CP&DR

VOL. 26, NO.08 — APRIL 15, 2011 CALIFORNIA PLANNING & DEVELOPMENT REPORT

Vision Scenario Depicts Unified Bay Area

MTC, ABAG release initial step in Sustainable Communities Strategy planning process

BY JOSH STEPHENS

The unique geography of the San Francisco Bay ensures that there is only one Bay Area. Uniqueness and unity are not, however, the same thing, and planners are now working to convince the Bay Area's own residents and public officials that there is indeed One Bay Area.

One Bay Area is the brand name under which the region's Sustainable Communities Strategy is being developed. It is a collaboration among the region's two major planning organizations – the Metropolitan Transportation Commission, which is the region's official Metropolitan Planning Organization, and the Association of Bay Area Governments – plus the San Francisco Bay Conservation and Development Commission, the Bay Area Air Quality Management District. The process also includes participation of the region's nine counties and 101 cities.

Building on generations of collaboration among these entities, the region's SCS, which is mandated by Senate Bill 375, will be called Plan Bay Area. In March, Plan Bay Area took its first step towards becoming reality with the release of the Initial Vision Scenario by MTC and ABAG. The IVS outlines expected population growth in the region and broadly identifies the locations where new residents and households can be located with the least impact on vehicle miles traveled and greenhouse gas emissions, pursuant to the goals of SB 375.

"Frankly we are trying to get people to think as one," said Randy Rechtsler, director of legislation and public affairs at the MTC. "We often use the phrase 'Bay Area' so why don't we get people focused on the place they live?"

"Plan Bay Area is the brand that is being put on the concept of this SCS," said Jeff Hobson, deputy director of the transit advocacy group TransForm. "That's all more of a communications issue than an issue of planning conflicts."

The IVS operates on the assumption that in the next 25 years the Bay Area will add [more than] 2 million people and 902, 000 housing units, for a 33 percent increase. The IVF projects that Plan Bay Area, when completed, will direct 97 percent of that growth to infill areas, leaving only 3 percent of household growth to greenfields. It also concentrates growth in the counties that are already most heavily urbanized. Santa

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A Prescription for Prosperity: Let Cities Be Cities

Edward Glaeser celebrates the city with both sentiment and statistics

book review

BY ADAM CHRISTIAN

In *Triumph of the City*, Ed Glaeser has written a love letter to his lifelong object of study, the global metropolis in which a majority of the world's population now resides.

When planned and managed well, cities exemplify the best of civilization. The subtitle of the book, "How Our Greatest Invention Makes Us Richer, Smarter, Greener, Healthier, and Happier," sounds a bit like the sales pitch in an infomercial, but Glaeser's enthusiasm for cities is sincere and infectious. To be precise, the title of the book refers to the triumph of *the* city, as opposed to *all* cities or any city in particular. Industrial cities in America, for example, are dead, and this book does not argue for their revival.

Whereas some might argue that the ability to conduct many forms of business from virtually anywhere, made possible by modern communications, have rendered the modern city less relevant, Glaeser maintains that the riches to be gained from agglomeration in the postindustrial urban economy have only begun to be mined.In fact, his is a deeply humanist book with the "triumph" referring to the heights of invention and creativity achieved when people cluster to-

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inside

inbrief

A NEW ORDINANCE in the Riverside County city of Temecula has led to a conflict between small-scale wineries and local planners. The Wine Country Community Plan is intended to spur the growth of the wine industry in the city. However, some vineyard owners are upset that it would require new wineries that want to operate hotels and restaurants to be greater than 20 acres; wineries with resorts would have to be at least 40 acres. The measure is intended to mitigate traffic and noise impacts for local residents, who complain about the proliferation of wineries in the area. Thus the twenty-acre minimum would limit the number of new wineries that could come in. Existing wineries under 20 acres could be "grandfathered" in under the ordinance, but some operators are concerned that, if they wanted to make changes to their winery – to say, add a conference facility – then they would have to come into compliance with the new policy.

A LARGE SUBURBAN DEVELOPMENT in Orange County is pitting developers against local officials who want to make sure that the former pay their share for the burdens new residents would place on local services, particularly education. The Irvine School District has approved a school facilities needs analysis, which paves the way to let the district levy extra fees on development to pay for additional educational resources and mitigate the strain placed on schools by an additional 13,000 residential units. Those developer fees, as approved by the school board, would come to about $5.50 per square foot of new residential real estate, a little less than double the existing rate. The Orange County chapter of the Building Industry Association has vocally, if unsurprisingly, voiced its displeasure, arguing that the fees were in excess of what was actually needed to meet future needs. Part of the conflict arises from the fact that the area in question is not covered by a Mello-Roos district, which allows localities to raise funds for services via property taxes. The building association and the school district are now trading barbs in the form of public letters alleging one another of working in bad faith.

THE LOS ANGELES CONSERVANCY has announced its 2011 Preservation Awards in nine categories. The winners were as follows: President's Award – Community Redevelopment Agency, City of Los Angeles; and, Media Award – Mad Men. Additional accolades went to the following projects: Antelope Valley Indian Museum State Historic Park, Lancaster; Murray Burns/The Preservation of Angelino Heights, Los Angeles; City of Los Angeles 2010 HPOZ Preservation Plan Program; Downtown Women's Center, Los Angeles; The Natural History Museum of Los Angeles County, 1913 Building Seismic Rehabilitation; Security First National Bank of Los Angeles/Comerica Bank, South Pasadena; and, Villa Riviera, Long Beach. The independent jury was comprised of architects, historic preservationists, and community development experts.

AFTER A FEDERAL JUDGE REBUFFED Hermosa Beach's efforts to ban tattoo parlors on the grounds that the ban violated the First Amendment (see *CP&DR Legal Digest* Vol. 25, No. 21, Nov. 2010 [ ]), the city is perusing a modified plan that would limit them to specific parts of the small beach city. City officials said that up to a half-dozen parlors may be opening in the city. The decision ended a legal contest with tattoo artists that lasted four years, with the court's ultimately upholding the latter's constitutional rights to tattoo. Residents have organized a petition against the new ordinance, which allows parlors in the downtown area and along two major boulevards. The group is calling for a moratorium on approvals of new parlors until the Hermosa Beach can study other city's practices and consult with local residents. City officials, on the other hand, seem content to let the new policies go forward, after spending $200,000 to litigate a case in which judges unambiguously found tattooing to be protected free speech.

THE U.S. SUPREME COURT has declined to decide the fate of Eagle Mountain, a proposed trash dump near Joshua Tree National Park that would be the nation's largest. The dump would be sited in a former open pit mine in Riverside County called Eagle Mountain. By refusing to grant certiorari, the Supreme Court let stand a lower court ruling that called into question critical aspects of the land swap between the Bureau of Land Management and the dumps developers, Kaiser Ventures and Mine Reclamation. Additionally, the lower court found that the developer failed to analyze alternate locations for the dump and its impacts on the local environment. Consequently, Kaiser Ventures must now go back and address those issues in a revised environmental impact report. The developers argue that the planned dump would be a good repurposing of an otherwise unused site in an already degraded area. Plus the fees assessed on trash dumping would bring in revenue to the county. Opposing the dump are a number of locals and the National Resources Defense Council, who worry about the air and water pollution impacts of the dump itself and the trash trucks that would bring in 20,000 tons of refuse daily from Los Angeles County.

THE U.S. NINTH CIRCUIT COURT OF APPEALS recently found in favor of the San Francisco Metropolitan Transportation Commission in a suit claiming that the agency's focus on capital investments in rail violated the 1964 Civil Rights Act. It was one of several suits across the country alleging that support for rail amounts to "transit racism," under the contention that poor and minority riders tend to use buses whereas heavy and light rail lines favor white, affluent riders. Plaintiff Sylvia Darensburg of Oakland was represented by the Equal Justice Society; she contended that she endured unduly long waits for buses during her daily commutes. The court found that roughly 51 percent of the region's rail riders are minorities and thus concluded "that Bay Area minorities already benefit substantially from rail service" and that it could find no evidence of racial bias in MTC's planning strategies. The plaintiff noted that roughly 80 percent of the region's transit riders are minorities. In a bold statement against further such suits, Ninth Circuit judge John T. Noonan wrote, "the notion of a Bay Area board bent on racist goals is a specter that only desperate litigation could entertain."

THE SAN FRANCISCO PLANNING COMMISSION has signed off on a five-year housing master plan that largely leaves existing policies unchanged. The update followed over two years of studies and dozens of community meetings. By and large, the housing element is consistent with San Francisco's environmental and housing policy goals, concentrating most of the new development around transit hubs. That hasn't stopped interest groups from taking issue with aspects of the plan. On one side, affordable housing advocates do not think the plan goes far enough to encourage the building of more affordable residences in an extremely ex-

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pensive city. At the same time, others are concerned that the character of San Francisco could be lost to runaway density. All told, the city now plans to add just over 30,000 new units to accommodate additional growth in the city, with the bulk of them coming within walking distance of BART and Muni lines.

THE LOS ANGELES CITY COUNCIL has carved out a special sign district [ ] for a proposed hotel and office tower development in the heart of downtown Los Angeles on the current site of the Wilshire Grand Hotel. The move will allow for elaborate Time Square-style signage and light shows on the first ten floors of the building. The hotel's developers, Hanjin International Corp, a subsidiary of Korean Air, said the advertising revenues – on top of $79 million in city tax breaks – were required to make the building pencil out. The one dissenting voice on the council, Councilmember Bill Rosendahl, argued that the city ought to share in those advertising revenues. The building will also feature architectural LED lighting wrapping the development that will display abstract colorful designs. The building also received an exemption from height limits, and at 1250 feet, it will be one of the tallest buildings in the western United States. It will also be the first new office tower built in downtown L.A. in nearly a generation. Local organizations such as Ban Billboard Blight have expressed concern about the new signage's affects on the visual environment and its potential for distracting drivers.

FIRST SOLAR'S large solar project is undergoing review by the San Luis Obispo Planning Commission. The proposed Topaz Solar Farm would cover 3,500 acres on the Carrizo Plain with a 550-megawatt, 9 million solar module commercial photovoltaic plant. The project comes second to, and faces similar issues as, a previously approved 250-megawatt solar project by the Commission for Carrizo Plain. The project raises ecological and aesthetic concerns for the Carrizo Plain, with potential impact on endangered species and loss of farmland as major issues. Additionally, the proposed panels for installation contain callium telluride, a hazardous material, unlike the 250-megawatt approved project. First Solar noted that they have redesigned the project several times to reduce the impact on endangered species, like the San Joaquin kit fox, and that the possibility of callium telluride pollution is remote. The green energy project construction will take three years. First Solar hopes to begin construction later this year.

THE VICTORVILLE TO LAS VEGAS DesertXpress high-speed rail recently completed its Final Environmental Impact Statement. The proposed project would provide express service between Southern California (Victorville) and Las Vegas. In a recent press conference, Sen. Harry Reid (D-NV) and Transportation Secretary Ray LaHood touted the project's economic impacts and associated jobs. Officials in the City of Barstow, however, have said they are discontented that they will be bypassed; the city is a major stopover for highway traffic between coastal California and to Las Vegas. The city will review the FEIS and continue in efforts to impede the development of DesertXpress, Barstow councilman Tim Silva said. The FEIS is under circulation for comments until May 2. The final regulatory step will be approval from the Federal Railroad Administration.

A LAND-USE BATTLE of miniscule proportions is brewing in Walnut Creek. A 96.1-square-foot parcel next to a Chico's—and soon to be Neiman Marcus—has been the topic of controversy between city officials and mall developers. City officials say that an easement on the land, owned by Joseph Giordano who also owns Chico's property, is necessary to eliminate a tripping hazard and to be ADA compliant. Additionally, Macerich's Neiman Marcus project involves plans for landscaping, seating and pedestrian improvements, some of which is on land owned by Giordano.

The city is asking for easement or pedestrian right of way, said Brian Wenter, the assistant city attorney. While the city hopes it will not be necessary, should negotiation prove unsuccessful, eminent domain will be used to secure the easement. Macerich will be paying easement costs as their development will cause access issues, and therefore, they are responsible. Wenter emphasizes the project is not for private benefit at the request Macerich, but rather, for pedestrian safety and accessibility. While some may not be convinced, Mayor Cindy Silva said the city became involved to ensure what is in the best interest for the public in this project.

THE CITY OF MONROVIA plans to sell 14 acres of agency-owned land to Los Angeles Metro for a proposed maintenance and operations facility on the Gold Line light rail Foothill Extension has caused uproar among commercial property owners of the site. Excalibur Property Holdings is one of five property owners that hold rights to the 24-acre proposed site for the facility. Excalibur Property Holdings names the city, the redevelopment agency, and the Metro Gold Line Foothill Extension Construction Authority in the lawsuit, claiming the sale of the land would constitute an unfair taking and result in the loss of several businesses. City Manager Scott Ochoa said he believes it is a stretch to hold the city and redevelopment agency liable, as neither institution is acquiring the land.

THE CITY OF LONG BEACH has received two grants that will help the city remake itself into a more healthy, walkable town. The combined $300,000 comes from the Southern California Association of Governments and the California Endowment. The funding will go to two specific projects. The SCAG money – which comes out of its Compass Blueprint Growth Vision program – will contribute to the costs of creating a Specific Plan for Long Beach Boulevard. The Cal Endowment funding will help ensure that the 2030 General Plan Update contains provisions to encourage active transportation (i.e. biking and walking) and healthy communities. Long Beach's public health and parks agencies will work on the planning components for the latter. The award comes at a time when Long Beach is earning national recognition for its aggressively pro-bike policies, including the recent debut of the first Copenhagen-style protected bike lanes on the West Coast. Work on the planning updates is set to begin this spring and take just over a year to complete. ■

Density Bonus Law Can Apply to Infill Projects

Berkeley can use categorical CEQA exception for mixed-use project

BY CORI BADGLEY

An appellate court has upheld the City of Berkeley's application of the density bonus law and the California Environmental Quality Act exemption for an infill project.

The decision means that a 98-unit, mixed-use affordable housing or senior affordable housing project (depending on which the developer chooses) in Berkeley can move forward. The case illustrates the broad reach of the density bonus law for projects that fit within its requirements. Combined with the earlier ruling in *Friends of Lagoon Valley v. City of Vacaville*, (2007) 154 Cal.App.4th 807 (see *CP&DR Legal Digest*, October 2007) [], the case also demonstrates the reluctance of the courts to narrowly interpret the provisions of the density bonus statute.

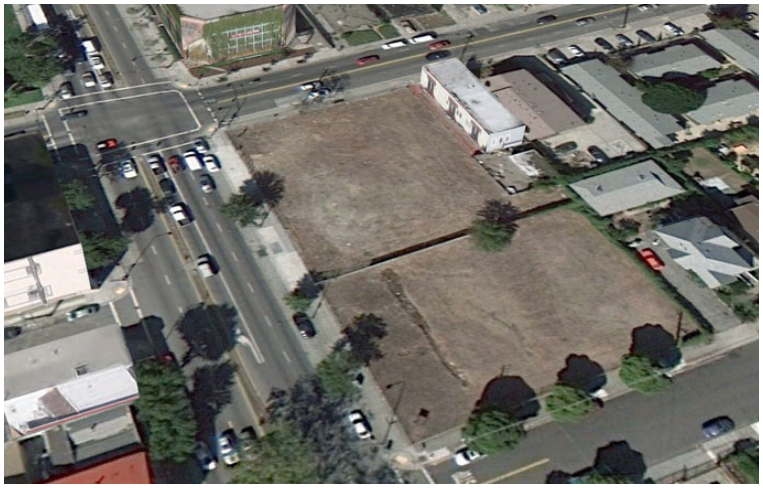
The ruling is also the first published decision upholding a city's use of the Class 32 categorical exemption from the California Environmental Quality Act (CEQA) for an urban infill project.

In 2007, the developer (RB Tech Center, Memar Properties, CityCentric Investments and Ashby Arts Associates) approached the city with two alternatives for a 0.79-acre site at San Pablo and Ashby avenues: a mixed-use affordable housing project or a senior affordable housing project. Both projects would have retail on the ground floor and 98 units of housing on the five floors above. The city reviewed both projects and determined that the developer was entitled to certain density bonuses for either project. Also, the city determined that both projects were exempt from environmental review under the Class 32 categorical infill exemption (14 Cal. Code of Regulations § 15332).

Ultimately, the city's zoning adjustments board approved a use permit allowing the developer to build either project. Berkeley resident Stephen Wollmer appealed, but the Berkeley City Council denied the appeal last year.

Wollmer sued, and Alameda County Superior Court Judge Frank Roesch found in favor of the city. Wollmer appealed.

In its decision, the First District Court of Appeal began by addressing the application of the density bonus law to the developer's projects. Wollmer raised three novel arguments: "(1) condition 68 of the use permit allowed the developers to receive Section 8 subsidies for density-bonus-qualifying units, thereby exceeding the maximum 'affordable rent' established in Health and Safety Code § 50053; (2) the city's approval of amenities should not have been considered when deciding what standards should be waived to accommodate the project; and (3) the city improperly calculated the project's density bonus." The appellate court found for the city on all issues.



© 2011 GOOGLE EARTH

Dec. 1, 2009, aerial satellite map view of the corner of San Pablo and Ashby avenues in Berkeley, California, site of a proposed 98-unit, mixed-use affordable housing or senior affordable housing project.

Section 8 Subsidies and the Density Bonus Law

The crux of the project opponent's first argument was that the total amount of rent that the developer would receive from very low-income tenants qualifying for Section 8 subsidies would exceed "affordable rent," and, therefore, the project could not qualify for a density bonus.

Government Code § 65915 requires that "[r]ents for the lower income density bonus units shall be set at an affordable rent as defined in § 50053 of the Health and Safety Code." Section 8 subsidies are provided by the federal government to cover the difference between the fair market rental value of a property and the amount that very low-income tenants can afford. Landlords who enter into Section 8 agreements receive one check from the tenant and the balance from the government.

In this case, one of the conditions of approval for the projects (condition 68) allows the rent received under Section 8 as the maximum allowable rent for the very low-income rental units. In addition to setting the cap for very low-income residents at the level permitted under Section 8, the city also granted the developer the very low-income density bonus. Wollmer argued that because Section 8 results in the developer/landlord receiving the fair market rental value, albeit not from the tenant, the rent would exceed "affordable rent" as defined in Health and Safety Code § 50053. The court disagreed.

The court found that the Health and Safety Code § 50098 defined rent as "the charges paid by the persons and families of low or moderate

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>>>> No Conflict Between Code and Density Bonus Law

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income for occupancy in a housing development." The Health and Safety Code regulations also specifically state that "affordable rent" includes "rent charged as a tenant contribution under the provisions of Section 8" (25 Cal. Code of Regulations § 6922, subdivision (d)). Therefore, according to the court, rent received under Section 8 qualifies as affordable rent. The relevant inquiry is what the tenant pays, not what the landlord receives in total from the tenant and other sources.

In light of the statutes and regulations, the court held that the city lawfully granted a density bonus for very low-income units that allowed receipt of rent under the Section 8 program.

Amenities in its Density Bonus Determination

In addition to requiring density bonuses, Government Code § 65915 requires that the local agency grant waivers or reductions from development standards that would otherwise preclude the construction of a project that meets the density bonus statute criteria. In this case, the city granted waivers of height and setback requirements in order to accommodate the development envisioned by developer, which included amenities such as a courtyard and higher ceilings. Petitioners argued that these amenities should not have been included as part of the "development" in order to obtain the waiver of development standards.

According to the appellate court, the narrow interpretation urged by Wollmer was incorrect and went against the spirit of the density bonus law. The city properly included the amenities as part of the development in waiving some of its development standards.

"Had the city failed to grant the waiver and variances, such action would have had 'the effect of physically precluding the construction of a development' meeting the criteria of the density bonus law," Justice Timothy Reardon wrote for the unanimous three-judge appellate panel.

Calculation of the Project's Density Bonus

In calculating density bonuses, the local agency uses the density allowed under the zoning code, *unless* the zoning code is inconsistent with the general plan, in which case the maximum general plan density is used. In this case, the city used the zoning code to establish the density baseline.

The opponent asserted that Berkeley's zoning code is inconsistent with the general plan, and, thus, the city should have used the general plan (which has a lower density). However, the court pointed out that the general plan specifically states that the zoning code is consistent and that the more specific provisions in the zoning code govern. Therefore, the court held that the city properly calculated the density bonus.

Infill Exemption

After upholding the city's application of the density bonus law, the court addressed the opponent's CEQA argument. This also involved a novel argument concerning the interplay between the density bonus law and the CEQA infill exemption.

Wollmer contended that the infill exemption did not apply because the city waived some of the development standards, resulting in a project that is inconsistent with the general plan and zoning code. The infill exemption requires consistency. As Wollmer noted, without the waivers or reductions granted under the density bonus law, a variance would have been required for the project and the infill exemption would not have applied. For purposes of this argument, the relevant portion of the CEQA Guidelines say: "The project is consistent with the applicable general plan designations and policies and all applicable zoning designations and regulations."

The court reasoned that the development standards waived under the density bonus law were not *applicable* to the project for two reasons: 1) the density bonus law authorized the waiver, and 2) the city's code requires the city to grant density bonuses upon a proper application. Therefore, the court held that environmental review under CEQA was not required because the infill exemption applied. ■

➤ The Case:
Wollmer v. City of Berkeley, No. A128121, 2011 DJDAR 4658. Filed March 11, 2011. Ordered published March 30, 2011.

➤ The Lawyers:
For Wollmer: Stephen Wollmer in pro. per.
For the city: Laura McKinney, city attorney's office, (510) 981-6998.
For the developers: Andrew Sabey, Cox, Castle & Nicholson, (415) 392-4200.

Court Declares Tidelands Development Regulation Invalid

State Lands Commission was not properly promulgated

BY KATHERINE J. HART

A State Lands Commission policy prohibiting development seaward of the most landward historical position of the mean high tide line was an invalid underground regulation because it was not promulgated as a regulation pursuant to the Administrative Procedures Act, the Third District Court of Appeal has ruled.

Contrary to the commission's contention, its policy was not exempt from promulgation under the Administrative Procedures Act (APA) because it did not fit within the "only legally tenable interpretation of a provision of law" exemption. In fact, the court held that the policy was not the only tenable interpretation because the regulation did not account for fluctuations in high tide that fall outside of the historical range.

Establishment of the mean high tide line is crucial to beachfront property owners, because the state owns all lands between the low-water mark and the ordinary high-water mark. Those are tidelands that the State Lands Commission holds in trust for the public.

The commission's policy, wrote Justice George Nicholson, "is potentially both overinclusive, prohibiting development on land that does not now and may never belong to the state, and underinclusive, failing to prohibit development on land that may become state land in the future."

The decision could have implications for coastal development and for public beach access, but it appears unlikely that the ruling will result in a substantial loosening of development regulations.

The court's decision came in a case brought by Thomas and Nancy Bollay. They own a beachfront parcel in unincorporated Santa Barbara County near Carpinteria. Their parcel extends landward from the mean high tide line to rocks that protect a railroad right-of-way on the landward side of the parcel. The Bollays in 1999 filed an application with the county for permission to build a single-family residence on the parcel. The county in turn contacted the commission regarding whether the proposed project would encroach on state tidelands. The commission responded that the proposed project could encroach on state tidelands and, thus, objected to the project.

In 2003, the Bollays submitted a survey to the commission. The survey identified the location of the mean high tide line, which is also called the ordinary high-water mark, and the Bollays attempted to show that their house would not encroach on this mark. This mark is determined by averaging the height of the high tides over approximately 19 years. The commission rejected the survey on the grounds the mean high tide had changed over the years, and cited surveys conducted in 1956 and 1964 as evidence that the entire beach seaward of the railroad right-of-way was seaward of the mean high tide line.

> "[The commission's policy] is potentially both overinclusive, prohibiting development on land that does not now and may never belong to the state, and underinclusive, failing to prohibit development on land that may become state land in the future."
>
> – JUSTICE **GEORGE NICHOLSON**, WRITING FOR THE COURT

In 2004, the county commenced an investigation into whether it should condemn the Bollays' parcel and seven others along the beach for public purposes. For the county to proceed, the State Lands Commission would have to establish the mean high tide line on the beach. However, the commission did not determine the existing mean high tide line. Instead, the commission issued a report that referred only to the 1964 survey, and which concluded that "it seems unlikely that any of the parcels could be developed in a manner that complied with Coastal Act policies or that conformed to the State Lands Commission's policy *that new development be sited landward of the most landward location of the mean high tide line*." (The italicized language is the policy that the Bollays challenged as an underground regulation.)

The Bollays first challenged the policy before the Office of Administrative Law (OAL). The OAL determined the policy was a regulation, but did not agree with the Bollays that the regulation was illegal. The OAL determined the policy was exempt from the APA rules requiring a certain process for promulgation of regulations because, the OAL concluded, the policy was the only legally tenable interpretation of the law governing the commission's activities.

The Bollays then sued in Sacramento County Superior Court, where Judge Lloyd Connelly considered only the question of whether the exemption to the promulgation rules applied. He upheld the OAL's determination that the exemption applied. The Bollays appealed.

The unanimous three-judge panel of the Third District agreed with the commission that the policy constituted a regulation. However, the appellate court reversed both the commission's determination and the trial court's ruling as to whether an exemption to the promulgation rules applied.

"Simply put, the Lands Commission's policy is not the only legally tenable interpretation of law because it potentially 'protects' the public's interest in land that does not now and may never in the future belong to the state," Justice Nicholson wrote. "Furthermore, the current policy is potentially underinclusive as well because the mean high tide line could move further landward than it has ever been. Thus, a policy that 'protects' only land that is seaward of the most landward historical mean high tide line does not preserve the public's interest in land that may foreseeably become state tidelands."

Thus, the court ruled the Bollays were entitled to the relief sought – a judicial declaration that the commission's policy was invalid because it was not promulgated in accordance with the Administrative Procedures Act. ■

➤ The Case:
Bollay v. California Office of Administrative Law, No. C063268, 193 Cal. App. 4th 103, 2011 Cal. App. LEXIS 225, 2011 DJDAR 3253. Filed March 1, 2011.

➤ The Lawyers:
For Bollay: Bruce S. Flushman and Wendy L. Manley, Wendel, Rosen, Black & Dean, (510) 834-6600.
For the state: Christiana Tiedemann and Alice Busching Reynolds, attorney general's office, (510) 622-2100.

Yurok Tribe Seeks Control of National Park Acreage

Proposed legislation would hand over parts of Redwood National Park

BY JAMES BRASUELL

While the mission of the National Park System is to preserve natural wonders for the enjoyment of all Americans, a Native American tribe in Northern California is asking to keep a piece of Redwood National Park for itself.

One of the state's most populous Native American tribes, the Yurok, has recently issued a proposal that would include an unprecedented transfer of land in Redwood National Park to management by the tribe. The tribe hopes to build a tribal park system that would encompass the Redwood National Park land and several nearby land purchases.

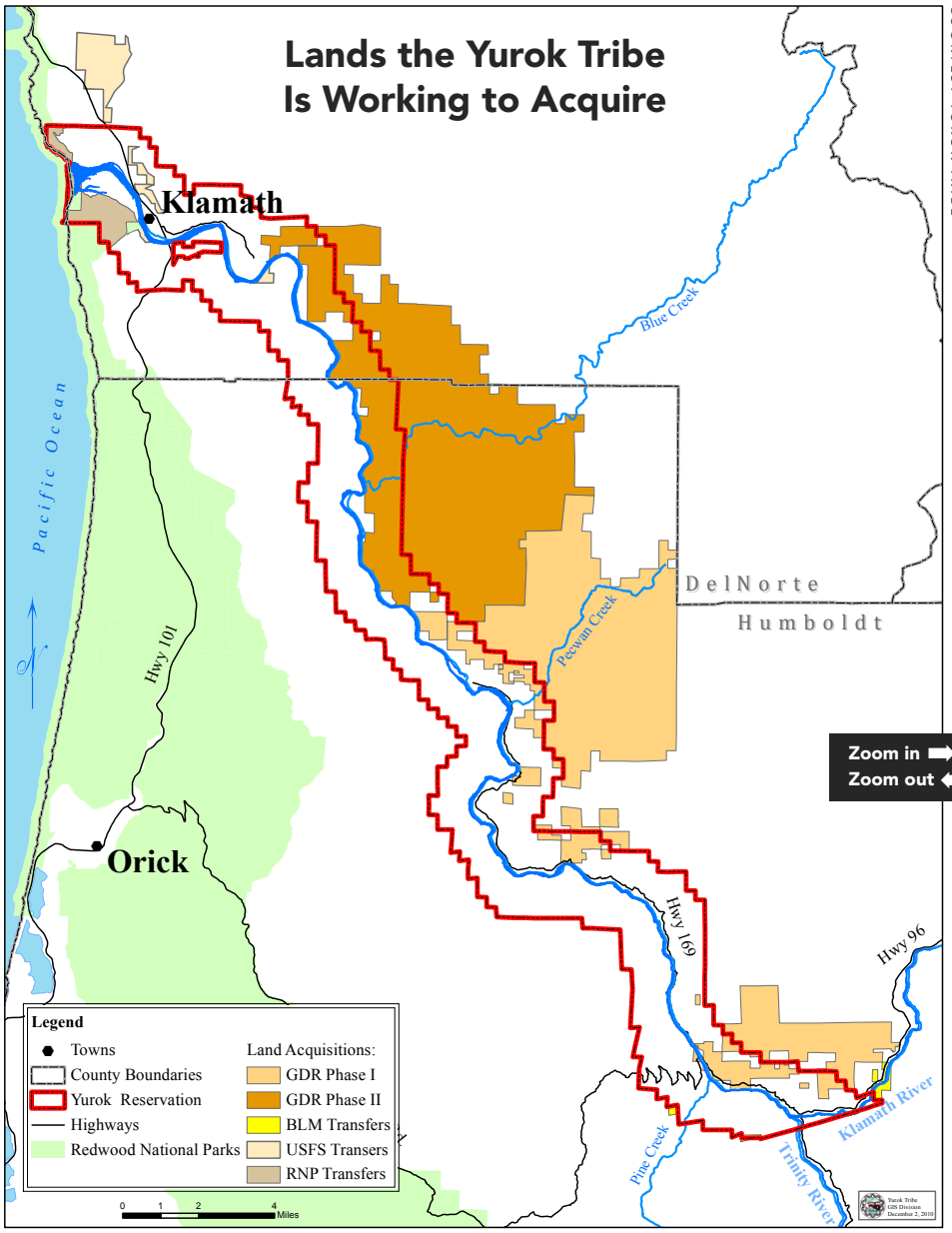
The tribe, which has set land acquisition as a centerpiece of the tribal political agenda, is seeking control of the land so that it can generate revenue and exercise sovereign rights over its ancestral territory. The problem, opponents say, is the precedent the land transfer would set for the national park system.

The tribe has drafted federal legislation that would allow the transfer of nearly 1,200 acres of Redwood National Park land in Del Norte County to the tribe's management. The tribe would package the Redwood National Park land together with 1,200 acres of Six Rivers National Forest land; Redding Rock, an offshore landmark currently under management by the Bureau of Land Management as part of the California Coastal National Monument; and some 50,000 acres currently owned by Green Diamond Resource Company. The other purchases are not a part of the draft legislation that would transfer the national park land to the tribe.

Tribal Chairman Troy Fletcher maintains that the tribe will continue to allow full public access to the Redwood National Park parcel under a co-management agreement that meets the standards of the National Park Service.

"We would call the land a tribal park, but it would remain within the boundaries of Redwood National Park, and we would manage it in a way compatible with the Redwood General Management Plan," said Fletcher.

Although the land would be transferred to the tribe, Fletcher said that it would be held in trust by the United States. The tribe, however, would create its own management plan and take over management from the National Park service. Fletcher said that the planning process would take place "in a transparent, open process, allowing public comment about the management of the park land."



COURTESY YUROK TRIBE

Opponents of the proposal, however, have already perceived a lack of transparency in the tribe's planning process for the Redwood National Park parcel. Public Employees for Environmental Responsibility (PEER), a national alliance of public employees that monitor environmental laws and standards, recently released an email from Destry Jarvis, a lobbyist employed by the tribe, addressed to the National Park Service (NPS). PEER believes that the emails exhibit back room dealing and a conflict of interest, in part because Destry Jarvis is the brother of NPS Director Jonathan Jarvis.

Jeff Ruch, the executive director of PEER, also worries that the transfer of public lands proposed by the tribe would open the door for

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>>>> Tribe Promises to Preserve NPS Land

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similar transfers around the state and the country, risking the protection of public lands and fragile ecosystems.

According to Ruch, an earlier draft of legislation proposing the transfer "was a major gift of public lands and resources for nothing in return. If you adopted a similar kind of approach to other national parks land where tribes had historic and cultural connections, you would dismantle the entire national parks, forests, and refuges systems."

Several tribes around the country have entered similar co-management arrangements for former tribal areas with the federal government , the most prominent example in California being the Timbisha Tribe in Death Valley National Park. Ruch, however, argues that the Yurok Tribe's plans require an unprecedented change of laws that govern National Park land.

The Yurok claim to understand the concerns of opponents, holding public meetings and charrettes with environmental groups and other NGOs. Tribal Chairman Fletcher suggested that the public process has improved the tribe's proposal: "People feel passionately and strongly about park land, so that issue has dominated much of the dialogue that we have had through these meetings. By identifying their interest, they have given the Yurok Tribe information about how we should draft any potential legislation."

Just as important as the precedent the actions of the tribe will set for the future, are the past precedents the tribe means to overcome.

According to Thomas Gates, an anthropologist who is a former consultant for the tribe, episodes of displacement and disenfranchisement mark the Yurok Tribe's recent history, contributing to the cause and timing for the tribe's proposal. From the 1860s until the Hoopa-Yurok Settlement Act of 1988, the tribe was forced to occupy the nearby Hoopa reservation. The Yurok narrowly missed gaining the national park land currently in question as part of the Hoopa-Yurok Settlement Act, which drew the current boundaries of the Yurok Reservation but dropped the Redwood National Park land before Congressional approval.

Moreover, the tribe has little control over most of the land that was set aside for their reservation.

According to Gates, the Yurok Reservation totals about 57,000 acres, but the tribe only owns about 15 percent of that 57,000 acres either as fee lands (which means the tribe pays taxes on the lands to the state) or land held in trust on behalf of the Yurok Tribe by the United States government. A timber company, Green Diamond Resource Company, owns 65 percent of the remaining land on the reservation. Therefore, the tribe's land acquisition plans have potential as a sustainable economic driver for the tribe.

COURTESY NATIONAL PARK SERVICE

Redwood National Park land, including coastal acreage at the mouth of the Klamath River and the Pacific Ocean, shown here, is part of acreage the Yurok Tribe seeks to acquire in Northern California.

"The Yuroks had upwards of 60 percent unemployment prior to the economic downturn," said Gates. "Here is one of the biggest employers in the region, and the Yurok want more employment in the park."

Not all groups interested in preserving national park land have spoken out to oppose the proposal. Ron Tipton, the executive director of the National Parks Conservation Association, cites the Yurok Tribe's good record of conservation, leading efforts to restore condor and salmon habitat in the North State. Tipton makes it clear, however, that before his organization will take a stand on the proposal, he wants to see the details of the co-management arrangement between the National Park Service and the tribe.

"We want to know exactly to what standards they intend to manage and what ability the National Park Service will have to be a partner in assuring that the tribal park concept articulated by the legislation is adhered to for the long term," said Tipton.

Tipton acknowledges that past examples of land transfers like this have had mixed results. But he believes that the good standing of the Yurok Tribe in the conservation community indicates that tribe has conservation-minded intentions for the national park land and can provide competent and conscientious management.

Jarvis is unequivocal about the intentions of the tribe.

"The National Park land would not change in any way, except possibly for the better, if transferred to the tribe. The tribe would have much more concentrated interest in the condition and quality of the land and the visitor experience there than the National Park Service does," adding that "The tribe does not plan to cut any trees, and they are willing to specify in the language of the legislation."

The Yurok Tribe does not currently have a timetable for the draft legislation to appear before Congress, but the tribe is continuing to hold public meetings in the North State and with members of Congress in Washington D.C. A tribal representative informed CP&DR that the draft legislation proposing the land transfer will soon appear on the tribe's website.

Rep. Mike Thompson, a Democrat from California's First Congressional District, which includes the Yurok Reservation, must introduce the draft legislation to Congress before the land transfer has a chance to become reality.

In a statement about the project, Thompson said, "The Yurok tribe has been great to work with but there remains more work to do before any legislation will be ready to be introduced." ■

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Ron Tipton, Senior Vice President of Policy, National Parks Conservation Association, (202) 223-6722

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Rep. Mike Thompsen
http://mikethompson.house.gov

>>>> One Bay Area Promotes 'Priority Development Areas'

– CONTINUED FROM PAGE 1

Clara, Contra Costa, and Alameda counties will accommodate roughly two-thirds of that growth.

Rechtsler said that the need for cities to conduct Regional Housing Needs Assessments will compel them to accept their allocated numbers. But that will not be nearly enough to make Plan Bay Area attractive to all the region's cities.

"Since (SB 375) has no enforcement teeth in it and was much more the carrot as opposed to the stick approach, the question is, are there any carrots that are going to be available to create some sort of an incentive," said Jake Mackenzie, vice mayor of Rohnert Park and MTC commissioner.

The plan relies to a great extent on Priority Development Areas (PDAs), to which the majority of new growth will be directed. PDAs will be sprinkled throughout the region's cities and, presumably, entail a range of incentives and supporting policies to facilitate development.

To make PDAs worthwhile, planners say that the region will have to abandon its current formula of allocating infrastructure funds and instead start awarding them according to merit. In essence, cities that are willing to openly embrace their PDAs and attract development to them would receive a more generous share of public funds, leaving reluctant cities to fend for themselves.

"It's clear that there are some cities that really are stepping up…those are the places that are going to need to get the lion's share of our dollars," said Stephanie Reyes policy director at the Greenbelt Alliance.

The implementation of PDAs is just one issue that is likely to dominate regionwide discussions, which begin in earnest in May with a series of public workshops.

Portraying the region's growth in such broad strokes, the IVF appears straightforward enough. It is, however, intended largely as a conversation piece around which countless discussions will revolve in the coming months and years. That's where Plan Bay Area and One Bay Area become public relations campaigns as much as they are planning documents. The challenge of getting literally millions of stakeholders on board is one that will face all four of the state's major urban regions as they all develop their own Sustainable Communities Strategies.

"But when it comes back to the county and to the local level, I still don't think that we've properly captured the attention of our colleagues, and we certainly haven't captured the public's attention," said Mackenzie.

Bay Area planners say that the buy-in necessary for the plan's success might come more easily in the Bay Area than it will in the state's other three, less geographically distinctive regions. As diverse as the nine counties are – from vineyard-laced Napa to the city-county of San Francisco – the planners behind Plan Bay Area are hoping to capitalize on the nine counties' physical and psychological connections to the bay.

"The Bay Area also rallied around other things too, building of bridges and building of BART," said Rentschler. "All this groundwork has been laid for us and asking people in the Bay Area to live in a more dense setting is actually asking someone to take advantage of these great assets that we already have here."

As diverse as the nine counties are ... planners are hoping to capitalize on the counties' physical and psychological connections to the bay.

"I think we have a chance better than others because we have the Bay to rally around. That's a great asset to have."

– **RANDY RECHTSLER**, METROPOLITAN TRANSPORATION COMMISSION

This mentality, planners say, has produced a rich tradition of regional planning that might not link, for instance, Redlands to Santa Monica or Oceanside to Poway in quite the same way.

"I think we have a chance better than others because we have the Bay to rally around," said Rentschler. "That's a great asset to have."

If Bay Area stakeholders are to disagree, a host of opportunities for dissention await.

Though SB 375 seeks the reduction of greenhouse gas emissions, many insist that it should also lead to – or at least not impede – economic growth. Scott Zengel, vice president at the business group Bay Area Council, said that, as currently articulated, the IVS fails to draw a necessary connection between population growth, housing locations, and jobs.

"Generally what we see as missing from the process – and this goes from performance targets to the Initial Vision Scenario – is in-depth economics and jobs indicators and analysis and scenario-running," said Zengel. "Jobs are an input for the model. From our perspective, it's a bit backwards from how it's supposed to be."

Planners argue, however, that job-creation simply is not a part of the planning process. In fact, they say that the plan will naturally improve the region's economic fortunes and that any attempt to guide job growth would be far-fetched at best and inappropriate at worst.

"We're not doing an activist (population) projection," said Rentschler. "On the other hand, we're doing an activist projection on where we want people to reside. That is true."

Some cities, especially small ones, may not take kindly to an effort that implicitly links them with the region's major centers, no matter how light a city's burden may be.

"Some small cities that have a RHNA number that's less than double-digits will somehow hit the roof that this is just unfair," said Rentschler. "For some folks that just want to be left alone, I don't think they're going to be so enamored of this process."

Others worry that places appropriate for residential growth today may not be appropriate in 25 years. In fact, by then some places might not even be places anymore. That's because the inexorable emergence of climate change and especially sea-level rise could make some low-lying parts of the Bay Area uninhabitable. In fact, a great deal of the developed land ringing the bay is landfill, built up scarcely higher than the current sea level.

Plan Bay Area must, they say, account for adaptation as well as mitigation.

"We're going to have to deal with the impacts of the emissions that are already in the atmosphere," said Will Travis, executive director of the Bay Conservation and Development Commission. "We need to be doing two things at once: Trying to avoid the unmanageable by reducing greenhouse gases and manage the unavoidable by adapting to the impacts of climate change."

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›››› Vision Scenario Does Not Account for Transportation

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Travis said that some of the area's most prominent areas are threatened, including downtown San Francisco. Meanwhile, Reyes of the Greenbelt Alliance said that she was concerned about the 3% of household growth that is projected for greenfields and not infill locations.

The crucial piece that the IVF intentionally does not yet account for is the transportation connections that will, planners hope, enable new and existing residents to get around and among these new population nodes without despoiling the atmosphere as much as residents currently do.

"We hope the final plan will do more to affect land use patterns, and we just haven't started to change the transportation investment and policies," said Hobson. "We have to know what those distributions are like so that we plan for the transportation scenarios to match up with those." ■

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›››› Glaeser: Less CEQA, More Skyscrapers

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gether. Glaeser conceives of cities, first and foremost, as consisting of people and connections, and secondarily, of places and buildings.

Predictable, though the comparison may be, it's true nonetheless: Glaeser is Jane Jacobs with a pocket square and, importantly, a spreadsheet. *Triumph of the City* adds crucial data and analysis to the story that Jacobs first told decades ago, when Glaeser himself was likely toddling about the parks and sidewalks of his native Manhattan. The Jacobs book that he most embraces is not *Death and Life of Great American Cities*, but rather her lesser known but equally compelling, *Economy of Cities*.

Glaeser draws on anecdotes of urban success and failure from Manhattan to Mumbai. But it is the abundance of statistical comparisons in Triumph of the City that serve as the real basis for understanding trends and correlations among variables – such as density, education, wealth, and even climate – that one might not normally associate with one another, but that he claims, bear heavily on a city's wealth and success.

Consider, for example, the following:

- In the average U.S. county with less than one person per acre, 15.8 percent of adults have college degrees. In the average county with more than two people per acre, 30.6 percent of adults have college degrees.
- Second only to January temperature, education is the most reliable predictor of urban growth, especially among older cities.
- One of his most counterintuitive observations comes early on, in the context of a lengthy discussion about housing values, incomes, and transit accessibility:
- When American cities have built new rapid-transit stops over the last thirty years, poverty rates have generally increased near those stops. This doesn't mean, however, that mass transit was making people poor. Rather, poor people value being able to get around without a car and move near the stops.

Whether the increase in poverty rates around new rapid transit stops is a temporary phase in the evolution of urban neighborhoods en route to full-scale gentrification, Glaeser does not say. If true, however, this observation upends one of the long-held assumptions in the planning profession about greater accessibility and increased property values—that one will automatically and instantly lead to the other.

Perhaps even more surprising, is Glaeser's invective against the modern environmental movement. Under the guise of "preservation," environmentalists have imposed strict controls on development in coastal regions that are inherently green by virtue of their mild year-round climate. High median home prices in places such as Santa Clara County are not the inevitable outcome of market forces, but instead, reflect a long-term disruption in new

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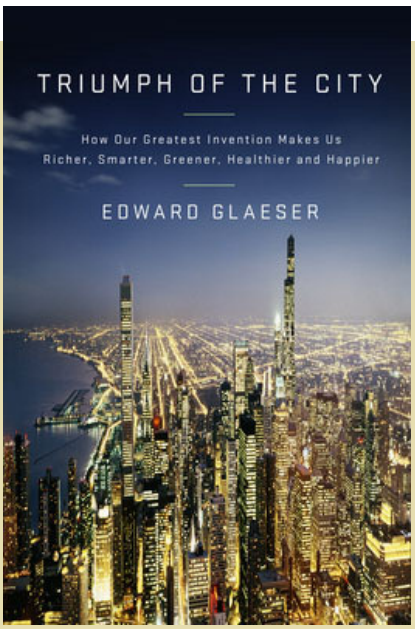
book review

Triumph of the City: How Our Greatest Invention Makes Us Richer, Smarter, Greener, Healthier and Happier

Edward Glaeser
The Penguin Press
hardcover, 352 pages
$29.95



Glaeser: Postindustrial Cities Create Human Capital

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supply. Regulatory barriers, which empower opponents of new development, have in effect shunted population growth to areas of the country with extreme weather, such as Phoenix, Las Vegas, and Houston, where the need for heating or air conditioning virtually guarantees a higher per-capita energy consumption. If the environmentalists in California were truly green, they would embrace more development in their own neighborhoods.

Glaeser saves special scorn for the California Environmental Quality Act (CEQA), pointing out that it is prejudicial against new development, since it only considers the impacts of a given project against a "no-build" alternative. This is unrealistic, Glaeser points out, because new growth pressures demand a release valve; if denied in one place, development will ultimately pop up elsewhere in a more receptive city or region. Because the natural tendency for people is to agglomerate, any policy that discourages agglomeration under the guise of "preservation" is necessarily self-defeating and an inducement to even further destruction of the environment via greenfield development.

For urban infill projects, CEQA's point of reference for assessing greenhouse gas impacts, for example, should therefore be not a "no-build" alternative, but an alternate scenario in which the same project is built in a car-dependent, less temperate environment. Such a scenario would be equally hypothetical—yet more reflective of the real world writ large.

Paris offers a cautionary tale of preservationism taken to an extreme, with the city's official building height limits making the center city unaffordable to all except the wealthy. Even the French have begun to debate whether Paris is a "*ville-musée*," or city-museum, prized for its Hausmannian architecture and cultural pleasures but lacking in dynamism or innovation. The fixation on historic preservation attracts millions of tourists each year while stymieing the city's ability to accommodate substantial new and permanent growth. As Glaeser writes, "cities aren't structures; cities are people."

For Glaeser, the ability of urban centers to grow "up" and increase densities over time is a key driver of the agglomeration economy, whereby the physical proximity of people to one another allows for the dissemination of new ideas, discovery of individual talents, creation of new industries, capital formation and wealth, which in turn supports the cultural amenities that define "quality of life." These amenities draw even more people, particularly the wealthy, creating a virtuous circle of growth and prosperity. It's worth noting that the one "amenity" that Glaeser values above all others is education.

That's why many of Glaeser's observations owe an intellectual debt to the seminal work of Jane Jacobs – but only partially. Jacobs' bid to preserve Washington Square Park and her beloved Greenwich Village from Moses' wrecking ball was ultimately successful, but in the long term, Glaeser also sees the current unaffordability of this area as a distinct part of Jacobs' legacy. Once a working-class neighborhood, Greenwich Village now boasts some of the most expensive real estate in the country. As Glaeser tells the narrative, its transformation into a wealthy enclave is directly tied to the low/mid-rise architecture of its townhouses and tenements. Without adequate new supply, prices inevitably go up.

	New York	Houston
Median family income	$70.000	$60,000
Median home price	$340,000	$160,000
Annual mortgage costs	$24,000	$9,700
Property taxes	$3,400	$4,800
State/city income taxes	$3,400	$0
Transportation costs	$5,500	$8,500
Average commute	42.1 min.	26.4 min.
Nominal income remaining	$24,500	$28,500
Real income remaining*	**$19,750**	**$31,250**

*Adjusted for differences in local prices of food and basic household goods

This may be part of the story, but Glaeser unfairly criticizes Jacobs for supposedly misunderstanding the long-term economic effect of her own preservationist stance. In fact, Jacobs did not oppose the gradual replacement of older buildings with newer ones; she simply favored retaining some older buildings as part of a neighborhood's real estate inventory because their more affordable rents provide incubator space for small businesses and entrepreneurs.

Jacobs' fondness for old buildings is supported by a rationale far more nuanced than the mentality of civic leaders in Paris, many of whom oppose even the slightest alteration to the scale and aesthetic of the historic urban core.

Toward the end of the book, the personal stakes of Glaeser's interest in the issue of affordability become clearer as he grapples with his own ambivalence as an urban economist who has decamped to the suburbs in search of cheaper housing and better schools than the nearby cities of Boston or Cambridge can provide. Instead of disparaging McMansionites, urban planners should understand that, for most middle-income families, the allure of suburbia is grounded in rational economic decisions. Compared to urban living, it simply offers more bang for the buck.

Glaeser does the math for a family located in Queens, New York versus Houston. (See chart at left.)

Such are the raw economics. On the subject of amenities, Glaeser is somewhere along the continuum between Richard Florida and Joel Kotkin. Cities should not tailor their policies to the so-called "creative class," nor should they ignore the important role of amenities in attracting and retaining talent. In fact, if a city has a high median income relative to local housing prices, it indicates that additional pay is needed to draw qualified labor. This is a sign of urban failure rather than success. In cities with a high quality of life, workers will, by contrast, accept lower salaries because the desirability of the location is itself a form of compensation.

To level the playing field and make cities more competitive, Glaeser's policy prescriptions are an amalgam of both left and right: streamline the existing environmental review process with a flat mitigation fee on new development; eliminate city income taxes; impose congestion charging fees on urban drivers as is done in Singapore and London; end the quasi-monopoly of the public school system through vouchers.

Ultimately, many of Glaeser's policy prescriptions hew towards the free market. And why shouldn't they? Glaeser argues convincingly that over 4,000 years cities – or, rather, the people who constitute their life force – have performed best when they welcome new arrivals and embrace transformation, rather than regulating new growth out of existence or clinging to failed policies of the past. And that's what makes Glaeser's contribution to the discourse on cities so valuable. He takes great pains not to come off as a heartless free-market economist, instead celebrating the artistry, poetry, humanity and, yes, freedom that constitute the true triumph of the city. ■

Rancho Cordova to Suspend, Not Eliminate, Planning Commission

Lately, any murmurs of eliminating public agencies [ ] make people understandably jumpy. Wouldn't it be nice if not all land use institutions come crashing down all at once? So it's no wonder that the possible axing of the City of Rancho Cordova's Planning Commission has raised concerns.

In fact, the proposed "elimination," on which the City Council is soon expected to vote, is not even an elimination in the permanent sense. It would, according to both commissioners and city officials, be a temporary disbanding in response to a painfully slow real estate market. It is, city officials insist, a move for streamlining the decision-making process and not necessarily a blow to democracy and planning expertise.

"The general feeling was efficiency," said City Manager Ted Gaebler. He noted that state law requires that "a city will have a planning function; it does not necessarily have a planning commission."

There was a time not long ago, in the short history of Rancho Cordova, that the Planning Commission was vitally necessary. Sitting roughly in Sacramento's lap, Rancho Cordova famously remained unincorporated as boom and bust at neighboring aerospace firms strained the area and its workforce. Since incorporating in 2002, it has grown to 62,000 residents, booming alongside the capital's other hypertrophic suburbs.

The recession, however, has been particularly unkind to Rancho Cordova.

There was a time not long ago, ... that the Planning Commission was vitally necessary. ... The recession, however has been particularly unkind to Rancho Cordova.

Although up to 34,000 units remain in the development pipeline, a scant number of them are expected to go forward in the foreseeable future. At the same time, Gaebler said that the City Council's docket is fairly light, thus freeing up council members to focus on development at the same level of detail that the Planning Commission would have. Ray Savorn, current chair of the Planning Commission, added that in a city defined by growth, many council members are well versed in land use.

"The City Council is not really bogged down as it used to be," said Savorn. "They can take this on their plate at this time and handle it judiciously."

Gaebler said that the move is not necessarily intended to spur economic development. Though developers might perceive the process as being easier, and friendlier to development, with the elimination of a step in the approvals process, he insisted that the City Council would not necessarily address projects any differently than the Planning Commission would have.

Gaebler said that the City Council would not want to shoulder this burden permanently.

"I think they anticipate, if and when we get out of this downturn, that the workload for the Planning Commission, and therefore the council, would pick up," said Gaebler. "They would reconsider reconstituting the planning Commission."

The city ordinance suspending the Planning Commission is expected to include a clause stating that the City Council can reconstitute it without passing a brand-new ordinance.

While the planning commission is on hiatus, residents of Rancho Cordova can ponder what sort of democracy they want to have. Planning Commissions, in their own small way, offer an object lesson in the merits of expertise versus those of direct democracy. Acting as an advisor to the City Council, a planning commission draws elected officials that much further away from the decisions they make. (In the case of the City of Los Angeles, the Planning Commission sits above Area Planning Commissions, thus adding yet another step to the process.)

Do residents trust appointed "experts" to decide on the merits of development proposals, or would they prefer that their elected officials make accountable, transparent decisions? It's likely that not enough dirt is going to move in Rancho Cordova for its residents to answer that question. But it's one that everyone should ask, recession or no.

Even as it goes on extended hiatus, Savorn insists that the expertise will not disappear.

"I would like to think that…all of us would be more than willing to step and be another set of eyes" if the City Council needed advice, said Savorn. "I think it would still serve a purpose for us to be an ad hoc planning commission."

– JOSH STEPHENS | APRIL 9, 2011

ULI Issues Thin-Skinned Response to Criticism

As a journalist, I regularly say some strong things about buildings and urban planning, although not without the anxious feeling deep inside that my big mouth will someday get me into trouble. And, as it turns out, not entirely without reason: sometimes, I can lose work because of my opinions. Wherein hangs the tale.

The Los Angeles Chapter of Urban Land Institute – how shall I put it? – un-hired me as a documentation writer. I, among other writers, had been approached by the institute to provide written documentation of the two institute's continuing education seminars. After vetting and hawing and hemming, I was selected for the writerly task. The fee probably wasn't going to be a fortune, but it was a paycheck for a self-employed person during the slowest economic recovery in anyone's memory, and it would have helped.

Now, in this blog and other places, I have written critically [ ] – very critically, but not uncivilly – about the some of the dubious qualities of LA Live as an example of urban design. I argued that this sports, entertainment and hotel cluster, which fills about 20 acres, essentially makes the southern end of downtown into a private enclave. And as I have written here and elsewhere, the whole $4 billion package is essentially a mousetrap to capture tourists, who may be tempted to stay and spend their money in this Vegas-sized extravaganza, without having ever ventured into the city proper, and then go home and tell the folks they've "seen L.A." I think it's a bad project, and a co-option of decades of planning by big money.

Then the phone rang a few days ago. On the other end was an executive with the Los Angeles Council of ULI. The person was very courteous, and wanted to speak to me personally.

The person told me, very civilly, that I could no longer serve as a writer-for-hire for Urban Land, because, and this is verbatim, "we can't use writers who have opinions." Opinions, that is, on a multi-billion-dollar project in downtown Los Angeles, the developer of which, Anschutz Entertainment Group (AEG), looms above other Los Angeles developers like a turkey buzzard among pigeons. (I could have chosen a more flattering metaphor, such as "like an eagle soaring above the meadowlarks," but I'm feeling piqued.)

Anyway, I politely pointed out to my caller that Urban Land Institute itself had recently given LA Live an award. Couldn't an award be viewed as opinionary? "It was recognized for certain qualities," hedged the caller, who seemed uncomfortable. "No, it was given an award for excellence," I replied, "which is why I wrote that blog criticizing ULI's decision." The caller acknowledged that he/she/it had private opinions about LA Live, but in the official capacity as a Person Without Opinions, kept personal feelings close to the vest. As for my doing any work at ULI, well, I could always volunteer to work on committees. In a gracious *l'envoi*, the caller told me to "keep holding our feet to the fire."

Now, I understand that Urban Land Institute does not owe me a job. And I also understand the potential embarrassment ULI officials would suffer should an irate official with Anschutz Entertainment Group, the developer of LA Live, express displeasure that I was feeding at their trough, so to speak. On the other hand, unhiring me could be interpreted as censorship. How? Imagine, if you will, if I had written a highly flattering, sickeningly effusive review of LA Live? Would that overt expression of opinion have cost me paying work with a non-profit trade group. (Long silence for dramatic effect.) No, I don't think so, either.

The Ritz-Carlton and Marriott hotels tower over the L.A. Live entertainment, sports and residential complex in downtown L.A. near the Staples Center.

I was punished for having a particular type of opinion about a highly conspicuous project, the developer of which enjoys a favorite-son status in the otherwise stagnant pool that was formerly the development industry in Los Angeles. And that's the burn. Urban Land Institute, you are a valuable organization that does fine work in advisory city planning in Los Angeles and the rest of the country. If you smell something burning, however, it could be your feet. May I advise you, very tactfully, to keep them out of your mouth.

Editor's note: *Naturally, Morris Newman's opinions are his own and do not necessarily reflect those of CP&DR or its editors.*

– MORRIS NEWMAN | APRIL 16, 2011