CP&DR

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Following Budget Resolution, Redevelopment Agencies Prepare to Fight for Their Lives

BY JOSH STEPHENS

After an agonizing six-month prelude, the curtain has finally risen on the drama that is redevelopment in California. How the plot will unfold from here is, in many ways, still as unclear as ever.

Yesterday Gov. Jerry Brown signed a pair of budget trailer bills – ABx1 26 and ABx1 27 – that would wrest $1.7 billion in the coming fiscal year from the state's nearly 400 redevelopment agencies. The so-called "two-bill" solution eliminates redevelopment but permits agencies to buy their way back in, by forking over a total of $1.7 billion in 2011-12 and $400 million 2012-13. The laws take effect on October 1.

The "remittances" to the state permitting redevelopment agencies to stay in business must be "voluntary" in order to avoid violating Proposition 22, the 2010 measure that prevents the state from forcibly taking local redevelopment funds. The governor has contended that Prop. 22 does not explicitly prevent lawmakers from dissolving redevelopment agencies altogether.

But a dramatic court battle is about to begin. The Community Redevelopment Agency and the League of California Cities have vowed to file a joint lawsuit contending that any transfer of tax-increment funds violates Proposition 1A, passed in 2004, and other provisions of the state Constitution, in addition to Prop. 22.

"They have fashioned a phony voluntary plan that is anything but voluntary," said Chris McKenzie, executive director of the League of California Cities.

McKenzie said that the lawsuit will be filed within a matter of days directly with the state Supreme Court, rather than to Superior Court, because of its statewide jurisdiction. McKenzie said he hopes that the court will issue a swift ruling, possibly within 4-6 months.

"We hope we get the court to issue a stay very soon so everybody can take a breather and wait for the court to make a decision," said McKenzie.

McKenzie said that the League's and CRA's legal strategy has not

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insight

WILLIAM FULTON

Redevelopment May Survive, But Will It Be Stronger?

The new rules of redevelopment – if the courts agree – are now clear: You're dead, but you can buy your way back to life. That's probably enough to keep most redevelopment agencies in business. But is it enough for cities to continue to do redevelopment deals?

That's not clear, though redevelopment agencies have gotten accustomed to doing deals with less and less money over the years. Also not clear is whether this is the end-game on redevelopment or the first step in an effort to truly reform redevelopment – a possibility that seemed far more likely in January than it does now.

Even though a lot of rhetoric about the past six months has focused on whether redevelopment is effective, the redevelopment deal in the budget was just about money. Agencies can stay in business if they fork over a big chunk of their tax-increment funding, but there's nothing in the budget deal that reforms how they do business.

So, moving forward, there are two questions about redevelopment:

First, now that the budget has passed, will there be

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inside

A PROPOSED 11,000-HOME DEVELOPMENT in unincorporated Riverside County has met with strong opposition from local environmental groups and the city of Riverside. The Inland Empire's Lewis Group of Companies is undertaking the project, dubbed Villages of Lakeview, which won approval from Riverside County's Board of Supervisors, despite protests from the likes of the Sierra Club and the local Audubon Society chapter. Following the approval, those groups sued the county on the grounds that the project violates CEQA and the county's general plan. That plan requires new developments to cluster around existing communities and infrastructure; Villages of Lakeview would be located on what is now rural farmland some 30 miles southeast of the city of Riverside. Nearly 300 million new car trips would be generated by the project, and, opponents say, could afoul of various California smart growth initiatives, including SB 375.

THE CITY AND COUNTY OF SAN FRANCISCO is experimenting with further changes to Market Street that officials hope will reduce traffic on the street and speed up transit vehicles, taxis and trucks. Under a plan being implemented by the Municipal Transportation Agency, drivers of private autos will be forced into making right turns at a series of intersections. The hope is that this will help spread traffic throughout the road network and discourage drivers from using Market for longer trips. So far, preliminary changes have been a success: Traffic has eased, while transit vehicle trips have been shaved by 5 percent. Even more changes could be on the way in the years to come, but construction on the Central City Subway may delay them for some time.

APPLE IS LOOKING TO EXPAND its Cupertino headquarters to better suit what is now the largest technology company in the world. The new facility will hold nearly six times what Apple's current offices hold. The shortage has forced the workforce into rented buildings scattered throughout the area. The site for the new campus – some 150 acres just down the street from the old one – was recently purchased by Apple from fellow tech giant Hewlett Packard. The proposed building, which is being designed by Foster+Partners and has been described as looking like a doughnut-shaped flying saucer, will be four stories tall. The structure itself will feature sustainable design elements – including its own electricity generation – as well as a not-so-sustainable four floors of underground parking. The Cupertino City Council will consider project approvals in the fall of 2012, with a projected opening in 2015.

LOS ANGELES MAYOR Antonio Villaraigosa has been tapped as the 69th president of the U.S. Conference of Mayors. He will be the first Angeleno to lead the group since Norris Poulson in the 1950s; the last Californian was former Long Beach Mayor Beverly O'Neill in 2005-06. Villaraigosa's selection comes at a time when cities across the country are fighting to keep financial support from the federal government as the latter goes about cutting deficits. Villaraigosa's new bully pulpit could be instrumental in getting federal support for America Fast Forward, the L.A.-born plan to help cities build mass transit more quickly by leveraging low interest federal loans. In addition to transportation, Villaraigosa said that he has his eye on a number of other urban issues. In a speech, he urged his fellow mayors to work on reforming failing schools and advocated for the speedy end of U.S.'s costly military commitments abroad.

AN APPELLATE COURT PANEL has overturned an injunction against California's cap-and-trade program, allowing it to proceed on an interim basis while the appeals court reviews the lawsuit in question. Consequently, the California Air Resources board will be allowed to continue implementing the cap-and-trade system pending the appellate court's ruling. In March a superior court judge had issued an injunction on AB 32, California's landmark global warming bill. The decision came after a legal challenge by environmental justice advocates who argue that the bill's cap-and-trade mechanism – the key tool in reducing carbon emissions – would produce de facto outcomes that would disproportionately hurt low income and minority Californians. The concern was that polluting industries would merely purchase allowances on the cap-and-trade market and keep polluting in low-income communities. Plaintiffs in the CEQA suit argue that the California Air Resources Board should have more rigorously studied other mechanisms for reducing green house gases, such as a carbon tax. CARB is soliciting public comments on the plan and intends to begin enforcing the new system by January 2013.

NEARLY 100 YEARS AFTER the damning of the Tuolumne River created the Hetch Hetchy Reservoir – supplying water to San Francisco – the conservation group Restore Hetch Hetchy is advocating that the Federal Energy Regulatory Commission subject the reservoir to a new environmental review as part of the relicensing of a downstream hydroelectric dam. The San Pedro Dam was built downstream from Hetch Hetchy Valley in the 1960s to help the city better manage its water supply during wet and dry years. The city of San Francisco paid over half of its costs. Restore Hetch Hetchy contends that, as part of the relicensing review, consideration should be given to removing Hetch Hetchy Dam, because the two damns work "as a single, integrated system that manages the water supply of the Tuolomne River," according to a legal filing. But the San Francisco Public Utilities Commission, the agency that operates Hetch Hetchy Reservoir, isn't buying it. The agency is taking the position that the dam's initial federal authorization predated the law that would require them to conduct the review desired by Restore Hetch Hetchy.

THE U.S. FISH AND WILDLIFE SERVICE released a proposal that would designate 2,678 acres in Riverside County as critical habitat for the Riverside fairy shrimp in areas stretching from Ventura to San Diego County. The Riverside fairy shrimp occurs in relatively deep, ephemeral wetlands, also known as vernal pools, that fill after winter and spring rains. This is a nearly tenfold increase over the 306 acres designated by the Bush administration in 2005. The Center for Biological Diversity, which sued to protect the shrimp, estimates that there are only about 25 pools remaining in the state that can support the species. "This critical habitat gives the unique Riverside fairy shrimp a shot at survival," said Ileene Anderson, a biologist with the Center, in a statement. "But the designation still doesn't contain all the areas where the fairy shrimp is found – instead it's the minimum this species needs to survive." More than half the land in

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the new designation is privately owned. Some other fairy shrimp habitats are already protected by local and military conservation plans.

ADVOCATES OF MARIJUANA USE and cultivation are seeking to officially designate a place that has long existed in the imaginations of many Humboldt County residents: Emerald City. Jim Lamport has proposed that the current hamlets of Garberville and Redway, in southern Humboldt County, be incorporated and combined into a city that would revel in the area's economic and cultural connections to marijuana (see *CP&DR* Vol. 25, No. 12 [ ]). Lamport and other supporters are currently raising the $7,500 needed for an initial financial feasibility study. He supports the idea of taxing the cultivation of marijuana to partially fund the city.

SAN FRANCISCO'S HUNTERS POINT, the enormous mixed use development that will occupy a former shipyard, is likely to get a friend. The San Francisco Planning Commission approved the Executive Park development, a 1,600-unit development on a partially developed 70-acre parcel next to the shipyard. Representatives of developer Universal Paragon said that the recent approval of Hunters Point (see *CP&DR* Vol. 25, No. 16 [ ]) made Executive Park viable. It is expected to include both low-rise and high-rise buildings, up to 280 feet.

THE HUMBOLDT COUNTY Board of Supervisors has settled a 2007 lawsuit with advocacy group Housing for All over what plaintiffs considered an insufficient county housing element. The suit contended that the county's zoning did not allow for development of enough low- and moderate-income housing. Under the settlement, the county must revamp its multifamily zoning to accommodate 980 more multifamily parcels and recertify its housing element by August 15. If it fails to do so, a court could impose a permit moratorium on future development in the county.

IN AN ODDLY SPECIFIC RULING, the U.S. Fish and Wildlife Service has agreed to allow developer Lennar Corp. to relocate exactly one California condor in the process of developing its 60,000 unit, 14,000-acre Newhall Ranch north of Los Angeles. Lennar had applied for a special exemption that would have allowed it to kill condors if needed. The birds number roughly 100 in the wild and are among the most critically endangered species in the nation.

THE KERN COUNTY BOARD OF SUPERVISORS has voted to appeal a judge's decision blocking the implementation of Measure E, the 2006 ballot initiative that seeks to prevent the City of Los Angeles from delivering sewage sludge to the rural county. The city has been depositing treated biosolids on two farms that it owns in rural Kern County. County residents, however, were opposed to the notion that Los Angeles was using the county as its dumping ground. Following a lawsuit by the city, a Tulare County judge recently issued the injunction against Measure E. The county is now taking its case to the 5th District Court of Appeal.

THE U.S. DEPARTMENT OF TRANSPORTATION recently announced through a Notice of Funding Availability that $527 million will be available for a third round of the Transportation Investment Generating Economic Recovery (TIGER) competitive grant program. This round will award $140 million for rural communities and will be awarded on a competitive basis. Projects will be selected based on their ability to contribute to the long-term economic competitiveness of the nation, improve the condition of existing transportation facilities and systems, improve energy efficiency and reducing greenhouse gas emissions, improve the safety of U.S. transportation facilities and improve the quality of living and working environments of communities through increased transportation choices and connections. The department will also focus on projects that are expected to quickly create and preserve jobs and spur rapid increased in economic activity.

THE SAN DIEGO CHAPTER of the Urban Land Institute recently announced its 2011 Awards of Excellence. They include the following: Urban Infill Award: Centre Street Lofts, 3671 Centre St. in Hillcrest; 25 rental units; developer and architect, Lloyd Russell. Innovation in Affordable Housing Award: Ten Fifty B, 1050 B St., in downtown San Diego; Affirmed Housing Group, developer; Martinez + Cutri, architects. Urban Infrastructure Award: Pedestrian bridge crossing Harbor Drive at Park Boulevard in downtown San Diego; developed by Centre City Development Corp.; designed by TY Lin International and Safdie Rabines Architects. Mixed-use Award: MXD830, 830 25th St. in Golden Hill; architect and developer, Mike Burnett; Wayne Buss Urban Creative Award: Gregory L. Strangman, founder and CEO of L.W.P Group.

A RECENT STUDY conducted by Transportation for America found that three Bay Area cities have some of the nation's best transit access for senior citizens – while one Inland Empire city has some of the worst —among the nation's 40 largest metro areas (excluding New York). San Francisco tops the study's list, with only 14 percent of seniors having "poor" access to transit by 2015. San Jose came in second, and Oakland was fourth. Meanwhile, the Riverside-San Bernardino-Ontario area came in second-to-last with 67 percent of seniors estimated to have poor access by 2015. The study's authors note that a rising senior population is expected to rely more heavily on public transit in the coming years. ■

legal digest

Adherence to Local Seismic Codes Suffices for CEQA Mitigation

Oakland development properly mitigates for earthquake risk, appeals court finds

BY CORI BADGLEY

A THOROUGH ANALYSIS of building codes and local ordinances applicable to seismic hazards provides the substantial evidence necessary to uphold a city's revised environmental impact report, the First District Court of Appeal ruled in *Oakland Heritage Alliance v. City of Oakland*.

In successful challenges under the California Environmental Quality Act, the petitioner generally has a second bite at the apple by challenging the return of the writ. If a petitioner is successful in its challenge to an EIR, the trial court issues a writ of mandate that requires the agency to bring the EIR into compliance with CEQA. Once the agency has complied with the writ of mandate by "fixing" the EIR, the agency files a return of the writ with the court. If the court finds that the city has satisfied the writ of mandate, the court discharges the writ.

In this case, developers Oakland Harbor Partners, LLC, Signature Properties, Inc., and Reynolds & Brown proposed to develop the "Oak to Ninth" project, a development of approximately 64 acres along the Oakland Estuary and the Embarcadero. The development would convert a maritime and industrial area into residential, retail/commercial, open space, and marina use. Building heights would range from six to 24 stories. The EIR for the project noted a risk of seismic danger, especially because the bay-adjacent site is vulnerable to liquefaction.

The city certified the EIR and adopted mitigation measures with respect to seismic hazards. Community group Oakland Heritage Alliance filed the suit, claiming numerous CEQA violations including that the EIR did not properly mitigate for seismic hazards. The Alliance alleged the city had violated CEQA by certifying the EIR and adopting CEQA findings although the mitigation measures would not reduce the effects of ground shaking, liquefaction, and earthquake-induced settlement to a less than significant level.

The trial court granted, in part, and denied, in part, the petition for writ of mandate. The court directed the city to void its certification of the EIR, CEQA findings and statement of overriding considerations, and the approval of the project, and remanded the matter to the City. The trial court then discharged the writ of mandate after the city submitted a revised EIR. The petitioner, Oakland Heritage, appealed the trial court's discharge of the writ on the grounds the city had still failed to adequately analyze and mitigate seismic impacts. The appellate court disagreed and upheld the trial court's discharge of the writ.

Petitioner's challenge focused on three areas relating to seismic impacts: (1) the significance threshold was improper; (2) the mitigation did not adequately mitigate to a less than significant level; and (3) the mitigation constituted an improper deferral of mitigation.

Although the petitioner had failed to mention the significance threshold argument during the trial court's proceedings on the return of the writ, and was therefore barred from bringing it up on appeal, the appellate court addressed the issue and found that the significance threshold used to evaluate seismic impacts was proper. The court based its conclusion on two grounds. First, contrary to petitioner's assertions, the city was not required to formally adopt a significance threshold that differed from the threshold listed in Appendix G of the CEQA Guidelines. According to the court, CEQA Guidelines section 15064.7 encouraged the adoption of the standard thresholds of significance, but did not require it. Second, the threshold of significance used by the city "was effectively coextensive with the CEQA Guidelines" Appendix G, and therefore, petitioner's argument had no merit.

In relation to the second issue of adequate mitigation, the two mitigation measures adopted by the city required that the buildings comply with all applicable state and local regulations. They also required that the buildings comply with the final design parameters and building recommendations that would be included in the geotechnical investigations for each building site. The appellate court found that substantial evidence supported the city's determination that the mitigation reduced seismic impacts to a less than significant level.

The court cited *Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 912, which found that the incorporation of state energy efficiency standards into the project constituted proper mitigation. In this case, the thorough discussion of the building codes and local ordinances, as well as the duties of the geotechnical engineer, constituted substantial evidence that the mitigation would reduce impacts. The added discussion provided the required "why" discussion, explaining how code compliance operates as effective mitigation.

Like the second issue of proper mitigation, the court disagreed with petitioner's final argument that the two mitigation measures for seismic impacts constituted an improper deferral of mitigation. The court found that the mitigation measures properly included performance standards that had to be met in order to insure that the project impacts would be mitigated. Therefore, the city did not improperly defer mitigation.

In the end, the petitioner's attempt to further delay the project and require additional analysis by the city failed. This case provides a good example of the information that agencies should include in the CEQA document when the mitigation involves adherence to state codes and local regulations. A thorough explanation of the state codes and local regulations referred to in the mitigation goes a long way to providing substantial evidence in the record. ■

➤ The Case:

Oakland Heritage Alliance v. City of Oakland (2011, Case No. A126558) 2011 Cal.App.LEXIS 60

Ken Alex Leads State Planning Efforts at OPR

BY JOSH STEPHENS

The Governor's Office of Planning and Research occupies an unusual place in California planning. Even though planning is an intensely local function, part of OPR's mission is to convey Sacramento's planning agenda to the local level. At times when that agenda has been ill-defined, OPR has nearly withered. But now that Gov. Jerry Brown has articulated support for Senate Bill 375 and for a host of smart growth principals, OPR may regain prominence.

This task falls to attorney Ken Alex. Alex, who served under Brown in the attorney general's office, is Brown's senior policy advisor and director of the Office of Planning and Research, as well as chair of the Strategic Growth Council. In the attorney general's office, Alex specialized in environmental cases, and before that, he led numerous settlement negotiations against power producers that collectively resulted in over $5 billion. As OPR director, however, Alex will see no such windfall. With a small staff and constrained budget, Alex spoke with *CP&DR* about his goals as OPR director and the future of California planning under the Brown administration.

Q&A WITH KEN ALEX

Ken Alex, Senior Advisor to Governor Brown and Director of the Office of Planning and Research, speaks at a UCLA / Berkeley Law forum on May 23rd in Sacramento.

TIA GEMMELL / COURTESY UCLA SCHOOL OF LAW

CP&DR: What are your and Governor Brown's goals for OPR?

KEN ALEX: Some of the highest priorities for the governor are to promote the conversion to renewable energy and to think about it in local terms. One way to think about that is distributed generation. We are considering how to site not just rooftop solar, but also solar facilities that are more modest in size than some of the large-scale projects out in the desert. You might think about a 20 megawatt system that can go in fairly small areas. Ground-mounted tends to be cheaper than roof-mounted; they're easier to install and easier to take care of. And there are a lot of possibilities for where they could be sited: on utility right of ways, on freeway right of ways, and along the California Aqueduct. OPR is trying to help local jurisdictions figure out where some locations might be and then to think about what sort of barriers might exist for those projects: How do we streamline permitting so that we are sensitive to environmental issues but don't slow down the project to the point of making it nearly impossible?

As former governor and mayor of Oakland, infill development is something that Governor Brown has been interested in for decades. So we're thinking about what strategies can promote infill development and do it in a way that's good for urban areas and brings people back to downtown areas in ways that we've seen in places like Oakland.

Then one of the things that OPR has some statutory obligation to do, but hasn't spent a lot of time doing, is looking at the state of the environment every four years or so. I'd like to do that in ways that think about different measures of the environment that may not be traditional, such as air quality and water quality. Those are important. But how is public health? How are we doing on crime? How are we doing on other measures of the broader environment? What is California going to look like as we look towards 50 million people in the state? There's a lot of things that go into evaluating the state of the environment.

CP&DR: What role does the Strategic Growth Council play in OPR's work?

KA: Right now the SGC is focused, in significant part, on doing its various grants. There are three rounds of grants: one set for urban greening and another set for planning and, in particular, for sustainable communities. The Strategic Growth Council has a very small staff. It actually has one [executive officer], and she just hired a second staff member, and we're trying to get her a third staff person. But they really have very minimal capacity to do much beyond the grant process when the grants are in action. So the first priority is to receive the grant request applications and make decisions about them.

CP&DR: What role can OPR play in implementing SB 375?

KA: Then SB 375 requires metropolitan planning organizations to evaluate and plan in a regional way, particularly for transit oriented development. We're trying to help the MPOs with some of that process on the planning side. More importantly, for me, is the question of how we get the local jurisdictions—which are not obligated to follow those plans—interested in meeting up with those plans and working in a regional way, which I think will help how we grow in California.

One of the challenges that the metropolitan planning organizations have is to do modeling to evaluate what different strategies and scenarios mean and what are the impacts if they develop in certain ways as opposed to developing in other ways. We can help with the modeling. We can help with different scenario plans. We are trying to get the different MPOs to talk to each other, to coordinate, and to use the extraordinary amount of work that's been done in this area on transportation planning, on modeling, on design work on transportation-oriented development.

CP&DR: SGC awards some highly coveted grants for local planning. What can cities expect from those grant programs?

KA: The criteria were put out to bid pretty much when I came into being chair of the SGC. I think the criteria haven't changed much in the past year. Obviously on the Urban Greening Grants, they're supposed to be primarily urban, so they're areas of high density, and there are various possibilities for how communities can go about, not just planting trees, but also creating places that are going to be relevant to downtown areas and to communities that have very high densities.

SGC, as I noted, has a limited staff. But the grants themselves are actually looked after by the Resources Agency and by the Department of Conservation. Looking after those grants and making sure that the money is used properly, appropriately, and effectively is quite relevant. We're going to be doing some auditing and ensuring that the money is being used properly. Oversight is always an important issue, but even more so given the current economic times.

CP&DR: How does the potential demise of redevelopment affect OPR's work?

KA: That's a fair question, and I don't really have a good answer at the moment. We don't even know which bills are going to the governor's desk, and which he may

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>>>> Alex Brings AG's Perspective to Land Use Policymaking

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or may not sign. And when the smoke clears, where are we going? I would expect that there will be something to replace the current system but what that's going to be, I don't know. It has a lot of potential impacts for everything that OPR is doing. Like you and your readers, I am very curious to see what happens next.

CP&DR: Are these incredibly trying times to be in your position right now?
KA: At the outset it's very exciting. We have a half-dozen new staff people who are excited to be there and have many, many ideas. We have almost no budget. But that's OK. We're interested in trying new ideas. What is difficult is that local governments in their planning departments have been decimated, so how do we help them without many resources ourselves?

CP&DR: Some governors have embraced OPR, as Jerry Brown did in his first stint, others have not. How does Gov. Brown approach OPR this time?
KA: He was a big fan of OPR the first time around when he was governor. He understands that it has great potential to do good things. He is supportive of the idea of land use planning. He knows very intimately the issues that local jurisdictions face. I feel like we have a very supportive governor for what OPR is about, but the challenges we've identified are small staff and small budget. He has also made it clear that his government is going to run under a very slim budget and we have to live with that. That's life and we'll deal with it.

CP&DR: How has your time in the attorney general's office influenced your approach to OPR's work?
KA: It's an interesting change from going from being an attorney and thinking first about litigation and how you use legal tools to being in a policy position. I think having some sense of how the laws are used, and sometimes misused, is a huge advantage. In many conversations, I have a sense of the legal issues, and as I learn some more of the policy questions I can bring some of that knowledge to bear.

It's very interesting to approach these problems and start thinking about, "OK, as a lawyer you might use the law in a particular set of ways." And now we have to think about what are the problems created by how the law is used? And are there ways to reform or modify or give some guidance to make things easier and better. I actually am enjoying that very much.

CP&DR: You have a unique perspective on CEQA having worked on some landmark CEQA cases in the Attorney General's office. How do you think the relationship between CEQA and greenhouse gas emissions is going to evolve?
KA: What we found at the AG's office is that it was a new area some years ago. And it really needed to develop. The AG's office was very much a part of that development. Sometimes the development occurs through litigation and negotiation. But OPR has some very interesting tools, like technical advisories and guidelines and information letters, and I'm interested in seeing if we can use some of those tools as well.

It's a positive development, and I think both tools are relevant. And I think working with local jurisdictions to figure out the challenges they have and to use OPR in a way that there's no threat of litigation--because we're not going to sue anybody--has some advantages. And I think sometimes the AG's approach has some advantages.

Hopefully, there will be some ways to make progress on all fronts and come to the point where some of the very difficult questions raised by GHG emissions are less contentious and more sophisticated.

CP&DR: How do you feel about the prospect of reforming CEQA?
KA: I think that CEQA has been perceived as a hindrance in certain instances. Whether that is objectively true in some ways doesn't matter, because perception is on some level, reality. I think it's fair and appropriate to evaluate what kind of changes may make sense.

Is it just CEQA? I think it's fair to say that there are a lot of reasons why infill development is difficult. Some of them are straight economics. There are legal impediments. There are actions that can be taken under CEQA that can make development more difficult. So, fine, that's where we are, and I think that it's fair and appropriate to evaluate CEQA and see if it's time to make some changes.

I know that the governor is interested in doing a very serious process to evaluate that. And at OPR we are working on possibilities of thinking about infill CEQA streamlining.

We're evaluating whether some sort of best practices approach might make some sense where projects that meet a set of criteria would then have a very streamlined environmental review. That's an area where I think there's a fair amount of promise to make some possible changes. So we're convening some discussions on that topic with a lot of interested folks from a lot of different perspectives: environmental, builders, chambers of commerce, etc. I'm hoping that we can make some proposals in the not-too-distant future.

CP&DR: What's your approach to the age-old challenge of coordinating different governmental units in California?
KA: The very first thing that we are doing is to get a sense of what the various interfaces between government agencies and local governments are on urban issues. It's not always obvious. There are quite a few of them. What Gov. Brown has emphasized with his cabinet secretaries….sometimes the agency jurisdictions are relevant, and they certainly are for budget purposes, but, in his view, it's one government, and we need to work together. I think OPR is part of making that happen. I want to find where the interfaces are and I want to get these entities to talk together and coordinate and figure out what works for local jurisdictions.

We're doing that already. We're particularly focusing on renewable energy. We have programs at the Energy Commission, Air Resources Board and Public Utilities Commission, and we are meeting with these various departments and agencies trying to figure out what resources are available.

CP&DR: How do you encourage cities to take health into consideration, on top of all the other factors that go into land use planning?
KA: I think that's a fair observation: cities have a lot of things to deal with. But I think for everybody at the state level and the local level, health issues are central. At the state level, we're working on something called Health in All Policies through the Strategic Growth Council, which is an attempt to integrate health into all sorts of decisions at the state government level: infrastructure spending and regulatory issues. What policies affect health and how do we ensure that decisions that are made that do affect health do take into considerations those impacts.

The Heath in All Policies work group has just identified 11 such impacts and are now working on a program to integrate those 11 identified issues into state policy. When we're done with that, we're going to integrate some of that into general plan guidelines for local governments. It'll be on a voluntary basis. But we want to try to help those jurisdictions that are interested in integrating heath into their planning decisions. We're going to introduce some informational processes to try to get some buy-in at local levels.

For jurisdictions that may not have the capacity to have thought about this in an extensive way, they might be able to use some of the material, and say, 'here's something off the shelf that we can do that might make quite a bit of difference.' For others, some of the jurisdictions are very sophisticated and it will be a reinforcement. As usual in California, there are all different sizes and shapes and we're trying to help as best we can. ■

>>>> Redevelopment Agencies Hope for Injunction

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been announced. The new "voluntary" component of the budget trailer bills is not likely to cause a change in strategy from when the Legislature was threatening outright elimination.

"We're certainly hopeful that the courts will issue an injunction because of the irrevocable damage they will cause," said David Bloom, spokesperson for the state's biggest agency, the Los Angeles Community Redevelopment Agency. "And then the state will be back in a hole again."

Steve Shea, consultant to Senate Pro Tem Darrel Steinberg (D-Sacramento), claims, however, that even if a court strikes down certain parts of ABx1 26 and ABx1 27, ABx1 26 contains a provision – a "poison pill," according to Shea – that would limit agencies' function to that of merely servicing existing debt. They would, therefore, cease to pursue new projects and would waste away as project areas expired.

"It's very difficult to see any possible resolution that would require redevelopment agencies to be restored in their pre-existing format," said Shea.

Shea said that the payment scheme and other aspects of the legislation resemble those that were included in the CRA's own proposed legislation, which also called for voluntary payments. The difference, said Shea, is that "the CRA's didn't have the elimination component."

For those agencies that survive, Shea said that the budget legislation foreshadows reform legislation that will be considered in the next legislative session.

In the meantime, redevelopment agencies around the state must decide whether to fold up shop or stay in business by paying the "remittance." "We're not issuing blanket recommendations," said McKenzie. "We encourage them to look at their own situation and make what they deem the best determination."

Unless a court issues a stay, the laws call for agencies that intend to pay to notify the state within 90 days of the law's signing – the end of September. Agencies can ask for a one-month extension. Unless a judge issues a stay, agencies do not have the option of staying in business without paying the remittance.

> "They have fashioned a phony voluntary plan that is anything but voluntary. ... We hope to get the court to issue a stay very soon so everybody can take a breather and wait for the court to make a decision."
>
> – **CHRIS McKENZIE,** LEAGUE OF CALIFORNIA CITIES

Payments would be spread among the state's redevelopment agencies in rough proportion to the size of their tax increments. As the state's largest agency, the Los Angeles Community Redevelopment Agency would pay roughly $95 million this fiscal year, according to analysis conducted by the California Redevelopment Association. Many smaller agencies would pay several hundred thousand dollars.

No matter what, any payment would be a burden for most agencies.

"We're not walking around with a nine-figure sum in our back pocket," said CRA/LA spokesperson David Bloom. "It is a significant hit to us."

As such, agencies that choose to stay alive will almost invariably have to curtail programs and scrap planned-for projects.

"If the city elects to opt into the AB 27 option, that means that we're going to have to take a look at all of our projects and activities," said Derek Danziger, spokesperson for San Diego's Centre City Development Corporation. Danziger said that the agency could "delay, postpone, defer, or eliminate (projects such as) parks, fire stations, public infrastructure."

While most agencies are expected to fight for their survival – and support the lawsuit, according to McKenzie – the decision to submit to the funding transfer rests with city councils and county boards of supervisors. Therefore, the ability to pay remittances does not depend directly on an agency's liquidity, but presumably city councils would hesitate to support agencies if they would have to draw from their cities' respective general funds.

"(Payment is) a decision the agency doesn't make. That's the city," said Jim Morales, general counsel for the San Francisco Redevelopment Agency. "They will need to take a look at the budget and the agency's budget and determine if that's an appropriate amount at the

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>>>> Agencies Must Decide Whether to Pay 'Remittance'

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city can assume."

Those that do not notify within the 90 are assumed to be shutting down, at which point their assets and liabilities will be turned over to "successor" agencies.

In many respects, the signing of the budget legislation marks only the beginning of the real battle over redevelopment. In the past six months debates have raged over the efficacy of redevelopment, the prospects for redevelopment reform, and even the value of the tax increment, which some say is far less than the governor's estimate of $1.7 billion. A week after taking office, Brown called for the elimination of redevelopment. The League and the CRA responded by proposing that agencies provide schools with voluntary contributions in exchange for extending the life of their projects.

For some cash-strapped agencies, a win in court may be their only hope of survival. Agencies that have the funds, and that wish to continue doing their work, are now gearing up to assess their finances and ask their respective city councils to approve the transfer of funds to the state. Many are prepared to adhere to the 90-day deadline even though the lawsuit could push the deadline back.

"Our legislative body has a summer recess, so if the city were to pursue the option, there would be added pressure because of the need for hearings and advance notice of the legislation," said Morales. "It's do-able but clearly it's pushing it."

One interpretation of the legislation contended that agencies that participated in the lawsuit would forfeit their opportunity to stay alive via remittances. Spokespeople from several agencies mention this concern. However, Shea said that he was "not aware" of any such provision.

Statewide, clear trends have not yet emerged regarding which agencies will fold versus which will submit to the payment. Bloom noted that some large agencies are relatively stable whereas the San Jose Redevelopment Agency – traditionally one of the biggest and strongest agencies – is over-leveraged and has been running on a skeleton crew for several months.

> Redevelopment agencies must choose whether to fold or to pay the "remittance." "We're not walking around with a nine-figure sum in our back pocket. It is a significant hit to us."
>
> – **DAVID BLOOM,** LA COMMUNITY REDEVELOPMENT AGENCY

As of now, therefore, no one knows how many agencies could fold if the legislation is upheld.

"We don't have a sense of that," said Shea, of the Senate Pro Tem's office. "The bill doesn't require (the Department of) Finance to release those numbers until September. It's obviously a significant decision. We want to put the agencies in the best possible shape."

All along, supporters of redevelopment have argued that agencies and their programs stoke exactly the sort of economic development and employment that the state needs amidst its historic economic downturn. A chorus of developers, public officials, and legislators have called for the Legislature and governor to keep redevelopment intact so that it can be reformed and made more effective. Many, including State Controller John Chiang, have criticized agencies for pandering to developers, avoiding oversight, and using specious findings of blight.

For agencies, many of those arguments became moot with the stroke of Brown's pen yesterday.

"It would be imprudent for us to just wait and hope," said Bloom. "I anticipate that we will have things in place to protect the city's prerogatives and finances as much as possible should we not be successful in court." ■

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>>>> Deals May Dry Up Even if Agencies Survive

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some kind of effort to reform redevelopment?

Second, can the remaining redevelopment power be combined with other financing mechanisms to put successful deals together – especially in a down economy where real estate seems to be terminally in the tank? Or must redevelopment be combined with other financing mechanisms to make deals go?

Back in January, there was a lot of talk about redevelopment reform. Brown's proposal to eliminate redevelopment was couched partly in budget terms, but also in terms of redevelopment's overall effectiveness. In his budget press conference in January, Brown spent more time on redevelopment than any other topic; and he promised to devise a replacement tool if tax-increment financing went away. There was some talk, for example, of permitting cities to issue economic development bonds with 55% voter approval, though nothing came of it.

A ferocious back-and-forth went on all spring, with anti-redevelopment folks claiming it was a gravy train for fat-cat developers and pro-redevelopment folks delivering anecdote after anecdote about redevelopment's benefits. The fat-cat developers stayed on the sidelines in this debate, and the pro-con gradually degenerated to partisan politics, with urban Democrats speaking out against redevelopment and suburban Republicans defending it.

Lost in the shuffle of this debate was the question of whether redevelopment should be – or could be – reformed. There was some talk about tightening up blight findings yet again and a number of other ideas were floated – making it easier to create blightless tax-increment financing districts, for example, but creating a state allocation system and stronger state oversight in response. These were mostly non-starters for two reasons: First, the real reason redevelopment was on the table in Sacramento was money, not effectiveness; and, second, the only thing that sets the redevelopment establishment on fire more than taking away the money is the possibility of more state oversight.

Yet, in the end, redevelopment reform is ultimately about more state oversight. Tax-increment financing is far easier for local governments to use in California than in any other state – and it will remain so even if the two-bill strategy goes into effect. In most states, access to tax-increment financing is strictly controlled by the state, which uses that control to ensure that TIF is used for specific purposes. Washington, for example, recently adopted a law giving access to tax-increment financing to cities that participate in the Seattle region's transfer of development rights program.

So it would seem that any meaningful redevelopment reform would have to begin with narrowing the purpose of redevelopment and giving the state more oversight power. This is not likely to sit well with local governments, who would probably much rather take more of a hit on the blight finding than surrender any actual power to the state. On the other hand, it's not clear how much clout the locals will have on redevelopment if they are engaged in firestorm litigation with the state over the budget. Nor is it clear that the state will have much interest in real reform if the budget is resolved.

> Most agencies will probably decide it's worth it to stay in business, even though they will probably be getting less than half the tax-increment revenue they received only a few years ago.

Which leads us to the second question: Will there be enough money left in redevelopment to do the real estate deals that redevelopment agencies have traditionally done?

The answer to this question is probably no, but it's worth noting that – in the past – the answer has always been yes even though prospects were dim. After Proposition 13 passed in 1978, for example, most experts predicted the end of redevelopment, because the property tax rate – and hence the tax increment – was cut by more than half. Cities soon figured out, however, that under Proposition 13, redevelopment was one of the few ways to wrestle property tax revenue unilaterally away from other agencies. So redevelopment was back in business.

Most agencies will probably decide it's worth it to stay in business, even though they

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>>>> RDAs Face 'Limited Options'

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will probably be getting less than half the tax-increment revenue they received only a few years ago. Especially in a lousy market, however, this situation will put pressure on cities and agencies to find other ways to fill the financial gap. The problem here is that the options are limited.

> Big-R Redevelopment has been curtailed and could still die – maybe a slow death. But small-r redevelopment will continue, as cities and developers look under every possible rock to find ways to do deals.

In general, in order to subsidize a real estate deal without outside funding, there are only three options:

1. Redirect some of the tax revenue from the project back into the deal, which is what tax-increment financing does.

2. Create additional revenue streams from the project's developers and tenants by creating something like an assessment district, which of course raises costs and changes the dynamics of the deal.

3. Give developers something of non-monetary value to the city, such as reduced parking ratios or increased square footage.

With property tax increment flows down, you can expect that more cities will turn to sales tax rebates – an equivalent tool – to make deals work. Sales tax rebates, of course, will only work for retail deals or other deals that involve businesses engaged in taxable transactions. Retail's on the way back, but retail chains are very reluctant to pull the trigger on new stores. So cities focus on other businesses that generate taxable transactions – such as companies that manufacture large pieces of equipment that are sold to other businesses at high prices in taxable transactions.

Among the options for additional revenue streams are things like assessment districts, parking districts, business improvement districts, and so forth. Cities are also likely to move toward these financing tools as well, though there are some problems. First, many assessment districts require an election under Proposition 218 – and approval is by no means certain. Second, by adding to the overall cost of development in a lousy market, such districts may raise money for infrastructure but may make it harder to do actual deals. The trend toward BIDs will continue, though BIDs tend to focus on operational funds for, say, a downtown, rather than capital cost of infrastructure or writing down land.

The last option would be to manipulate regulations to give developers something of value to them that doesn't cost the city anything. And there are two ways to do this. The first is to simply give these regulatory breaks away in order to induce private development. The second is to, in essence, sell those breaks, through something like a transfer of development rights system, in order to raise money for infrastructure or land write-downs.

Reducing parking ratios is a very powerful inducement for developers, especially in urban areas where the cost of structured parking is extremely high. In the current market, this option is probably more powerful than increased density, which increases revenue but also increases cost. At the same time, most developers will balk at reducing parking too much, since they must still deal with market demand for at least some parking on-site.

The TDR alternative essentially permits a developer to build larger buildings by purchasing development rights for other property owners who have ample zoning. If the seller of the development rights is a public agency, this could potentially raise money for infrastructure or land writedowns. Seattle has done this a lot – since the city has limited access to tax-increment financing – and Los Angeles has done it a few times with the Transfer of Floor Area Ratio (TFAR) program. L.A. Planning Director Michael Lo Grande has state L.A. is likely to do more TFAR deals in the future if redevelopment is eliminated or restructured.

Big-R Redevelopment has been curtailed and could still die – maybe a slow death. But small-r redevelopment will continue, as cities and developers look under every possible rock to find ways to do deals. ■

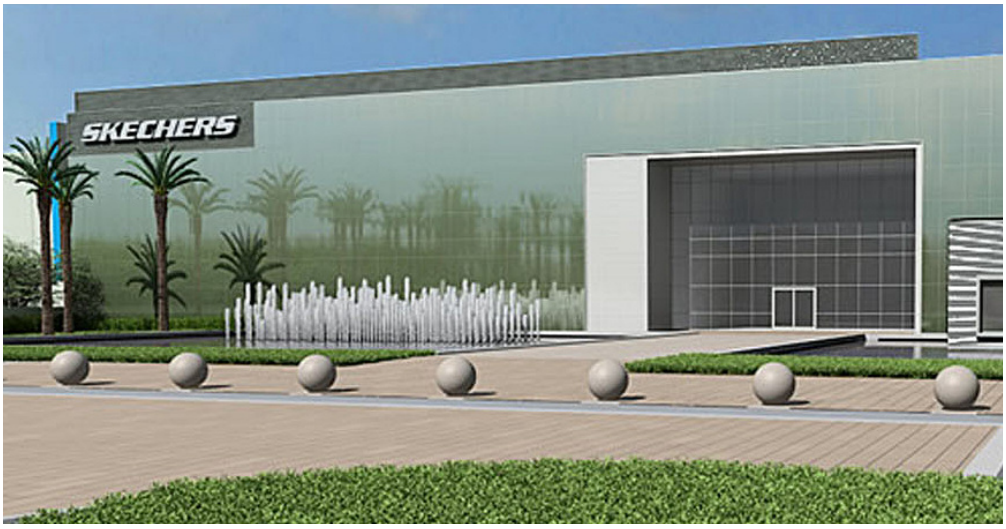
Shoe Warehouse Stumbles into Sustainability

Here's one for the irony hall of fame: the new distribution center of one of the world's largest shoe companies is located in one of the most un-walkable places in California.

I mean to rib Skechers USA Inc. and its warehouse in Moreno Valley only lightly. No one expects to walk to an industrial or logistics facility the way they would to an office building or corner grocery store.

Progressive planners can only hope that all those shoes land on worthy sidewalks after they're sold. Nonetheless, the Skechers distribution center has captured attention not only because it's a real live building (we remember real estate development, don't we?) in one of the foreclosure capitals of the country but also because it touts its "green" credentials to a fare-thee-well.

As the second- or third-largest warehouse in the state, it seems to hold as many superlatives as it does shoes. Most notably, this biggest of the big boxes claims to be the largest LEED-certified building in the United States.



RENDERING: HIGHLAND FAIRVIEW

We usually don't talk about sprawl in discrete terms. Sprawl is a totality of developments. Yet the Sketchers building itself is sprawl. The structure spans 1.8 million square feet, mostly on one level. That alone is the size of a small tract housing development. The Los Angeles Times notes that it would take a half-minute to drive the 2,900-foot length of the building – at 60 miles per hour. The "short" end of the building is 700 feet, meaning that it covers the area of 40 football fields. This is ironic, since Skechers isn't known for making cleats.

Up to 20,000 shoes of other types will pass through its conveyer belts and out the 270 truck bays every hour.

Not bad for a little cobbling outfit from Manhattan Beach.

Somehow, this behemoth racked up enough points to gain basic LEED certification. Environmentally friendly features reportedly include solar power (makes sense with a roof that big), natural ventilation (good luck in the Moreno Valley summer), and sensors that turn off lights in vacant parts of the building (duh). These features will reportedly save Skechers $10 million in energy costs per year compared to a conventional building. That's nice for Skechers, but it's not clear why the company deserves a plaque for being sensible.

Beyond the building's walls, its location flouts every principle of smart growth. Moreno Valley is the classic outer suburb. It has wide streets, strip malls, and tract housing, and it's far from any traditional urban center. This means that 500 or so daily workers will be driving there by all sorts of routes, none of which is likely to involve a bus, bike, or, indeed, even those weird convex shoes that claim to make your butt look firmer.

So, on the regional scale, the place embodies, at best, business-as-usual freeway urbanism.

If laws like Senate Bill 375 were retroactive, we'd scoop up all the residents of Moreno Valley and deposit them in condo towers in Downtown Los Angeles. Then we'd let wildflowers take over. Then you'd build warehouses…. Well, I don't know where you'd build them. Probably close to freeways, rail spurs, and other infrastructure.

But just as you can't un-ring a bell, you can't un-leap a frog. Moreno Valley's leapfrog development is here to stay, and the freeways and heavy rail lines leading to it (as well as the ports of L.A. and Long Beach) are too. That's why – and I can't believe I'm saying this – the Sketchers warehouse might be almost all right.

Regardless of what LEED says, the greenest component of the warehouse may lie in what it isn't: it's not six other warehouses.

That's the number of facilities Skechers currently uses, and they're spread all over the Inland Empire. So if all those truck trips to one location in Moreno Valley scare you, imagine the aggregate impact of the current system. There's no reason to believe that workers are driving any less to get to those jobs than they will once they're redeployed to the new place.

There's one other scale worth considering: the global scale. Ultimately, Skechers' LEED-plated building is just one stop on the long conveyor belt connecting the sweatshops of China to the closets of America. Those shoes grace California's shores because we have the port infrastructure and inland connections. But the environmental impact of what happens here pales in comparison to what's happening in Guangzhou or Shenzen. Out of sight, out of mind.

So let's tally the votes. Building: OK. Location: bad. Economics of scale: good. Global impact: unclear, but probably unavoidable no matter what it is.

There is, of course, one more element to consider: the output. Skechers isn't a tire company or chemical plant. If, after they cross an ocean, slide through a conveyer belt, and cross a continent, Skechers' products get consumers to lace up, take a stroll, and tighten their glutes, then it might be pretty green after all.

They just probably won't be doing much of it in Moreno Valley.

– JOSH STEPHENS | JULY 11, 2011