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CALIFORNIA PLANNING & DEVELOPMENT REPORT

Nevada Threatens Secession from Tahoe Compact

Pending law would force Tahoe Regional Planning Agency to produce regional plan update

BY JOSH STEPHENS

Last week, the Nevada Legislature – usually not an entity with much to say on California land use – issued a decision that would make King Solomon blush.

After 31 years as a supposedly equal party in the Bi-State Compact governing the Lake Tahoe basin, Nevada has taken its first steps towards pulling out of the Tahoe Regional Planning Agency and thereby negating the agreement under which the two states have governed and managed Lake Tahoe and the surrounding basin.

The original version of Nevada's Senate Bill 271, sponsored by Sen. John Jay Lee of the Las Vegas area, called for Nevada to essentially abrogate the compact upon signing by Gov. Brian Sandoval. The version that passed at 1 a.m. on June 8, the state's legislative deadline, instead outlines Nevada's demands on TRPA – a change in the governing structure and passage of its long-overdue regional plan update. If those demands are not met, then the state could initiate withdrawal two legislative sessions from now, in 2015. (Lee did not respond to requests for comment.)

Many in the environmental community in both California and Nevada fear that the bill – which Sandoval is expected to sign – undermines environmental protections and will lead to development. Even the mellowed version that was passed, they say, holds TRPA hostage to Nevada's interests while denying the unavoidable conflict that arises when two sovereigns share a single resource. (Many lament that the Tahoe area was not designated as a national park long before development crept in.)

"What was recognized when the TRPA was created is that it's just not feasible to deal with each side of the lake," said Schladow. "What happens in California has an impact on Nevada and vice-versa."

SB 271 makes two major demands to avert Nevada's secession from the compact. It first requires that TRPA pass a long-overdue update to its regional plan. It also would profoundly change the agency's governance by altering the voting structure among its 14 board members.

Currently, to adopt, amend, or repeal environmental threshold carrying capacities, the regional plan, or ordinances requires a supermajority of nine votes, with at least four yeas coming from the state in which a plan or project is located. SB 271 requires TRPA to abandon the latter provision

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insight

WILLIAM FULTON

Stalemate Over Federal Transportation Funding Leaves California in Limbo

Transportation is The Big Carrot in federal planning and development policy – the funding source that determines not only how much money there is for transportation, but also which projects will be funded and, by extension, what types of growth patterns will prevail.

Recently, however, The Big Carrot has been getting smaller – and that's caused a stalemate in Washington. Some movement is occurring on a new transportation bill now, but it's hard to say whether it will move in the direction of supporting urban development California-style or revert to the highway-oriented patterns of Red State America.

The most recent six-year transportation funding bill, known as "SAFETEA-LU," expired in 2009 and Congress has not yet passed a new bill. In the meantime, the federal gas tax revenues have been in such decline – thanks to both a weak economy and better fuel economy – that it no longer pays the bills for the federal transportation program. Congress has kept the program going by borrowing from the general fund –

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inside

THE CALIFORNIA REDEVELOPMENT ASSOCIATION announced last week that it had learned of another proposal to eliminate redevelopment, in addition to the one proposed by Gov. Jerry Brown as a way of alleviating the state's deficit. According to CRA officials, a two-bill strategy has been proposed by legislative staff. The bills would eliminate redevelopment agencies, then exempt agencies from elimination if they make payments to local schools. However, no bill has been introduced and no language is available. The first bill would, reportedly, mirror the governor's proposal and eliminate redevelopment agencies as of a specific date, most likely prior to the end of 2011. The companion bill would exempt any redevelopment agency from elimination if they make specified payments to schools. Redevelopment agencies that make payments will pay a large amount the first year and an ongoing amount every year thereafter. CRA opposes these bills on the same grounds on which they oppose the governor's proposal: that they violate Proposition 22.

THE JUNE 7 ELECTION DAY was a quiet one for land use in California. Voters in the City of San Juan Capistrano affirmed a previous City Council vote to approve a small, mixed use development. Distrito La Novia will include 90 single-family homes, and 130 apartments and condominiums, plus 82,000 square feet of retail space. Concerned, in part, about estimates that the development would generate over 2,000 daily car trips, a group of citizens collected signatures to put the referendum on the ballot. Voters upheld the council's decision by approving Measure B, 3,327-2,704. In a rare win for Walmart, voters in the Riverside County city of Menifee gave their blessing to a proposed Supercenter. Measure C passed, 7,834-2,363. The Walmart will be included in a shopping center totaling more than 200,000 square feet.

AFTER 15 YEARS OF PLANNING, the Board of Supervisors of the City and County of San Francisco has unanimously approved the plan for a monumental mixed use development on Treasure Island, in the middle of the San Francisco Bay. While environmental groups, including the Sierra Club, brought up concerns regarding the environmental impact and traffic problems, the board set aside those claims in an 11-0 vote. The $1.5 billion plan will house 19,000 residents in the new neighborhood, with plans for high rises and large swaths of open space. Over the next 20-30 years, the developers hope to turn the aging former Navy Base into a state-of-the-art district with both affordable housing and market rate homes designed to save water and energy. Although the Board of Supervisors had a unanimous vote, the San Francisco Planning Commission, only narrowly, approved the plan because a few commissioners were concerned about the last-minute cut of some affordable housing units and the added impact of cars on the Bay Bridge. Master developer Lennar hopes to break ground as early as 2012.

DESPITE A SCARE EARLIER THIS YEAR, a ruling from the Superior Court judge of San Francisco allows the majority of implementation proposed in the 2006 Global Warming Solutions act to advance, with the exception of the carbon trading plan. Regulators at ARB will be working to figure out alternatives to the cap and trade plan in order to fill the CEQA requirement. ARB spokesman, Stanley Young, said in a written statement that, "We are pleased that the court's decision enables ARB to continue moving forward on implementation of a range of AB 32 measures to reduce greenhouse gas emissions, drive innovation, improve energy security, and steer California to a clean energy economy." Until ARB is in full compliance with CEQA, the ruling prohibits the board from "engaging in any cap and trade-related project activity that could result in an adverse change to the physical environment." ARB disagrees with the court in the conclusion that their analysis of alternatives for cap and trade were insufficient.

THE OBAMA ADMINISTRATION recently proposed a commission to help shed some of its 14,000 surplus properties nationwide, including over 1,150 in California alone. While the plan is not new, as Obama previously included the surplus property commission in his 2012 budget plan, officials provided specific legislative language for the first time early May. These properties vary from empty lots and warehouses to unused roads. The majority of these places have no, or little, market value. The proposed commission still needs approval from the Congress.

SEN. DIANNE FEINSTEIN has introduced federal legislation that would restrict the Lytton band of the Pomo Indians from expanding its San Pablo casino. While the Lytton Gaming Oversight Act permits the tribe to operate its bingo-style machines, it is seeking to expand its building and offer certain other forms of gambling. Feinstein's bill, S.872, would require a lengthy federal and state approval process in order for the casino to expand. Feinstein said that her intent is to prevent the development of a large, Nevada-style casino. Other nearby bands of the Pomo tribe have been unsuccessful in their efforts for approval of building more Las Vegas style casinos. The Lytton band opposes the legislation. The band's spokesman, Doug Elmets, says this legislation will not only put the tribe at an economic disadvantage, but also hurt the surrounding area of San Pablo, which heavily depends on the employment and revenue the casino provides.

THE CALIFORNIA DESERT PROTECTION ACT would become a great deal more expansive under legislation recently reintroduced by Democratic Sen. Dianne Feinstein. The bill would preserve about 1.6 million acres of federal public land, create two new National Monuments, expand Joshua Tree, the Death Valley National Park, and Mojave National Preserve. A version of the bill failed last year because of disputes over its treatment of lands that could be used for the generation of renewable energy. This year's version leaves the governance of renewable energy to the Department of the Interior, which has proposed to set aside 350,000 acres in the Mojave Desert as a solar study area. Meanwhile, Rep. Kevin McCarthy (R-Bakersfield) has reintroduced the Wilderness and Roadless Area Release Act, which would roll back protections on 60 million federal acres, nationwide, and release all wilderness study areas to multiple use. McCarthy's bill also attempts to release all wilderness study areas for multiple uses and also prevents future administration from protecting new wilderness.

FEDERAL OFFICIALS HAVE quashed calls for the California High-Speed Rail Authority's to reconsider the starting point for the construction of the state's high speed rail system. The current plan, which calls for a short segment to be built in the Fresno area, has been

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derided as a "train to nowhere." The authority, however, will proceed with the plan as proposed and on-schedule if it is to receive $3.1 billion in promised federal funds by a 2012 deadline. The state Senate's Select Committee on High-Speed Rail had directed the authority to inquire about changing the federal funding requirements following the release of a scathing report from the state's Legislative Analysts Office. That report contends that the authority's "governance structure for the project is inadequate for the imminent development and construction stages" and recommended that control of the authority be handed over to the California Department of Transportation. The LAO also recommended that the authority seek more flexibility in using federal funds and that it consider a different location for the system's first segment. Officials from the Federal Department of Transportation have said that the terms of the federal contribution are non-negotiable and must conform to the stipulations of the American Recovery and Reinvestment Act and that the federal funds were designated for the Central Valley segment after extensive study.

A PROPOSED Sacramento County ballot measure for the 2012 election would levy an additional tenth of a percent sales tax to generate $8.5 million each year in park funds. That figure is roughly triple the $3 million that the system currently receives – half of what it received a decade ago. The influx of funds would support and be concurrent with the creation of a regional park district – to be overseen by an elected board of directors – that would manage the 30-plus county-run parks. The ballot measure is inspired by a successful program in the East Bay counties of Alameda and Contra Costa. Part of the aim of the ballot measure – floated by Save the American River Association – is to relieve the burdens placed on the American River Parkway, which receives the bulk of annual park visitors. The association is working with county officials in hopes of garnering their support; the latter seem to be warm to the idea in principal. A poll of county residents suggests they'd be on board too: 72% of surveyed residents said they would be in favor of an even higher, 0.125% sales tax increase for the parks.

A WIDELY SUPPORTED PLAN to redesign a stretch of California Avenue in Palo Alto has hit a road block: a CEQA lawsuit. The two plaintiffs charge that city's determination that the project would have negligible impacts is invalid. The plaintiffs, one of whom is a merchant on California Ave., also contend that the loss of some parking spaces is not being properly mitigated. But shifting emphasis away from automobiles along these blocks is a feature, not a glitch. The project's main goal is to implement traffic calming measures – including converting the street from four travel lanes to two and adding street furniture – in order to enhance quality of life for pedestrians and transit riders on the street. Palo Alto residents appear to support that vision "overwhelmingly," based on the comments given at public hearings on the proposal. Prior to filing the lawsuit, the objecting residents attempted unsuccessfully to convince the Metropolitan Transportation Commission not to allocate $1.7 million in funding for the project.

FARMERS, RANCHERS and property owners are wary of a new policy adopted by the Ventura County Board of Supervisors that establishes new environmental standards for "locally important" flora and fauna. The change, approved by a 3-2 vote, takes the form of an amendment to the county's "Initial Assessment Study Guidelines." The new "Biological Resources Segment" therein is intended to guide local planners in their decision about what kind of environmental review is required of a landowner for various types of land uses. Specifically, it requires Ventura County landowners to consider the effects that developments could have on "locally import species," i.e. those that don't necessarily show up on California of U.S. endangered species lists, but are threatened within county borders. The Ventura County Coalition of Labor, Agriculture and Business lead the charge against the new guidelines, contending that they were yet another onerous set of regulations that would impose stricter controls than in neighboring counties. The coalition had proposed a competing regulation based on a tweaking of existing laws, but it did not ultimately gain traction with county supervisors.

MORE DEVELOPMENT could be coming to Marina del Rey, an unincorporated maritime community surrounded by the City of Los Angeles, now that County Supervisors have given the green light to a series of projects that could add senior citizen housing, apartments and new boating facilities. Citizens concerned about the new developments – and the potential increase in traffic – were particularly cold on a proposed 19-story Woodfin Suites hotel. That prompted the developers to come back with a counter-proposal featuring two buildings around 70 feet tall. County Supervisors deferred action on that proposal, sending it back to the Regional Planning Commission for further study. At a recent hearing, community members expressed indignation about the suite of zoning changes that paved the way for these new developments. In particular, one parking lot that had been set aside as open space was rezoned to accommodate over 500 apartments. Representatives of State Assemblymember Betsy Butler and the adjacent L.A. City Councilman have also stepped forward to air their concerns. In the meantime, a community group called We Are Marina del Rey is considering a lawsuit to stop the plans from going forward.

THE CALIFORNIA HIGH-SPEED RAIL AUTHORITY has decided to revive consideration of a route between Bakersfield and Los Angeles that would travel through the Grapevine stretch of I-5. The move is considered somewhat of a surprise, given that the route had been ruled out several years for geological reasons in favor of one that would jog inland through the Antelope Valley before heading south into the L.A. Basin. Planners say that they now have better data about seismic issues and that the I-5 corridor could save billions on construction and minutes off train trips because it's more direct. The Authority has set aside $700,000 to study this option. This decision has raised the ire of Antelope Valley communities who would be bypassed by such a route and would thus lose the economic benefits of an HSR connection to the state's economic hubs. The city attorney for Palmdale has sent the Authority a letter arguing that Grapevine route could run afoul of federal funding requirements outlined in the ARRA stimulus and of the state's Proposition 1A bond measure, which specifically mentions the Antelope Valley as part of the route. If the Authority pushes on with the Grapevine study, Palmdale officials say that they might pursue legal recourse to stop it. ■

Court Is Stoked on Storm Water Treatment Facility Near Malibu's Surfrider Beach

EIR suggests that retention basin will improve water quality of famed surf beach

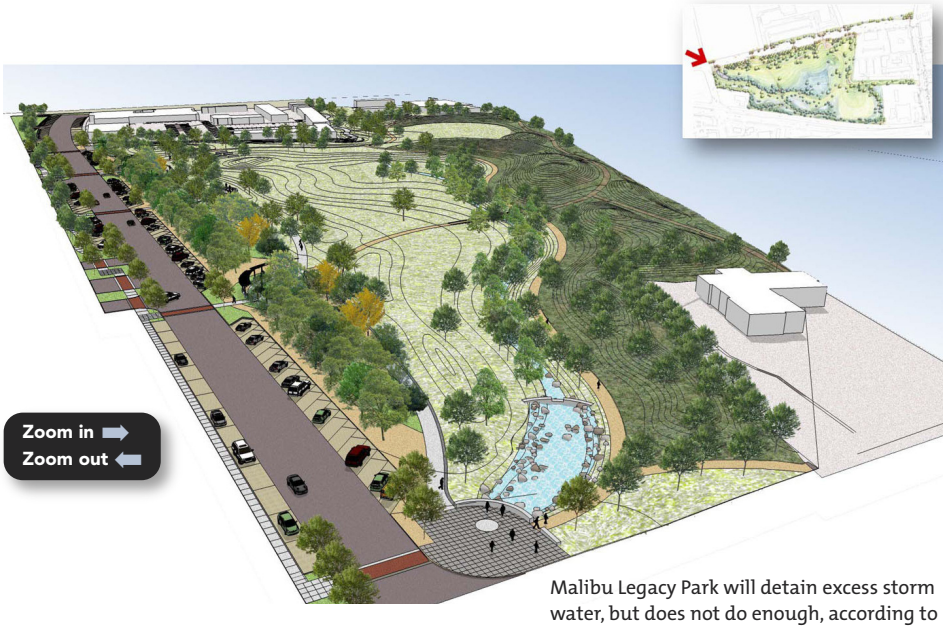
BY LESLIE Z. WALKER

How much can one park do? That is the implicit question that environmental advocacy group Santa Monica Baykeeper posed regarding a combination passive recreation area and storm water retention facility planned in the City of Malibu. Sited near the iconic Surfrider Beach, the 15-acre Legacy Park would include a detention basin designed to capture three days' worth of storm water before diverting it to a treatment plant. Despite the city's hope that Legacy Park would be "the centerpiece of (its) commitment to water quality and the environment," Baykeeper has said that the park will not do enough to keep bacteria and other effluent out of the notoriously polluted area and filed suit under the California Environmental Quality Act.

In April, the Second District Court of Appeal disagreed.

Baykeeper initially challenged the project alleging the EIR failed to analyze 1) construction-related project impacts; 2) the impact of using treated effluent from the adjacent Malibu Lumberyard; and 3) the cumulative groundwater impacts. In 2009 Baykeeper had filed suit to halt construction of the park, but in December 2009 a Los Angeles County Superior Court found in favor of the city, and then, in July 2010, a three-judge panel denied Baykeeper's request to halt the project while it filed its appeal. At that point, the park's construction was well underway; the park was, in fact, completed in October 2010, and yet Baykeeper forged ahead with its suit.

On appeal, the city argued the case was moot because the project construction was completed during the pendency of the appeal.



Malibu Legacy Park will detain excess storm water, but does not do enough, according to Santa Monica Baykeeper.

The Court of Appeal found that the case was in fact moot as to the first issue of construction-related impacts. But it disagreed on the second and third issues. The appellate court upheld the trial court's denial of the writ with respect to the second and third issues, finding that Baykeeper failed to demonstrate the city had abused its discretion by approving the project.

LEGACY PARK PROJECT AND ADMINISTRATIVE PROCESS

Legacy Park was designed to reduce pollution impacts and improve water quality in Malibu Creek, Malibu Lagoon, and Surfrider Beach, all impaired water bodies under the Clean Water Act.

The project, as originally proposed, included: 1) stormwater detention and treatment; 2) habitat restoration; 3) a public park and 4) wastewater treatment. The purpose of the project was to provide an integrated plan for the city's Civic Center area that would protect the water quality at nearby beaches and lagoons from nitrogen runoff and pathogenic degradation and provide opportunities for restoration of native/sensitive habitats and public recreation. The project site is located at the terminus of the Malibu Creek watershed where Malibu Creek drains into Malibu Lagoon.

A draft EIR for the project was prepared and circulated. After the DEIR was circulated, the city eliminated the wastewater treatment portion of the project because draft studies demonstrated the percolation capacity of the project site was insufficient. Insisting that the treatment plant be salvaged, Baykeeper appealed the project, but was rebuffed by the City Council. Baykeeper thereafter sought a petition for writ of mandate.

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CONSTRUCTION-RELATED PROJECT IMPACTS

Baykeeper argued the EIR's analysis of construction impacts on hydrology and water quality from erosion, sedimentation, and potential release of hazardous materials was deficient because it failed to determine the level of significance. The city argued that the issue was moot because by then construction had already been completed. The appellate court agreed, distinguishing the case from *Woodward Park Homeowners Association v. Garreks, Inc*. (2000) 77 Cal.App.4th 880 (see *CP&DR Legal Digest* March 2000 [ ]) where the court ordered the preparation of an EIR for a car wash, even though the construction of the car wash was completed during the pendency of the action.

The *Woodward* court based its decision on the fact that the ruling could still have a practical impact: for example, the project could be modified, torn down, or eliminated. (Id. at p. 888.) The Baykeeper court noted that in *Woodward*, the petitioners had attempted to avoid CEQA review all together, whereas the EIR at issue in Baykeeper included extensive mitigation measures to address construction phase impacts. The court went on to explain that Baykeeper failed to maintain the status quo by seeking an injunction or stay, citing to *Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th 1559, where the court blamed plaintiffs for the claims being moot because plaintiff had failed to seek a stay or other preliminary relief pending the outcome of the case.

LUMBER YARD WASTEWATER

The Legacy Park project proposes to use the treated wastewater produced by the separate Lumber Yard Project, in combination with treated stormwater, to irrigate Legacy Park. For two months out of the year, excess effluent from the Lumber Yard will be percolated to groundwater. The draft EIR initially proposed that treated stormwater would be reused to the extent possible for irrigation and or dispersal via underground perforated piping. The draft therefore identified groundwater mounding hazards because the depth of the groundwater within the project area was shallow (mounding is the disruption of the groundwater flow caused by shallow re-injection or other surface recharge method). The draft EIR concluded the impact was significant, but after the mitigation calling for a hydrologic assessment, it would be less than significant. The subsurface dispersal was eliminated from the final EIR, as was the discussion of the hydrologic assessment. The EIR instead states that there will be no seepage into groundwater. Baykeeper argued that neither the draft nor final EIR discussed the fact that the effluent from the Lumber Yard project would be discharged on the site and cause mounding, and that the EIR improperly relied on a future study to mitigate groundwater mounding.

The city argued that the only impact on groundwater at the Legacy Park would be from the previously approved Lumber Yard, which was approved in 2007. Further, the project would virtually eliminate the existing subsurface discharge of treated wastewater from the Lumber Yard because it would use it for irrigation.

The Court found the EIR adequately addressed the use of the Lumber Yard treated wastewater because the dispersal was subject of prior environmental review that was not challenged and thus a challenge is time-barred. The court found the EIR discussed the scientific studies conducted for the Lumber Yard project and, based on those studies, concluded the portion of treated wastewater not used for irrigation is within the percolation capacity of the site. Importantly, the court noted that Baykeeper does not cite scientific evidence in the administrative record to contradict the studies. Finally, the record supported the conclusion that no treated stormwater collected pursuant to the project would be discharged onto the Legacy cite.

The EIR establishes that any groundwater mounding which occurs on the Legacy Park site will result from treated wastewater from the separate Lumber Yard project, not from the Legacy Park project itself.

CUMULATIVE GROUNDWATER IMPACTS

Baykeeper claims that the chapter on cumulative impacts failed to analyze the Lumber Yard. The city responded that the Legacy Park does not discharge anything into the groundwater, and therefore makes no contribution to cumulative groundwater impact. The court agreed with the city. Writing for the court, Presiding Justice Norman L. Epstein wrote, "the net effect of the Legacy Park project will be to improve, rather than harm the environment."

CONCLUSION

This case is one of a number of cases in recent years emphasizing Petitioner's duty to point to evidence contradicting the substantial evidence put forth by agencies, a trend giving some hope to developers and public agencies defending their CEQA decisions. (See also *Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 912; *California Native Plan Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603.) ■

➤ The Case:
Santa Monica Baykeeper v. City of Malibu (2011) 193 Cal.App.4th 1538.

➤ The Lawyers:
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For the City of Malibu, Jenkins & Hogin, Christi Hogin and Gregg Kovacevich

Legacy Park official website: **www.malibulegacy.org**

Proposed 'New City' Banks on Resurrection of Salton Sea

Travertine Point would bring 35,000 residents to shores of ailing saline lake

BY JOSH STEPHENS

With a surface level at 227 feet below sea level and shoreline temperatures often rising past 120 degrees, the Salton Sea could be mistaken for the headwaters of the River Styx. Sometimes, concentrations of salt in the brackish lake, formed by a not-quite-natural overflow of the nearby Colorado River a century ago, asphyxiate resident tilapia fish by the thousands. Currently California's largest lake – larger, even, than Tahoe – the Salton Sea itself may soon dry up, leaving a dust-filled crater.

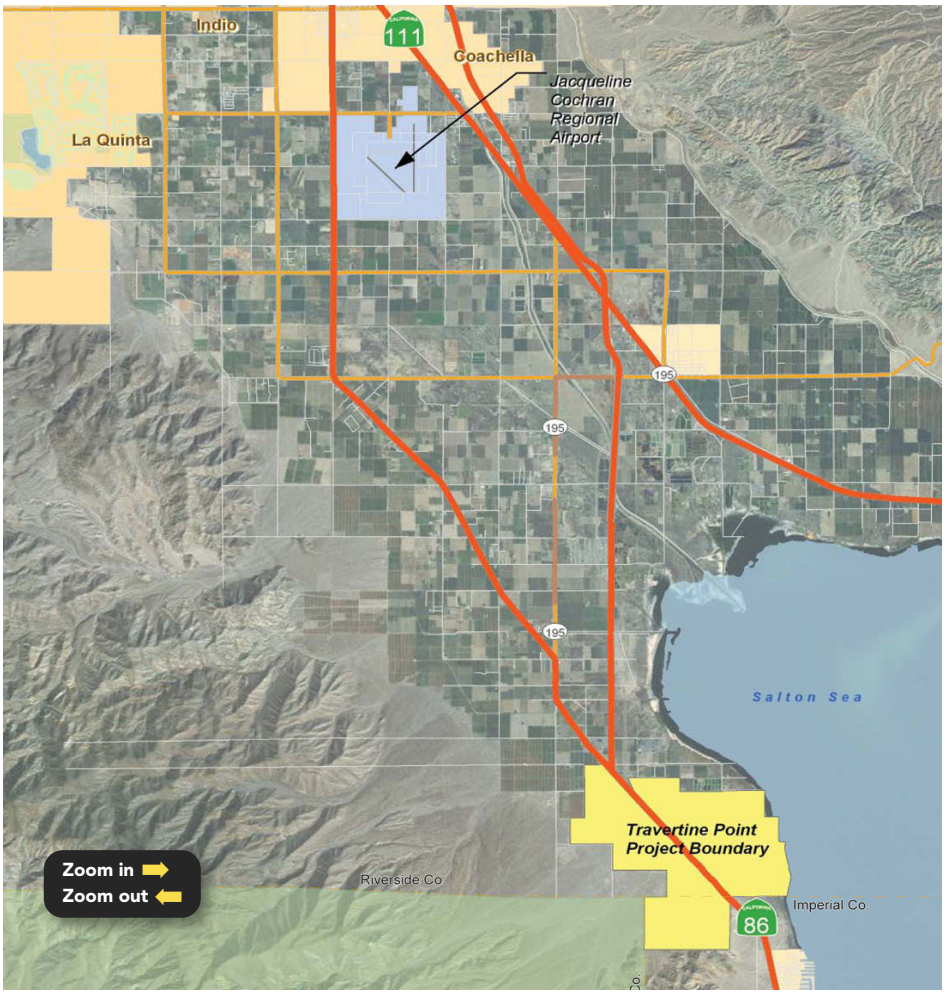
Remnants of Atomic Age vacation towns line the sea's shores, as if residents had evacuated and never returned. And yet, a development team – backed, perhaps incongruously, by an insurance company from Minnesota – thinks the time has come to introduce some sustainability to this forlorn landscape.

Travertine Point would cover 5,000 acres along the northwest corner of the Salton Sea, roughly 15 miles from Mecca and 50 miles from Palm Springs. It is designed as a self-contained city, with mixed uses, employment centers, and over 13,000 units of housing for over 35,000 residents. It would also have a marina and other shoreline amenities – assuming, of course, that the Salton Sea does not dry up before the project is completed.

"People are going to want to live around the sea," said Riverside County Supervisor and Salton Sea Authority Boardmember Marion Ashley, who expects the rapid growth of Riverside County – 41 percent last decade – to continue. "This would be a very well planned, self-sustainable development that would be a well planned place to live."

Though its build-out will follow a nearly geological time scale, its environmental impact report was released in December. On June 15, it will receive its second hearing before the Riverside County Planning Commission. If the commission approves a version of the project, it could go before Riverside County supervisors by the end of the summer.

Developer Black Emerald, LLC, in partnership with the Torrez-Martinez Tribe and funded by Federated Insurance, is seeking approval based, in part, on their contention that the project will be a model sustainable community. Roughly 1,400 acres of the project would occupy land that is, currently, part of the Torrez-Martinez reservation.



Despite Travertine Point's remoteness, Black Emerald believes that the southern Coachella Valley and, in particular, the immediate Salton Sea area, is poised for an economic and demographic boom in the coming decades. The developers claim that 150,000 more residents will populate the valley, no matter what.

Therefore, living in a compact, self-contained city that ascribes to smart growth principles will be considerably more green than living in the traditional subdivisions that comprise communities such as Indio, Coachella, and the rest of the Palm Springs area.

Straddling Highway 86S, Travertine Point is planned to include a variety of uses, including a resort, a marina, and a variety of residential neighborhoods, with a complement of regional and local retail, schools, recreational and open space. A mixed use town center will sit roughly at the geographic center of the development. Situated next to a planned highway interchange, the town center will include local amenities, as well as, a business park and even light industrial activities, presumably related to renewable energy.

The plan calls for 13,000 residential units at a variety of densities. Roughly 10,000 of those units will be planned at eight or fewer units to the acre, with some as few as two units per acre. In the town center, 1,125 of "highest-

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>>>> Travertine Point Planned as Self-Sustaining City

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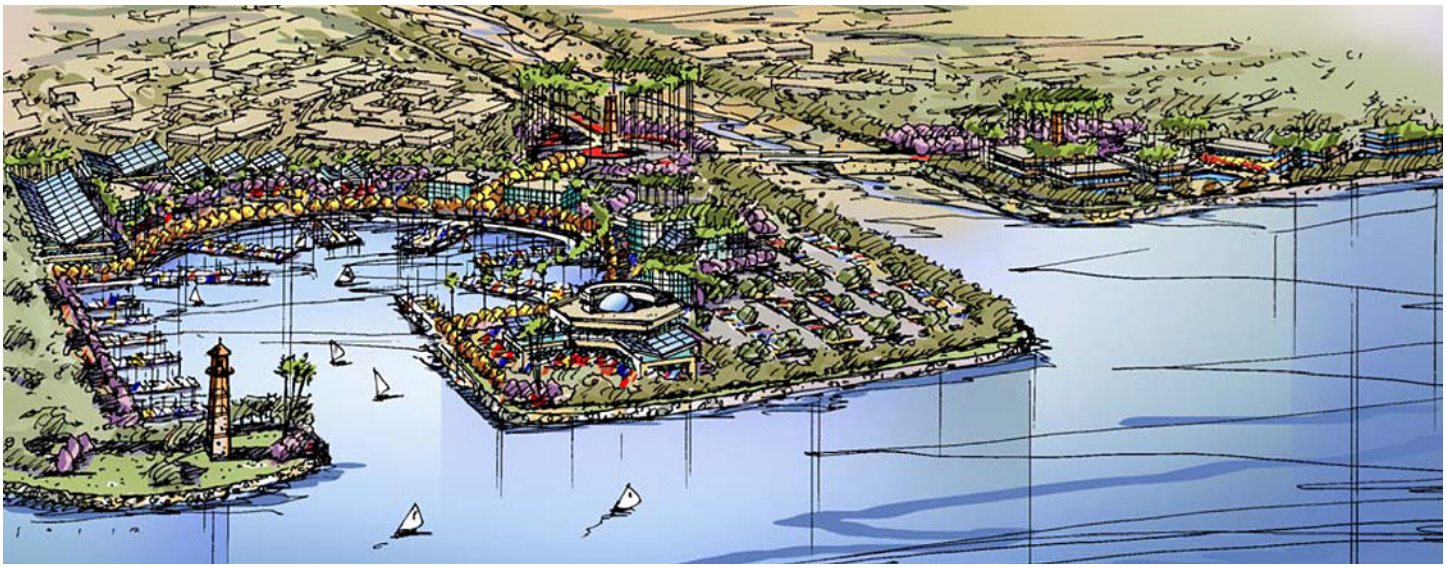

BLACK EMERALD, LLC

Paul Quill, spokesperson for Travertine Point, says that the project remains viable even if the sea dries up. Though Black Emerald is prepared to scrap the marina, shown here in an artist's rendering, Quill said that a recreational component, centered on a healthy Salton Sea, would be a "home run" for the project.

density" units will occupy 45 acres.

"Travertine Point enables the other lands in the eastern Coachella Valley to be able to continue on as agriculture, rather than just continue as subdivision on subdivision," said Paul Quill, a land development specialist with Innovative Land Concepts and spokesperson for the Travertine Point project. "Rather than allowing the ongoing encroachment of population, we're trying to do something in a big way that concentrates it into a community."

In fact, Quill said that Travertine Point is designed, explicitly, to conform with Senate Bill 375, the 2008 law that promotes emissions reductions through compact development. Travertine Point's plan contends that if new, non-infill development is to occur, some models are better than others.

"I feel it not only conforms with SB 375, but I believe it should be fully embraced as the intent of SB 375," said Quill. "To the extent that there will be development in raw land areas in Southern California, Travertine Point is the model for that."

Though the project covers three jurisdictions – Riverside County, the Torrez-Martinez reservation, and a small piece of Imperial County – Quill said that the planning and environmental documents are being drawn up holistically.

"To avoid the piecemealing argument, we have treated it as one project and mitigated our impacts as one project," said Quill.

So far, those efforts have impressed some officials in Riverside County, which will consider the project first.

"The backers of Travertine Point have really gone the extra mile to try and make it as environmentally sound and friendly as possible," said Riverside County Supervisor John Benoit, whose district would include Travertine Point. "I think they've gone that far and a little further."

The project's sustainability plan contends that residents of Travertine Point, which would be built largely on fallowed agricultural land, would generate 38% less per-capita emissions than would residents in a business-as-usual scenario. This performance would be achieved through a combination of sustainable building techniques and compact development intended to reduce residents' vehicle miles travelled.

While most of the jobs in the area are currently low-paying agricultural jobs, developers say that Travertine Point is posed to capitalize on – and facilitate – a predicted explosion in green industries in the area. Though the desert is anything but lush, its relentless sunshine is poised to attract, by some estimates, up to $8 billion in solar energy projects in the coming decades.

Those projects, plus geothermal energy projects towards the southern end of the Salton Sea, are expected to bring construction and permanent jobs. Quill said that workers who live in Travertine Point will face far shorter commutes than they would if they lived in currently built-up parts of the valley.

"Everybody that works in the industry is driving an hour to get to it because they live in Palm Springs, La Quinta, and Indio," said Quill. "This project is located where the jobs will be."

Travertine Point's business model differs considerably from those of the developments that first arose around the Salton Sea. In the 1950s and '60s, vacation homes sprung up around the sea, which played host to all manner of water sports and recreation. Boosters promoted it as an oasis for water skiers and weekenders who populated homes in cities such as North Shore and Salton City. Those cities' mother lode ran out, however, as the sea's salinity spiked in the 1970s and the lake became inhospitable to recreation.

Today, ghostly traces of streets make Salton City perhaps the state's largest stillborn development. It, and similar developments, have made the sea a symbol of Southern California noir.

Black Emerald insists that Travertine Point faces a far different future.

"What happened then in the 1950s was strictly a water-vacation based development," said Quill. "We're not that. We're trying to provide housing, industry, commercial….that would be a sustainable new town. Salton City and North Shore were never designed to be sustainable."

Environmentalists, however, would prefer that Travertine Point never even have the chance to become a ghost town – or anything else.

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>>>> Development Could Help Fund Restoration of Salton Sea

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They reject the developer's claims about greenhouse gas mitigation and contend that it lies too far from any established jobs or housing centers to be considered anything but leapfrog development. A May 24 letter from the Sierra Club, the Center for Biological Diversity, and Defenders of Wildlife to the Riverside County Planning Commission urges the commission to deny the Travertine Point EIR on several grounds.

In addition to claiming that the EIR includes improper deferral of analysis and mitigation efforts, the letter contends that "there is no way over 37,000 people can truly live in a sustainable fashion in a desert environment" and that it does not support SB 375.

"It's dumb growth on a massive scale," said Jonathan Evans, staff attorney with the Center for Biological Diversity, which has been active in Riverside County habitat issues.

Evans also said that planning a development around a brand-new industry – and anticipating certain commuting patterns – does not amount to a recipe for sustainability.

"Who knows if they'll materialize," said Evans. "We're seeing a large rush of solar development in the desert in terms of permitting. Whether the financing and actual construction of that occurs is speculative at best."

Moreover, they say that a development that massive is bound to take its toll on nearby ecological resources, including the sea and nearby Anza-Borrego State Park.

"I think that it's placing a disastrous project next to a water body that already is troubled," said Evans. "Certainly there won't be any benefits to the Salton Sea from the runoff or the pollution caused by this project."

The biggest environmental disaster, however, may have nothing to do with development as such.

According to scientists and public officials alike, there is a very real possibility that the Salton Sea may dry up entirely within the next generation. The 2004 Quantification Settlement Agreement (QSA), governing California's allocation of 4.4 million annual acre-feet of Colorado River water, calls for water to be diverted from Imperial Valley farms. The runoff from those farms feeds the Salton Sea.

Though the QSA is currently being litigated, if and when it goes into effect, the Salton Sea will lose the majority of its inflow.

"After 2017 the sea essential goes into a tailspin," said Michael Cohen, senior research associate at the Pacific Institute.

The evaporation of the sea and exposure of seabed is expected to result in dust storms that would give a Depression-era Okie pause.

"We're going to have a dust problem that's going to make the Owens Lake look like child's play," said Ashley, referring to the lake that dried up when its waters were diverted to the Los Angeles aqueduct. "Property values will plummet even further around the area. It will be an economic and ecological disaster."

> "It's dumb growth on a massive scale. ... I think that it's placing a disastrous project next to a water body that already is troubled."
>
> – **JONATHAN EVANS,** CENTER FOR BIOLOGICAL DIVERSITY

Averting this fate has been on the minds of policymakers and environmentalists since the 1950s. Currently, the Salton Sea Authority governs restoration projects around the sea and has been involved with the planning of restoration efforts, but neither it nor any other entity is currently pursuing a restoration plan.

Most recently, in 2004, the state legislature directed the California Natural Resources Agency to devise an ecosystem restoration plan. In 2008 the Legislative Analysts Office endorsed a plan that would reduce the sea's surface area by 60 percent through a network of dams and dikes – at a cost of $9 billion.

Since then, no significant funding has been allocated to the project.

"If the Legislature felt like the state could financially support the preferred alternative and move forward with funding," said Kent Nelson, who covers the Salton Sea for the state Department of Water Resrouces. "In the absence of some kind of miraculous (economic) recovery, we're not sure where that money is going to come from."

Quill insists that Travertine Point remains viable even if the sea does dry up. He said that Black Emerald is prepared to scrap the marina, which would sit on Torrez-Martinez land, and that the recreational component would be "a home run," according to Quill, for an otherwise viable development.

"We don't rely on Salton Sea restoration for the future success of the community," said Quill. "We know that these renewable energy industries are coming. That growth is going to occur whether or not the sea is restored."

On the other hand, Black Emerald does not want the sea to die without a fight.

Local officials, who say that the sea simply isn't a priority for Sacramento lawmakers, are promoting a plan that, they say, would cost as little as $3 billion. That plan would include an initial phase of $500 million, spent largely on a dike across the northern portion of the sea. Those amounts could be modest enough to spur the establishment of an infrastructure financing district funded by a public-private partnership.

As such, despite environmentalists' criticisms of Travertine Point, it may, in fact, hold a key to the sea's future.

"Projects like Travertine Point and projects similar to it around the sea, as well as the renewable energy industries….will be able to contribute significant funding to the infrastructure financing district," said Quill.

"Travertine Point could be a real meaningful component of saving the sea," said Ashley, the county supervisor. Longtime observers of the sea are not optimistic.

"Every year or two the Salton Sea Authority says we should have an infrastructure financing district," said Cohen. "We say it makes sense to have local financing contribute to a portion of this. And nothing ever happens." ■

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>>>> TPRA Has Struggled to Build Consensus for Regional Plan

– CONTINUED FROM PAGE 1

if Nevada is to remain a party to the compact.

Even though SB 271 calls for the update of the regional plan, some predict that Nevada will try to exercise power by refusing to approve any plan that does not meet the state's stated needs. Therefore, TRPA will either have to adopt a plan favorable to Nevada or automatically face dissolution. Therefore, TRPA is between a lake and a hard place.

"That does not seem like a reasonable demand by Nevada," said Rochelle Nason, executive director of the League to save Lake Tahoe. "As a consequence, we're concerned that it will not be possible to salvage TRPA."

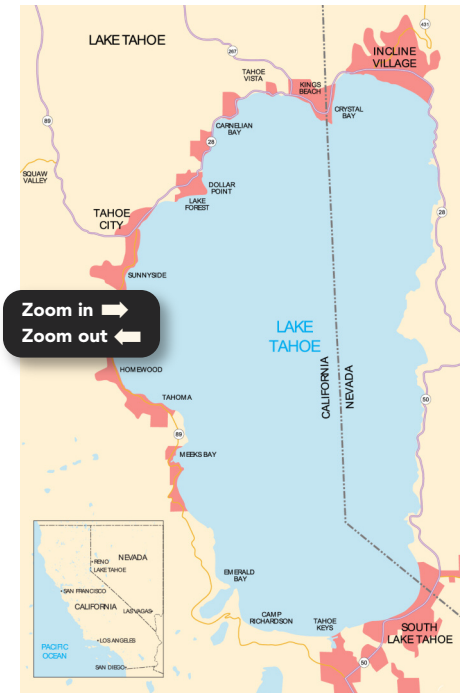
Though Nason said that TRPA is crucial for protecting the lake, opponents of SB 271 say that TRPA itself did not forcefully protest its own demise. TRPA Executive Director Joann Marchetta appeared at the initial Senate hearing, but agency staff did not take an official position on the bill. "The conservation groups had to defend the TRPA," said Ann Nichols, president of the North Tahoe Preservation Alliance.

TRPA External Affairs Director Julie Regan said that staff were not free to take a position in the absence of direction from the board; Marchetta was not available for comment.

"Our board never took a position, and we have differing opinions on the board," said Regan. "It would not have been appropriate for us to take a position when the policy makers on the board did not take a position on the bill."

Instead Regan said that the law presents a valuable opportunity.

"We are hopeful that this legislation will allow enhanced dialog between the states of California and Nevada," said Regan. "Sometimes there are just different ideas about the best path to get there and this bill is one example that those differences are coming to a head."



Environmentalists in both California and Nevada fear Nevada Senate Bill 271 holds the Tahoe Regional Planning Agency hostage to Nevada's interests while denying the unavoidable conflict that arises when two sovereigns share a single resource.

As well, some say that this reticence symbolizes the problems that plague TRPA, have held up the regional planning process, and thus made the agency a target for the Nevada Legislature.

"TRPA not being present for this discussion is like a miniature version of TRPA sitting on the regional plan for 5 years," said Nason. "In the absence of consensus on their board, they can't act. The whole purpose of a board – and a diverse board like this – is to build consensus but also to make decisions. The board never voted not to take a position, and it never voted to take a position."

Most notably, a regional plan update that was supposed to come out by 2007 remains unfinished. Without that update, uncertainty – and therefore stasis – has come to dominate land use in the basin, thus leading to SB 271. In addition, the California side of the basin must now mesh the regional plan with a sustainable communities strategy as required under SB 375.

"We haven't had [an update] for quite a while. They're just amending the current on piecemeal, project-by-project," said Nichols.

Authorized by a unanimous board vote in January, TRPA staff have finally embarked on a new planning process for the regional plan update. Staff hopes to circulate a draft EIR by the end of 2011 with a possible vote in 2012. What, exactly, the Nevada delegation might demand of a new regional plan update remains undefined – but not without attracting speculation.

Though TRPA regulations cap development in the Tahoe Basin in the broad sense, Nichols said that plenty of developers and existing landowners would like to create new developments and expand existing ones, especially in casino-rich South Lake Tahoe. Opponents of SB 271 have pointed to projects such as the Boulder Bay hotel expansion in Crystal Bay, Nev., as examples of things to come under SB 271. They say that, by quadrupling its current size, the project violates the Bi-State Compact;

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>>>> SB 271 Raises Fears of Development in Tahoe Basin

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it was approved by TRPA in April.

"It's obvious that this is being promoted by Nevada gaming interests on the Nevada side of Lake Tahoe," said Nichols. "They don't want to be constrained by thresholds all that pesky stuff that the compact has them do. "Although they would say that they have to comply with all the existing environmental restrains, even if they separate, I think they will change those thresholds."

SB 271 comes about now in part because Nevada's economy has suffered during the current recession and landowners see TRPA's regulatory structure as an impediment to efficient development. In particular, TRPA has been blamed even for holding up projects that were intended to reduce pollution and runoff into the lake.

Billy Vassiliadis, CEO of R&R Partners and creator of the famed "What happens in Vegas" marketing campaign, was one of the lead lobbyists in favor of SB 271. His clients included a collection of landowners around the lake, including prominent casino interests. Likewise, the Nevada Resort Association supported SB 271.

"The Nevada Resort Association supported the position of one of its largest members, Caesars, in seeking assurances regarding Lake Tahoe's future during one of the most challenging times that tourism market has ever experienced," said association President Virginia Valentine in a prepared statement.

That argument draws little sympathy from Nichols. "We can't change the compact every time there's a recession," she said.

Environmentalists fear that a Caesars Palace, or even a poorly designed mountain chalet, could wreak havoc with the lake's fragile eco - system, which of course does not heed the state border that runs through it. Regan said that urban runoff is one of the biggest threats to the lake's clarity. The lake is currently clear to 67 feet, whereas the goal of TRPA is 100 feet.

Vassiliadis insisted that Nevada maintains a paramount interest in supporting the health of the lake. He noted that SB 271 adopts the environmental language of the Tahoe Compact and thus obligates the state to uphold its goals.

"The impact is not to reduce or to lower any environmental standards, as has been alleged," said Vassiliadis.

But Nevada's definition of "obligation" may hew more towards voluntary compliance and away from regulations that some say are crucial to preventing the further muddying of the lake's waters.

"It's not that Nevadans don't love Lake Ta - hoe; it's that they think it can be saved through purely voluntary approaches," said Nason. "The League to Save Lake Tahoe and the rest of Tahoe's conservation community believes that strong regulation of matters like land coverage and traffic impacts needs to continue."

"Oftentimes Nevada has more of an independent streak, perhaps more of an interest in protecting private property rights," said Regan.

Moreover, if Nevada is not constrained by California's interests, then its Legislature can amend SB 271 at will, thus obviating the protections that the current version contains.

Conversely, despite the stigma that accompanies the notion of development in such a sensitive area, some suggest that more development could actually help the lake. In particular, if an updated regional plan could promote the replacement of aging, substandard buildings with new, environmentally sensitive construction.

"We have marvelous new technology to conserve and be green," said Vassiliadis. "So it's more of a matter of not allowing a group to just say no to any permits or any process."

Geoffrey Schladow, director of the Tahoe Environmental Research Center at UC-Davis, said that advances in understanding the threats to the lake and in mitigation techniques may warrant new construction, some of which might have to be executed by the sort of deep-pocketed developers that concern environmentalists.

"If we want these developed areas to be re-engineered, then some degree of redevelopment may be inevitable," said Schladow. "It's hard to believe that the existing small-scale mom and pop stores or motels would have the capital to do what's needed." ■

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>>>> Federal Funding Crucial for Cities' Smart Growth Plans

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an unheard-of move in previous decades.

The reauthorization of the transportation bill is important for two reasons. First, it lays out the funding streams required to pay for the federal transportation program. But just as important, it lays out the policies by which transportation projects are funding. In recent years, new thinking both in cities and on Capital Hill have moved federal transportation funds away from new highway construction toward transit projects, bicycle and pedestrian projects, environmental enhancements, and highway retrofits and improvements.

Traditionally, the transportation reauthorization bill has been a six-year bill – thus providing enough certainty to plan for and build big projects. And in the last few cycles, the reauthorization bill has been used to make a new statement about federal transportation policy. The seminal change occurred 20 years ago, when President George H.W. Bush signed the so-called ISTEA bill, which moved away from highways and toward a more urban approach.

When I visited D.C. a year ago in the spring, transportation policy wonks despaired that Congress would never again pass a "T bill," but, rather, would bump along indefinitely with extensions (see *CP&DR Insight* Vol. 25, No. 9, May 2010 [ ]). The reason, simply put, was money: The gas tax wasn't generating enough money to pay for the federal transportation program, but nobody wanted to increase it. At the same time, nobody wanted to pass a bill admitting that there would be less money for federal transportation projects.

A year later, the appetite for increasing the gas tax – or creating some other new revenue source – is even weaker than it was before. Nevertheless, both parties seem to see the value of trying to reach a deal. In late May, four key senators – two Republicans and two Democrats, including California's Barbara Boxer – issued a statement outlining six overarching principals on which they agree. They are:

- Maintaining the current funding level of approximately $60 billion a year.
- Eliminating earmarks
- Focusing programs on "key national goals"
- Creating a more "focused" freight program
- Vastly expanding the loan program to metropolitan areas, which could facilitate Los Angeles's so-called "30/10" program
- Expediting project delivery

Of the six principles, the one most important to California is the expansion of the so-called TIFIA program – the Transportation Infrastructure Finance and Innovation Act, which permits the federal government to provide loans to metropolitan areas in order to leverage private or local money for transportation projects. This is the core of Los Angeles Mayor Antonio Villaroigosa's so-called "30/10" idea, which calls on the feds to loan money to L.A. Metro so that Los Angeles's Measure R rail projects can be built in 10 years rather than 30. The loans would be paid back with Measure R's sales tax proceeds.

The bottom line is that everybody likes – and wants – transportation projects. So the likely question in the months ahead is not whether there will be a bill, but whether that bill will retain the ISTEA reforms that favor metropolitan California.

Although the four senators committed themselves to current funding levels, they didn't specify how they'd do it. (The gas tax is currently generating less than $40 billion a year – 35% less than spending.) The most obvious idea is "indexing" the gas tax – that is, making the gas tax a percentage of gas price, rather than a flat 18 cents per gallon. That way, tax revenue would fluctuate with gas price. But even the liberal Boxer admits that's a non-starter, especially with a Republican House. Other revenue ideas – for example, a tax on vehicle miles traveled rather than gasoline sales – went out the window when the Democrats lost the House as well.

So Congress is now looking at the possibility of a shorter time period for the bill – perhaps two years. The loan from the federal general fund will carry the transportation program through to the end of the 2011-12 fiscal year, meaning Congress would have to find only one more year of "gap" funding. That means the Republicans don't have to come up with as much money, and the Democrats can punt in hopes of a more favorable political climate.

In order to fund 30/10 and other projects, Boxer is calling for an increase in the TIFIA program from $110 million to $1 billion per year. She claims such an increase could leverage $30 billion a year in private and other investment – thus helping to close the funding gap. It remains to be seen, however, how much of this funding would go to Los Angeles, which could easily consume all the TIFIA money each year and then some.

As the 30/10 question indicates, even with a shorter bill, Republicans and Democrats will still have to agree on the policy issues – and they appear to be far apart on most things. Republicans want to focus more on rural highway projects and narrow the scope of federal involvement to the National Highway System – which would, among other things, eliminate funding currently provided to local governments to pave arterial streets. Democrats will be under pressure to maintain the original ISTEA innovations from 1991, including ped/bike funding and the ability to "flex" federal transportation funding from highways to transit – a technique frequently used in California. In the wake of the six principles announcement, Boxer was heavily quoted as saying that funding for bicycle and pedestrian projects would be preserved in the new transportation bill. Her statements were widely interpreted by environmentalists as meaning that the pike/bed funding was part of the deal. However, Oklahoma Sen. James Inhofe, the ranking Republican on Boxer's committee, quickly put the kibosh on that idea.

The battle in the House will be even more difficult, as moderate Republican leaders such as Transportation Committee Chair John Mica of Florida must bring along the conservative, anti-tax freshman class of Republicans. However, the bottom line is that everybody likes – and wants – transportation projects. So the likely question in the months ahead is not whether there will be a bill, but whether that bill will retain the ISTEA reforms that favor metropolitan California. The outcome will go a long way toward determining whether federal transportation funding will help California implement SB 375 and other such initiatives. ■

Governor Drops In on SGC Discussion of 2011 Agenda

Being governor of a state that includes Hollywood requires mastering the art of the cameo. Governor Brown demonstrated his skill at the craft when he arrived, unstaffed, at the Strategic Growth Council (SGC) meeting blocks away from his Capitol office, saying that he just stopped by to see what exactly the Council had in mind regarding strategic growth – and to get a handle on what, exactly, the SGC does.

The Council members were, at that moment, considering the Health in All Policies (HiAP) priority actions. HiAP includes supporting "complete streets" policies, using SB 375 to promote active transportation, and promoting sustainable development for smart housing siting.

Council Chair and newly installed OPR Director Ken Alex – a longtime colleague of Brown's – brought the governor up to speed, describing that the goal was to consider how all state policies affect human health. The governor recast it tongue-in-cheek as one policy objective "colonizing" all the other policy areas.

In the end, the governor expressed his general support for the the HiAP concept, but not before he warned of potential resistance from those who might find even more strings attached to California's growth policies – actually citing tea party opposition to overly intrusive government.

The take-away message (if there was one) for the SGC was a reminder that they have to balance the laudable policy objectives with political realities – and proceed accordingly. Or maybe it's just that their boss may wander in on them from time to time.

Governor Brown quickly exited – as a good cameo requires – and the Council returned to approving the HiAP Priorities. The ensuing discussion highlighted some of the delicate balances that the Governor brought up. Council members approved of the general voluntary nature of the HiaP Priorities, but also discussed how the Council can be a "bully pulpit" to promote HiAP-related policies.

The discussion then moved to SB 375 and the role that Council might play in its implementation. For those who are thinking that SB 375 does not assign any role to the SGC, Ken Alex noted that they have an oversight responsibility related to granting MPOs' funding under the Sustainable Planning Grant Program (see *CP&DR* Jan. 2011 [ ]). It was clear that the Council intends to scrutinize MPOs to learn how they are spending their grant money.

Indeed, looking forward, it seems clear that the SGC wants to leverage the SB 375 process beyond its climate change goals. There was a specific discussion about SANDAG's recently released draft Sustainable Communities Strategy (see *CP&DR* Vol. 26, No. 10 [ ]), but there was no credit given for the fact that SANDAG is projected to exceed its 2020 target. Rather, SANDAG's plan was characterized as a moderate reduction in VMT with a question of how can more reductions, and other benefits, can be gained from the process.

Ultimately, the conversation returned to the larger picture of the SGC's mission and strategic plan. Council members agreed with one statement that articulated three elements to the SGC work program: first is providing resources (funding, data, etc) when available, the second is facilitating better coordination between agencies in policy implementation, and the third is policy advocacy.

As the SGC continues its strategic process over the summer, it remains to be seen as how these roles will evolve under the new administration. But stay tuned, you never know when the Governor may make another cameo.

– BILL HIGGINS | JUNE 2, 2011

Bill Higgins is the director of the California Association of Councils of Government.

PPIC Issues Primer on State-Local Realignment

Needless to say, realigning the relationship between state and local government in California isn't going to be as easy, say, as realigning the tires on your car.

The Public Policy Institute of California has announced that it will publish a series of papers concerning the process and wisdom of realigning, per Gov. Jerry Brown's intentions in his 2011 budget proposal. The first report, Rethinking the State-Local Relationship: An Overview, was released in April. Authored by Dean Misczynski, it describes the general principles of realignment and lays out some of the challenges that the state and its localities will face.

Under the governor's budget proposal, counties would take over responsibility for, among other functions, housing certain low level offenders and juvenile offenders; providing mental health, drug treatment, and child and adult protective services; and, of course, the elimination of redevelopment zones. Many of these services would be paid for by a temporary increase in vehicle license fees and sales tax, pending voter approval.

The report outlines what it considers some of the factors that have prompted the need for realignment in the past, most notably Prop. 13, which deprived localities of the ability to raise money via certain property taxes and therefore tied their fates to the largesse of the state.

Clearly, the success of realignment depends on implementation and not on any conceptual framework. Nevertheless, the report cites several benefits that may come from realignment: efficiency, better outcomes, and a balance between local control and statewide equity.

Among the constraints that will complicate the realignment process are:

1) the mandate to reimburse localities for new obligations

2) Prop. 96's mandate that 45% of general fund monies go to schools;

3) Propositions 1A and 22, which limit the uses of sales tax revenues and of monies related to redevelopment and transportation.

Not surprisingly, the state will want to lowball the value of the services that it is delegating to localities, and localities will demand generous funding from the state. How far apart these numbers will be remains to be seen. But while money is fungible, facilities and expertise are not. In some cases, it could take years before localities built the capacity to take on all that will be asked of them.

What all of this means, of course, is that realignment could go swimmingly and save millions of dollars. Or it could be a nightmare for local governments that already feel put-upon by the state.

– JOSH STEPHENS | MAY 20, 2011