

More Than 40 Redevelopment Lawsuits Filed Against DOF

BY LARRY SOKOLOFF

At least forty-two lawsuits have been filed in the past year regarding disputes arising from the end of redevelopment, according to a study by the League of California Cities. League officials there think even more lawsuits have been filed in recent weeks.

The League’s analysis found that lawsuits fell into four main categories: true-up payments, ROPS (recognized obligation payment schedules), constitutional challenges, and housing-related disputes. Thirty-six of the cases were filed by cities and local agencies.

H.D Palmer, a spokesman for the Department of Finance, says the many of the cases are “narrowly focused targeted items” involving issues like ROPS. Palmer says the department’s own count from early January is that there have been 17 lawsuits involving enforceable obligations. DOF counts eight lawsuits by nonprofit or private petitioners, he said. The cases have been filed in Sacramento County Superior Court.

In contrast, the League’s figures show that six cases were filed by private entities. The League’s report also noted that 15 of the

42 cases were already resolved, with mixed results.

“We assumed there would be litigation relating to the dissolution of redevelopment,” Palmer said, adding “our preference is not to go the litigation route.”

Chris McKenzie, executive director of the League of Cities, said the savings that were supposed to come from the end of redevelopment are creating the conflicts with the cities and the DOF. “The Department of Finance is under pressure from the governor’s office to produce as much savings as possible,” he said, claiming that the administration “significantly overestimated how much they could get out of this program.”

Jennifer Farrell, an attorney with Rutan & Tucker, a Costa Mesa law firm which has filed many cases against the Department of Finance, said, “it needs to go to litigation to get their attention.”

But with another round of ROPS due to the state Department of Finance on March 1 (with results of that review released by April 15), can another round of lawsuits be far behind?

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Will Urban Streetcars Flip Mello-Roos On Its Head?

Streetcars are the hottest thing in the downtown revitalization business these days. They’re in operation in Portland and Seattle and in the planning and construction stage in places like Washington, D.C., Oklahoma City, Cincinnati, Fort Lauderdale, and Kansas City. And don’t worry – California will get its share of streetcars as well, especially Southern

California. The Downtown Los Angeles streetcar appears all but certain to be open by around 2016, and three Orange County cities – Anaheim, Santa Ana, and Fullerton – are exploring the idea.

And here’s the interesting thing: The Los Angeles Streetcar is going to get built because

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BY COURTNEY OUSTAD

CORDOVA HILLS DEVELOPMENT trumps concern over more sprawl and more pollution in Sacramento County. By a 4-1 vote, the Sacramento County Board of Supervisors amended the county's general plan to approve the 8,000-unit, 2,700-acre development project on the county's eastern edge. Supervisor Phil Serna, who voted against the project, said he could not support the project because the developer did not deliver on his promise to secure a university for the project. Supervisor Susan Peters countered Serna's reasoning by claiming that she considers the project a "smart growth" development because it will help attract a university. Although Ron Alvarado, one of the developers of the project, was unable to secure a university for the project, he has agreed to reserve land for university development, pay for the university's initial infrastructure cost, and give the county the land if he cannot attract one. With no university for the project, environmental concerns make the project's approval harder to justify. According to the Sacramento Area Council of Governments, the greenfield development could hinder the state's ability to meet its SB 375 emissions reduction standards.

THE CENTRAL VALLEY'S "GROWTH WAR" causes Governor Brown to intervene and help resolve the debate over how the region should grow. The Governor's Office of Planning and Research is currently overseeing the meetings between the city of Fresno and its neighboring counties to help reach

a mutual understanding for how to sustainably grow and develop the region. With recent state projections showing that the valley is growing at a faster rate than anywhere else in California, the policies that regulate its growth and development will significantly impact where its growing population will be able to live and the extent to which the region will physically grow.

CEQA REFORM is likely to be one of the hottest topics in Sacramento. As advocacy groups from both ends of the spectrum launch CEQA campaigns, state politicians, Darrell Steinberg and Michael Rubio are trying to create a common outline for a reform bill. Senator Rubio, who represents the Bakersfield area, said that reforming the outdated and abused environmental law is "the most important issue facing California today." Although Rubio is considered a moderate Democrat, his position clashes with the views of more traditional environmentalist Democrats.

A NEW LAX RUNWAY PLAN WAS APPROVED by officials despite community opposition. Back in January, more 400 Westchester residents attended a public hearing to voice their opposition to the new LAX runway plans. The plans involve moving one of the northernmost runways 260 feet closer to Westchester homes, and if approved, would result in increased noise and air pollution for its neighbors. Despite residents' loud opposition to the plan, the Los Angeles Board of Airport Commissioners voted to approve the LAX modernization plan

in late January. However, the plan still requires approval of the City of Los Angeles's Planning Department and City Council and is likely to face legal challenges by local advocacy groups.

SHOULD FULTON MALL BE REOPENED TO CARS? At Fresno's "State of Downtown" breakfast, urban designer and architect, Henry Beer, urged Fresno to reopen the mall to cars. The 50-year-old pedestrian mall designed by Victor Gruen has been a controversial and ongoing political issue for the city. Converting the pedestrian mall into an automobile accessible corridor is a top priority for Mayor Ashley Swearengin.

IN RESPONSE TO MAP-21, advocates like the League of American Bicyclists and the California Bike Coalition (CalBike) are urging the Brown administration to prioritize walking and biking in the state budget. Brown's budget proposal combines funding for pedestrian and bicycle programs into one category, cutting "active transportation" funds 10% from last year. Additionally, CalBike wants CEQA reforms to include a streamlined process for projects that improve bicycle infrastructure and better-connect bicycle networks. The decrease in federal funding could make it more difficult for cities like San Francisco to finance and implement their innovative bicycle strategies that are crucial towards diluting the state's reliance on cars.

SHOULD SANTA MONICA EASE ITS PARKING MINIMUMS? Santa Monica has put forth a proposal to ease its

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parking minimums but Paul Barter of Reinventing Parking says that a proposal is not a “war on cars”. Barter makes the case that people’s dependency on the automobile is not going to be alleviated by easing parking minimums; rather it’s the traditional zoning policies that require excessive parking to blame. Additionally, Barter argues that current parking policies are not mode neutral; rather they are the driving forces that have shaped Americans’ mobility preferences for the automobile. With traditional parking policies still in charge, easing parking minimums proposals can do little to reduce car usage in Santa Monica.

LOS ANGELES IS MAKING STRIDES in its effort to create more active and pedestrian oriented streets with the kick-off its mini-parklet program. The four parklets opened to the public earlier this month, and have already received

wide praise from city officials and the public. **Highland Park’s parklet** was the first to open, with **two parklets on Spring Street** and one in El Sereno opening shortly after. Valerie Watson from LADOT emphasizes the project’s contribution to making Spring Street a “complete street” -- a street that “really strikes a balance between all modes of transportation”. Councilman Jose Huizar, who has sponsored the program since its beginnings last fall, is hoping that the success of the parklets program will spark a city-wide trend for using parklets as a way to improve neighborhoods and transform it’s streets from places for cars into places for people.

L.A. PARKS STAY OPEN TEMPORARILY. Two parks on Skid Row in Los Angeles, Gladys Park and San Julian Park, are at risk because redevelopment funds are no longer available to keep them open.

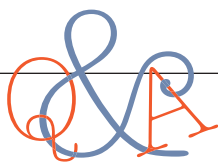
When the funds to operate the park ran out in June, Councilwoman Jan Perry helped secure funds from the Los Angeles Homeless Services Authority that would keep the park operating for another six months. Those six months have passed and redistricting has handed this issue over to Councilman José Huizar. With the risk of the parks closing on February 1, Huizar allocated \$50,000 of discretionary funds to aid SRO with San Julian Park’s maintenance and operation costs and the city’s Department of Recreation and Parks will now maintain Gladys Park. City officials are currently working on a **long-term solution** that will hopefully prevent the risk of closure in the future ■



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New SGC Head Makes Switch from Academia to Sacramento

BY JOSH STEPHENS

For most of his career, Mike McCoy studied planning and developed analytical tools to guide planning in California from the relatively placid confines of UC-Davis. As the new Director of the Strategic Growth Council—an advisory body consisting of the directors of all state agencies involved with the environment and land use—McCoy now gets the chance to put more of his research into action. *CP&DR* recently spoke with McCoy, and new SGC Deputy Director Allison Joe (formerly a Senior Planner at the Office of Planning & Research, about the SGC's agenda.

How do you feel about your transition from academics and research into the public sector?

Mike McCoy: When I first saw SB 375 and AB 32, they gave me hope that we're moving in a direction that I've been wishing for since the early 1990s. We're moving towards a more comprehensive, coordinated, collaborative way of doing planning, both at the state level and at the regional/local level. And when I heard that there'd been a vacancy at SGC, I certainly wanted to apply, having been a fan of the institution since its inception.

What's it going to be like navigating Sacramento coming from an academic background?

Mike McCoy: I'm very gratified by the openness and enthusiasm that people have shown so far. I think I wouldn't have predicted that from the experiences that I've had in the past. But I think there's the beginnings of a new era here, at least it seems so at the moment. I'm always taken by what Peter Detwiler [retired chief consultant to the Senate Governance and Finance Committee] once told me: "The window of opportunity in Sacramento opens every so often, but it does so briefly and erratically." I think it's open right now. The receptions that I've gotten from the agency secretaries and Ken Alex and our public member Bob Fisher [all members of the Strategic Growth Council] are all very positive.

Are there specific projects that you've been working on as an academic that you think are especially relevant to your new position? Conversely, that you're going to miss because you're going to have to give them up?

Mike McCoy: Both of those.

I've been involved in land use modeling for over a decade, having worked on UC Davis's U-Plan model, which is a university open-source freeware forecasting tool, and various travel models including the California statewide TDM. And I've worked with Urban Footprint here in Sacramento, built by Calthrope and Associates for the High Speed Rail Authority. It shows a great deal of promise as a scenario tool to help sketch the impacts of various decisions of individual agencies, groups, publics, and cities. These scenario tools are very valuable for creating dialogs

around most important variables in planning. I'm enthused by the fact that I still get to work in land use modeling.

On the "I'm going to miss it" side: There's the Baselines Project, led by UCLA, funded by the California Energy Commission to find new and unique and more complete ways to address energy and climate issues as they relate to the urban environment.

What are your top priorities for SGC in terms of internal workings and in terms of deliverables for the state?

Mike McCoy: Quite rightfully, every agency and department has its mission. Each has vowed to accomplish the goals of that mission, but often without seeing how that mission interacts with the missions of fellow departments and agencies.

It's what political scientists call the collective action dilemma: if I do what's right for me and Allison does what's right for her, do we end up doing what's right for all of us? I think we want to instill a more robust culture of resolving collective dilemmas and seeing how individual agencies and departments can meet their missions while creating the higher common good.

SGC has been contributing to the General Plan Guidelines update, to be published by the Office of Planning and Research. How might that document help cities?

Allison Joe: OPR has been actively working on the General Plan Guidelines update and it looks like they will be ready for a draft by the fall of next year. SGC has basically played a supporting role in the guideline's development. What we see are a lot of compatibilities in our efforts, particularly with regional and local governments and implementation of the regions that have adopted Sustainable Communities Strategies, in supporting various components of the general plan guidelines update. We're looking forward to working with them on that.

We have been particularly interested in the work OPR has been doing surrounding infill and trying to support some sort of infill template or toolbox to help locals better support infill development in their general plans.

I think there's a really good opportunity with this guidelines update occurring to work with OPR and work with local governments to better understand the challenges to local planning. And I think this has been a really good opportunity as we have more convenings with stakeholders.

What are the challenges that you're seeing to local planning and what can SGC do about them?

Allison Joe: The challenge to local planning first and foremost is finance -- financing the good projects that support compact developments and sustainable development. We

legal digest

Appellate Court Blocks Prescriptive Easement

BY GLEN C. HANSEN

In *Windsor Pacific LLC v. Samwood Co.* (January 30, 2013, B233514) ___ Cal. App.4th ___, the Court of Appeal for the Second Appellate District held (1) that a prescriptive easement could not be established over two roads, where the facts in the case demonstrate that the party alleging the prescriptive use was equitably estopped from denying that its use of the roads was by permission; and (2) that a proceeding to interpret a written easement agreement in order to determine whether a party to the agreement is equitably estopped from claiming that its use of the subject property was permissive is an action to ‘enforce or interpret’ the agreement, for which an attorneys’ fees provision in the agreement applies, regardless of whether that interpretation was sought by the allegations of the complaint or by affirmative defenses in the answer.

In *Windsor*, a property owner, Windsor Pacific, LLC (Windsor), sought to establish a prescriptive easement over two access roads on adjacent

undeveloped land owned by Samwood Co., Inc. (Samwood), and on nearby undeveloped land owned by Shadow Pines, LLC (Shadow). Windsor used the roads for several years with Shadow’s permission and pursuant to a written easement with Shadow. Windsor then used the two access roads on the Samwood property with the express permission of Shadow under the terms of another written easement beginning in August 2006 at the latest. The second easement agreement stated that Shadow owned an interest in both the Shadow property and the Samwood property and granted Windsor a nonexclusive easement to use the access roads on the two properties. However, beginning in 2009, Windsor claimed a prescriptive easement over the two access roads on the Samwood property. Windsor brought an action seeking quiet title to a prescriptive easement over the two roads, seeking ejectment of defendants’ obstruction of the two roads for Windsor’s use; and seeking a declaration

as to the rights and obligations of the parties with respect to the two roads.

The trial court held that Windsor’s use of the roads did not create a prescriptive easement over either the Samwood property or the Shadow property because Windsor’s use of those roads was expressly authorized by the permissive easement granted to Windsor. However, the trial court denied Shadow’s motion for an award of attorney fees pursuant to a contractual attorney fee provision included in the first written agreement that had led to creation of the permissive easement. Windsor appealed the trial court’s denial of the prescriptive easement; Shadow appealed the trial court’s order denying its attorneys’ fees motion.

The Court of Appeal agreed with the trial court that Windsor’s permissive use of the roads precluded the creation of a prescriptive easement. However, Windsor argued on appeal that the permissive easement granted by its written agreement with Shadow applied

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only to use of the access roads on Shadow’s property, and did not apply to use of the access roads on Samwood’s property, because Shadow did not have the authority to grant such an easement to Windsor. The Court rejected that argument. The Court held that the particular facts in the case demonstrated that Windsor was equitably estopped to deny or question Shadow’s authority to grant an easement over the Samwood property.

The Court also held on appeal that the trial court erred in denying attorneys’ fees to Shadow. The written attorneys fee clause provided for a fee award to the prevailing party in “any action or proceeding to enforce or interpret” the provisions of the easement agreement. The court concluded that this provision applied not only where the plaintiff’s allegations in the complaint seek to

enforce or interpret the contract, but also where the defendant seeks to do so by asserting an affirmative defense raised in its answer. In reaching that conclusion, the Court distinguished and disagreed with the majority opinions in *Exxess Electronixx v. Heger Realty Corp.* (1998) 64 Cal.App.4th 698 and *Gil v. Mansano* (2004) 121 Cal.App.4th 739. *Exxess* and *Gil* held that whether the attorney fee clauses at issue in those cases authorized a fee award in favor of the prevailing party depended on the nature of the claims alleged in the complaint or cross-complaint, irrespective of the defenses raised. The Court in Windsor rejected that conclusion: “To the extent that either *Exxess* or *Gil* suggests, or can be read to support the proposition, that the word ‘action’ does not encompass a defense, we disagree. As did Justice Armstrong in his dissenting opinion in

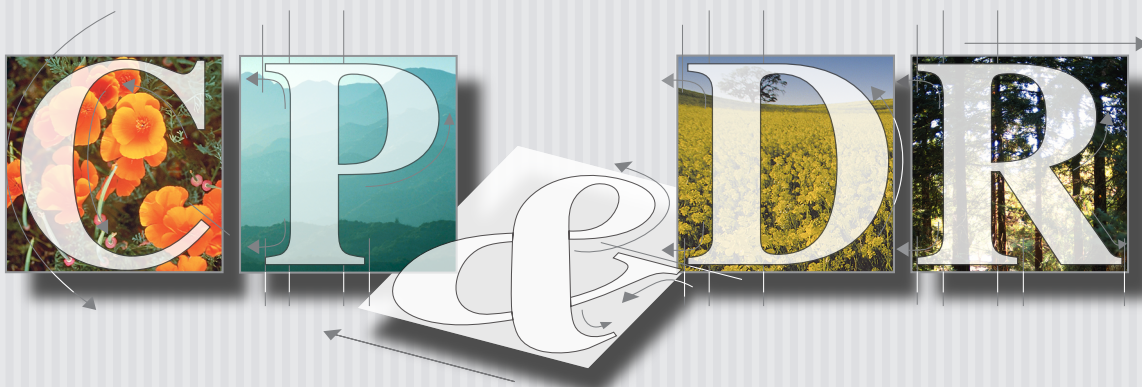
Gil, we regard the word ‘action’ used in this context as encompassing the entire judicial proceeding, including any defenses asserted.”

Therefore, the Court affirmed the trial court’s judgment denying the prescriptive easement. However, the trial court’s post-judgment order denying the attorneys’ fee award was reversed and the matter was remanded to the trial court with directions to (1) grant Shadow’s motion for an award of attorney fees; and (2) conduct further proceedings to determine the reasonable amount of fees to be awarded ■

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>>> More Than 40 Redevelopment Lawsuits Filed Against DOF

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Cities may find more resolve in filing lawsuits based on recent victories against the Department of Finance.

“They’ve settled some of these cases. They’ve admitted they’ve been wrong,” said McKenzie,

Some of the legal matters are resolved quickly without heading to full-bore litigation.

For example, in a recent matter involving the city of Duarte, the city sued the Department of Finance on Dec. 18, and a portion of the matter, involving \$1.2 million in low- and moderate-income housing funds, was resolved several days later after the Department of Finance dropped its objections. Duarte continues to press on with a larger dispute over \$8.3 million in housing funds, also filed on Dec. 18.

Among cases that settled, the city of El Cerrito in Contra Costa County settled a case in December that allowed it to skip a \$1.7 million true up payment.

But as cases settle, more cases have been filed. The city of Murrieta in Riverside County sued in December over a DOF decision to invalidate two payments—one a \$3 million payment from the city to the redevelopment agency and the second a \$1.2 million payment to developers on an affordable housing project called Monte Vista.

San Bernardino County announced on January 9 that it would sue over two funding disputes. The first is approximately \$10 million for reconstruction of infrastructure in the Cedar Glen area near Lake Arrowhead. Redevelopment funds were used to rebuild roads and water systems after a huge fire there in 2003. The second is for redevelopment of the industrial area of San Savaine near Fontana.

And in early February, Rancho Cordova – east of Sacramento – sued DOF to recoup \$6 million in funds the city loaned to the former RDA.

Palmer of the Department of Finance pointed to the San Bernardino County’s lawsuit as an example of each entity misunderstanding what the other is doing. Palmer said the San Savaine project was not denied, and the Cedar Glen project could still be eligible for funding after a more thorough review.

Some of the other cities listed on the League of Cities litigation report include National City, Oceanside, Palmdale, Glendale, Walnut, Pittsburg, San Diego, Fresno, San Jose, Morgan Hill, Apple Valley and Brea.

In addition, the League itself filed suit in September challenging the constitutionality of parts of AB 1484. A separate suit by a coalition of cities, including the city of Bellflower, is also challenging some of the same issues, said Patrick Whitnell, general counsel for the California League of Cities. The main issue is over provisions in the law that allow the Department of Finance to withhold sales tax

“The Department of Finance is under pressure from the governor’s office to produce as much savings as possible,”
-- Chris McKenzie

and property tax revenues from local governments that don’t meet its payment requests related to redevelopment. A hearing on the League’s lawsuit is set for April 19.

In November, the city of Petaluma in Sonoma County sued the Department of Finance for denying its use of \$22 million in transportation projects. The first was a denial of \$15 million for

two Highway 101 interchange projects, and the second project was \$7.5 million earmarked for a cross-town connector project.

Both McKenzie and the Department of Finance agree that meet-and-confer provisions passed in 2012 as part of AB 1484 have helped avoid even more lawsuits. The law provides an appeal process for cities when the department rules against it on such matters as ROPS.

Several suits have been filed by housing developers as well.

Rutan & Tucker succeeded in mid-January in a suit on affordable housing in Oxnard, where its private developer client CRFL Family Apartments succeeded in a ruling on a 120- unit development near Highway 101. Sacramento County Superior Court Judge Timothy Frawley ruled that the state must recognize a \$14.2 million contract for an affordable housing project. The city had pledged that money for a \$44 million project in an agreement in 2010 with Oxnard Family Apartments. The project was later transferred to CRFL Family Apartments.

One area of contention between the cities and the Department of Finance is that some of the ROPS were questioned in the third round of review last fall, after escaping notice in early rounds of review by the state. But Palmer said his department had a huge volume of ROPs to review in early 2012 after the Supreme Court’s ruling allowing the state government to dissolve redevelopment agencies. He said the department can continue to review ROPs that escaped scrutiny in earlier rounds ■

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The California League of Cities report is updated every few weeks. A link to the California League of Cities study can be found at:
<http://www.cacities.org/UploadedFiles/LeagueInternet/7d/7d11e9fe-c72e-47c8-81c3-ea5390299e4e.pdf>

>>> Will Urban Streetcars Flip Mello-Roos On Its Head?

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of the way streetcar advocates managed to use the venerable Mello-Roos legislation to help finance it. It's one of the few cases in California history that a Mello has been successfully adopted in an urban location – which, all by itself, may be a harbinger of things to come.

At first glance, streetcars would not seem to have much of a place in the 21st Century. Yet they're catching on all over the country as a more efficient downtown circulator than the typical bus or shuttle – and one that will generate new real estate development along the way.

At first glance, streetcars would not seem to have much of a place in the 21st Century. These self-propelled single-car vehicles are much slower even than light-rail trains and they typically run in the street with regular traffic. Yet they're catching on all over the country as a more efficient downtown circulator than the typical bus or shuttle – and one that will generate new real estate development along the way.

That's clearly what's happened in Portland, where the streetcar connects downtown with the hopping Pearl District and with the South Waterfront, where it connects to an aerial tram to Oregon Health Sciences University, which is located atop a nearby hill. Other cities are trying to replicate the Portland story. Virtually all streetcar projects seek to connect disparate destinations in or near downtowns. They're all starting with only a few miles of service and compared to other rail transit investments they're cheap -- \$100 million or so on average.

But, as L.A. Streetcar General Counsel Shiraz Tangri pointed out in his presentation in Kansas City, no city in the country is better poised to use the streetcar well than L.A. "It's a history project and an identity project," he said of the L.A. streetcar. "We should be the most pedestrian-friendly city in the world. We have a great climate. It is incredibly dense."

Downtown Los Angeles is already experiencing an amazing renaissance. The opening of the Staples Center in 1999 and the city's pathbreaking adaptive reuse ordinance shortly thereafter

kickstarted a rejuvenation that has increased downtown's population from 10,000 to 50,000. Downtown is the hub of a burgeoning regional transit system that is likely to double in size over the next decade, thanks largely to Measure R.

Even so, as Tangri pointed out in a recent talk at the New Partners for Smart Growth conference in Kansas City, Downtown L.A. is big – it's a long way from Staples to the hip lofts east of City Hall – and it can be tough to get around. Furthermore, some parts of Downtown have not shared in the rebirth. For example, along Broadway – once Downtown's premiere shopping street – the upper floors of 12-story buildings remain mostly empty even as neighborhoods all around have new life. (Tangri says there is 1 million square feet of vacant space on Broadway.) Indeed, Broadway is the focal point of the streetcar project; Councilmember Jose Huizar has assigned the same staff member to be the point person for both the streetcar and Broadway.

Like so many other streetcar projects around the country, the L.A. project is being put together entirely outside the traditional public transit structure. (L.A. Metro is supportive but has nothing to do with the project.) And as Tangri and others often point out, when business leaders promote – and pay for – a transit project, it's going to have a completely different goal: economic development rather than mobility. "We talk a lot about transit-oriented development," he said, "But this is development-oriented transit."

Though some cities around the country are relying on state and federal funds to help pay for their projects, L.A. – like other cities, including Kansas City – is relying almost entirely on what amounts to a parcel tax. Among other things, the Mello is levied as a gradient – those close to the line pay more. And, as Tangri and other streetcar experts frequently say, you've got to link those places that are hot in the real estate market with those that aren't. It's a way of extending the hot market to new locations.

The Mello-Roos victory last November is an especially interesting and important aspect of the L.A. streetcar effort. Originally a Proposition 13 workaround, Mellos have traditionally been used only in greenfield locations because they require two-thirds voter approval. In areas with few voters, the vote is among property owners only, which means developers and local governments have typically negotiated an infrastructure finance deal and then the developer (often the sole landowner) votes the Mello district into existence. Cities have usually stayed away from urban Mellos because they fear voters won't go for the extra tax.

In Downtown L.A., though, all those new hipsters helped the cause. Whereas many property owners may have been reluctant to tax themselves for the streetcar, the new downtown residents – the voters – were more than willing deliver the two-thirds vote for the additional tax, which of course falls in the property owners and not – at least not directly – on those residents who are renters. The streetcar vote could flip traditional California thinking about urban Mellos on its head ■

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recognize the challenges that local governments have had in sustaining themselves financially. On top of that, there's this added layer: They're actually working to try to encourage good development in their communities.

To the extent that SGC can assist in that, a lot of that is in the policy work that we do at the state level and in better organizing our house to support those policies. One thing that SGC is charged with is coordination of programs, funding, policies that support sustainable development and sustainable communities, which is all done at the regional and local level, and better align these policies with other programs. We can't work in silos. We can't expect locals to figure it out on their own.

Mike McCoy: One of the hallmarks of the council at this point has been supplying funding for local planning through the Sustainable Communities grant program. I spoke at the planning commissioners' annual conference a couple weeks ago, and it's so nice to walk into the room and have local government people come up and say, "Thank You." It's an unusual experience, I'm told by my colleagues. That's a project we'd like to double-down on and we're very anxious to secure additional funding.

We're also charged with bringing information to local government. We want to create channels for information, data, ideas about interactions of planning formats and their impacts, bringing in models such as the Urban footprint model, tools that help with sketch planning.

Then, finally, I think if we could work together with agents that provide infrastructure funding to establish some priorities for these important state goals, among them creating the opportunity for urban infill, that would be a tremendous achievement.

The Sustainable Planning Grants were funded by Prop 84, which has almost run dry. Do you see other sources of funding to continue that grant program?

Mike McCoy: I see lots of possible funding sources, but not everybody here in Sacramento agrees with me. Perhaps the most justifiable source for some of that work is cap-and-trade funds. I know that's the first thing on everybody's list these days, but the reason I say that is that a great deal of the carbon reduction that's being requested is being requested from the transportation and land use sector.

If we are serious about having them achieve their goals, then funding that comes from the industrial sector could be put to very good use in retiring the responsibility of the city sector. In fact, given the way AB 32 is structured, in some ways it's in the best interest of the industrial to see that happen, lest more tons land on their doorstep.

You've observed SB 375 intently. Now that you're in the thick of it, how do you feel about it as a law and about the way it's being implemented? Can anything be done to make it more effective?

"We're moving towards a more comprehensive, coordinated, collaborative way of doing planning, both at the state level and at the regional/local level."

Mike McCoy: It's all happened so fast that it's hard to sit back and make an assessment like that. My first assessment was to say, "Wow! We don't have the tools or the data to really implement this." It's a great challenge to the science and policy community. Certainly we saw that with the RTAC struggle to even understand how to create targets. Right out of the box this has been a challenging law to think about.

As it's being implemented in the SCS's, it reminds me of a bit of the history of CEQA itself. We started out with a law that had a somewhat narrow application and somewhat proscriptive stance about projects to having interpretations by the court subsequently morph it into a more distinct legal system. I wonder if that isn't going to happen here. We're going to learn by doing. The law didn't have tremendous specificity about what an SCS was. There was no SCS guideline, like a general plan guideline. So people are feeling their way through. I'm actually gratified by the quality of the work that's been done.

I think some mistakes were bound to be made by the very nature of the fact that there wasn't a whole lot of guidance given. I think we're going to work our way through it, as always, using the courts to help define what our tests were in the legislature. I certainly believe that, lawsuit or no lawsuit, over time, SANDAG's and everyone else's SCS's will evolve to a higher level of quality. This is just one step in what's going to be a very long process for every MPO to continuously find ways to improve these documents.

There's a lot of buzz these days about reforming CEQA. Bills have already been introduced. Is there a role that you or SGC might play in these discussions of reforming CEQA?

Mike McCoy: I'm not sure what our role will be exactly, although I am a strong proponent of CEQA reform and have lectured on this over the last decade-and-a-half. My team at UCD wrote the state clearinghouse's database system, so I am painfully aware of the number of distinctive EIR's, NOP's, Neg Dec's and everything else that are in that system.

Hundreds of thousands of documents are here on 10th St in Sacramento since the inception of the act. Those tens of thousands of EIRs have not particularly referenced one another,

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nor have they looked at large-scale, long-term impacts. CEQA is not, and never was, meant to be a design and planning tool for good management, and yet it's sort of become the court of last resort for every element of every project. It encourages fragmentation by saying, "here's how we resolve your project; we do it all by itself in a silo and we say yes to yours and we move on to the next one." That approach is not in the best interests of the state of California.

I'm in the OPR building so I certainly have hallway rights to Ken Alex and anyone else. As to an official soapbox with the council, I don't really see that unless OPR asks us to take that role with the council. Each of the council members is perfectly free to recommend topics that are brought to the council as a whole. If OPR were to bring that, I would be glad to house that discussion.

What else is going on at SGC that you want planners around the state to be aware of?

Mike McCoy: In no particular order, we have some specific priorities:

I think the council has a role in working with High_Speed Rail and the inter-agency questions that High_Speed Rail raises: How are we going to manage agricultural land and agricultural economics in an era of High_Speed Rail? How are we going to manage a large number of potential species conflicts in an era when we are building a massive piece of infrastructure? How are we going to deal with runoff and water discharges via the state Water Resources Control Board in an era where we're changing the landscape? I think we have an important role to play in bringing these parties together now more than ever.

One of the things related to that is the concept of a Regional Advance Mitigation Program, or RAMP. I've been an advocate of this for many years: we need, as an alternative to this CEQA approach that we've taken, to look comprehensively at our environmental goals for a region or a location or the whole state and manage accordingly in advance of projects, realizing that one day we will have projects.

An example is a pilot project we did in the Elkhorn Slough Watershed where Caltrans, Fish and Game, US Fish and Wildlife, Army Corps, and NGOs all got together to look at the environmental values of that watershed and to look at the fact that three state highways intersect at that watershed and there could be a need for some improvements or changes from time-to-time in the next couple of decades and ask the question, if changes were made, what would we want the response in the ecosystem to be?

That exercise was conducted over a multiyear period to the satisfaction of all parties, entering into an advance mitigation agreement. I would hope that one of the things we can do is ramp up RAMP so it's much more than a single watershed and to actually have regional considerations to our environmental goals. That would help temper our future infrastructure investments and would do it in a way that created the greatest biological benefits.

Granting is another area that I think is ripe for collaboration. The state has hundreds of granting programs through its many agencies and departments. Some of these, I believe, could be bundled in ways that would create cooperation between departments and would solicit the same collaboration between applicants.

We might have the current health grant and current planning grant coming, say, from the Natural Resources Agency on the one hand, and Health and Human Services on the other, and if we just so much as join to the RFP date and descriptions – didn't even change the color of the funding or who managed the contract – if we just coordinate the funding to look at a planning grant that also involved the health element and then went out to the community that involved both a planning agency and a health department, we'd have taken one very large step forward in collaborative planning. I think that's a piece of low-hanging fruit that we want to explore in the next year.

Finally, we don't think quite as carefully as we should across all funding sources for infrastructure about what the state's bigger goals are. I'm hopeful with the launch of a new Environmental Goals and Policy Report, hopefully in the next year, we'll begin to think about what role investment plays in achieving these goals and policies in the state. Maybe we can hook those two concepts together and use our investments to accomplish multiple goals.

Arguably the biggest news in the planning community over the past few years has been the demise of redevelopment. What role can SGC play in devising an alternative?

Mike McCoy: We certainly don't take positions on legislation in the SGC, but certainly I would like to see the evolution of some kind of mechanism that would stimulate infill investment. I'm not sure what form that takes now. There are different bills traveling through the legislative process. I do think that something needs to come forward to stimulate that investment that we want to see and, in some ways, that we legislated for in SB 375, so I'm hopeful that we can find a way to reward good planning in infill processes.

Allison Joe: We're excited about being here. There's a tremendous opportunity to work with planners throughout the state to be in collaboration with Sacramento and are interested in learning about where the challenges are that can really impact those local communities. The number-one challenge is financing -- that the state doesn't have a huge impact on. But we know there are things out there that we can support, and to the extent that we can do that, we're really excited to do that ■

This interview has been edited and condensed.

The Conservative Argument for Smart Growth

AS THIS BLOG HAS REPORTED REPEATEDLY, the standard conservative critique of smart growth and “good” planning sometimes doesn’t seem very logical. Sometimes these critiques were based on the assumption that any government intrusion into land markets is bad – whether it creates higher density or lower density – and sometimes they’re based on the assumption that smart growth inevitably promotes higher-density development when what the market really wants is low-density development. Indeed, my good friend Wendell Cox sometimes espouses both these views at the same time.

Which is why the conservatives who came to the defense of smart growth the other day at the New Partners for Smart Growth conference in Kansas City were so refreshing. They didn’t agree with everything smart growers advocate – indeed, they were assiduous in shooting down anything that smelled like big government – but they did a good job of identifying the situations in which conservatives should support smart growth.

Virginia blogger Jim Bacon and Long Island law professor Michael Lewyn both landed in more or less the same place: Traditional suburban zoning represents heavy-handed government regulation that robs people of their liberty and property rights. “What kind of society outlaws granny flats?” asked Bacon, who runs a blog called [Bacon’s Rebellion](#).

Lewyn, a professor at Tauro Law School on Long Island, went further and articulated a heavy conservative critique of minimum parking requirements, saying not only that they rob people of their property rights, but also that they hinder real estate development by taking property out of play. “If the spaces are above ground, these requirements are taking money from your hands,” Lewyn said. “If they’re underground, you have to pay money to build the parking units.”

In addition, Bacon hit hard on the fiscal effects of smart growth and sprawl. He said conservatives should be opposed to the practice – especially common in red states – of having the government pay for all the infrastructure costs associated with new development. “That’s crony capitalism,” he said. This is a mighty different critique than we typically see from Cox, his buddy Joel Kotkin, and academics like my USC Price School

colleague Peter Gordon. They typically begin with the assumption that low-density development is the natural order of things and therefore any move toward higher density must be the result of government regulation. Indeed, as I have previously reported, not long ago on Larry Mantle’s Los Angeles radio show, Wendell and I agreed that regulations should be lightened so that developers can be more responsive to the marketplace – but he then railed about SB 375, saying that it would cause (I am paraphrasing here from memory) “30 units an acre in neighborhoods that have five 5 units an acre for decades and decades.” The idea that the market might want higher density and property owners ought to have the right to cash in on this changing market didn’t seem to occur to him.

In that sense, Cox trods a well-worn path in conservative suburbia – the desire to retain one’s own property rights while making sure nobody else is able to cash in on theirs. Bacon, in particular, called his fellow conservatives out on this paradox and went on to say that conservative Republican politicians are more than happy to exploit it. “In Virginia,” he said, “Republicans see their constituents as their red spots on the electoral map. They’ve written off the urban areas. They are focused on the areas that consume a lot of gasoline and are committed to existing forms of development.”

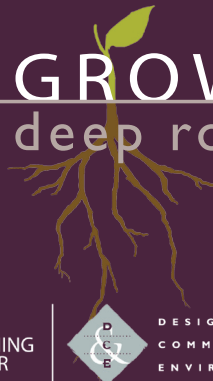
There was one area where both Bacon and Lewyn appeared to strongly part company with the smart growers: Both strongly opposed government-funded public transit. Transit is, of course, a core part of the smart growth agenda and virtually all major transit systems in the United States – and in the world, for that matter – are run by public agencies that make up for farebox deficits with tax revenue. To both Bacon and Lewyn, this appears to be top-down government intrusion at its worst.

“The traditional municipal-transit model is broken,” Bacon said. “None make a profit, all are undercapitalized and starved for resources. Why would that be? Gee, maybe because they are government monopolies dealing with labor unions.”

– William Fulton | FEBRUARY 16, 2013 ■

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Will Demographic Change Force a Smart Growth Future In the Central Valley?

Over the past few weeks, issues concerning the Central Valley's future growth and development plans have gained widespread attention throughout the state – even causing Governor Brown to intervene in the Valley's deliberation processes. With the Central Valley region growing at a faster rate than any other region in California, the policy outcomes of the region's "growth wars" will provide the context in which the Valley's cities and counties will be able to accommodate its growing population.

Regardless of how the region decides to grow, the Valley must address the challenges of its rapidly growing population by adopting development policies that meet the needs of future market demands while aiming to preserve its most valuable economic resource- its farmlands. And based on the results of a recent study, one thing is for certain: Past planning and development practices should no longer be an option for its future.

Instead, Valley leaders should look to Arthur C. Nelson's recent study "A Home for Everyone: San Joaquin Valley Housing Preferences and Opportunities to 2050" for answers. The report draws from demographic and economic trends and consumer preferences analysis to recommend the housing types and development practices most conducive for the region's projected growth.

Demographic Trends:

- Over the next four years, the household population will grow by 72%, requiring approximately 700,000 new households by 2050.
- The Hispanic population will become the Valley's new majority population.

Economic Trends:

- National homeownership rates are projected to further decline.
- Incomes are projected to remain stagnated over a 10-year time period.
- Energy costs and gas prices will continue to increase.

Consumer Preferences:

- Almost half (48%) of the total housing demand will be for single-family homes on smaller lots of less than 6,000 square feet.
- Residents prefer walkable neighborhoods and homes that are closer to jobs and transit.

To accommodate the growing household population and meet market demands by 2050, a study from [The Concord Group \(2012\)](#) projected that 45% of all new residential units built before 2050 should be attached units -- apartments, townhomes and condominiums. Currently, the region's supply includes only 5% of these types of residential units.

The Valley's current mismatch between the housing market's supply and demand should signal a red flag to leaders and deter them from enabling growth through large-lot, single family homes that not only fail to meet market demands, but risk the loss of its already over-compromised farmlands. [The American Farmland Trust](#) found in a recent study that business as usual development in the Valley would result in a loss of almost 600,000 acres of irreplaceable farmland and a \$100-190 billion loss in economic value.

Fortunately, Nelson's valley housing report provides leaders with a smarter development alternative- one that responds to future market demands and preserves valuable farmland. The report recommends that all new attached residential development and nonresidential development could be directed to infill and redevelopment of areas that are already developed. To implement this type of change and prevent the resurgence of past development patterns, the report advises leaders to change their current zoning and development regulations to policies that facilitate mixed use developments and direct new growth to infill and redevelopment areas.

– COURTNEY OUSTAD | FEBRUARY 16, 2013 ■

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