cities that adjoin it.

"One could logically anticipate that one of the adjoining cities might then come in and apply to annex that area," said Novak. Novak added, however, that the annexation process would likely involve lengthy studies and a host of bureaucratic hurdles. The most imposing of those hurdles is that a vote of more than 25 percent of residents and/or landowners can block an annexation.

That issue may, however, never arise if neither Maywood, nor Commerce, nor Los Angeles decide that they want to absorb a greasy place with a tarnished past. In fact, although the Los Angeles City Council issued strong support for AB 46, it looks unlikely that the city would make a play for Vernon any time in the foreseeable future.

"I really feel that Los Angeles has its hands full keeping its own house in order," said Los Angeles City Council Member Jan Perry, whose council district is one of three that border Vernon. "At this point I'm not even willing to consider the exploration of annexation."

"The initial talk of L.A. trying to get an annexation seems to have gone away, which probably is wise," said Sonenshein. "My guess is that it would pollute the discussion in ways that might be unproductive."

Though Vernon businesses fear that the county would strip them of amenities and their favorable business environment, supporters of disincorporation insist that little would change in the city.

"Our bill is going to address some of the issues in terms of permitting, in terms of grandfathering in these businesses so they can continue to operate efficiently," said Murphy.

Molina, the county supervisor, said that the county does not intend to dismantle the city's business environment. She said that the utility would likely continue to operate and that other policies would change little.

"There are a lot of things that would probably stay in place for a long time," said Molina. "It shouldn't create any disruptions of services or any things of that sort. It wouldn't have any kind of civic government per se, but they could address their issues to the county."

Vernon's unique nature and history might even warrant innovations in governance that would satisfy businesses there without requiring that the city operate as a full independent entity.

"At some point the county might consider treating Vernon as some kind of enterprise zone, governed indirectly by the county through some commission that doesn't even pretend to be a local government," said Sonenshein. ■

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>>>> Courts May Decide Ultimate Fate of Redevelopment

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Brown's office, however, maintains that Prop. 22 does not infringe on the Legislature's right to create and disband redevelopment agencies as it sees fit, per Article XVI, Section 16 of the State Constitution. That legislation, originally passed in 1954, establishes redevelopment agencies as creations of the state.

"Prop 22 limits the Legislature's authority to redirect from redevelopment agencies certain funds. But it doesn't speak about whether or not the Legislature has the authority to end redevelopment," said Marianne O'Malley, director of General Government at the nonpartisan Legislative Analyst's Office.

The League of Cities acknowledges that the Legislature retains ultimate authority over redevelopment. However, McKenzie, insists that neither Art. XVI, Sec. 16 nor any other aspects of the state constitution allows a comprehensive, nearly instantaneous dismantling of the system.

"They authorized the creation of RDAs, they authorized them to incur obligations. These obligations are substantial; they are tied to the existence of RDAs," said McKenzie. "Eventually if they said they didn't want any more agencies, any more project areas, that's within their discretion.

"They cannot do it overnight in this chaotic, pell-mell way that the governor's proposal envisions."

McKenzie acknowledged that Prop. 22 does not prevent the legislature from enacting traditional reforms such as altering the lifespan of redevelopment project areas or redefine the legal definition of blight. But he maintains that the governor's proposal amounts to a blatant violation of Prop. 22 and, he said, of the voters' intention of securing more funds for local governments.

The apparent conflict between Prop. 22 – a constitutional amendment – and those parts of the constitution that were previously enacted has no clear endgame in California constitutional law. Mary Beth Moylan, a law professor at University of the Pacific's McGeorge School of Law, said that, essentially, there are conflicting precedents that make the outcome of a lawsuit nearly impossible to predict.

Moylan said that, on the one hand, the more specific statute takes precedence. This principle would favor previous provisions of the constitution. However, she also said that, when constitutional amendments are in conflict, the more recently enacted one takes precedence.

"Under the 'more recent takes prevalence' rule, Prop. 22 is the last statement of constitutional law and so one would think it takes precedence," said Moylan. "Under 'specific-versus-general,' it's hard to say."

Moylan noted, however, that if the supporters of redevelopment such as CRA and the League (who also were behind the drafting of Prop. 22) had intended to outlaw the dissolution of redevelopment, they could have explicitly included such language in the proposition.

"My guess would be that a court if faced with this would try to say, 'Well, the initiative didn't amend Article XVI, so the state still has the power," said Moylan. "If it had wanted to shore up or change or alter the power balance between the state and the local governments in this particular way, it would have changed Article XVI."

McKenzie said that such a possibility was never discussed. Instead, he said that Prop. 22's prohibition on "indirectly" shifting funds implicitly forbids the wholesale elimination of redevelopment.

"It could not be clearer because it says it cannot 'directly or indirectly' shift these funds to the state or to the local agencies as long as they're needed for redevelopment under Article XVI," said McKenzie. "That was (included) to expressly capture any kind of ruse like this."

The League's legal strategy also centers on Article XII of the state constitution, which holds that ad valorem real property taxes are to be distributed to districts within the countries from which the taxes are collected. The governor's proposal would, the League contends, distribute some funds to statewide programs such as Medi-Cal and trial courts.

This debate over the provisions of Prop. 22 amounts to another chapter in the state's tortured history of legislating by ballot initiative. The most recent, high-profile such conflict surrounded Prop. 8, the voter-approved ban on same-sex marriage which was later ruled unconstitutional in a U.S. District Court.

"Like most voter initiatives, they have these unintended consequences," said Moylan.

"The problem with making state constitutional law by initiative is that it doesn't look holistically at the constitution." ■

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>>>> Cities Fear 'Fire Sale' That Would Squander RDA Properties

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days, redevelopment agencies have entered into new contracts, transferred title of properties to their respective cities, and even hustled brand-new bond issues out the door. In particular, the issuance of new debt creates ironclad obligations that the state would not, presumably, be able to nullify.

Though the bill language implies that the state may try to nullify some of these transactions – and could do so for transactions dating back as far as three years – cities are nonetheless trying to shield as much as possible.

It is an unfortunate but necessary strategy, say supporters of redevelopment who do not want the state to force a "fire sale" of, in many cases, cherished civic assets.

"I think it is eminently prudent in the face of the invasion that the governor's legislation is mounting against every community in this state, trying to commandeer and control the assets of the RDAs in the state," said Chris McKenzie, executive director of the League of California Cities. "It's unthinkable that they would not prepare."

On the other hand, this unprecedented situation has created uncertainty for both developers and public agencies across the state, with the potential for rash decisions. "It's hard because of the manipulations in Sacramento are hard to understand and coming pretty fast-and-furious," said Larry Kosmont, president and CEO of Kosmont Companies, a real estate advisory firm with a long history of working with redevelopment agencies.

If cities fail to prepare, or if the state government can nullify shielding agreements, many fear that the state's real estate market will be flooded with a motley assortment of un-developable and orphaned land parcels – as well as a few plum deals – that may be sold for pennies on the dollar.

"I think the liquidation clause is the most incredibly stupid idea that you could put into legislation," said McKenzie. "The governor just said he didn't want to dump a bunch of state property on the market and get below-market prices. This bill forces a lot of government-owned property to get below-market prices. It's going to waste dramatic amounts of public funds."

Although official statewide figures are difficult to ascertain, the value of shielding transactions is likely well into the billions, if not tens of billions, of dollars.

The City of Los Angeles alone has approved $1 billion in new contracts and transfers. The City of San Diego and its three redevelopment agencies has entered in a whopping $4 billion worth of cooperation agreements, according to Derek Danziger, spokesperson for the Centre City Development Corp. (CCDC). The City of Santa Ana took control of $210 million in assets from its redevelopment agency. And the list could go on.

(At the same time, cities have not abandoned all caution. The Irvine City Council considered, but decided against, approving a pledge to commit $1.4 billion in redevelopment funds to the city's Great Park. Councilmembers felt that an existing development deal was sufficient to shield the funds. Likewise, San Diego is holding off on the transfer of 135 properties that remain in the hands of its redevelopment agencies.)

On a smaller, but perhaps more aggressive scale, National City is one of a many cities whose redevelopment agencies have issued and obligated bonds. National City Redevelopment Director Patricia Beard said that her city's issuance of $39 million in bonds was likely the first in San Diego County. Those are a small fraction of the $700 million in bonds that redevelopment agencies have issued since the first of the year, according to State Treasurer Bill Lockyer. That compares against $1.2 billion in bonds for all of last year.

Larry Westerlund, chair of the Fresno Redevelopment Agency, said that he proposed the approval of a wide range of projects, some of which were only in early planning stages. The city council, acting as the RDA board, ended up approving around $20 million worth of projects that were reasonably far along in the planning process.

"We have tried to expedite projects that were in the pipeline to get those MOUs, OPAs, DDAs out the door," said Westerlund.

The City of Oxnard has taken title to 53 properties worth around $60 million, according to Community Development Director Curtis Cannon. The city has also transferred a cache of contracts and cash worth, he said, around another $60 million. Thus, cities like Oxnard are rapidly becoming the caretakers of land considered crucial to their future development.

"All of us at the local level have much more at stake, I believe, than does the state," siad Cannon. "That doesn't discount the state's own problems. But we at the local jurisdictions cannot physically sit down and let this happen."

For many cities, these assets represent years of work and planning, and they are considered crucial components of cities' development plans.

"We have goals and objectives that we have been working towards. So when we purchase property or assets we have them for a purpose," said Sidnie Olson, community development director of the City of Eureka. "To have someone liquidate it and just divvy it up, that doesn't help our community."

Olson said that redevelopment is crucial for small cities that have few revenue sources. Even in behemoth San Diego, Danziger said that the properties owned by CCDC are complements to a planned increase in the residential population of downtown San Diego from a current 35,000 to 90,000.

"There are people who won't have backyards, so parks will be essential to their future," said Danziger. "If we suddenly lose the properties that we being earmarked for those developments, it creates a very tenuous situation for us."

Cities are even trying to shield high-profile megaprojects, such as sites for proposed professional sports stadiums in Oakland, San Jose, and Santa Clara. Danziger said that San Diego has not explicitly earmarked land for a rumored football stadium. However, a potential downtown brownfield site is among the parcels that CCDC has tried to shield, along with funds to clean up the property.

"We've set about $150 million on the list for environmental remediation for the site on which the stadium could potentially go," said Danziger. "That's irrespective of whether you build a stadium, housing, a park or anything…you need to remediate on that site."

While not all of the state's brownfields are expected to go to such illustrious uses, the mere chance to remediate hundreds, or even thousands, of currently marginal sites throughout the state is looking precarious under the governor's proposal. Many such sites have no apparent purpose other than to serve redevelopment plans and would be laughable if put up for sale on the open market.

"With the loss of redevelopment we will also lose some exceedingly important brownfield tools," said Stephanie Shakofsky, executive director of the Center for Creative Land Recycling, which promotes the reuse of brownfields and other inner city parcels. "These are laws that allow a redevelopment agency to clean up, or require a property owner to clean up, a contaminated property while providing essential liability relief."

Whether redevelopment agencies' parcels are marginal or not, the rush

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Unlike U.S., China Embraces Density and Enormity

The following is the first of an occasional series of thoughts on "super density" and the future of cities.

China plans to create a city of 42 million people (!) by linking six major cities by rail, power lines, communications and the like. When complete, the new mega-city will comprise 16,000 square miles, compared to the 900 square miles of urbanized Los Angeles County, which many people already consider an unmanageably large city. The Chinese government plans to spend the equivalent of $190 billion in the next six years to accomplish this extremely ambitious task.

Among the official purposes of this massive conurbation, surprisingly, is what could be called non-redundancy of services: People who seek specialized health care, for example, would be able to do so within a much larger network. Labor economics also seems a strong reason for the investment in this region, because employers seeking highly skilled workers for tech and high-tech industries will be able to draw from an immensely enlarged labor pool.

As a student of urbanism, I find this idea both appalling and oddly exciting. Appalling, because the idea of a city of 42 million people terrifies me with visions of unrelenting high-rise construction, lack of open space and environmental wreckage.

At the same time, I admire – I almost said in awe – of China's willingness and ability both to actually plan for its economic future. It's called "industrial policy," which is a familiar concept in Asia, but almost unknown in the United States. In China, industry professes to benefit from things like public transit (which get their employees to work) and high-density housing (which allows them to leave cheaply). In the US, the primary things that industry wants (and regularly wins) from government are tax breaks, subsidies and relaxed regulation. Please compare the Chinese plans for infrastructure and transit development with the hostile reception greeting the President's proposal for high-speed rail to inter-connect major US cities. (The hostility, of course, is prompted by the spectre of spending (wash your mouth out!) at a time of high federal deficits, despite the arguable benefits to business. Austerity measures have been greeted enthusiastically in Greece, Great Britain and Ireland, so we thought we'd try it here, too.)

But if superdensity and hyper-infrastructure looks good from 30,000 feet, our first reaction to the idea of a megacity naturally be: How would I feel living in such an environment? Beyond moving goods and bodies around with increasing efficiency, what will it feel like to live in a non-stop, high-density with no relief in the form of wide open spaces or accessible rural areas? Then I feel somewhat less excited.

(In fairness, I need to find out what kind of open space planning and habitat conservation efforts the Chinese plan to undertake in this exercise. Recent city-building efforts in that great nation, however, do not inspire confidence that the authorities have any larger vision of urban form, let alone the good life, other than smoothing the path for real estate development.)

In one sense, urban America already lives in loosely comparable conditions: The Northeast has long been a continuous carpet of inner cities and suburbs (old timers may remember the 1960s term "megapolis"). The West Coast, for that matter, could almost be described as a continuous urban fabric stretching from San Diego to Seattle. Insofar as we have open space, it is because we have inherited them from idealistic planners of a century ago or more, such as the Olmsteads and the City Beautiful movement.

Is there a model for large-scale, very high density living we can imagine ourselves living in voluntarily, even happily? Personally, I think much of the answer lies with the availability of public and semi-public open space. Otherwise, we are simply warehousing people as if they were abstract economic units to be moved around with a giant croupier.

Even if the Chinese are intent on building this "city" in six short years, we are at the beginning of an ongoing discussion.

– MORRIS NEWMAN | MARCH 4, 2011 ■

>>>> State May Reap Far Less Than $1.7B from RDA Shutdown

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to liquidate them in order to plug the state's budget hole makes little business sense, according to some analysts – especially given the state's already depressed real estate market.

"It's a bit like leasing out your house to buy a boat," said Kosmont.

As well, they may be properties that a private developer cannot, or would not, want to do much of anything with.

"In general, these properties would be the cats and dogs of a private portfolio...they need help," said Kosmont. "They would have a predevelopment value with a low valuation because a lot of things would have to happen for those properties to achieve their highest and best use."

With a redevelopment agency, said Kosmont, those properties could be utilized. But without the help of, for instance, infrastructure improvements and a wider community plan, they would likely languish.

As cities try to shield assets in order to avoid these kinds of devaluations, the state stands to net far less than the $1.7 billion anticipated in the governor's budget draft because so many assets will be taken off the books. And those that are left will be worth little.

"Given the rush to go to the altar to terminate redevelopment, and given the defensive measures that are going on now – whether or not they can be pierced legally or not – at the end of the day, you're probably looking at no more than $200 or $400 million that could be allocated," said Kosmont. ■

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Controller Issues Stern Criticism of Redevelopment Agencies

Throughout the now eight-week battle over the fate of redevelopment, both sides have issued claims about the efficacy – or lack thereof – of redevelopment but have relied on scant data to do so. Today the empirical analysis of redevelopment has, according to the office of State Controller John Chiang, become quite a bit clearer.

Five weeks ago Chiang initiated a limited-scope review of redevelopment and today released findings that are highly critical of redevelopment. Among other criticisms, the findings directly contradict claims that redevelopment is responsible for the creation of hundreds of thousands of jobs – because, according to the report, agencies have done little, or nothing, to track job creation.

Based on a review of 18 agencies statewide, the controller found no reliable means to measure the impact of redevelopment activity on job growth because RDAs either do not track them or their methodologies lack uniformity and are often arbitrary such that "virtually any condition could be construed to be blight." The review also found that agencies interpret "blight" loosely enough that their standards lack uniformity and therefore cannot be compared to each other. The report noted that in some cities, golf courses and luxury homes are located in redevelopment project areas.

The report suggests that these discrepancies make it difficult for the state to hold RDA's accountable for the funds they receive and spend. It found other troubling oversights, such as missed payments to school districts and sloppy bookkeeping, including auditing violations.

The 40-page report has been submitted to Gov. Jerry Brown as well as leaders in the Senate and Assembly.

"For a government activity which consumes more than $5.5 billion of public resources annually, we should be troubled that there are no objective performance measures demonstrating that taxpayer's are receiving optimal return for each invested dollar," said Chiang in a statement. "Locally-controlled economic development is vital to California's long-term prosperity. However, the existing approach – born in the 1940's – is not how anyone concerned with performance, efficiency, and accountability would draw it up today."

The 18 selected agencies represent 16 percent of all redevelopment dollars in fiscal year 2009-10. Auditors from the Controller's office conducted the review by interviewing redevelopment staff and analyzing financial statements, reports, plans, budget documents, ledgers, job creation data, and payroll records.

The report is a potentially damning rebuttal to the claim, circulated by the California Redevelopment Association and repeated by many supporters and local agencies, that redevelopment contributes to over 300,000 jobs in California. According to the report, only 10 of the 18 agencies studied even attempted to track job creation, and of those 10, some methodologies were inconsistent and opaque.

"The lack of accountability and transparency is a breeding ground for waste, abuse, and impropriety," said Chiang in a statement. "In whatever form local redevelopment takes in the future, the level of oversight and openness must be consistent with the amount of public dollars entrusted to their care."

The report does note, however, that all 18 agencies contributed appropriate funds to their low- and moderate-income housing funds. Redevelopment agencies have come under fire recently for neglecting to make these payments, which are required by law.

– JOSH STEPHENS | MARCH 7, 2011

CRA Fires Back at Controller

As expected, supporters of redevelopment in California wasted no time responding to a scathing report released today by State Controller John Chiang. This afternoon California Redevelopment Association reiterated its longstanding contention that redevelopment creates jobs, stokes local economies, and provides a net economic benefit to the state despite what Gov. Jerry Brown claims is a $1.7 billion annual drain on state coffers.

Chiang's report claims, among other things, that of 18 redevelopment agencies surveyed, almost none of them had done a credible job tracking the number of jobs that redevelopment created in their respective jurisdictions. Moreover, the report found numerous inefficiencies and sloppy business practices. Finally, it contends that agencies' definitions of blight – which is crucial for the creation of redevelopment project areas – vary so widely as to be meaningless.

The CRA continues to contend that redevelopment is responsible for over 300,000 jobs statewide, contrary to the controller's claim that it's essentially impossible to track or assess the jobs that individual agencies have created, much less estimate the statewide impacts. CRA Executive Director John Shirey attacked the controller's methodology in his statement released:

"Unfortunately, rather than issuing a serious, methodologically and academically sound review of redevelopment, it appears that the Controller has chosen to issue a politically-motivated campaign piece to support those who want to abolish redevelopment," said Shirey. "The Controller has cherry-picked a few problems in reporting to draw broad conclusions about redevelopment that are not supported if one looks at the whole picture of redevelopment statewide."

The CRA takes issue with the controller's report on the following points:

- The report focuses on only 18 agencies, out of nearly 400 statewide.
- The report was conducted with undue haste: only five weeks to assess a multibillion-dollar, statewide program.
- The 18 agencies include five that did not make their SERAF payments last year, indicating that the report focused unduly on agencies that were struggling financially.
- Those agencies that missed SERAF payments did so legally and are not necessarily mismanaged or ineffectual but rather were unprepared for the state funding transfer.
- Only 8 percent of agencies statewide missed their SERAF payment whereas 28 percent of the report's focus agencies did.

Shirey's statement makes no mention of the controller's claims about the definition of blight, nor does it address claims of mismanagement. Throughout the budget debate, the CRA has maintained that some agencies do need to be reformed – but not eliminated.

"The California Redevelopment Association and our member agencies are committed to working with the Controller and the Legislature on any reforms needed to improve redevelopment outcomes or the process of reporting," said Shirey.

– JOSH STEPHENS | MARCH 7, 2011

TOD Without the T Is Simply Odd

What happens when you go through years of planning and actually building TODs, only to have the T suddenly vanish?

This is the question on the San Francisco Peninsula and in the South Bay, where Caltrain is proposing radical service reductions and the closure of numerous stations.

It's also a question that other places are likely to confront as public budgets grow more austere and the Republican Party ramps up its attacks on seemingly all transportation that doesn't involve automobiles.

Caltrain is the heavy rail commuter service that runs from Gilroy to San Francisco. It carries nearly 40,000 passengers a day on weekdays. The Santa Clara Valley Transportation Authority, the San Mateo County Transit District and San Francisco jointly operate the system. However, Caltrain has no dedicated funding source, such as a local sales tax, and the three Caltrain partners have their own serious money problems. Thus, Caltrain faces a $30 million budget deficit for the 2011-12 fiscal year.

To close the budget gap, the Caltrain joint powers board has proposed reducing the number of weekday trains from 86 to 48, eliminating all non peak-hour trains, eliminating all weekend and special event service, ending service between San Jose and Gilroy, and closing seven stations from South San Francisco to San Jose.

The proposal is a blow to the cities and the region as a whole, which have embraced transit-oriented development (TOD) adjacent to Caltrain stations. Projects have been built in South San Francisco, Redwood City, Mountain View, San Jose and elsewhere. A wide variety of TOD projects is planned in Millbrae, San Mateo, San Carlos, Sunnyvale and other locations. Cities have created mixed-use land plans around Caltrain stations. Moreover, Caltrain is critical to the Grand Boulevard Initiative, a voluntary regional planning effort that seeks to transform the El Camino Real corridor – which includes many miles of the Caltrain line – from a mostly automobile-dominated, inefficient, commercial strip into a dense, mixed-use, transit-first corridor.

The whole point of the Grand Boulevard Initiative is to locate many new job centers and housing units along a corridor that already has a great deal of infrastructure, including public transit in the form of buses, light rail and, yes, Caltrain. Even cities that for decades have been hostile to growth have shown a willingness to accommodate transit-oriented development along El Camino, thanks in large part to the popularity of Caltrain. All of this is exactly what SB 375 seeks to encourage. It's what the new urbanists, smart growthers, housing advocates and the alternative transit crowd have been pushing for.

But if Caltrain's budget-cutting proposal goes forward, are any of these plans and good intentions viable?

Elected officials and advocates are trying to find funding for Caltrain. I have to believe they will be successful, later if not sooner. Still, the episode is making both decision makers and transit riders nervous, and it has to raise big doubts. How committed will cities and developers – not to mention merchants, business owners and potential residents – be to transit-oriented developments if the transit can vanish? Roads and highways may become heavily congested, but they don't disappear.

– PAUL SHIGLEY | MARCH 1, 2011

Dueling Polls Muddle Redevelopment Debate

With apologies to Sir Isaac Newton, we may finally find out what happens when an irresistible force runs headlong into an immovable object.

In this case, the irresistible force is Gov. Jerry Brown while the immovable object is redevelopment and the 400-odd localities that are trying to save their agencies and the thousands of planned projects under their purview. The latest example of the remarkable symmetry (read: stalemate) between the two sides is a curiously sanguine poll released today by Probolsky Research – presumably on behalf of the California Redevelopment Association and other redevelopment supporters – contending that 59% of Californians think that redevelopment is "a good idea."

The poll included a follow-up question to the naysayers, asking them if they thought redevelopment funds were "put to good use." When presented with types of activities that RDAs do, such as promote affordable housing or repurpose military bases – many respondents changed their minds, deciding that redevelopment is a "good idea."

Sixty-three percent of respondents said that redevelopment agencies should continue operating.

Finally, 64% responded in the negative to what was clearly the survey's most leading question: "it is estimated that 300,000 Californian jobs will disappear....does knowing this make you more or less likely to eliminate local redevelopment agencies?"

First, it should be noted that the 300,00 figure that the CRA and others have been citing is not without its critics. Second, while the elimination of redevelopment under Brown's plan would halt future redevelopment projects, I have yet to see any credible suggestions that the jobs already created by redevelopment – however many there may be – will "disappear." Businesses in redevelopment areas do not get tax benefits or any other incentives. They simply exist. And, with or without an active redevelopment agency, they are scarcely more likely to "disappear" than are the buildings that house them.

Now, all of these numbers don't exist in a vacuum. And, as has become customary since Jan. 10, there are some powerful numbers to contradict Problosky's findings. In January, the Public Policy Institute released its own poll contending, well, the exact opposite.

The PPIC found that 66% of adults and 63% of likely voters do support the governor's plan to redirect local revenues, including those that will come from the elimination of redevelopment. So that's a pretty big swing: from over 60% in favor of elimination to over 60% opposed to it. Granted, the CRA has been doing a massive public relations campaign, so it's likely that any poll taken today would reflect the sentiments of a more informed electorate. Even so, any PR campaign capable of not only reaching 1/3 of a population but also changing their minds would qualify as just short of a miracle. (If this was true, CRA should rent itself out to people with real public image problems, like Charlie Sheen or BP.)

But these numbers suggest that Californians are either mightily capricious, that one poll is grossly flawed – or that no one really knows how anyone feels about redevelopment. But by now we all know what it feels like to get beaten over the head with a $24 billion deficit: it's no fun.

– JOSH STEPHENS | MARCH 4, 2011