

# S.F. Peninsula Cities Cast Wary Eye on High-Speed Rail

BY JOSH STEPHENS

**WITH FRIENDS LIKE** the cities of Palo Alto, Redwood City, and San Mateo, who needs enemies? Certainly not the California High-Speed Rail Authority.

When Proposition 1A, the \$9.95 billion bond measure to fund planning for California’s proposed high-speed rail system, passed with 52% of statewide votes in 2008, voters in San Mateo and Santa Clara counties approved at rates over 60%. Since then, however, cities along the Peninsula have been some of the most vocal critics of the plan – with some going so far as to sue the authority in order to force the project to scale down. Opposition on the Peninsula could prevent high-speed rail from completing its final northern leg from San Jose to San Francisco. Cities there are currently promoting a hybrid alternative to build on current Caltrain service.

“The communities along the Peninsula were resoundingly in support of Prop. 1A,” said Seamus Murphy, government affairs manager at Caltrain, the commuter rail line that serves the Peninsula. “But I don’t think anyone was predicting at the time how the design and engineering, and

environmental review process would unfold on the Peninsula.”

Many in the region are now less excited about the prospect of having high-speed rail stations in cities such as Palo Alto than they are concerned that trains traveling through their communities at 200 mph dozens of times per day could irreparably undermine their quality of life – regardless of opportunities for transit-oriented development.

“We don’t want some huge wall to come through our city, which is a pedestrian and bike community,” said Burlingame Mayor Terry Nagel. “It’s got a very down-home, small-city feel. We don’t want to lose that with some enormous thing.”

The authority’s initial business plan, published in 2008, projected that eight trains would run per hour in both directions at peak times of time, for a total of 71 trains each way per day for 100 million annual passengers. Those numbers have been subject to criticism and are being revised downward, by as much as 50%, by the authority.

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**insight**  
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## Prop. 13 Inequities Pit Cities Against Special Districts

**HERE’S THE FIRST SALVO** in the next war over local government funding in California: The El Dorado County Grand Jury’s lambasting of the cash-rich El Dorado Hills Fire District. [↗]

The whole report is devastating. In a nutshell here’s what it says: The El Dorado Hills Fire District gets 17.5% of the city’s property tax. The department has four fully staffed stations, with highly trained firefighters who make considerably more money

than their counterparts in neighboring fire departments and they also make a lot in overtime. And it has \$14 million in the bank.

Last year, on average, the El Dorado Hills firefighters responded to seven calls a day. They responded to one structure fire every week or two and one brush fire every week or two.

If you think maybe this is throwing an awful lot of horsepower at a pretty small problem – well, the

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**A REPORT RECENTLY ISSUED** by the State Auditor contends that the State Lands Commission has not always managed its more than 4,000 leases in the state's best interest. According to the report, the commission has missed opportunities to generate millions of dollars in revenues for the State's General Fund – estimated to be as much as \$8.2 million for just some of the leases in the sample of 35 the auditor reviewed. Specific findings were that the commission is not effective or consistent in seeking payment from lessees whose rent is past due – known as delinquent lessees – in part because it does not have policies and procedures specifying the steps it needs to take to appropriately manage these leases. Furthermore, it does not consistently take any other actions, such as evicting delinquent lessees, to ensure that it is protecting the state's interest in its properties. The report found that 130 of the commission's nearly 1,000 revenue-generating leases were past due on rent and that the commission has allowed some of the delinquent lessees whose leases we reviewed to remain on state land for up to 22 years without paying rent. The report made a host of recommendations explaining how the commission can better manage its leases and collect rent payments.

**IRVINE'S GREAT PARK** crossed a major threshold this month with the approval of the construction of a mixed use development including 5,000 homes on the site of the former El Toro Marine Corps base. The long-awaited development, approved by the Irvine City Council with only one dissenting vote, had stalled because of the recession, but it is poised to get back on track with the development of the homes – to be called Great Park Neighborhoods – by FivePoint Communities. FivePoint has agreed to contribute an initial \$40 million to the construction of the park, which has been on the drawing board for six years, ever since the federal government shuttered the base and put it up for sale. FivePoint also owns 1,000 more acres on the Great Park site that are eligible for development. Plans for those acres have not been revealed.

**A JUDGE HAS THROWN OUT** a claim by developers seeking to invalidate the March 2011 vote on San Clemente's Measure A. Approved by a 57% majority, Measure A rejected a planned development called Playa del Norte, which would have included over

48,000 square feet of construction adjacent to the beach. The lawsuit, filed by Playa del Norte developers, Shaheen and Linda Sadeghi, claimed that the Measure A referendum (in response to the City Council's approval of the project) was flawed because it was unclear about whether voters were approving on planning documents or on the development itself. Orange County Superior Court Judge James DiCesare disagreed, saying that any errors in the language of the referendum were not so substantial as to invalidate it.

**THE SMALL MOJAVE DESERT** community of Mecca has had to inhale more than just sagebrush and mesquite in recent months. Instead, a foul odor from two nearby waste recycling facilities has been inundating the farming community, one of the poorest in California. In response to citizen outcry – and reports of illnesses caused by the odor – the U.S. EPA, the South Coast Air Quality Management District, Sen. Barbara Boxer, and celebrity lawyer, Erin Brokovich, brokered a deal to force Western Environmental Inc. to reduce the size of its waste piles, treat them with chemicals, and take other actions to reduce the stench. Failure to do so could result in a \$7,000 daily fine, to be administered by the EPA.

**ACCORDING TO A RECENT REPORT** from the Public Policy Institute of California entitled "California Housing: Planning for a Better Future," California is still experiencing the aftereffects of the most recent housing bubble and faces significant long-term challenges in housing. The state is slowly emerging from the crisis, but prices remain at or near their post-bubble lows, construction remains slow, and 32 percent of mortgaged residential properties are "underwater." Foreclosures skyrocketed in 2007, peaked in 2008, and have remained high in 2009 and 2010. Falling prices have also discouraged new construction: new residential construction permits fell from around 200,000 annually, from 2003 to 2005, to tens of thousands annually from 2008 to 2010. During the post-bubble years, home values declined less steeply in San Francisco (18%) and San Jose (21%), as well as in Orange County (28%) and Los Angeles (29%). And in 2010, prices rose slightly or held steady in those areas. At the other extreme, prices fell 41% in Sacramento, 45% in the Inland Empire, and more than 50% in the Central Valley metropolitan areas of Stockton, Modesto, and Merced.

**NEWHALL RANCH**, the proposed 60,000-home development in northwestern Los Angeles County, has received a crucial approval from the federal government. The U.S. EPA had been in a dispute with the Army Corps of Engineers over flood dangers posed by the Santa Clara River, which runs through the proposed 12,000-acre development and is under the Corps' jurisdiction. The EPA claimed that the Corps had not fully considered flood dangers and some downstream effects of the development. But the two agencies struck a deal that now limits the development's impact to 48 acres of streams and sets aside 115 acres as a floodplain. While the developer praised the deal, environmental activists attacked it, noting that the river has suffered at least two major flood episodes in the past 20 years and that multiple endangered species rely on the watershed. The project will now be considered by the Los Angeles Regional Water Control Board.

**A GROUP CALLED** Save Our Heritage Organization (SOHO) has filed a lawsuit against the City of San Diego over an agreement it made to reduce traffic in the center of historic Balboa Park. The City Council voted, 7-1, to approve a memorandum of understanding with Irwin Jacobs, co-founder of Qualcomm, to construct a bypass off the Cabrillo Bridge to route traffic away from the Plaza de Panama, the park's ceremonial center. Jacobs is spearheading a \$25 million fundraising effort to pay for the bypass and other improvements. SOHO objects to the MOU on the grounds that the bypass could endanger the park's historic and cultural resources; the group wants the city to review a broader range of options. The bypass is intended to be completed in time for the centennial celebration of the 1915 California-Panama Exposition.

**TAKING A RHETORICAL AND LITERAL CUE** from Los Angeles, officials in the City of Oakland have announced their intention to revitalize the city's aging stadium and arena complex into a development called Oakland Live. Though Alameda County owns the land on which the city's major league teams now play, the city has been buying parcels adjacent to the stadium property in the hopes of developing a new retail and entertainment district modeled on LA Live, the complex next to Los Angeles' Staples Center. No formal plans have been drawn up yet, but the council did re-

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– CONTINUED FROM PAGE 2

cently authorize the expenditure of \$4 million in redevelopment funds for a design plan and environmental impact report. Some officials say that an upgrade of the area – near the Oakland Airport – is crucial for retaining the Raiders, A's, and Warriors, and possibly for attracting the 49ers.

**THE LOS ANGELES COUNTY** Metropolitan Transportation Authority and local elected officials celebrated the groundbreaking this month of Phase II of the Expo Light Rail line that, when completed, will connect downtown Los Angeles to coastal Santa Monica. In doing so, the Expo Line will be the first rail transit line to serve the jobs-rich neighborhoods of West Los Angeles since L.A.'s erstwhile electric interurban rail system was torn up in the middle of the 20th Century. The first phase of the light rail project is expected to be completed by the end of 2011. The nine-mile Phase I segment will connect downtown Los Angeles to Culver City. Phase II will fill in the last seven-mile leg between Culver City and Santa Monica. Ridership estimates project 64,000 weekday boardings on the Expo Line by 2030, which would rival Metro's Blue Line for busiest in the metro system and the entire U.S.

**THE RESPECTIVE GOVERNORS** of California and Nevada have entered into an agreement with the U.S. Environmental Protection Agency to preserve Lake Tahoe's renowned clear waters for 65 years. Increasing development around the lake had prompted concerns that it might generate greater pollution. The main culprit in the clouding of the waters is fine particulate matter generated by automobiles that ends up washing into the lake via stormwater runoff. Achieving this goal will require overcoming both technical and political challenges. On the face of it, the technical challenges seem comparatively easy; namely, localities will have coordinating street cleanups and sediment capturing. Governors Jerry Brown and Brian Sandoval convened at the lake for two days to discuss the broad parameters of an agreement and

have made plans to visit each other's respective capitol. A complication is a Nevada bill signed by Sandoval that would force the state to walk away from its participation in the bi-state Tahoe Regional Planning Agency. The only "out" that would keep the state in the compact is if it were modified to loosen regulations on new developments around Lake Tahoe. U.S. Senator Dianne Feinstein (D-Calif.) is attempting to secure over \$400 million from the federal government to bolster the pollution abatement efforts, but wasn't entirely optimistic, given federal funding priorities at the moment. Sen. Feinstein also expected that it would be difficult to get California and Congress to agree on the amendments to the compact that the new Nevada law requires.

**A PIECE OF UNINCORPORATED LAND** in Santa Clara County – dubbed "Cambrian 36" by planners – has finally found a home via annexation. The cities of Campbell and San Jose have struck a deal that will see the 103-acre parcel become a part of Campbell, thus bringing to an end a protracted dispute. This comes as a relief to residents of the incorporated area – referred to, locally, as Campbell Village – who were resolute in their desire not to become a part of San Jose. Citizens were particularly concerned about having more direct say in local political matters and better provision of municipal services. The deal ultimately benefits both cities, however. San Jose will be given a portion of the any revenue surplus that Cambrian 36 generates for Campbell for the next five years. That's projected to be, roughly, an additional \$200 thousand in San Jose's coffers annually. The terms will be adjusted every five years to ensure that neither party benefits nor bears the brunt excessively. The funds transfer deal will expire after forty years at which point Campbell will keep any and all Cambrian 36 revenues.

**A RECENT REPORT** by the Sacramento chapter of the Urban Land Institute allays some concerns about a proposed sports arena at the city's downtown rail-

yards. Opponents of the arena had raised concerns that it could conflict with the city's plan to create a multimodal transit hub – and high speed rail depot – at the rail yards, but the report contends not only that the two can coexist but that the arena and the transit hub can complement each other. Fitting both facilities into the 240-acre rail yard site would be a squeeze, and it could require the purchase of additional land, but the report contends that doing so is feasible, especially if it included a "transit village." The report also contends that the 8,200 existing parking spaces near the arena site are sufficient and that the arena and transit hub would therefore not require new parking. The \$300 million arena project has yet to be approved, but a plan was released in May.

**AIR RESOURCES BOARD STAFF** has released an information report on the draft Sustainable Communities Strategy recently issued by the San Diego Association of Governments and the quantification of the greenhouse gas reductions expected from implementation of the plan. The quantification of GHG emissions from the draft San Diego SCS, which is the first SCS from the state's four major MPOs, indicates that the ARB target of a 7 percent per capita reduction in 2020 and a 13 percent per capita reduction by 2035 would be met with SCS implementation. Therefore, if SANDAG approves the draft SCS, ARB staff will recommend that the Board accept the SANDAG finding that implementation of the SCS would meet the targets. If SANDAG modifies the draft SCS, ARB staff will review the changes to determine the impact on greenhouse gas emissions. ARB staff will inform the Board of the outcome, including any need to reconsider whether the final SCS would meet the target. Although the staff review shows that the draft SCS would meet ARB targets, the trend in per capita GHG emissions is unexpected. The San Diego SCS would achieve double the 2020 target and just meet the target in 2035. The full report is available at <http://www.arb.ca.gov/cc/sb375/sandagscs.pdf>. ■



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## Annexed Parcel Subject to Voter-Approved Down-Zoning

*Voter initiative did not deprive Morgan Hill developer of equal protection, court rules*

BY KATHERINE J. HART

WHEN THE CITY OF MORGAN HILL annexed an 80-acre plot of land over public outcry, city residents fought back by approving ballot measures limiting the development that could take place on that parcel. With a recent appeals court ruling – 31 years after the initial annexation – a developer’s project is high and dry, with the court ruling that the city’s actions did not amount to inverse condemnation or illegal spot zoning.

In *Arcadia Development Co., v. City of Morgan Hill*, Arcadia Development filed a petition for writ of mandate and a complaint for damages against the City of Morgan Hill over an initiative measure placed on the ballot by the city and approved by the voters in 2004. Arcadia argued that the city illegally spot-zoned its 69-acre property, inversely condemned the property, and sought damages for violating its civil and equal protection rights. Both the trial court and the appellate court rejected Arcadia’s claims.

### Background

On March 19, 1990, despite great public opposition, the Santa Clara County Local Agency Formation Commission approved the annexation of an 80-acre property owned by Arcadia Development Co. into the urban services area of the City of Morgan Hill. Within a few months, Arcadia had entitled 11 acres of its property. Thus, 69 acres remained undeveloped.

On December 8, 1990, voters of Morgan Hill approved Measure P, which amended the city’s zoning code to restrict the density on lands annexed on or after March 1, 1990 to that which was allowed by the county’s general plan prior to annexation. The measure and new ordinance had the effect of zoning Arcadia’s un-entitled property (now only 69 acres) to 20-acre minimum lot sizes and limiting the devel-

opment rights on the property to four single-family homes (versus 354 homes under the City’s general plan). The terms of Measure P would expire in 2010.

On April 17, 2004, Measure C was approved by city voters, which prohibited the city from applying to LAFCO or otherwise requesting or supporting the addition of any land to its urban services area until the existing infill land is insufficient to accommodate five years of growth. It also contained the same density restriction for lands annexed on or after March 1, 1990 as the previous Measure P adopted by the voters in December 1990. The terms of Measure C expire in 2020.

### Legal Issues

Arcadia sued the city over Measure C in 2004 arguing the city illegally spot-zoned its site, inversely condemned the property; it sought damages for violating Arcadia’s civil rights and equal protection rights. The inverse condemnation cause of action was dismissed. The trial court ruled in favor of the city on all remaining claims, which Arcadia appealed.

### On Appeal

On appeal, the Court of Appeal, Sixth Appellate District, analyzed whether the city abused its police power by illegally spot zoning the Arcadia property. Here, the court found that because other land surrounding the Arcadia property had equally or more restrictive zoning (two sides of the property were bounded by 20-acre minimum agricultural sites) and no development surrounding the property had occurred since 1990, when the density restriction initially took effect, the city did not illegally spot zone the site.

Arcadia’s equal protection challenge was also unsuccessful at the appellate level. Even in accepting the fact that the city’s new ordinance singled out Arcadia’s property for differential treatment, the court still sided with the city. The issue was whether there was any rational basis related to the public welfare for the restriction imposed. The appellate court explained that the first inquiry into the issue must

start with asking whose welfare is to be benefited by the ordinance at issue. A balancing of competing interests is undertaken and then the court must decide whether the ordinance has a rational basis.

In distinguishing the *Arnel Development Co. v. City of Costa Mesa* (1981) 126 Cal.App.3d 330 (holding that an initiative to down-zone a site was not rationally related to the general regional public welfare, but was rather an attempt to address only localized development concern) asserted by Arcadia, the court noted that there was an extreme shortage of low to moderate income housing in the City of Costa Mesa and in down-zoning Arnel’s site, the city had not addressed the regional housing shortage concern. Comparing the *Arnel* case to Arcadia’s, the court noted that the public welfare concerns outlined in Measure C were legitimate in that they attempted to reduce the burden on the city’s resources by discouraging noncontiguous development and urban sprawl. Moreover, the city had a legitimate goal of preserving the city’s unique rural character.

### Comment

The holdings in this case reinforce the long-standing rules regarding both spot zoning and equal protection. In sum, an agency does not abuse its police power in zoning unless it acted arbitrarily. Similarly, so long as there is a rational basis related to the public welfare for the restrictions imposed, no violation of equal protection will be found – even where an entity or parcel is singled out as was the case here. ■

#### ► The Case:

*Arcadia Development Co., v. City of Morgan Hill* (2011), filed August 5, 2011.

#### The Attorneys:

For Arcadia Development Co.: SSL Law Firm, Michael Burke, Diane K. Hanna

For the City of Morgan Hill: Shute, Mihaly & Weinberger, Ellison Folk

# City Can Ignore Attorney General's Recommended GHG Mitigation Measures Under CEQA

*Court rules EIR for hospital need not address every potential mitigation measure proposed by attorney general*

BY LESLIE WALKER

**BY NOW**, most CEQA practitioners have faced the problem of what to do when a project opponent submits the attorney general's 18-page list of potential greenhouse gas mitigation measures, when many of the measures in the list may not be appropriate for a particular project. On June 30, 2011, the Court of Appeal for the Second Appellate District held that the lead agency is not required to explain why each of the proposed measures is inappropriate for the project at issue.

The City of Santa Clarita approved a master plan for the expansion of Henry Mayo Newhall Hospital by adopting a statement of overriding considerations and certifying the final environmental impact report for the project. The city also adopted a development agreement between it and the real parties in interest, and adopted the master plan. The project would expand the amount of hospital and medical office space on the existing site from its current size of 340,071 square feet to 667,434 square feet and would add nine proposed structures over a 15-year period.

A citizens group named Santa Clarita Organization for Planning the Environment (SCOPE) challenged the project approvals on two grounds: 1) the city's conclusion that com-

plete mitigation of the project's impact on climate change was infeasible was not supported by substantial evidence or adequate analysis; and 2) that the city had abused its discretion in making the findings required by the city's uniform development code.

## Climate Change

The city prepared four draft EIRs for the project between November 2005 and September 2008. In June 2008, the Governor's Office

ery; and Scope 3 included indirect emissions that are consequences of activities of the project but which are not owned or controlled by the project, including GHG emissions from transportation sources. The city concluded that impacts from Scope 1 and 2 GHG emissions would be less than significant, but Scope 3 emissions would remain significant and unavoidable despite the implementation of recommended mitigation measures. SCOPE, the petitioners, claimed the city did not provide an ad-

Practitioners now have support for the decision not to address every mitigation measure thrown at a proposed project.

of Planning and Research issued a technical advisory calling for lead agencies to "make a good faith effort, based on available information, to calculate, model, or estimate the amount of CO<sub>2</sub> and other GHG emissions from a project, including emissions associated with vehicular traffic, energy consumption, water usage, and construction activities." The city's third draft EIR calculated the greenhouse gas (GHG) emissions from the project, including three categories of emissions: Scope 1 included emission sources owned or controlled by the Project; Scope 2 included GHG emissions from en-

equate explanation for this conclusion or provide substantial evidence in support of the finding that the impact would remain significant and unavoidable.

## 1. Adequate Explanation for the City's Conclusion

SCOPE had submitted a comment on the EIR and included with its comments a list of potential mitigation measures that had been developed by the Office of Attorney General. SCOPE requested that the city incorporate the measures into the project approval. The city re-

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# >>>> Court Defers to City's Interpretation of its Own Code

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sponded to the comment, indicating that certain aspects of the project design were consistent with the attorney general's proposed mitigation measures. The city did not address every mitigation measure in the attorney general's list.

Citing to *Los Angeles Unified School District v. City of Los Angeles* (1997) 58 Cal.App.4th 1029, the petitioners claimed the final EIR violated CEQA because it did not specifically consider and discuss the mitigation measures in the attorney general's letter. In *Los Angeles*, the petitioner suggested a specific, concrete mitigation measure to mitigate a specific air quality impact, whereas in Santa Clarita, petitioners had attached the attorney general's list of mitigation measures to a letter to the city. The court found that because SCOPE did not single out any specific suggestions from the numerous potential mitigation measures in the attorney general's letter, and the letter itself stated that "the measures cited may not be appropriate for every project," it was unreasonable to impose on the city an obligation to explore each and every measure.

## 2. Substantial Evidence Supports the Finding

SCOPE also argued there was an absence of evidence to support the city's determination that the mitigation measures set forth in the attorney general's letter were infeasible. SCOPE further claimed that the city's finding that significant cumulative impact on climate change would be unavoidable was unsupported because neither the city's findings nor the FEIR contained any facts or analysis to support this conclusion.

The court found that substantial evidence did support the city's finding. The court noted

the OPR technical advisory was one of the only documents providing guidance on GHG emissions at the time the EIR was prepared. The EIR followed the three steps set forth in the advisory: 1) identify and quantify GHG emissions; 2) assess the significance of the impact on climate change; and 3) if the impact is found to be significant, identify alternatives or mitigation measures.

The EIR quantified the emissions from the project and found the emissions with respect to Scopes 1 and 2 were insignificant. With respect to Scope 3, the EIR pointed out that emissions from vehicle exhaust are regulated by state and federal governments and are outside the control of the project. The EIR noted that no thresholds had been established, but concluded that it was likely that if a threshold were adopted, the Scope 3 emissions would exceed the threshold. The project included eight mitigation measures which had been introduced to ease the flow of traffic, and thus reduce GHG emissions. As well, the city had committed to comply with new standards requiring the project comply with the city's sustainable policies and transportation demand management program. The court found this to be substantial evidence to support the agency's decision that the EIR complied with CEQA.

## Health and Welfare of Neighboring Residents

SCOPE claimed the city failed to proceed in the manner required by law because it balanced the project's perceived benefits against its adverse impacts on neighboring residents. The City of Santa Clarita's uniform development code requires the city find a proposed development will not "adversely affect the health,

peace, comfort or welfare of persons residing or working in the surrounding area." The city balanced the benefits of the project against the impacts on the surrounding neighborhood in making the required finding. Petitioners claimed the plain language of the section did not permit that type of balancing.

The court found the plain language of the uniform development code did not foreclose the balancing of the benefits versus the detriments, the city's interpretation of its own ordinance was entitled to great deference, and the ordinance does not limit the factors that may be considered in making the finding. Therefore, the court found that the city proceeded lawfully.

## Conclusion

Practitioners now have support for the decision not to address every mitigation measure thrown at a proposed project. The case should be read with caution, however, because it could easily be distinguished in cases where the list of proposed mitigation measures is more closely tailored to the proposed project. ■

► The Case:  
*Santa Clarita Organization for Planning the Environment v. City of Santa Clarita* (June 30, 2011, No. B224242) \_\_\_ Cal.App.4th \_\_\_.

The Attorneys:  
For Plaintiff and Appellant: Law Offices of Babak Naficy and Babak Naficy

For Defendants and Respondents: Carl K. Newton, City Attorney; Burke, Williams & Sorensen, Brian A. Pierik and Amy E. Hoyt

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# Federal Government Sends Reinforcements to Fresno



BRYAN HARLEY

The failing Fulton Mall is a symbol of downtown Fresno's economic challenges.

## California's poorest metro area is one of six cities enlisted in 'Strong Cities, Strong Communities' pilot project

BY JOSH STEPHENS

ACCORDING TO SOME FRESNO LOCALS, it was 30 years ago – perhaps because of Proposition 13, perhaps because of the falling price of grapes – that the city at the heart of the San Joaquin Valley went into decline. Since then, accusations of corruption, dismal economics, and nearly unmitigated low-density development have made the city both the butt of jokes and one of the nation's most forlorn urban areas. It has not suffered the spectacular fall of, say, Detroit – but only because it never rose to Detroit's industrial prominence in the first place.

But now Fresno and Detroit have something else in common: They are among the six cities that the Obama administration have chosen to take part in the Strong Cities, Strong Communities Initiative, a pilot program intended to help depressed cities use federal resources to

revive their economies.

Administered by the Department of Housing and Urban Development with participation from a wide array of federal agencies that address urban development – including the departments of Transportation, Health and Human Services, and the Environmental Protec-

federal government work better for those of us who are working at the local level to make our communities better," said Fresno Mayor Ashley Swearengin. "There are ways in which I think we can streamline and fast-track certain issues that we have to deal with the federal government on."

"We're pleased to finally get national recognition and be identified as a city that has good economic development plans but needs help implementing them."

– ASHLEY SWEARENGIN,  
FRESNO MAYOR

tion Agency – Strong Cities, Strong Communities is intended to help cities leverage federal funds and capitalize on federal expertise in order to execute their own, home-grown economic development strategies. The White House heralds the program as a way to use civic ingenuity to create jobs.

"They're trying to find ways to make the

That sort of coordination and quest for efficiency represents a new attitude in the federal government, said HUD District 9 administrator Ophelia Basgal.

"To try to get people out of their particular program areas and think about how you can leverage federal resources in a community," said Basgal. "That's very different from how

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## >>>> Team Will Help Fresno Leverage Federal Funds, Expertise

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HUD operated in the past, or DOT or EPA or any other federal agency.”

Fresno is the lone western city to take part in the initiative. The other cities are Chester, Pa.; Cleveland, Detroit, Memphis, and New Orleans. HUD officials say that because it is a pilot program, cities were not invited to compete for spots in the program. Swearingin said that Fresno was already in the running before she had even heard of the program, which is intended to include a variety of cities with a variety of challenges.

“In Detroit, your issue isn’t, ‘do you have enough available land?’ It’s, ‘what do you do in a city that’s shrinking?’” said Basgal. “That’s why this pilot approach of having a variety of a different kind of cities facing different issues.”

She and city leaders hope, however, that by the time the initiative runs its course that everyone in Fresno will be aware of its impacts on the city.

“We’re pleased to finally get national recognition and be identified as a city that has good economic development plans but needs help implementing them,” said Swearingin.

Basgal said that Fresno was an obvious candidate for the initiative because of its aggressive and unified approach to economic development and the fact that decades of desperation have, say city officials, recently given rise to a new, more aggressive approach to economic development.

“While we’ve been hard-hit, the economic challenges we face as a region have been in place for many years,” said Swearingin. “I made the case that other cities that were picked because they were poster children for this recession...we are on our way back from long-term chronic unemployment and chronic economic distress. We’re primed.”

The initiative centers on Community Solutions Teams, which consist of representatives from relevant federal agencies who will be embedded in Fresno city hall for a year. Those representatives will work with each other and with city officials to identify ways that existing federal programs and funding opportunities — the initiative includes no formal financial support — can be put to work for the city’s benefit.

The team’s specific goals have yet to be determined. Swearingin said that the team would spend its first 30 days getting oriented, after which time they would create a list of concrete goals to address in the following 11 months.

“(The initiative is) not something that’s completely defined yet,” said Balch. “It repre-

sents more potential or promise than actually knowing what it is that’s going to happen.”

Many of its goals, say Swearingin, will involve the city’s physical character.

“They relate almost entirely to the built environment,” said Swearingin. “One of the reasons the team was interested in coming to Fresno was our focus on downtown revitalization, planning for high speed rail, planning for the expansion of our industrial sector, in particular food-related business, which is key for our region.”

Swearingin said that the Community Solutions Team will work with staff from the city departments including planning, utilities, and public works. In addition to the Community Solutions Team, the initiative includes a fellowship program that will place mid-career professionals in city agencies. A National Resource Network has also been proposed to provide technical advice and models of best practices for participating cities.

The city’s downtown holds particular promise for the team, if only because it has long been considered one of the most moribund and under-performing in the state.

“Downtown was a grand planning experiment,” said Basgal. “There’s nothing that goes on in downtown Fresno after dark. How to re-create a vibrant downtown is a key to where Fresno goes economically.”

For generations Fresno has famously promoted dispersed residential development which, in turn, has dissuaded residents from visiting the downtown. As well, the city’s reliance on the agricultural sector means that there are fewer traditional downtown jobs and more in the rural areas surrounding the city. Many of the city’s 354,000 residents simply cannot afford to patronize the sorts of businesses that downtowns rely on. By some measures, Fresno’s quality of life — taking into account poverty levels and other data — ranks dead last among all regions in the United States. In some parts of the city, average annual wages do not break \$20,000.

Nonetheless, city leaders see the downtown as the key to creating higher-wage jobs and to attracting businesses that will create a local multiplier.

Basgal noted that one of the region’s biggest employers — the Internal Revenue Service — could be enticed to move downtown with the right incentives. The city is also considering turning a moribund Fulton Street pedestrian mall into a traditional street, which city offi-

cialists hope will lead to more vibrant street life.

“If we really believe that the downtown is the heart and soul of our community and the economics are in conflict with that, then we have to in the short haul boost that effort through incentives of some sort...on the local and the national level,” said Al Smith, president of the Fresno Area Chamber of Commerce.

Though many Fresno-area residents might not choose to visit downtown today, the state’s planned high speed rail network could, one day, bring all of California to Fresno, if only for a few minutes. For those passengers who would get on and off in Fresno, the city’s high speed rail station could, it is hoped, become a catalyst for the city’s development.

Though the high speed rail line is still decades in the offing, city and federal officials are hoping that merely planning for the station will lead to economic benefits regardless of when, or if, the train actually arrives.

“There’s always some amount of money that’s flowing for transportation,” said Balch. “There are always funding streams. So figuring out ways to get them running in the same direction makes sense when things are down.”

Though high speed rail is a massive project in and of itself, it is just one component of the state’s efforts to curb greenhouse gas emissions. Senate Bill 375 offer further incentives for Fresno to develop its urban fabric in a way that encourages density and discourages automobile use. The city is already drawing up a master plan for growth in its southern section, which will be designed according to the principals of smart growth. The implementation of that growth plan was, according to Basgal, another reason why Fresno was chosen for Strong Cities, Strong Communities.

“Fresno is the most rural of all and the only one on the West Coast,” said Basgal. “But it has a lot of great opportunities because of the focus in California on sustainability and planning.” ■

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# >>>> Cities Fear Impacts of High-Speed Rail

— CONTINUED FROM PAGE 1

Whereas urban freeways were often notoriously planned to cut through low-income areas, the high-speed rail route between San Jose and the system’s northern terminus at San Francisco’s Transbay Terminal, would pass nearby, and even through, some of the wealthiest communities in the nation. While many of these communities embrace environmentally friendly principles like transit-oriented development and mass transit, many have realized in the past three years that threading a major infrastructure project through the corridor poses no small impacts.

“You have tension between folks who are seeing the physical introduction of a new transportation system versus the ones who plan on using it or that have business interests that see the benefits of connecting different parts of the state,” said Gregg Albright, executive program director at CHSRA and a former high-ranking Caltrans official.

While state and federal officials have been contemplating what the \$40 billion system would do for the state, Peninsula cities have been concerned about minute, but important, local impacts such as grade crossings. The overall project has been subject to a statewide programmatic EIR/EIS, while seven segments have their own project-level environmental reports; the 50 miles from San Jose to San Francisco is one of those seven segments.

“Those cities have downtowns right next to the track and have multiple grade crossings and the rights of way aren’t particularly wide,” said Andy Chow, president of the Bay Rail Alliance. “There’s fear among the communities that if high-speed rail comes through, adding two more tracks and grade separations are not something that they would want.”

The City of Burlingame, for instance, would have seven crossings if the line remains at grade.

“The gates would be down almost all the time,” said Nagel, who wants the line to run in a trench below grade.

A series of lawsuits has been moderately successful in challenging CHSRA’s environmental reviews and ridership projections. A coalition of Peninsula cities and environmental groups filed the lawsuits when initial plans called for the authority to build a total of four tracks along the right of way of Caltrain commuter rail. Two groups, the Peninsula Cities Consortium and the San Mateo County Rail Corridor Partnership, have been voicing Peninsula cities’ concerns about high-speed rail.



That right of way currently has only two tracks, and the other two tracks would require either the construction of aerial structures or significant takings of property to widen the right of way. Neither option has pleased cities along the corridor.

Nagel said that CHSRA lost credibility with an initial business plan that she described as “laughable.”

The cities have generally accused CHSRA of being insensitive to local concerns and even

of wildly inflating their traffic projections. The latest proposal – a so-called “blended solution” – that has been championed by a trio of Peninsula legislators relies on more modest traffic projections that could be accommodated by the existing two-track Caltrain right of way, plus a proposed passing spur midway up the Peninsula that would allow high-speed trains to operate efficiently among slower Caltrain traffic.

U.S. Rep. Anna Eshoo (D-Palo Alto), state

— CONTINUED ON PAGE 10



## >>>> Caltrain, not HSR, Offers TOD Opportunities

— CONTINUED FROM PAGE 9

Sen. Joe Simitian (D-Palo Alto) and state Assemblyman Rich Gordon (D-Menlo Park) have been promoting that option, which the authority is now studying.

Next month the CHSRA will issue a new business plan that will assess the efficacy of the blended solution. The authority is also waiting from the office of Attorney General Kamala Harris to find out whether it must apply federal funds to a proposed initial segment in the Central Valley or whether those funds can be applied to the Caltrain right of way. Whatever that plan implies, officials from both the cities and the authority hope that future discussions will be more amicable than the often adversarial debates that have taken place in the past year.

“On a scale of 1 to 10 for rancor vs. peace, I’d put it at a 9 or a 10 last year,” said John Grubb, chief of staff at the Bay Area Council, which has take part in the discussions between the cities and the authority. “It was a very rancorous.”

Officials from Peninsula cities say that CHSRA’s initial approach offers a case study in how not to plan a major infrastructure investment.

“The tenor last year was basically of two camps fighting with each other: It was either our way or your way,” said Grubb. But Grubb and others said that the mood has improved dramatically, as the “blended solution” has mollified many cities. Grubb said that with the blended option, “the project has been brought literally back down to earth.”

The officials from the authority admit that they did not initially pursue the most congenial approach and that the current pause in planning has allowed them to come to a new understanding of how to collaborate with local stakeholders.

“A collaboratively built transitional strategy is probably the biggest benefit that has come out of this tension,” said Albright.

“The lessons that we learned and that the authority learned was that we have to have a more unique approach to this process,” said Caltrain’s Murphy. “We need to conduct a planning process instead of a design and engineering process and see if there was a different solution that would make sense.” CHSRA is the lead agency on the project.

Many cities, such as Fresno, eagerly welcome the advent of high-speed rail and especially of the economic boost that may come from a station. The City of Palmdale is even

suaging the authority over the possibility that the line would not go through the city. But many Peninsula cities are not overly eager to plan their futures around the project. In fact, Peninsula cities are more enthusiastic about the old-fashioned Caltrain than they are about a futuristic bullet train.

Peninsula cities are, therefore, more inclined to support high-speed rail because of what it can do for Caltrain than for high-speed

Officials hope future discussions will be more amicable ...  
 “On a scale of 1 to 10 for rancor vs. peace, I’d put it at a 9 or a 10 last year. It was very rancorous.”

— JOHN GRUBB,  
 CHIEF OF STAFF, BAY AREA COUNCIL

rail per se. If funding is approved, development of the high-speed rail line would entail improvements to Caltrain, including electrification of the line, which would lead to significant service and environmental benefits.

“If high-speed rail can help leverage better service on Caltrain, then that’s certainly something we’d support,” said Emslie.

However, if high-speed rail requires more tracks, it could actually derail some cities’ existing plans for transit oriented development. CHSRA has earmarked \$4.5 million for station-area planning grants of up to \$200,000 each. But the prospect of those grants means little to communities that see the train as a disruption.

“The rail line goes down the heart of our city and there are many homes and businesses very close to it,” said Nagel. “We approved new downtown plan, and it would be really damaging to have our development stymied by the equivalent of a four-lane raised freeway.”

Officials in nearby Redwood City feel similarly.

“Redwood City has had a TOD plan prior to the introduction of high-speed rail, so high-

speed rail is not the reason for establishing TOD in Redwood City,” said Peter Vorametsanti, Acting Engineering Manager for Redwood City. He added that the city recently adopted a new downtown plan in the general plan, which is geared towards transit development. The story is the same in Palo Alto, which, unlike Burlingame, would have high-speed rail station stop.

“We don’t see high-speed rail having a lot of influence over transit oriented development,” said Steve Emslie, deputy city manager in Palo Alto. “Because we have two stations now, we’re gearing up and planning for TOD around our train stations.”

Albright noted that if and when high-speed rail comes to cities like Palo Alto, the cities will have to rethink their notion of transit-oriented development.

“It’s not a BART station. It’s not light rail. It’s something distinctly different,” said Albright. “It’s going to be higher density than what you’d see around a BART station.” Indeed, most experts say that a high-speed rail station is similar to a small airport in its operations and impact.

As such, the cities are not compelled to welcome just any high-speed rail plan. But, contrary to the message sent by last year’s lawsuits, they are not roused to oppose it anymore either.

“I think there’s collective concern about significant visual and noise impacts,” said Emslie. “I think those were pretty universal, but as we’re getting down to finer grain and local impacts, it’s more driven city-by-city.”

“I think that what may have looked like unified opposition really wasn’t,” said Grubb. “A lot of city council members and mayors... still support high-speed rail. They just have one important concern. So they’ve banded together all their individual concerns. But I wouldn’t call that a really strong coalition.” ■

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## >>>> Govts. May 'Eat Each Other Alive'

— CONTINUED FROM PAGE 1

Grand Jury thought so too. The question they are asking, and none too subtly by the way, is why a special district with so little to do gets so much money. I can imagine it won't be long before El Dorado County honchos who depend on the general fund — the elected sheriff, for example — start asking the same question.

The El Dorado Hills Fire District is just one example of a growing inequity throughout the state between “special district haves” — districts with specific functions and a fixed portion of the property tax revenue — and “general fund have-nots,” those cities and counties that must fund a wide range of services but don't have many options to raise revenue.

Call it the next logical phase in intramural financing jousting after the redevelopment fight. Sales tax is flat. Property tax is in decline. There is no new real estate development. Voters are not in the mood for higher taxes, even at the local level. So local governments are about to start eating each other alive for revenue.

The impact on planning and development in California is indirect but palpable. In particular, local agency formation commissions — the LAFCOs in each county that set government agency boundaries — are likely to get drawn into the middle of these fights.

Like the distribution of redevelopment funds, the allocation of property taxes to special districts is one of the peculiar legacies of Proposition 13. After the famous tax-cutting initiative passed, the allocation of the remaining revenue among taxing entities was more or less frozen in place. There are a couple of exceptions, of course, including the famous “ERAF shift” of the early 1990s that moved property tax revenue from cities and counties to school districts, and the success of the “Lows and Nos” — those cities that imposed little or no property tax prior to Prop. 13 but successfully lobbied the Legislature for a share later on.

But many special districts — for fire, parks, and other individual functions — simply saw their revenue stream frozen in place. No matter whether their responsibilities increased or decreased, they got the same share of the property tax year after year. So their budget process was reduced to the exercise of figuring how to spend whatever amount of money was coming in the door. For some special districts this meant figuring out how to get by without enough money. Others figured out how to spend a whole bunch of money they didn't re-

ally need. In either case, the revenue stream became more and more divorced from reality.

This is what happens when you freeze-dry any kind of governmental structure, whether it is land-use policy or tax rates or revenue distribution: Sooner or later, it doesn't make any sense — but those with a vested interest in the antiquated system make it almost impossible to change things.

Witness the case of Vernon, the industrial city just outside Los Angeles that has been run like a fiefdom for more than a century, much to the benefit of industrial businesses that like the friendly atmosphere. In the wake of the Bell debacle, Assembly Speaker John Perez took aim at Vernon and attempted to forcibly disincorporate it, which would have put it under the jurisdiction of Los Angeles County. The businesses in Vernon were opposed, which was understandable. But even uglier, the League of California Cities opposed Perez's bill on the grounds that an attack on the independence of one city is an attack on the independence of all cities. The state Senate refused to back Perez up, and then it turned out the city had vastly overleveraged its municipal power company — meaning the cash cow may not really exist.

In a way, the gold-plated special district is not so different from Vernon, which is a municipality that exists for a very specific purpose. It's a geographically defined entity with a mission to provide a specific service to its customers — a kind of partial government. But there's a difference between, say, a water district that charges its customers for the service provided (much like a public utility) and a fire or parks district that gets a portion of the property tax revenue. In the latter case — as the El Dorado Hills Fire District example suggests — there is no relationship between the revenue received and the service provided.

This is how Proposition 13, going on 34 years after the fact, has skewed the way we run our local governments in California. Services are provided based on longstanding governmental structure; tax revenue is distributed based on political clout in Sacramento. As a citizen activist or even an elected local official, there's no way to sort through this mess even if you wanted to. But a sorting out of revenues and responsibilities is long past due. If cities, counties, and special districts in California had a more logical distribution of funds, then maybe the local governments would be less tempted to make crazy land-use decisions to try to gin up more revenue. ■

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## Measuring the Unmeasurable

AS THE IMPLEMENTATION OF SB 375 APPROACHES and the Pacific Ocean rises ever higher, one of the greatest technical challenges facing planners is that of defining and measuring “sustainability.” Judging by this morning’s session “Translating Sustainability into Practice: Tools for Measuring Community Sustainability” at the California American Planning Association conference, that task is going to be about as easy as creating, say, cold fusion.

That’s ironic, since cold fusion would solve a heck of a lot of our sustainability problems.

The session’s premise is that, in essence, everyone wants to be sustainable, but, even if people know it when they see it, they are woefully under-equipped to measure it. What, then, to make of such a nebulous, all-encompassing concept such as sustainability?

Presenters Matthew Burris and Jason Pack described their experience writing a report for the Urban Land Institute’s Orange County chapter. They put the problem poetically, citing the Iroquois tradition of considering the next seven generations in any major decision. How, they asked, could you fit seven generations into a zoning code? They started with 255 definitions of sustainability, as collected on the blog Computing for Sustainability. For ULI, they whittled those down to a few categories of criteria, with 3-4 criteria per category. The categories include things like environment, socioeconomics, resources, and economics. In other words, just about everything that could possibly comprise the public realm.

After some more whittling down, they presented their criteria to ULI. The response: “deep fear.”

It seems that folks at ULI who previously supported Burris’ and Pack’s project had a change of heart when confronted with concrete recommendations for how cities address sustainability. Pack described the response as, “One of the most surreal experiences of my professional life.” The takeaway, they said, was not a revolutionary new way of measuring sustainability. Instead, it was the realization that entrenched business prac-

tices might not embrace sustainability, despite the best of intentions.

Walker Wells of Global Green USA presented an alternative scenario. He suggested that competing definitions and microscopic measures of sustainability are beside the point. He proposed that, for a city, sustainability entails a framework, with three components: 1) a long-term vision; 2) an evaluation tool; 3) a management tool, such as a dedicated office of sustainability. To heck with the 250-plus definitions, Wells said. What cities need is an official with an office and real power.

Wells then introduced the Star Community Index, being developed by ICLEI. Scheduled for launch next year after four years of development, STAR is a “LEED for cities,” according to Wells. It lists a range of criteria – not unlike the ones that Burris and Pack developed for ULI-Orange County – and offers cities a guide for implementing a range of sustainability strategies according to their own needs. Wells said that the premise of the Star index is that cities should not fixate on “lofty goals” because, of course, “there’s no way to measure them.”

Cities are supposed to pursue lofty goals, but they can only implement the strategies that they can measure. And those strategies are most measurable when they’re discrete. You can see where this is headed.

It seems to me that the good news – which none of the presenters mentioned – is that

most of components of this nebulous world of sustainability are complementary. Improving public health, reducing vehicle miles traveled, and increasing walkability rarely rely on separate actions. Fixating over hundreds of definitions and minute measurements misses the point that, in many cases, just making cities nicer – if you’ll pardon the technical term – accomplishes a slew of goals.

Sustainability may, therefore, be more art than science. Or, perhaps, more common sense than cold fusion.

– JOSH STEPHENS | SEPTEMBER 12, 2011 ■



“Cities are supposed to pursue lofty goals, but they can only implement the strategies that they can measure.”

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## Planning in California Is Changing, So Let's Talk About It

**FRIGHTENINGLY ENOUGH**, this is the 27th year I've attended the California Chapter, American Planning Association conference, and at least the third time here at the Fess Parker in Santa Barbara. Memories, both good and weird, haunt me here; I remember, for example, standing in the corridor outside the Santa Barbara ballroom in 1995 watching TV as the O.J. Simpson verdict came in.

This year, I'm struck not by how much the conference has changed – it really hasn't, not all that much – but by the passing of time. Maybe it's just me, but there's a kind of a wistfulness this year, a sense of loss. Only a couple of years ago the planning profession in California still seemed robust and energetic, with planners excited about new challenges such as climate change. This year, it feels like there's tentativeness to the entire profession, as planners are continually laid off, planning departments are shut down, and young planners can't find jobs.

I'm saddened this year by the absence of two esteemed professional colleagues who have passed away in the last year: Frank Wein and Dave Wilcox. Both were longtime consultants in the planning profession and both were longtime colleagues of mine – beloved by their students – at USC's School of Policy, Planning & Development. Both passed away this year – too soon – after long and difficult illnesses.

There was certainly no one more committed to CCAPA than Frank Wein, and so it's fitting that the California Planning Foundation auction is now named for him. But I'd much rather forgo the naming of the auction if I could see Frank up there again – his wry humor, his good cheer, and most of all, his caring for his students and professional colleagues.

Ditto Dave Wilcox. A longtime partner in the economics consulting firm of ERA (now part of AECOM), Dave was one of California planning's great characters, each year administering "The MPL Pledge" to our master's in planning students at USC while wearing a Shriner's fez and referring to himself as "El Capybara," after a rare, obscure, furry and frankly weird giant rodent. (It was perhaps fitting at an actual capybara turned up in Paso Robles a month ago: As I said on my Facebook page a few weeks ago, back in the '80s when I started writing about planning in California as a journalist, I rated folks by how interesting the papers on their desk were (journalists develop the skill of reading upside down). Dave was at the top of the list. The papers on his desk were the most interesting I'd ever seen – because in his practice, Dave was always in the middle of all the most interesting stuff in Los Angeles.

Even the change in my own role has me wistful. CP&DR was unveiled for the first time at CCAPA exactly 25 years ago, and for many years after that I was very comfortable as the chronicler of California planning

and nothing more. Yesterday I found myself acutely aware of how much my role had changed. First I participated in a redevelopment session with my longtime colleague Morris Newman. In critiquing redevelopment, Morris could distance himself from the system, calling himself "just an observer". (Admittedly, an observer who has, by his own count, written 200 articles about redevelopment.) I got up in my role as the renegade mayor who supported the governor's attempt to eliminate redevelopment and replace it with something different, carefully couching my words as

advice to my fellow local government officials about how to reform redevelopment in a way that is good for "us".

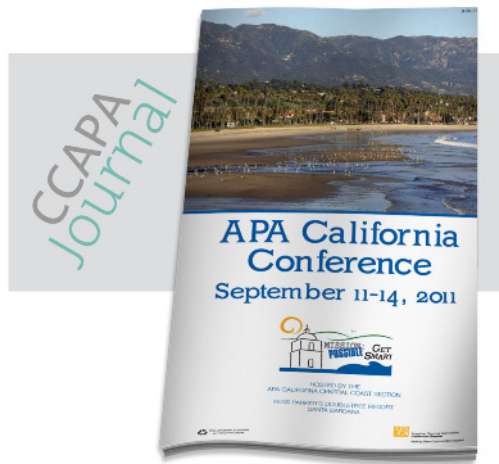
Later in the day, I attended two ethics sessions – a first for me at CCAPA. (As a concession to my primary role as a planning consultant, I finally took the AICP exam not long ago and, thankfully, actually passed.) Expecting to maintain a safe distance from the hypothetical ethics problems presented in the sessions, I was surprised to discover how engaged I was in them – especially the one where the mayor tries to override the staff's decision on which consultant to pick. Yes, I've been on both sides of that one in the last couple of years.

But there's more to this sense of wistfulness than just Frank and Dave passing away and me playing a different role. The entire planning business in California is changing, and I cannot quite predict where we are headed. So many of the conditions we have lived with for the past generation or two are changing. Real estate development is flat and we

can't predict when the market's coming back, meaning we can't use developer money to fund our practices. Local government revenue is flat and probably going down – meaning advance planning in California is extremely dependent right now on state and federal money, which could dry up anytime. And, of course, nobody knows what's going to happen with redevelopment in the long run. Cities are on the verge of bankruptcy, planning departments are being rolled up, and planners are out on the street.

In the short run, all these things are harmful to the profession and to California's communities as well. But it's possible that some kind of shakeout and rethinking of how planning works in this state is long overdue. Maybe we've become too dependent on the same ol'-same ol' – tax-increment funds, developer impact fees, and so forth. Maybe it's time to find a new model – one where the local governments play a smaller, or at least different, role and developers and nonprofit organizations play a bigger one. All this is in the air here in Santa Barbara this week. I just wish we were talking about it out loud.

– BILL FULTON | SEPTEMBER 13, 2011 ■



"... It's possible that some kind of shake-out and rethinking of how planning works in this state is long overdue."

