CP&DR

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Redevelopment Vetoes Lead to Disappointment, Cautious Optimism

BY JOSH STEPHENS

Over the past year, even the most irate objectors to Gov. Jerry Brown's dismantling of redevelopment held out hope that in agreeing to kill redevelopment, the legislature would invent a new, better system for stoking local economic growth. Last week, the governor dashed those hopes.

Facing a total six bills designed to replace aspects of redevelopment or otherwise help cities with local economic development, Brown vetoed all six. In his veto statements, Brown indicated that it was too soon to consider alternatives. The wind-down process has been tumultuous for many cities, but almost all have clamored for immediate relief for the billions in tax increment funding that they have collectively lost this year.

Despite the governor's seemingly indiscriminate vetoes, they came as a shock to neither supporters nor critics of redevelopment.

"I'm not 100 percent surprised," said Jean Hurst, senior legislative representative of the California State Association of Counties. "The governor put significant time and energy into the dissolution process."

League of California Cities Legislative Director Dan Carrigg said that he was "certainly disappointed" but that he was not necessarily discouraged by the vetoes, even if many cities were hoping for relief sooner rather than later. Peter Detwiler, former staffer for the Senate Government and Finance Committee, said, "I didn't read it as 'hell, no.' I think he said, 'not now, not yet.'"

Brown was unusually complimentary of the concept of replacing redevelopment, despite his veto. In his veteo of Senate Bill 1156 he wrote, "the planning and investment that is envisioned by this bill would help to develop and redevelop a California that is sustainable and thriving." But he wrote that he would " prefer to take a constructive look at implementing this type of program once the winding down of redevelopment is complete."

– CONTINUED ON PAGE 12

insight

WILLIAM FULTON

Rumors of Redevelopment's Resurrection Greatly Exaggerated

When Jerry Brown first proposed killing redevelopment – back in January 2011, when he released his first budget – he said he would replace it with some other economic development tool.

After Brown succeeded – when he released his second budget, in January 2012, just days after the Supreme Court killed redevelopment – his tune changed, ever so slightly. He said he would consider bringing redevelopment back if it didn't affect the state's general fund.

Fair enough.

Last month, however, Brown vetoed several bills that would have brought redevelopment back in some form but would not have taken any money from the general fund.

What gives?

The answer is simple: Brown has decided that the gradually decomposing dead body of redevelopment isn't cold enough yet.

Despite his steadfast rhetorical support for the revival of some kind of redevelopment tool, Brown has pretty consistently sent the message that the body of redevelopment has to be cold, deep in the ground, and long turned to dust before he approves a replacement.

– CONTINUED ON PAGE 14

Inside

AS EXPECTED, League of California Cities has filed a lawsuit to block some of the provisions of Assembly Bill 1484, the so-called cleanup legislation that governs the dissolution of redevelopment agencies. The suit was filed in Sacramento Superior Court and has been assigned to Judge Michael Kenney. The suit challenges AB 1484 on constitutional and other grounds. In particular, it asserts that the sales tax and property tax clawback provisions violate both Proposition 1A and Prop. 22, which were intended to protect local funds. Those provisions allow county assessors to garnish municipal property taxes and sales taxes if successor agencies are deemed not to have surrendered their allotted share of former tax increment. Critics contend that this action represents an illegal incursion upon the rights of localities. "I don't know of any cities that would want to have a precedent of having a state seize their sales tax or property tax," said League Legislative Director Dan Carrigg, "so I think there would be a significant amount of support for getting that clarified by a court." A hearing date is expected to be held in April 2013 with a decision possibly being issued by next July.

AN UPGRADE IN STATUS for Pinnacles National Monument to national park status is in sight, thanks to Congressman Sam Farr (D-Carmel). Despite its small size compared to more notable national parks such as Yosemite and Death Valley, Pinnacles holds high ecological importance as it is home to the endangered California condor and approximately 400 species of bees. Already a favorite among avid hikers, Pinnacles could use the status upgrade to increase visits from foreign tourists, especially those who seek out national parks but overlook national monuments. Although the change in designation from national monument to national park will not involve an expansion of its size or protected area, a simple change in status will demand greater attention to its geologic and biological resources.

AN 8,500-PAGE environmental report analyzing a gravel quarry planned for a site near Temecula is under siege from grassroots group Save Our Southwest Hills and the Elsinore-Murrieta-Anza Resource Conservation District, who are joining a suit against Granite Construction, the developer of Liberty Quarry. The quarry has already been rejected by Riverside County Supervisors, but the developer has been invited to re-apply for a permit. The lawsuit, filed in Riverside County Superior Court, alleges that the county violated the California Environmental Quality Act by certifying the flawed, incomplete report that downplayed the environmental impacts of Liberty Quarry. The plaintiff also argues that the county failed to ensure that the report was prepared in an independent and objective manner.

A DEAL ANNOUNCED in early August marked the purchase of nearly 3,000 acres of "peak" land on Donner Summit of the Sierra Nevadas for $11.25 million. The purchase was made by a coalition of environmental groups seeking to preserve the land from development as developers defaulted on their loans and made the Royal Gorge Cross Country Ski Resort available for purchase. Some believe this is the "most significant conservation effort in the recent history of the Sierra Nevada," and the defeat of developer proposals to build 950 condos and single-family houses on the summits was seen as triumphant. The coalition of buyers included conservation groups such as The Nature Conservancy, as well as residents themselves seeking to "keep the quiet of their community," according to a statement.

THE CITY OF LOS ANGELES faces three lawsuits over new zoning regulations called the Hollywood Community Plan that would allow developers to build bigger and taller buildings in Hollywood. The lawsuits were filed separately by three neighborhood groups alleging that state environmental law was violated due to the lack of consideration for impacts on air quality, traffic and public services. One of the lawsuits goes as far as questioning the accuracy of emergency response times from the LAFD, challenging the legitimacy of analysis backing the zoning changes. Opponents of the Hollywood Community Plan believe that changes to zoning regulations are insensitive to resident needs especially since the last updates to zoning guidelines were made more than twenty years ago.

THE FEDERAL GOVERNMENT has announced plans to increase solar energy production through the creation of zones in which developers will be offered incentives to cluster their projects on 285,000 acres of federal land in the western United States. The plan opens up an additional 19 million acres of land in the Mojave Desert for new solar power plants, and facilities will be placed in 17 designated areas across six states, 154,000 acres of which will be in California. The plan excludes environmentally sensitive land from the energy zones that had previously allowed solar development despite protest from environmentalists.

THE BUREAU OF INDIAN AFFAIRS has accepted a 6.9-acre plot of land in the Santa Ynez Valley owned by the Chumash tribe into federal trust and into the Chumash reservation, thus removing it from local and state jurisdiction. For the county, this means no property tax or the application of county land-use rules. Opponents argue that it is a "camel's nose" into the expansion of gambling establishments in the area, seeing as the land is across from the Chumash Casino. Residents who oppose the move of the land into federal trust are concerned over the impact of development on traffic and emergency services, but Chumash plans are to build a museum, tribal center, and housing on a small portion of the property.

THE CITY OF SAN FRANCISCO is changing its rules for student housing, banning the conversion of existing residential units into housing limited to students in order to protect low-income renters and their families. According to the Board of Supervisors, the growth of San Francisco's 14 post-secondary schools may be pushing low-income residents out of apartment buildings and residential hotels as these schools have continued to grow in enrollment and consequently the need for student housing. Schools which do not have a central campus must expand through buying rather than building, which translates into mass leases that can take over apartment buildings and put pressure on the availability of affordable housing in the city. The new proposal offers incentives for the construction of new student housing such as allowing greater density through exemption from the city's requirement for a mix of various-size units.

A DEAL TO BRING BACK the CityPlace development in the heart of San Francisco between Fifth and Sixth Streets has been finalized. Its name will be changed to Market Street Place, but the project's old design and location will remain the same. Its new face will bear a five-story, glass-front facade with only 200

– CONTINUED ON PAGE 3

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– CONTINUED FROM PAGE 2

parking spaces built into the project. However, developers are not worried since it is in a desirable location "just steps from public transportation," and there have already been a wide variety of tenants expressing interest. The project will begin construction this year and will be opening its doors in early 2015.

SUPERIOR COURT JUDGE Sharon Waters has blocked plans for a development that would include housing for 30,000 residents, four schools, a public library, a town center with 500,000 square feet of retail and office space, and 1,000 acres of open land near the City of Riverside. Several environmental groups and the city have sued its developers for their lack of a full environmental impact report that properly considered factors such as air pollution, regional traffic congestion, and wildlife habitat. Environmentalists fear that the development will harm the San Jacinto Wildlife Area, a 10,000-acre reserve nearby. Further, according to Judge Waters, the city-like development would add 85,000 car trips to the region per day and have unforeseen consequences for the already-congested Interstate 215 commuter corridor. The project, named Villages of Lakeview, was planned for a corner in the farming belt of Riverside county between Perris and San Jacinto and proposed by the Lewis Group of Companies.

OPPONENTS OF THE San Francisco Central Subway filed suit to halt construction of the $1.6 billion project, which got its final chunk of funding from federal transportation officials. Opponents are suing over on the grounds that the Union Square would violate the prohibition of nonrecreational uses in city parks. The subway in its entirety would have extended 1.7 miles from Caltrain at Fourth and King streets to Stockton and Washington streets in Chinatown, passing through the Interstate 80 skyway, Moscone Center and Union Square. Had construction been approved, digging was scheduled to begin early next year and the subway scheduled to open in 2017. However, despite having moved forward in accordance to all other laws, the plaintiff Save Muni alleges that voter approval is needed to utilize Union Square, and that federal funding cannot be used until approvals from all parties are received.

THE LOCAL AGENCY FORMATION COMMISSION for Los Angeles County has unanimously approved the annexation of Copperstone, Elsmere Canyon and Soledad Commons into the city of Santa Clarita. The three are part of seven annexations set to be completed by the end of this year, adding more than 25,000 residents and nearly 8,000 acres to Santa Clarita, which will become the third-largest city in Los Angeles County.

A NEW STUDY by the National Research Council predicts sea levels along the California coast to rise up to 1 ft in 20 years, 2 ft by 2050, and 5.5 ft by 2100. This is slightly higher than the global average and puts coastal California, particularly areas such as Southern California and the Bay Area, at greater risk of damage from flooding, storm surges, and high tides. Although in areas such as Cape Mendocino where geological activity is pushing up the land, a major earthquake can upset the trend and send it in the opposite direction, showing that different types of vulnerabilities exist throughout the region. According to Gary Griggs, a member of the committee that produced the report, the most problematic areas in the short term are low-lying areas such as San Francisco Bay and Newport Beach that lay vulnerable to extreme weather and tidal activity.

AN EXPRESSWAY through southeast Sacramento County that has been discussed among planners for decades took its first step in the form of an $8.5 million widening and straightening project on White Rock Road between Rancho Cordova and Folsom. The project aims to eliminate two sharp turns on shoulderless parts of the rural road that require slowing to a near stop. Further, the widening of White Rock Road will be the first step toward easing into an alternative to Highway 50, which currently sees much congestion due to commuter traffic between El Dorado County and Rancho Cordova. According to Folsom City Councilman Jeff Starsky, jobs and development will follow the newly widened White Rock Road south of Highway 50 and call for about 10,000 new homes, promoting growth to the El Dorado County line. This is part of a larger scheme that will culminate in a larger 35-mile connector, the Capital SouthEast Connector road, an expressway running across Highway 99 to meet Interstate 5 south of Sacramento. However, concerns from environmentalists include the loss of ranchland and more traffic and air quality problems.

U2 GUITARIST THE EDGE has a team of lobbyists and lawyers working to push a bill that will allow the musician to build his dream compound on the Malibu coastline. A proposed project by the Edge (David Evans) was rejected last year when he proposed his development to the California Coastal Commission on the grounds that his five-mansion development would "scar a rugged ridgeline" and "harm sensitive habitat." According to the Coastal Commission ruling, Evans attempted to avoid hurdles by submitting five separate applications, each under a different name, to bypass environmental rules and maximize his development. However, if the controversial legislation is passed, the state would be subject to the same evidentiary standards that apply in the court system, incapacitating public agencies and potentially allowing "more fragmented, inappropriate development along the coast." Environmentalists believe the bill is a "power grab by developers" and point out the overwhelming presence of business interests in the bill. Defendants of the bill argue that Evans is not the originator of the bill and that it addresses a larger problem that uses "arbitrary standards to block development."

A $45 MILLION PLAN to eliminate cars and parking from the center of Balboa Park in San Diego has been approved by the Planning Commission. More than five decades of plans have failed to do remove automobiles from the Plaza de Panama in front of the San

– CONTINUED ON PAGE 4

– CONTINUED FROM PAGE 3

Diego Museum of Art, a "venerable place" created by landscape architect Martin Poirier and envisioned by architect Bertram Goodhue to be an important civic space frequented by pedestrian foot traffic and street performances. To do so, a 405-foot-long, 44-foot-wide bridge would be built to detour cars off the Cabrillo Bridge and divert them to a 822-space parking garage southward. The project would use $31 million raised by the Plaza de Panama Committee and $14 million from a parking revenue bond. Proponents of paid parking in the park believe that it improves access by eliminating visitors who carpool less and ignore public transit options. Alternatives to the project have been proposed, but are lacking in financial backing.

A PROPOSAL to more than double the number of residences built in Orange County's Great Park is being considered by city officials in Irvine, keeping supporters optimistic of the redevelopment project's financial backing, offering alternatives such as public-private partnerships and selling off portions of land, although $1.4 billion of redevelopment funds intended for the park were recently redirected towards California's growing deficit. A draft of an environmental impact report released by the city in July wrote that the extra homes built along the retired Marine base would have little or no impact on wildlife, aesthetics, noise, and natural resources. However, skeptics of the project, such as Councilman Jeffrey Lalloway, believe the park is ambitious and is an "initial promise [that] cannot be kept."

THE FEDERAL TRANSIT ADMINISTRATION (FTA) has granted Los Angeles County Metropolitan Transportation Authority (Metro) a record of decision for a $1.37-billion underground light rail project in Downtown L.A. The nearly two-mile line, named the Regional Connector Transit Corridor, will connect the Metro Gold Line, Blue Line and Expo Line through Downtown L.A., allowing easier access ("one-seat" trips) between the San Gabriel Valley, Long Beach, and the Westside. Officials estimate that three new light rail stations in Downtown L.A. will provide access to 88,200 passengers, 17,700 of which will be new transit riders. Metro estimates construction to begin in August 2013, and the project could open to the public in 2019 if fully funded.

THE CITY OF EL MONTE has taken over a $1 billion transit village project from private developer Transit Village LLC. Two executives from the development firm recently underwent a scandal and were arrested in mid-June on charges of fraud, embezzlement and theft. The El Monte Transit Village is envisioned to be a mixed-use space including condominiums, stores, office buildings, and a "state-of-the-art" bus station, and intended to generate pedestrian and vehicular traffic from the development to downtown El Monte. The 35-year-old bus station is currently undergoing renovation by the Metropolitan Transportation Authority, but residents are doubtful due to the city's past financial strains, while others believe the city lacks expertise. However, supporters are optimistic that the city will be able to work closely with consultants and private developers, and proceed in phases which allows an earlier kickoff to the project.

A BROOKINGS INSTITUTION analysis of data from 371 transit providers of the 100 largest metropolitan areas of the nation studied employer access to labor by transit. One major finding of the analysis was that over 75% of all jobs in these metropolitan areas are found in neighborhoods serviced by transit, especially in Western metropolises such as Los Angeles and Seattle with the highest coverage rates. Secondly, the average job is accessible to only about 27% of its metropolitan workforce by transit in 90 minutes or less, depending upon different transit provisions, job concentration, and land use patterns. Finally, the suburbanization of jobs hinders the ability of transit to connect workers to opportunity and, at the same time, jobs to local labor pools. However, when pitting city jobs against their suburban counterparts, they hold a geographic advantage due to access to larger shares of metropolitan labor pools. The study suggests focusing on addressing suburban coverage gaps and disconnected neighborhoods when metro leaders make transit investment decisions, and concerting effort with other public agencies as well as the private sector.

ENVIRONMENTAL GROUPS, represented by public interest law firm Earthjustice, joined in on the case to prevent the construction of new roads through Yosemite National Park. Southern California developer Lewis Geyser has lost a legal battle for rights over two dirt roads dating back to the 1870s that connect his property with Yosemite National Park. The roads, named Old Coulterville Road and Crane Flat Road, connect his 83-acre property named Hazel Green with Highway 120 in the national park, and would have offered critical access to potential tourists staying in his planned 300-unit resort with cottages and tent cabins. At one point in the five-year legal battle, Yosemite park officials envisioned working with Geyser to use his property as a large parking area where visitors would be required to leave their vehicles, but Yosemite Valley Plan, an effort to reduce the number of hotel rooms and parking spaces in Yosemite Valley, extinguished any chance of collaboration. Although Geyser appears to have alternative routes from the property, they are less direct and more costly to develop, thus limiting the viability of his resort project.

—Compiled by
Eleanor Fang and Amber Kong

Storage Facility Expansion Curtailed by Restrictive Ballot Measure, Area Plan

Prior use and discretionary approvals for RV storage use did not form a basis to claim a vested right to expand a non-conforming use.

BY WILIAM W. ABBOTT

Ideal Boat & Camper Storage began operating as an equipment storage yard in 1964, and in subsequent years, obtained various county approvals, including two site development review (SDR) approvals, the latest in 1990. In 1993, the county adopted a new area planning document which sought to promote viticulture in the area and in 1994, the area plan was incorporated in the comprehensive general plan for the east area of the county.

In November 2000, the voters of Alameda County approved Measure D, which, among other provisions, sought to protect agricultural and open space. Measure D restricted the urban expansion areas, and added new development requirements. These requirements proved to be restrictive for Ideal.

In 2001, Ideal submitted an application to expand the storage operation to turn an additional 30 areas of the same lot into additional vehicle storage. On the contention that the proposal could lead to the conversion of potentially productive agricultural land, county staff recommended denial. The planning commission, and then the Board of Supervisors, denied the request. The applicant then filed a new application. Staff advised the applicant that the county could not approve expansion of a non-conforming use but would consider all arguments offered by the applicant.

Staff recommended to the planning commission that it dispense with California Environmental Quality Act requirements and deny the application on the basis that it was an expansion of a non-conforming use. The commission denied the request, as did the Board, in accord with staff recommendations. They contended that the expansion would be in conflict with Measure D, and was inconsistent with County planning requirements. The applicant then filed a writ. The trial court denied all relief.

On appeal, in *Ideal Boat & Camper Storage v. County of Alameda*, the plaintiff argued in part that Measure D was not intended to apply to existing activities such as those that Ideal with which Ideal was engaged. First, the court reviewed the specifics of the East Area Plan, as amended by Measure D. When read in conjunction with other county land use regulations, the existing Ideal Storage activity became a non-conforming use upon passage of the east area plan and Measure D. Measure D restricted any expansion of non-conforming uses.

Under such pointed limitations, expansion would not be consistent with the applicable planning and land use requirements. With that as background, the appellate court rejected the argument that Measure D was not intended to apply to existing activities. As Measure D restricted discretionary approvals, Ideal then challenged the nature of the SDR approval, asserting it was not discretionary.

Although no hearing was required by local ordinance, the court agreed that the director could conduct a hearing on the proposed SDR. More importantly, the terms of the ordinance allow the decision-making authority to exercise significant discretion, based upon a broad range of issues and potential areas of investigation. The Court of Appeal also rejected the argument that Ideal had a vested right to expand.

Given that the approvals granted by the County prior to the implementation of the East Area Plan and Measure D did not contemplate any additional expansion, the appellate court could find no basis for an argument that there was a vested right to expand. ■

Wiliam W. Abbott is a partner in the Sacramento law firm of Abbott & Kindermann, LLP.

➤ **The Case:**
Ideal Boat & Camper Storage v. County of Alameda (August 9, 2012, A132714) ___Cal.App.4th ___.

➤ **The Attorneys:**
Sheppard, Mullin, Richter & Hampton, David P. Lanferman and James G. Higgins for Appellants

Donna R. Ziegler, County Counsel; Brian E. Washington, Chief Assistant County Counsel; Erin H. Reding, Associate County Counsel for Respondents

County May Consider Survey Results for Mobile Home Park Conversion

The board of supervisors allowed to consider results of a tenant survey when deciding on the approval for the conversion of a rental mobile home park to an individual ownership park

BY WILIAM W. ABBOTT

Mobile home parks often represent meaningful opportunities for cities to provide affordable housing. Conversions of rental mobile home parks to individual ownerships can lead to thorny issues. They can create affordable ownership opportunities for lower income families and individuals, or they can displace the same economically disadvantaged households burdened with a difficult-to-relocate housing asset.

The legislature has struggled with crafting the appropriate protocols for cities and counties to follow when reviewing applications for park conversion. The most recent judicial decision, *Paul Goldstone v. County of Santa Cruz*, involves city and county practice when determining whether or not an application represented a bona fide application to convert under Government Code section 66427.5.

Originally enacted in 1991, this code section has steadily morphed, adding new provisions in response to legislative recognition of new issues associated in conversion. In 2002, the appellate court in *El Dorado Palm Springs, Ltd. v. City of Palm Springs* (2002) 96 Cal. App.4th 1153 concluded, based upon the statute as then enacted, that the scope of local government discretion when acting on an application was strictly constrained to that limited provisions found in the code, and in particular, concluded that local governments were precluded from imposing conditions to prevent sham or fraudulent conversions.

This scenario, of limited discretion of course, is at great variance to the discretion typically enjoyed by most cities and counties when acting upon pending applications for land use approvals. In response to the *El Dorado* decision, the legislature, in the same year amended section 66427.5 to provide for a tenant survey. The code directed that the results of the survey would be delivered to the city or county processing the applications, and that the scope of review was limited to compliance with "section 66427.5."

With that as background, plaintiff Goldstone sought approval for a mobile home park conversion in Santa Cruz County. The applicant completed the requisite park tenant survey, the overwhelming results of which were in opposition to the conversion. There was a dispute as to how the survey information was conducted and whether or not the homeowners association cajoled tenants into opposing the conversion.

The county planning commission recommended against the conversion, and the Board of Supervisors, based upon the negative resident survey results, denied the application. The applicant filed a writ challenging the decision, arguing that the scope of local inquiry was limited to whether or not the statutorily required survey was conducted, but not the results of the survey. Recognizing the ambiguity in the code, the appellate court ultimately concluded that the city or county processing the application could take into consideration the results of the tenant survey when making its decision to approve or deny the conversion. As a result, the appellate decision affirms the county's denial. ■

Wiliam W. Abbott is a partner in the Sacramento law firm of Abbott & Kindermann, LLP.

➤ **The Case:**
Paul Goldstone v. County of Santa Cruz (July 17, 2012, H036273) ___Cal.App.4th ___.

➤ **The Attorneys:**
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Dana McRae, County Counsel; Jason M. Heath, Assistant County Counsel for Defendant and Respondent

Attorney Fee Award Depends on Pecuinary Interests, Even for Public Agencies

City of Maywood cannot collect attorneys fees in suit over deficient EIR for school campus

BY GLEN C. HANSEN

When deciding whether to award a public litigant its attorneys' fees against another public entity under Code of Civil Procedure section 1021.5, the trial court may only consider the public litigant's "pecuniary interests and the pecuniary interests of its constituents" in determining the third requirement of that statute. The court may not consider the non-pecuniary motives of the public litigant in bringing the lawsuit.

In *City of Maywood v. Los Angeles Unified School District* (2012), a city filed a petition for writ of mandate seeking to overturn a decision by a school district that certified a final environmental impact report that analyzed the environmental consequences of constructing a high school. Finding the FEIR deficient under CEQA, the trial court issued a peremptory writ of mandate that prohibited the school district from taking any further actions to approve the school construction project until it had prepared and certified a revised FEIR. The trial court then granted attorneys' fees to the city pursuant to section 1021.5.

The school district appealed both the writ and the award of attorneys' fees. The Court of Appeal affirmed a portion of the writ, and reversed on the remainder of the writ. The Court of Appeal also reversed the trial court's order awarding attorneys' fees and remanded that issue for further proceedings.

In *Conservatorship of Whitley* (2010), the most recent major case regarding attorneys' fees, the California Supreme Court examined the three requirements that litigants must prove in order to recover attorneys' fees under California's 'private attorney general' fee statute in Code of Civil Procedure section 1021.5. Those factors are "(1) plaintiffs' action 'has resulted in the enforcement of an important right affecting the public interest,' (2) 'a significant bene-

– CONTINUED ON PAGE 7

>>> Maywood Case Sets Precedent on Attorneys Fees

– CONTINUED FROM PAGE 6

fit, whether pecuniary or nonpecuniary has been conferred on the general public or a large class of persons' and (3) 'the necessity and financial burden of private enforcement are such as to make the award appropriate.'"

The *Whitley* court examined the third requirement of "necessity and financial burden." That requirement is comprised on two prongs: "[W]hether private enforcement was necessary and whether the financial burden of private enforcement warrants subsidizing the successful party's attorneys." In determining the second prong of that third requirement – i.e., the "financial burden on litigants" – courts have focused "not only on the costs of the litigation but also any offsetting financial benefits that the litigation yields or reasonably could have been expected to yield."

A fee award is appropriate when the cost of the claimant's legal victory "transcends his personal interest, that is, when the necessity for pursuing the lawsuit placed a burden on the plaintiff 'out of proportion to his individual stake in the matter.'" (*Ibid*. (citation omitted).) That second prong focuses on "the financial burdens and incentives involved in bringing the lawsuit." (Ibid.) The method for weighing the financial costs and benefits consists of the following:

> The trial court must first fix – or at least estimate – the monetary value of the benefits obtained by the successful litigants themselves. … Once the court is able to put some kind of number on the gains actually attained it must discount these total benefits by some estimate of the probability of success at the time the vital litigation decisions were made which eventually produced the successful outcome. [¶] After approximating the estimated value of the case at the time the vital litigation decisions were being made, the court must then turn to the costs of the litigation – the legal fees, deposition costs, expert witness fees, etc., which may have been required to bring the case to fruition. … [¶] The final step is to place the estimated value of the case beside the actual cost and make the value judgment whether it is desirable to offer the bounty of a court-awarded fee in order to encourage litigation of the sort involved in this case. … [A] bounty will be appropriate except where the expected value of the litigant's own monetary award exceeds by a substantial margin the actual litigation costs.

Thus, the focus is "not on plaintiffs' abstract personal stake, but on the financial incentives and burdens related to bringing suit." The Whitley court disapproved several lower appellate decisions that had considered claimants' aesthetic or other nonpecuniary interests in evaluating the "necessity and financial burden" requirement.

In *City of Maywood*, the Second Appellate District court addressed an issue not decided in Whitley: whether the Supreme Court's holding is intended to apply to public enforcement cases where a public entity has pursued attorneys' fees against another public entity.

On appeal, the school district challenged the fee award on the ground that the city had not satisfied the "necessity and financial burden" requirement of section 1021.5 because "the city had a personal interest in the litigation – preservation of its tax base – that transcended the burdens of enforcement," and because the primary purpose of the lawsuit was to benefit the city and its constituents, "whether for financial or other reasons."

Addressing that issue in its partially certified decision, the Court of Appeal noted that, prior to *Whitley*, appellate courts were divided as to whether it was proper to consider a claimant's nonpecuniary "personal interests" when applying the financial burden element; however, *Whitley* clarified that, "in a private enforcement action, a court may not consider nonpecuniary interests when evaluating the financial burden criterion in section 1021.5."

The Court of Appeal found that "the holding of *Whitley* applies equally to both private and public litigants who seek attorneys' fees pursuant to section 1021.5." The court explained that all of the factors that *Whitley* discussed in concluding that nonpecuniary interests may not preclude a private litigant from obtaining fees under section 1021.5 apply equally to public entity litigants. Therefore, when assessing the financial burden element in the context of a public entity's legal victory, "the trial court may only consider the public entity's pecuniary interests and the pecuniary interests of its constituents." ■

Glen C. Hansen is an attorney with the Sacramento law firm of Abbott & Kindermann, LLP.

➤ **The Case:**
City of Maywood v. Los Angeles Unified School District (2012) 207 Cal.App.4th 1075, 2012 Cal.App.LEXIS 819

Funding Combination Nullifies Prevailing Wage Exemption

Appellate denies exemption from paying prevailing wages for a seniors project

BY WILIAM W. ABBOTT

There is some irony in contemplating the demise of state affordable housing programs at this moment. Residential values have taken a major haircut and interest rates are at record lows, the two factors together resulting in new levels of affordability. Nevertheless, over the long run, state programs have served a vital role in affordable housing and from a long term policy perspective, should remain funded and operational. The most recent decision in this area, in *Housing Partners I, Inc. v. John C. Duncan*, pertains to prevailing wage requirements and the specified exemptions to the obligation to pay prevailing wage on public projects, depending upon the funding source.

California's prevailing wage requirements are found in the Labor Code at sections 1720-1861. Two commonly utilized exemptions from the obligation to pay prevailing wages involve projects financed through a qualified housing fund or from a combination of qualifying housing funds and private funds (Labor Code section 1720(c)(4), and below-market in-

– CONTINUED ON PAGE 8

>>> Case Reveals Quirk in Prevailing Wage Law

– CONTINUED FROM PAGE 7

terest rate funds for projects meeting qualified income and affordability criteria (Labor Code section 1720(c)(6)(E)).

In this case, Housing Partners I, Inc. developed a senior citizens housing project in Redlands. To finance the project, the developer utilized 1720(c)(4) funds and 1720(c)(6)(E) monies. As permitted by state law, a prevailing wage monitoring group requested a prevailing wage coverage determination from the Department of Industrial Relations.

The monitor first concluded that the project met the definition of a public works project, which would typically require the developer to follow prevailing wage law. The monitor then turned to the nuanced question of whether or not a developer who receives funds from two sources, each of which meet the test for the exemption, loses the exemptions if the funding sources are combined. As difficult as it is to imagine that the legislative purpose behind the exemption would be lost if the two sources were combined, that is what the monitor concluded.

That decision was confirmed following an administrative appeal, and by the trial and appellate courts. As the appellate court observed, the legislative goals behind the exemption have to yield to the unambiguous terms of the statutes. In the situation of section 1720(c)(4) funds, the statute qualifies the exemption to circumstances in which those funds are the sole source of funds.

COMMENTARY

When it came to interpreting what the legislature enacted, the director and the court got it right. If there is legislative wisdom to such a restriction, it is far from evident. This case reminds me of Humpty Dumpty in *Alice In Wonderland*: "When I use a word," Humpty Dumpty said, in a rather scornful tone, "it means just what I choose it to mean - neither more nor less." The moral of this case is to be careful of what you wish for and how you draft legislation. ■

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➤ **The Case:**
Housing Partners I, Inc. v. John C. Duncan (June 15, 2012, E052582) __Cal.App.4th __; 2012 Cal.App. LEXIS 709

➤ **The Attorneys:**
Atkinson, Andelson, Loya, Ruud & Romo, Thomas W. Kovacich and Jennifer D. Cantrell for Plaintiff and Appellant

Vanessa L. Holton, Chief Counsel, Steven A. McGinty, Assistant Chief Counsel, and John L. Korbol, Staff Counsel, for Defendant and Respondent

news

November 2012 Land Use Ballot Measures

BY CP&DR STAFF

It's safe to say that the City of Calistoga's Silver Rose Referendum will not be the most important question on the ballot this November. Nor will Escondido's general plan measure, nor even a preliminary vote on draining Hetch Hetchy reservoir.

Nonetheless, next month's election brings a diverse array of local land use measures on issues ranging from the provision of open space to the funding of affordable housing.

Herewith is *CP&DR*'s roundup of ballot measures related to land use statewide.

GENERAL PLANS, SPECIFIC PLANS & GROWTH

(Napa County)
Measure U
Angwin General Plan Amendment Initiative

Measure U would redesignate certain lands in Angwin from urban residential to "agricultural, watershed and open space (AWOS) or public institutional." It will permit modernization and expansion of a sewage treatment plant and prohibit further subdivision of "public institutional lands" anywhere in the county.

Del Mar (San Diego County)
Measure J
Village Specific Plan

"Shall Ordinance 869 approving the Village Specific Plan as approved by the Del Mar City Council, which, without raising taxes, implements the Del Mar Community Plan by: creating a pedestrian-oriented downtown with plazas, wider sidewalks and landscaping; improving the Village's appearance and economic viability; increasing public parking availability; improving traffic flow, bike and pedestrian safety; reducing air and water pollution; and providing development controls, and traffic and parking solutions to ensure neighborhood compatibility, be adopted?"

Escondido (San Diego County)
Measure N
Changes to General Plan

Measure N would ratify the changes to the city's general plan, approved by the City Council.

Simi Valley (Ventura County)
Measure N
Managed Growth Plan

Measure N would approve a new Managed Growth Plan, which will become effective January 1, 2013 through December 31, 2022, replacing a plan that expires December 31, 2012.

ZONING & RESTRICTIONS

Berkeley (Alameda County)
Measure T
Zoning for the West Berkeley Plan

– CONTINUED ON PAGE 9

>>> Californians to Vote on Raft of Land Use Measures

– CONTINUED FROM PAGE 8

Measure T would make zoning changes to large parcels in West Berkeley. It reads, "Shall the West Berkeley Plan and the Zoning Ordinance be amended to allow development flexibility on up to 6 large sites, each under the same ownership, during the next 10 years, allowing a maximum height of 75' with a site-wide average height of 50', and only if community and environmental benefits are provided to West Berkeley?"

Pacific Grove
Measure F
Building Height Restrictions

If Measure F is approved, it will regulate the height of buildings in the city's downtown district. Buildings in this area would be allowed "a maximum height of 75 feet and 100 percent site coverage."

PARKS & OPEN SPACE

Fullerton (Orange County)
Measure W
West Coyote Hills Development and Nature Preserve

The Fullerton City Council approved the "West Coyote Hills" development, a project that would cover 510 acres of former oil field; it would include 760 homes and 283 acres of open space . A "yes" on Measure W supports decision of the Fullerton City Council to allow the West Coyote Hills Project. A "no" vote would stop that development.

Laguna Beach (Orange County)
Measure CC
Parcel Tax for Open Space

Measure CC would approve a parcel tax of $120 per parcel per year, and the revenues from the tax will be used to purchase open space within the city. The tax will generate about $1 million a year, with the objective of increasing open space in the city by about 20%.

Yuba County
Measure T
Open Space Initiative

Measure T's passage would mean that land use designation and building densities in the General Plan Natural Resources Land Use Element must be retained until the year 2030. A "no" vote means that the Yuba County Board of Supervisors will continue to decide on changes to land use designation and building densities in the General Plan Natural Resources Land Use Element, without a popular vote.

City of Alameda (Alameda County)
Measure D
Sale or Disposal of City Parks

The City of Alameda's charter requires voter approval for any "sale or alienation of any public parks or portion of public parks within the City." This provision has three exceptions that allow the city council to grant certain permits and licenses and sell park property, under certain circumstances, without first seeking voter approval. If Measure D is approved, that the city council would no longer have the authority to sell or dispose of park land without voter approval. The measure reads, "Shall the Charter of the City of Alameda be amended by amending Section 22-12 to eliminate language that allows the City Council to sell or dispose of public parks or any portion thereof if a new public park is designated, which means the sale or disposal of public parks must be approved by the electors?"

City and County of San Francisco
Proposition B
Clean and Safe Neighborhood Parks Bond Proposition

Proposition B would authorize the city to borrow $195 million for park, open space and recreation facilities.

City and County of San Francisco
Proposition F
Water Sustainability and Environmental Restoration/Hetch Hetchy Reservoir

Proposition F would allocate $8 million to require the City to prepare a plan that evaluates how to drain the Hetch Hetchy Reservoir and identifies replacement water and power sources. Hetch Hetchy, in Yosemite National Park, is a reservoir that supplies San Francisco with much of its drinking water. It has long been considered a lost natural jewel.

Woodland Hills, Encino, and Tarzan Mountains Recreation and Conservation Authority (Los Angeles County)
Measure MM
Parcel Tax

Measure MM would levy a parcel tax of $19/year for ten years "to protect, maintain and conserve local open space, parklands and wildlife corridors; protect water quality in local creeks and reservoirs; improve fire prevention including brush clearing, acquire open space, and increase park ranger safety and security patrols."

Los Angeles County
Measure HH
Santa Monica Mountains Recreation and Conservation Authority Parcel Tax

Measure HH would "protect, maintain and conserve local open space, parklands and wildlife corridors; protect water quality in local creeks and reservoirs; improve fire prevention including brush clearing; acquire open space, and increase park ranger safety security patrols" through a special $24 tax assessed annually for ten years, with all funds spent locally in the Santa Monica Mountains east of the 405.

HOUSING & REDEVELOPMENT

City and County of San Francisco
Proposition C
Creation of a Housing Trust Fund

The measure would create a brand-new affordable housing trust fund for the City of San Francisco.

"This measure (would set) aside general fund revenues beginning in Fiscal Year 2013-2014 and ending in Fiscal Year 2042-2043 to create, acquire and rehabilitate affordable housing and promote affordable home ownership programs in the City; and 2) lower and stabilize the impacts of affordable housing regulatory impositions on private residential projects; and to authorize the development of up to 30,000 affordable rental units."

Moorpark (Ventura County)
Measure O
Low-Rent Housing Development

Measure N would approve a new Managed Growth Plan, which will become effective January 1, 2013 through December 31, 2022, replacing a plan that expires December 31, 2012.

West Sacramento
Measure G
Redevelopment Agency Dissolution Revenues

West Sacramento is attempting a novel approach to redevelopment dissolution, by explicitly directing remaining RDA revenue to community investments. The measure reads, "Should the City direct ongoing revenue it receives from the dissolution of its Redevelopment Agency to continue funding community investment projects such as streets, bridges, transportation, parks, and public infrastructure?"

– CONTINUED ON PAGE 10

>>> Land Use Ballot Measures, Ctd.

– CONTINUED FROM PAGE 9

MISCELLANEOUS
Huntington Beach (Orange County)
Measure AA
Equal Taxation and Assessments for Sunset Beach

Measure AA emerges from an acrimonious annexation of the formerly unincorporated community of Sunset Beach by the City of Huntington Beach. Sunset Beach residents feared that the larger city would raise taxes and fees on residents. If Measure AA is approved, the residents of Sunset Beach will pay the same assessments, taxes and property-related fees as do the residents of Huntington Beach.

Guadalupe
Measure J
City of Guadalupe Name Change to "Guadalupe Beach"

If the measure is approved, the name of the city will be changed from "Guadalupe" to "Guadalupe Beach."

Los Angeles (Downtown)
(Los Angeles County)
Streetcar Measure

Residents in an area of downtown Los Angeles will vote on whether a proposed streetcar circulator will be developed in the area. The system is projected to cost $125 million, with roughly half coming from local landowners. The measure requires 2/3 approval.

Atherton (Santa Clara County)
Measure L
New Town Center

"Should the Town of Atherton use funds primarily from private donations to construct a new Town Center? Other funding sources might include funds derived from Building fees or future grant money, but would not use general fund or parcel tax money."[1]

Calistoga (Napa County)
Measure B
Silver Rose Referendum

Measure B concerns an ordinance, approved by the Calistoga City Council in May 2012, which amended the city's overall zoning ordinance to allow the development of the Silver Rose project at 400 Silverado Trail. A yes vote support's the council's decision. ■

news

Roundup of Land Use Laws, 2012

BY JOSH STEPHENS

While Gov. Jerry Brown's veto of redevelopment-related bills and the earlier failure of parking reform bill Assembly Bill 904 caused some consternation around the state, he did in fact sign a wide array of bills relating to land use at the end of last month.

Of chief concern to many planners is Senate Bill 1241, sponsored by Sen. Christine Kehoe. The bill intends to use land use planning to minimize fire risks and guide decisions about future development by amending the safety element of general plan law. In doing so, SB 1241 expands the state's ability to review county plans and subdivsion plans. It adds to the list of specialized topics that general plans must address.

The bill is considered to be a culmination of an eight-year effort by Kehoe to address wildfires, starting in 2004 with AB 3065. A measure similar to SB 1241 was vetoed by Gov. Arnold Schwarzenegger in 2010.

Its provisions go into effect Jan. 1, 2013. By 2014, cities and counties will have to review and update the safety element as necessary to address the risk of fire for state responsibility areas and conduct detailed surveying and mapping to determine areas of high fire danger. The bill directs the Office of Planning and Research to draft guidelines for how plans should identify and address fire danger, and it requires that county legislative bodies make findings that ensure the availability of fire protection before they approve tentative maps for parcels in areas located in an SRA and/or an area of high fire danger.

Many of the other bills that Brown signed affect only small, specific geographic areas or are adjustments to existing laws. One of his more quizzical signatures was applied to AB 2259, which creates an infrastructure financing district for San Francisco's America's Cup yacht race. The governor made it clear that he does not yet support the use of IFD's for redevelopment. However, the immediacy and special purpose of the America's Cup IFD may have made it necessary and justifiable.

The other bills that Brown signed include the following, listed by sponsor with official titles:

OPEN SPACE & CONSERVATION

AB 2207 by Richard Gordon (D-Redwood City) – Property taxation: welfare exemption: nature resources and open-space lands.

AB 1672 by Norma Torres (D-Pomona) – Housing-Related Parks Program.

AB 880 by Brian Nestande (R-Palm Desert) – Ecological reserves: Mirage Trail.

AB 1589 by Jared Huffman (D-San Rafael) – State parks: sustainability and protection.

AB 1961 by Jared Huffman (D-San Rafael) – Coho salmon: habitat.

AB 2544 by Richard Gordon (D-Redwood City) – Forestry and fire protection: land purchases and property use.

AB 2082 by Toni Atkins (D-San Diego) – Public lands: State Lands Commission: violations.

AB 2169 by Wesley Chesbro (D-Eureka) – Property Acquisition Law: conservation easements.

AB 2388 by Jim Beall (D-San Jose) – Santa Clara County Open-Space Authority: authorization to contract.

– CONTINUED ON PAGE 11

>>> Gov. Signs Dozens of Land Use Laws

– CONTINUED FROM PAGE 10

AB 2680 by Assembly Agriculture Committee – repeals the automatic termination date to authorize a city or county and landowner to rescind a Williamson Act contract and simultaneously enter into a new contract to facilitate a lot line adjustment with no sunset.

SB 1094 by Christine Kehoe (D-San Diego) – Land use: mitigation lands: nonprofit organizations.

SB 1169 by Christine Kehoe (D-San Diego) – Natural community conservation planning.

SB 1278 by Lois Wolk (D-Davis) – makes several changes to Sacramento-San Joaquin Valley cities and counties' flood hazard planning and development practices.

SB 1501 by Christine Kehoe (D-San Diego) – Open-space easements.

SB 1577 by the Committee on Natural Resources and Water – Resources: public trust lands: City of Newport Beach.

TRANSPORTATION, TRANSIT & ROADS

AB 1446 by Mike Feuer (D-Los Angeles) – Los Angeles County Metropolitan Transportation Authority: transactions and use tax.

AB 819 by Bob Wieckowski (D-Fremont) – Bikeways.

AB 432 by Roger Dickinson (D-Sacramento) – Transit: Sacramento County.

AB 441 by William Monning (D-Carmel) – Transportation planning.

AB 1770 by Bonnie Lowenthal (D-Long Beach) – California Transportation Financing Authority.

COMMUNITY DEVELOPMENT & AFFORDABLE HOUSING

AB 1585 by John A. Pérez (D-Los Angeles) – Community development.

AB 1699 by Norma Torres (D-Pomona) – Affordable housing.

AB 1951 by Toni Atkins (D-San Diego) – Housing bonds.

AB 1551 by Norma Torres (D-Pomona) – Housing.

AB 1797 by Norma Torres (D-Pomona) – Mobilehome Park Purchase Fund.

AB 232 by Manuel Pérez (D-Coachella) – Community Development Block Grant Program: funds.

MISCELLANEOUS

AB 1614 by William Monning (D-Carmel) – Fort Ord Reuse Authority.

AB 1616 by Mike Gatto (D-Los Angeles) establishes zoning and permit requirements pertaining to cottage food industries.

AB 1915 by Luis Alejo (D-Salinas) – Safe routes to school.

AB 1965 by Richard Pan (D-Sacramento) – Land use.

AB 2046 by Michael Allen (D-Santa Rosa) – provides that tenants in floating home marinas who want to purchase the marina can do so without reassessment of the marina, similar to mobile home parks.

AB 2259 by Tom Ammiano (D-San Francisco) – makes conforming changes to San Francisco's special waterfront Infrastructure Financing Districts for the Port America's Cup.

AB 2649 by Tom Ammiano (D-San Francisco) – Tidelands and submerged lands: City and County of San Francisco: seawall lots.

SB 200 by Lois Wolk (D-Davis) – Delta levee maintenance.

SB 1241 by Christine Kehoe (D-San Diego) – Land use: general plan: safety element: fire hazard impacts.

CLIMATE CHANGE

AB 1532 by John A. Pérez (D- Los Angeles) – California Global Warming Solutions Act of 2006: Greenhouse Gas Reduction Fund.

SB 535 by Kevin De León (D-Los Angeles) – California Global Warming Solutions Act of 2006: Greenhouse Gas Reduction Fund.

CEQA

AB 1665 by Cathleen Galgiani (D-Tracy) – California Environmental Quality Act: exemption: railroad crossings.

AB 1486 by Ricardo Lara (D-South Gate) – California Environmental Quality Act: exemption: Los Angeles Regional Interoperable Communications System.

AB 2245 by Cameron Smyth (R-Santa Clarita) – Environmental quality: California Environmental Quality Act: exemption: bicycle lanes.

AB 890 by Kristin Olsen (R-Modesto) – Environment: CEQA exemption: roadway improvement.

AB 2669 by the Committee on Natural Resources – Environmental quality: California Environmental Quality Act. ■

Governor Vetoes Six Bills Related to Redevelopment

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Supporters of redevelopment are cautiously optimistic.

"We can see in the governor's veto messages that he seems to have left the door open for a return of those bills or a reopening of that discussion once the redevelopment process has kind of played itself out," said Carrigg. He was hopeful that the dissolution process would adhere to the schedule set forth in the "touch-up" bill, Assembly Bill 1484, passed over the summer. (The League has since filed suit to block some of the provisions of that bill.)

The vetoed bills include the following, listed by their official titles and sponsors:

- AB 345 by Norma Torres (D-Pomona) – Redevelopment.
- AB 2144 by John A. Pérez (D-Los Angeles) – Local government: infrastructure and revitalization financing districts.
- AB 2551 by Ben Hueso (D-Chula Vista) – Infrastructure financing districts: renewable energy zones.
- SB 214 by Lois Wolk (D-Davis) – Infrastructure financing districts: voter approval: repeal.
- SB 1030 by the Committee on Budget and Fiscal Review – Redevelopment Property Tax Trust Fund allocations: excess Educational Revenue Augmentation Fund moneys.
- SB 1156 by Darrell Steinberg (D-Sacramento) – Sustainable Communities Investment Authority.

Three of the bills would have changed the state's notoriously restrictive laws concerning infrastructure financing districts, through which a local government can levy special taxes on local residents and businesses for the purpose of investing in locally serving infrastructure projects. SB 214 would have made the most drastic changes to this system, changing the voter-approval threshold from 2/3 to 55%.

Historically, IFD's have not been heavily used because they cannot be used in redevelopment project areas and require 2/3 voter approval, not only for the formation of the districts, but also for the issuance of bonds backed by projected tax increment revenues in the districts. Many, however, see a gentler version of IFD law as a way for cities to revive many of the infrastructure-related functions that redevelopment agencies served.

"The governor's veto does nothing to remove the obstacles barring many local governments from utilizing infrastructure financing districts for public infrastructure investment, like flood protection and clean drinking water," said Wolk in a statement to *CP&DR*. "I remain committed to making it easier for local governments to utilize IFDs to fund important projects, without adversely affecting our schools, core local services, or the state general fund."

(Brown did, however, sign a bill authorizing the creation of an IFD for the America's Cup yacht race in San Francisco next year. Detwiler postulated that such a move was appropriate given that the IFD is for a specific, clearly defined event and not for general economic development.)

SB 1156 would have come closest to a replacement for traditional redevelopment. It was designed to complement Senate Bill 375 by giving cities more tools to promote development in districts heavily served by public transit. Many such districts are in former redevelopment project areas. It has nearly universal support from local officials and statewide advocates of local economic development.

The bill would have enabled cities to form "Community Development and Housing Joint Powers Authorities" to carry out much the same functions as redevelopment agencies did. These authorities would have been funded by tax increments as long as they prepared plans to offset any loss of tax revenues incurred by local schools. It also would have allowed localities to implement local sales taxes, with voter approval.

> "We can see in the governor's veto messages that he seems to have left the door open for a return of those bills or a reopening of that discussion once the redevelopment process has kind of played itself out."
>
> *– Dan Carrigg, League of California Cities*

Redevelopment had long drawn the scorn of many county officials who felt that it allowed cities to unfairly siphon away tax money that would have, in part, ended up in county coffers. However, even some county officials supported SB 1156 because it explicitly attempted to address some of those concerns by

– CONTINUED ON PAGE 13

>>> Gov. Brown Focusing on Prop. 30, Not on Redevelopment

– CONTINUED FROM PAGE 12

giving counties input into cities' use of tax increment financing.

"SB 1156 provided that authorization for counties and cities to come to the table together and say that we agree that this is an appropriate use of tax increment dollars, as opposed to a more unilateral approach," said Hurst.

Steinberg has already vowed to reintroduce a version of SB 1156 and make it one of his highest legislative priorities next year.

In an Oct. 2 letter to supporters, Steinberg wrote, "Looking ahead to next year, it is imperative that the Legislature and Governor reach an agreement on a new set of tools for local economic development and affordable housing." Steinberg wrote that he will reintroduce it on the very first day of the legislative session, with the designation SB 1.

Brown indicated that he feared that such new tools would distract cities from the burdensome process of winding down their former redevelopment agencies.

"Expanding the scope of infrastructure financing districts is premature," Brown wrote in his SB 214 veto statement. "This measure would likely cause cities to focus their efforts on using new tools provided by the measure instead of winding down redevelopment. This would prevent the state from achieving the General Fund savings assumed in this year's budget."

Brown's veto messages indicate that he supported the spirit of many of the bills that he vetoed, thus simultaneously giving cities hope, while telling them to hang on for another year.

Even supporters of redevelopment are sympathetic to this approach, saying that there are too many uncertainties to come up with a suitable replacement for redevelopment just yet.

At the same time, cities are caught in an uncomfortable period of limbo and are trying to encourage development regardless of what happens in Sacramento. They would, however, like some help in the meantime.

"The business of our economy doesn't stop or isn't necessarily synchronized with the state budget," said Carrigg. "There's all sorts of infrastructure challenges that are out there... there were a lot of city officials that would just like to get to work on dealing with those challenges."

> "The whole policy community ... needs to see how this post-redevelopment period settles out and really what are the assets and liabilites."
>
> *– Peter Detwiler, former staffer, Senate Government and Finance Committee*

Some hope that an extra year will result in a stronger, better economic development tool from Sacramento.

"(The governor) is signaling a redevelopment recess," said Detwiler. "The whole policy community – the fiscal and urban renewal community – needs to see how this post-redevelopment period settles out and really what are the assets and liabilities."

Detwiler also speculated that Brown is more focused on Proposition 30, his package of tax increases aimed at balancing the state budget, than he is on any other issue.

"Anything that might deflect that focus (on Prop. 30) had better be for an awfully good reason," said Detwiler. "Right now there is no awfully good policy reason to sign IFD bills or redevelopment reincarnations."

At the very least, this year's bills may pave the way for those future incarnations. Though city officials have had choice words for the governor, and tempers have often flared, they seem to accept his veto messages in good faith.

"The bright spot is that the governor's veto messages certainly, in my mind, don't close any doors," said Carrigg. "They seem to indicate a delay connected to budget issues and the unwinding of redevelopment."

Whenever it comes, a replacement for redevelopment will likely impose new challenges on city administrators – and a quick fix should not be expected.

"We know that there are other economic development devices out there," said Detwiler. "They are politically much more difficult to use and require more managerial skill, more political leadership, and a genuine cultivation of public support. Well, duh. Of course." ■

Editor's Note: This story is an updated and expanded version of a blog post that ran online Sept. 30.

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>>> SB 375 Offers Reason to Revive Redevelopment

– CONTINUED FROM PAGE 1

He wants, essentially, for the former redevelopment apparatus to scatter and the old assumptions and habits to slip into the history books. The September vetoes simply reaffirm his position.

But it's hard to say how long we will all have to wait. Will he sign something in 2013? He might have that chance, since Senate leader Darrell Steinberg has already vowed to introduce a version of his SB 1156 – which amounted to a semi-revival of redevelopment, with a smart-growth twist – on Day One of the next legislative year. Or, will Brown wait until his second term, if there is one? Will California's cities have to wait until he's out of office altogether – an event that is somewhere between two and six years away?

Nobody really knows. You'd think he's feeling some pressure to do something. After all, his determination to keep redevelopment underground for the foreseeable future is at odds with his own rhetoric about building a sustainable California.

Even Brown seems to recognize this. In his veto message for SB 1156 he wrote: "The planning and investment that is envisioned in this bill would help develop and redevelop a California that is thriving."

Not a surprising statement. After all, the bill explicitly tied new redevelopment efforts to implementation of SB 375, the 2008 regional planning law designed to implement the state's climate change law. Brown is passionate about the climate change issue and, in inheriting SB 375 from the Schwarzenegger years, he has made it a centerpiece of his growth policy, which is being implemented primarily through the efforts of his Strategic Growth Council. And although SB 1156 would have revived tax-increment financing in a limited way, the bill would not have included property taxes that flow to schools, meaning the state general fund would be held harmless.

Yet Brown vetoed the bill anyway. He said he wanted to wait until after the redevelopment wind-down process is complete before considering new approaches like that contained in SB 1156. Brown used similar reasoning in rejecting AB 2144 by Assembly Speaker John Perez, which would have made it easier for local jurisdictions to create infrastructure financing districts. He said he did not want the locals to "focus" on IFDs while winding down redevelopment.

It's hard to know whether Brown is using his veto power to punish California cities for their recalcitrant approach during the 2011 budget negotiations – but it's possible. As you'll recall, he proposed killing redevelopment only two months after the cities won passage of Proposition 22, a constitutional amendment that prohibited the state from raiding redevelopment funds to balance the budget. The cities subsequently chose not to negotiate on redevelopment – and eventually lost a big gamble when the Supreme Court ruled against them in a lawsuit they brought, citing Prop. 22's provisions in killing redevelopment altogether.

It's hard to know whether Brown is using his veto power to punish California cities for ther recalcitrant approach during the 2011 budget negotiations – but it's possible.

Punishment aside, there is a certain logic to Brown's approach – if you accept the premise that the state's goal should be to protect the general fund at any cost. Cities engaged in the wind-down process are currently negotiating with their Oversight Committees to determine which old redevelopment projects should go forward – and how much tax increment should continue to flow to those projects, as opposed to the general funds of local taxing entities. While cities and Oversight Committees are working well together throughout the state, the state Department of Finance is often using its power to hinder or block the resulting wind-down plan.

Given DOF's hard-line approach, you can imagine how Steinberg's bills might look to the Brown administration: Say some city has successfully negotiated a wind-down plan that essentially keeps a redevelopment project afloat, at least in a limited way. Then the city negotiates with its county under SB 1156 to create a new tax-increment flow to further augment the project, and possibly takes an infrastructure financing district to a vote. Before you know it, the local redevelopment agency is back in business – through a patchwork of wind-down money, SB 1156 increment, and possibly IFD funds.

In and of itself, that's not something that would concern the state. But if this happens in enough cities, then redevelopment as an industry begins to emerge once again – with the consultants, the lawyers, the developers, and maybe even a trade association. And before you know it, the redevelopment industry is lobbying to restore tax-increment financing on a larger scale – even if it means grabbing a piece of the state's general fund.

OK, not likely. But this is clearly the scenario that the Brown administration wants to avoid. Which is why the death of redevelopment isn't enough and the carcass has to decompose before Brown will consider something new.

Cities would be in a stronger position to bring redevelopment back if they could argue that all entities that receive property taxes – and the state itself – would increase their coffers if tax-increment financing were revived. After all, that was the argument the redevelopment industry always made before. But there was always little hard evidence that the diversion of $6 billion in property tax funds generated a strong return on investment for local agencies; and the big drop in property values during the real estate bust has killed that argument altogether.

So maybe those interested in reviving redevelopment need to take a different, more comprehensive approach. The Brown Administration appears committed to the implementation of SB 375 and to a general strategy of encouraging compact development patterns, often around transit stops. Maybe a limited revival of redevelopment – meaning, yes, tax-increment financing – should be viewed as part of a broader effort to implement SB 375, along with all those Proposition 84 planning grants, CEQA exemptions for infill development, housing elements that encourage upzoning around transit stations, the remaining infill funds from the 2006 housing bond, and a whole variety of other implementation tools. It might even turn out that redevelopment – targeted properly to true infill locations, especially those that are transit rich – will save the state enough money in other costs to please the beancounters and undertakers alike. ■

How SB 375 Is Going Down in Dublin

DUBLIN, Ireland – Mike McKeever and I traveled 5,000 miles east from California this week to debate SB 375 in front of a Trans-Atlantic audience of planning and policy wonks at University College Dublin. Characteristic of how we each look at things, when we sit down to answer questions, my water glass was mostly empty and his was mostly full.

My presentation focused on the background of AB 32 and SB 375 and the challenges associated with implementing the regional Sustainable Communities Strategies, such as the one adopted by the Sacramento Area Council of Governments, of which McKeever is the executive director. My bottom line was this: Under SB 375, neither the state nor the regions can coerce local governments to follow the SCSs; and it's unlikely there are enough financial inducements available – especially with the loss of redevelopment – for the state and the regions to compel the locals to do the right thing.

That leaves what I call nudging. Using the financial inducements that are available – including transportation investments – and the general flow of policy, the state and the regions will have to nudge local governments to move in the right direction. Yes, my presentation (which otherwise included the requisite Schwarzenegger action-hero images) ended with an homage to Monty Python. (Nudge, nudge, wink, wink, know what I mean?) McKeever, as I acknowledged in my presentation, is one of the great planning nudges of all time.


University College Dublin
UCD

McKeever, to his credit, was not nearly as glib and cynical as I was. But his bottom line was that you have to trust local elected officials to understand that smart growth policies are in their best interest. You need not assume that you have to muscle the locals from above because they're too stupid or parochial to figure this out. "If you can't win the hearts and minds of local leaders, you're never going to effect change," he said.

As a former local elected official, I couldn't agree more.

After spending two days listening to presentations about state and regional planning efforts throughout the United States and Europe, McKeever made two good points:

1. A state planning law like SB 375 actually creates and stimulates a discussion about planning goals and planning implementation that can elevate local electeds out of their parochialism if it's managed well. He pointed specifically to the SB 375 debate at the Southern California Association of Governments as an example.

2. States and the federal government should rely more on performance standards and allow regions and locals more flexibility in meeting goals. He posited that this approach could be tested usefully if Obama is re-elected. I could add, this could be equally true even if Romney is elected and somehow tries to make the Partnership for Sustainable Communities work from his perspective.

Of course, Mike and I had this debate on the very day that the Irish government announced a massive consolidation/reduction of local government and rearrangement of both local planning power and state infrastructure power so that it is exercised at the regional level. But we're not tempted by all this. It's time to come home.

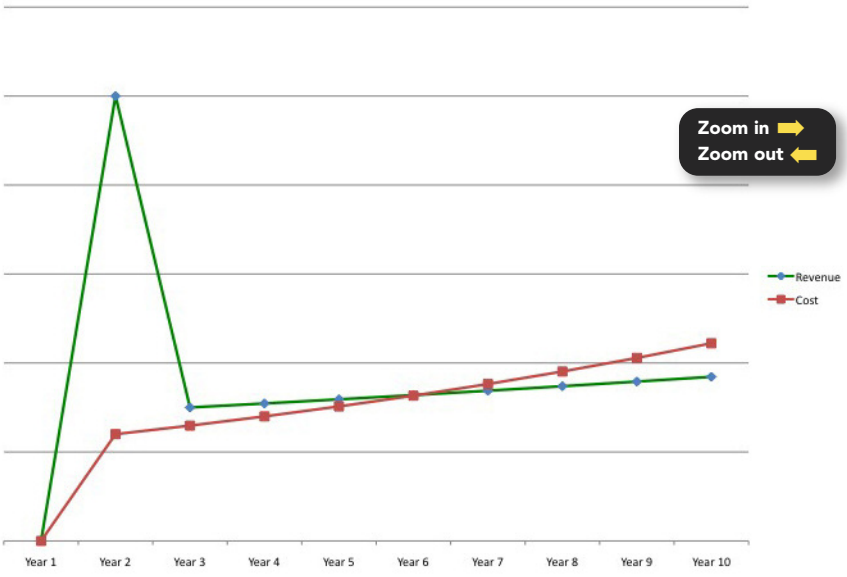
– BILL FULTON | OCTOBER 16, 2012

The Multari Curve

Last week I published a short op-ed in the *Los Angeles Times* [] suggesting that low-density development patterns are one of the reasons California cities are experiencing fiscal problems. But I have to admit I wasn't prepared for the type of pushback I got from readers, most of whom seemed to view me as an apologist for public employee unions or as a radical wishing to overturn Proposition 13.

I tried to be careful about how I made my case–acknowledging that public employee pensions are a huge issue no matter what and also acknowledging that Stockton, in particular, made their problems worse with grandiose urban redevelopment projects.

I made a particular point of the fact that, under Proposition 13, the buying power a city gets from a new development project declines over time, especially in relation to the cost of servicing the project. I borrowed this point from a talk I once saw given by Mike Multari, the former San Luis Obispo city planning director and longtime partner in Crawford Multari & Clark. Mike used to draw a chart depicting the revenue-cost curve of a typical development project over time, showing that eventually there's a crossover where the project runs a deficit. (I've replicated The Multari Curve crudely here.)



Mike's point was that most of a development project's revenue bump comes at the beginning, with impact fees and a big increase in property tax, but the impact fees go away and after that property tax increases slowly because property isn't reassessed unless it is sold. His point was that the only way to cover the gap was to keep approving new projects and get a new "hit" of revenue. And it all comes crashing down when the new projects stop coming. Which is what happened in 2008.

I guess I expected that some people wouldn't believe all this and suggest, instead, that sprawling development projects do make money for cities. Naively, I didn't expect anything else.

The blowback to the piece came in several waves. First were the online comments posted underneath the piece itself. My article was called everything from "baloney" to "fatuous nonsense" to "commie propaganda." Several people pointed to sprawling, non-union Texas as proof that I am wrong, as cities there are doing fine compared to cities in California (which, by the way, isn't true). Substantively, most of the comments were variations on the following themes:

1. I'm an apologist for public employee unions claiming that pensions aren't a problem.

2. I'm trying to divert attention from my own dismal record as a tax-and-spend liberal on the Ventura City Council.

3. I'm one of those crazy people who think Proposition 13 should be repealed.

None of which I said or meant to imply in the article.

Then came my appearance on Larry Mantle's normally thoughtful Air Talk show on KPCC. In the interest of balanced journalism, Larry recruited anti-anti-sprawl economist Wendell Cox to refute me. I like Wendell personally, but I don't care much for his research; in fact, I have devoted considerable effort on *CP&DR* blog space to tearing it apart.

Wendell predictably argued that I was wrong but then, as he typically does, blamed everything on restrictive land-use regulation. I agreed with him that land-use regulations are often too restrictive and lock in large-lot zoning where it is unnecessary. Then at the very end of the show Wendell circled back to attack SB 375 and the horrors of 30-unit-per-acre zoning (imagine!). I wanted to reply by saying the market's going in that direction anyway – something Wendell and the other pro-sprawl economists stubbornly refuse to believe – but Larry was pressed for time.

Subsequently, Wendell emailed me in very gentlemanly fashion, so I asked him if he agreed that the market was changing. He said that trying to predict the housing market today would be like trying to predict it in 1931 – his way of saying that the economic downturn has so skewed the market that you can't tell how it will turn out in the end. Sometimes I wonder whether these pro-sprawl guys have any Millenial kids. And what does all that have to do with the question of whether sprawl costs money?

Then came the *L.A. Times* letters. As it turns out, nowadays not only does the *L.A. Times* publish online comments and letters in the paper but they have a whole separate online section called Postscript, in which the author gets to respond to a letter-writer. They gave me two choices, and I chose to respond to Sidney Anderson of Mission Viejo, who said I was only half-hearted in my criticism of pensions and also claimed that I was in favor of repealing Proposition 13, which he claimed had saved his house. "Prop 13 and Sprawl. Sure." I responded by saying I actually agree with Mr. Anderson on pension reform and that smart growth can help balance a city's budget within the constraints of Proposition 13.

But even this wasn't the end of it, because both the interchange with Sidney Anderson and several other letters appeared on the *Times* web site and in the newspaper, generating even more comments, which – for better or worse – I responded to, thus getting into the weeds of how cities are hemmed in by state pension laws. Which is not exactly where I expected to end up.

I'm happy that the piece attracted so much attention and comment. I don't expect people to accept everything I say, but I didn't expect all the curves I've gotten in the last week. But one thing I have learned: A picture really is worth a thousand words. So in the future, in order to make my point, I'm just going to draw The Multari Curve.

– BILL FULTON | OCTOBER 8, 2012

Giving Main Street a Kickstart

BARRINGTON, Ill. – What can California learn from a sleepy exurb on the edge of nowhere? Not much, I don't think. California has scarcely ever pretended to care much for small town America. But something that is at once very modern and very old-fashioned is afoot here on Main Street.

I mean Main Street literally. Barrington has a primary commercial street, and it's called Main. And in the middle of that street, watching over it calmly and without imposition, stands the Catlow Theater, its neon casting a red glow over the prairie.

Living near Westwood, in Los Angeles, makes me one of the last Americans to think of a movie theater as a single-screen affair, with a marquee and architectural flourishes. Everyone else probably thinks of multiplexes and uses the retronym "single-screen," if they think about such things at all, when they refer to such oddities like the Village Theater or, indeed, the Catlow.

CATLOW THEATER

The Catlow theater in Barrington, Ill., was saved by a healthy dose of civic pride and a Kickstarter campaign that netted more than $175,000 for restoration of the small-town, single-screen movie house.

If the Catlow had been dutifully following the trends of the past two decades, it would have turned into a Walgreen's years ago. While so many of its brethren have gone dark – such as my local Aero, in 2005 – the Catlow hung on just long enough for a hero to arrive.

That hero was neither Batman, who does not exist, nor was it even the movie *Batman*, which I saw at the Catlow Tuesday night in the form of *Dark Knight Rises*. Instead, something much more modest rescued the old Catlow Theater: civic pride.

An orthodox (i.e. unrealistic) interpretation of capitalism says that an institution like the Catlow should live and die by selling all the tickets and popcorn that it can sell. If its sales fall short, then in marches creative destruction. One show per weeknight and hundreds of empty seats aren't going to cut it.

That's why the Catlow restored to a Kickstarter campaign. Its operators asked for $100,000 to upgrade the theater and, presumably, to keep it afloat. How much could a for-profit operation expect to raise from the population of one small town? And why should anyone "donate" to a business in the first place? We'll get to the second question. As to the first, the answer is… $175,000.

Make it $175,005, with my five bucks thrown in.

The Catlow was built some 90 years before the invention of Kickstarter, but what's a generation gap when the heart of a town is on the line?

If the private sector worked perfectly, the Catlow wouldn't need Kickstarter, and if the public sector worked perfectly, developers wouldn't need lobbyists. Patrons would see a movie a week, and elected officials would know exactly what the public does and does not want built in their backyard or town square. But it doesn't work that way. People don't always have the time or inclination to spend the money that they actually want to spend.

The Catlow's Kickstarter campaign puts in perfect relief the point where the power of the public sector ends and where the private sector – be it businesses, stakeholders, or nonprofits – must take over. Planners can do their damndest to promote appealing, vibrant places, but they cannot control who is going to move into those places, and they cannot guarantee their success. If stakeholders are going to invest in nice places – via the tax money that goes into planning and infrastructure – then they should also be willing to invest in the institutions that activate those places, even if those institutions are presumably for-profit ventures. That's because, as strict free-market conservatives are loath to admit, there is such thing as an externality.

When externalities are negative, we deserve compensation. When they are positive, we deserve a chance to show our appreciation. Many people would pay not just to see movies in an enchanting space but would in fact pay merely to have the opportunity to see movies in an enchanting space.

Unfortunately, until the advent of Kickstarter, institutions like the Catlow had no way of gracefully asking for help. Witness every independent bookstore and music store that has perished since the advent of Amazon and Napster. The Catlow's salvation suggests, at least, that we are finally taking notice of what we've lost and are willing to preserve those few great gathering places that still remain. It's tempting to think of great places as charity cases, but I reject that notion. When we're talking about a communal institution, of which the proprietor is as much a steward as an investor, the charity is us.

California's economic situation is going to get worse before it gets better. And semi-historic institutions like movie theaters are facing increasing peril with the demise of redevelopment. We can expect no further success stories like Oakland's Paramount Theater. So Californians should get ready to pony up.

If that still sounds like an odd notion, consider this: If they pass the plate around on Sunday morning so that you can sit in a lovely building and hear provocative ideas in the company of your neighbors for two hours, then why not do the very same on Saturday night?

– JOSH STEPHENS | OCTOBER 19, 2012

ARTIC in Anaheim: What Kind of Building Are You, Anyway?

The $188 million Anaheim Regional Transportation Intermodal Center (ARTIC), which broke ground earlier this month, is the most recent example of a fast-growing list of public facilities with big ambitions: the local transit hub that connects local and regional transit rail lines with bus service, taxies, bicycle locks and sometimes business services for travelers. The anticipation of high-speed rail also adds some drama to the Anaheim transit center.

Even if high-speed rail never gets built, however, the Anaheim complex promises to be one of the first of a new type of civic building: a flamboyant train station meant to be a high-profile civic ornament. With its dramatic, parabolic roofline, ARTIC has the confident, puff-out-your-chest architecture that in some cases wants to evoke the train stations of a century ago – even if it's not yet clear what exactly these buildings should look like or what ultimate purpose they will serve. Unlike an airport, typically an anonymous-looking expanse of infrastructure on the edge of town, the rail terminal is a downtown building. It needs to be visible, swelling with civic pride, a beacon.

CITY OF ANAHEIM

Architectural rendering of the Anaheim Regional Transportation Intermodal Center

Driving the development of massive projects like ARTIC are several factors, notably regional air quality goals, efforts to expand ridership on light rail systems and, in the case of Anaheim, perhaps the chance to give the city an "image" building that is not an artificial alp. The financing for ARTIC reflects policy goals on federal, state and local levels, with $143.1 million coming from Measure, the county's half-cent sales tax devoted to transportation improvements, $29.2 million from the 2008 State Transportation Improvement Program, and another $11.8 million from federal sources. An additional of $3.6 million for environmental studies rounds out the budget. Located at the site of existing Amtrak and Metrolink stations, ARTIC is within close distance of Angel Stadium and the "Platinum Triangle" commercial district in downtown Anaheim.

Dozens of intermodal transit hubs are currently planned in California, although the exact number is difficult to identify, in part because it's difficult to talk the range of projects and their urban-design ambitions are extremely wide, ranging. They include everything from suburban park-and-rides with train platforms, to large-scale city building exercises like the multi-block TransBay Terminal currently under construction in the SOMA district of San Francisco and the expansion of Sacramento's historic train station situated between the city's downtown area and the enormous Railyards project immediately to the north. The largest projects integrate office buildings and other uses into the transit projects, increasing their importance as civic linchpins.

Projects appear to be both more popular and more useful in Northern California, where BART and local rail systems seem like natural station generators. In the nine-county area comprising the Metropolitan Transportation Commission in the Bay Area, at least 51 transit hubs of various sizes are under review. Other places are banking almost entirely on high speed rail – a still-uncertain proposition.

The positive aspects of the HOK-designed ARTIC is that it is prominent, has a graceful shape and will likely be an ornament to a city that has long worked to make its downtown area seem at least as big and prosperous as Disneyland, the resort-within-a-city which has been Anaheim's *monstre sacre* for half a century. The negative aspects, arguably, is that the building, with its soaring, glass-lined ceilings, is not readily identifiable as a train station or perhaps anything else. If we were flying over the completed building in a helicopter, and knew nothing about it, what would we think it was? My first guess is an opera house or community theater, because the half-shell profile of the building suggests a band shell. A second guess might be an Olympic-sized sports venue, although this building, with its half-round foot print, looks more like a basketball stadium cut down the middle.

When we find out that ARTIC is a transit building, however, it's clear that HOK has wisely chosen to evoke the soaring spaces of old-time rail stations – Grand Central and the late, great Penn Station, both in New York, are the textbook examples – with the height of the building symbolizing the great press of people down below, all hurrying past one another in search of their travel connections. The new-style transit hub is different from Grand Central, however, because the transit hub is a building sitting alone in the middle of a parking lot – an awkward condition that tends to isolate these structures from the business districts they serve.

A much smaller, but equally intriguing, transit center is the proposed Hercules Multimodal Transit Center in Contra Costa County. If I'm reading it correctly, the Hercules station evokes a different building type, in this case the long-barrel vaulted train stations of Great Britain and France. (Think of the train station in Paris that became the *Musee D'Orsay*.) The "signifier" or symbolic piece in this design is a set of three broad-shouldered station buildings with curving roofs, which remind me of the industrial-looking buildings, with their long, "extruded" cross sections. In suburban Hercules, however, the station buildings are narrow, rather than the long platforms found in big-city train stations. A prominent clock tower that serves as a place marker is another traditional device.

In terms of making sense at first view, I find Hercules more easily identifiable as a transit station than ARTIC. At the same time, the rapid growth of transit stations suggests that there is something like an architectural version of "shake out" happening, whether competing images of what best symbolizes the intermodal transit station. Cities like Sacramento and Los Angeles, which have created new transit centers at the site of existing rail stations, have a certain advantage, although the 19th Century or early 20th Century facades of those stations may not give an adequate idea, from the outside, of the 21st Century transit technology that someday may roll in behind their walls. It's clear from the contrast between ARTIC and Hercules, in any event, that the image of the present-day transit center is still early in its evolution.

– MORRIS NEWMAN | OCTOBER 23, 2012