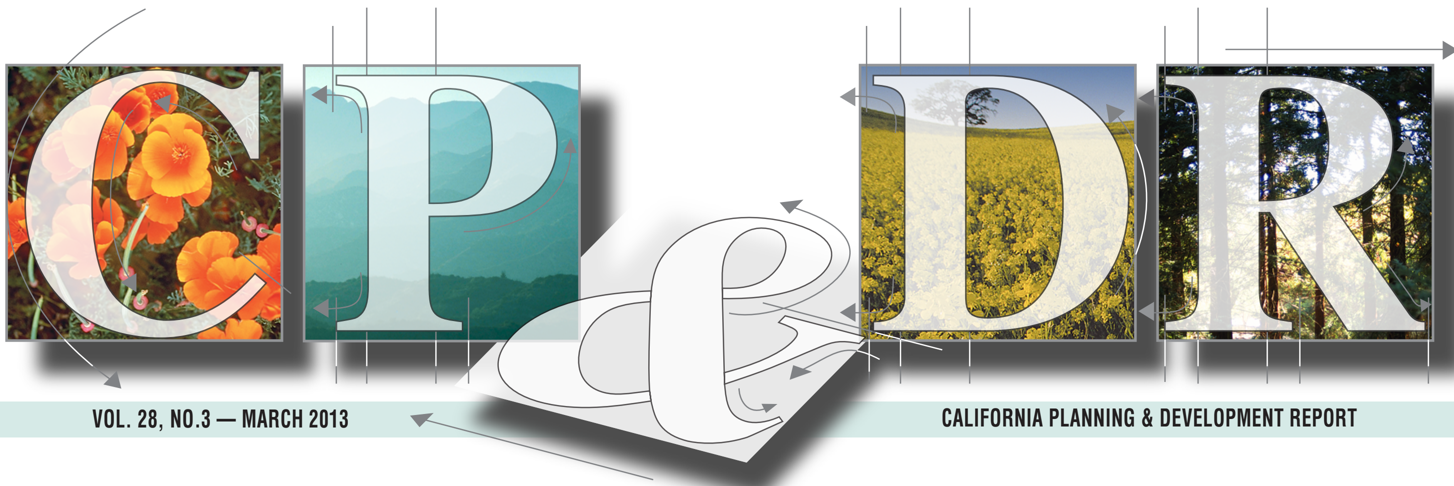

VOL. 28, NO.3 — MARCH 2013

CALIFORNIA PLANNING & DEVELOPMENT REPORT

It's *Groundhog Day* For Steinberg's Redevelopment Bill

BY LARRY SOKOLOFF

Like the plot of the Bill Murray movie, *Groundhog Day,* Sacramento politicians are back to the same story on redevelopment this year. It's a re-run of last year, with proponents of redevelopment re-introducing many of the same bills as last year.

Attempts to resurrect redevelopment were a flop in 2012 when Governor Jerry Brown vetoed most redevelopment-related bills. This year, there is hope for a different ending, where Brown and his Democratic allies can find themselves in agreement on future steps to aid economic development at the local level.

Last year's installment ended in late September, when Brown vetoed SB 1156, an attempt to resuscitate redevelopment by Senate President Pro Tem Darrell Steinberg. The measure, known as the sustainable communities bill, tried to bring back redevelopment as an infill development tool.

Last fall, though, Brown was in the thick of a battle to raise taxes through Proposition 30, and he turned down the measure along with several others. He said in his veto message that "expanding the scope of infrastructure financing districts is premature" and that he wanted redevelopment wound down and general fund savings achieved.

But in the new session of the legislature, Steinberg signaled redevelopment's importance by introducing the old SB 1156 as the first bill of the session. Now known as SB 1, the bill is identical to last year's version. It passed the Senate Governance and Finance Committee on March 13 on a 4-2 party line

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What's Next for CEQA: Major Reform or Incrementalism?

insight
WILLIAM FULTON

Is the California Environmental Quality Act finally on the verge of major reform?

Or will CEQA's defenders succeed in limiting the reform to just nibbling around the edges, without attacking the law's basic structure?

Up until the resignation last month of Senate Environmental Quality Chair Michael Rubio, D-Bakersfield, it sure looked like major reform was a possibility. A conservative Democrat from a pro-growth (and oil-producing) region, Rubio had been pushing hard since last summer for major reform that would alter CEQA's fundamental framework. Though Rubio backed down last August when challenged by Senate leader Darrell Steinberg, D-Sacramento, he appeared likely to make a serious run at reform this year. Instead he quit in the middle of his term to take a government relations job with Chevron.

With Rubio gone, Steinberg quickly introduced a placeholder bill. Though short on specifics, SB 731 would seem to suggest a much less aggressive approach to reform. Meanwhile, CEQA's hardiest defenders – including the Planning & Conservation League, other environmental groups, and unions that often use CEQA litigation to challenge non-union retail stores – rallied support around the existing law.

Traditionally, the debate over CEQA

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inbrief

FRESNO AND MADERA COUNTY LEADERS have pledged to resolve their long-lasting debate over how the Fresno region should grow.

For the first time since their numerous growth and development lawsuits, Valley leaders came together in a downtown Fresno meeting to discuss the region's development. County officials were able to discuss their differences in growth strategies, with Madera wanting to promote growth and Fresno wanting to thwart growth away from its northern boundaries. County leaders agreed that continuing to sue each other over development pursuits will not lead to desired results for the region and that they must find a middle ground in order to proceed with regional growth plans. The city of Fresno plans to meet again with the counties to discuss the settling of lawsuits.

STATE'S CONTROLLER John Chiang identified that San Bernardino mishandled its redevelopment funds by illegally transferring property funds to its economic development corporation and wrongly holding onto the remaining $420.5 million.

The (now) former City Manager claims that the report's finding are false, and although the city later admitted its transfer of funds to the EDC, it claimed the transaction was legal. The state Controller's request to reverse the original transfer of $108 million worth of properties has not yet been executed due to incomplete information regarding the transfer of properties. The state is requiring the bankrupt city to repay these funds, leaving the city at a loss for how it will be able to transfer money it does not have-possibly resulting in criminal charges for the city.

In a letter to the city, California's Department of Finance claimed that it could withhold some of the city's future tax receipts should the city fail to pay the state $15.2 million by April 3. In response to the letter, City Attorney James Penman said that the city doesn't have the money to pay the state and the state's collection of this money would be illegal as the city's petition for bankruptcy protects the city from collection. Penman sent letters to the state controller and Finance Director Ana Matosantos demanding immediate promises that the state will not try to collect the money from the city.

THE CAPITOL AREA DEVELOPMENT Agency (CADA) was seemingly exempt from the dissolution of redevelopment agencies last year.

However, in the face of state budget cuts, officials have set forth a plan to cease the agency's development operations and sell off its properties to subsidize the state budget. CADA still hopes to retain its role in supporting development and managing affordable housing projects.

SILICON VALLEY ASSEMBLYWOMAN Nora Campos has introduced a bill to provide cities and counties with tax increment financing.

AB 690 allows municipalities to sell bonds and finance development of public works projects by forming job and infrastructure districts (JID). The districts would then pay off their debt by "capturing" the increase in property tax revenues. The new bill is gaining traction with several cities and business that see the bill as an economic development solution to the Governor's 2011 dissolution of local redevelopment agencies. Further, Campos' bill is not likely to be the only bill of this type sent down the pipeline, though many suspect that Governor Brown will likely veto any bill that would give power to former redevelopment policies.

Though critics are calling the Assemblywoman's bill "RDA 2.0" and susceptible to the same abuses of redevelopment as before, Campos defends the bill clarifying the bill's intention of creating jobs, not to remedy neighborhood blight. The language of the bill focuses on high unemployment and job creation metrics required for the JID-requiring the creation of ten wage jobs for every $1 million invested. The bill could stimulate public private partnerships to spark investment that would create jobs while improving public services. The bill has gained the support of SCAG, the California Business Roundtable, and the Los Angeles County Business Federation who advocate the bill as a way to stimulate the much needed job growth in the state.

CEQA REFORM DEBATES have dominated state headlines this month.

Senator Michael Rubio, former chair of the Senate Committee on Environmental Quality and leading proponent of CEQA reform, resigned at the end of last month leaving many to question the

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fate of CEQA reform policies. Upon Rubio's resignation, Senator Steinberg introduced a placeholder reform bill, SB-371, broadly containing "intent" language for substantive changes including thresholds for land use impacts and procedural changes that call for trial judges to focus review on inadequacies rather than the entire document. The bill has even received praise from the Center for Biological Diversity, one of the major environmental groups opposing major changes to the law, for not using language that reflects a "standards-based" approach to CEQA which opponents claim would protect government officials from environmental damage accountability and undermine public participation in the development process.

However, despite the choice of what language to use, Sacramento Bee's political columnist, Dan Walters, argues that policies governing post-litigation is the most important issue at stake in debates concerning reform as challenging development plans under CEQA is the most powerful weapon enviros and labor unions can use to kill opposed projects.

To fill Rubio's place, Steinberg appointed Senator Jerry Hill, D-San Mateo, as the new leader of the environmental committee. Steinberg claimed that Senator Hill is well is "well-versed in the false dichotomy that pitches business against the environment", and that he is confident the state will "continue to lead the nation in smart, environmentally sustainable economic growth".

The CEQA debate became even more convoluted when the CEQA Working Group, a coalition of business leaders advocating for CEQA reform, called upon local officials to sign an open letter in support of CEQA modernization to the California Legislature, sparking a strong response from CEQA defenders. The day after the release of the open letter, labor unions, tribal organizations, and environmental groups rallied at the steps of the state capitol to stake their claim in the debate. The protestors have formed the coalition, Common Ground, to mobilize and fight back against reform proponents in an effort to save the law from sweeping reforms, claiming that any attack on the law is also an attack on the state's workers, families and communities.

Further, the pro-CEQA coalition released a report by the Labor Management Cooperation Trust, highlighting how the law benefits the state's economy and the environment to counter common claims that the law is used to prevent development projects that are actually good for the environment and promote the state's economy.

SAN DIEGO IS IN THE PROCESS of preparing the county's rail lines for the state's future high-speed rail network.

The blueprints, as part of the draft CA State Rail Plan, aim to combine the existing rail system with the future rail system needed to accommodate the state's new bullet-train network. Although the high-speed rail isn't expected to operate through San Diego for decades, officials are committed to improving regional access to future network connections in Los Angeles and San Diego by investing in its current light rail system.

THE LOS ANGELES CITY COUNCIL approved a 30-year operational plan that will commit $294 million for LA's downtown streetcar.

The maintenance funds for the streetcar will come from fares, ad revenue and the county's Measure R sales tax- after the streetcar is built. To finance the construction, the city will be using a voter approved special tax and (hopefully) federal funds. City Councilman Jose Huizar claimed that retrieving federal funds for the project will be more difficult given the recent federal sequester, however Huizar is remaining optimistic on the project's completion and plans to work with the Federal Transit Authority to apply for funds through the Federal Small Starts program. The project's draft EIR is expected for release this summer and construction could begin as early as 2014.

THE CITY OF LOS ANGELES is proposing to rezone property around the existing Culver City Expo Line station and four additional stations to be built as part of Expo Line Phase II.

The city claims that the proposed zone changes will establish new development regulations aimed to support transit ridership, require pedestrian-oriented design, and reconfigure the street's design and improve road conditions to promote pedestrian and bicyclist activity as well as vehicular circulation. The DCP will be holding a public meeting in April to discuss the proposed zone changes.

THE CALIFORNIA HIGH SPEED RAIL Authority voted to authorize the selling of nearly $8.6 billion in taxpayer-approved bonds to help finance the cost of the nation's first bullet train.

With this recent allocation of funds, the construction of the HSR is now on track to begin this July. The governor, attorney general, and state treasurer are to decide the timing of the sale, however the first opportunity for the sale will not be until this fall. The project still needs to undergo the upcoming hearings regarding its environmental impacts and whether or not the funds meet voter requirements, both of which could stall bond money. The authority's Chairman, Dan Richard, admits there are several issues that need to be resolved before the project goes to court, however he still expects the project will meet its construction timetable. ■

legal digest

Judge Upholds High-Speed Rail EIR Against Peninsula Cities' Challenge

BY WILLIAM FULTON

A Sacramento Superior Court judge has – for the second time – ruled against three Peninsula cities who filed suit against the High-Speed Rail Authority under the California Environmental Quality Act.

Atherton, Menlo Park and Palo Alto originally filed suit in 2008, claiming that HSR had not adequately analyzed the Altamont Pass alignment before choosing the Pacheco Pass alignment, which will require the rail line to traverse the Peninsula. After Sacramento County Superior Court Judge Michael Kenny ordered HSR to make some changes to the EIR, the three cities sued again, arguing this time that because HSR is now considering a "blended" project, the environmental analysis is no longer sufficient.

The "blended" project, which was approved by HSR in part because of pressure from the Peninsula cities, would be a two-track system in which the tracks are shared by HSR and the Caltrain commuter rail line. Previously, HSR had proposed a four-track system with HSR and Caltrain running on separate tracks.

> ***"Even if the process was not absolutely perfect, it was sufficient to comply with CEQA,"***
>
> **-Hon. Michael Kenny**

Kenny ruled that HSR had "fully complied" with his prior rulings. He further concluded that HSR had considered the two-track alternative in the original EIR, even though the four-track alternative was the EIR's focus. He said parts of the EIR dealt with phasing and the possibility of a blended system. He said the EIR's discussion of a blended alternative was sufficient even though the blended system was not explicitly set forth as an alternative.

"Specifically, the discussion of the phased or blended system disclosed to the public, and to the decision-makers, what the changed effects of such a system would be," Kenny wrote. "That disclosure served the information purposes of CEQA (California Environmental Quality Act) whether the blended system in the Caltrain corridor is an interim step toward final construction or whether, as petitioners contend, it may be the final end point for construction." ■

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Adjacent Properties Not Part of One Development for Takings Purposes, Federal Circuit Rules

BY GLEN C. HANSEN, ABBOTT & KINDERMANN, LLP, SACRAMENTO

The Court of Appeals for the Federal Circuit held that, in determining the relevant parcel of land for purposes of analyzing a regulatory takings claim based on the denial of the U.S. Army Corps of Engineers of a Clean Water Act § 404 fill permit, the Court of Federal Claims should only consider the economic value relating to the single parcel of land containing the wetlands to be filled, and not the adjacent developed property and other wetlands in the vicinity owned by the same developer. Here, the single parcel was never considered part of the same larger development.

Between 1968 and 1974, Lost Tree Village Corporation ("Lost Tree") purchased approximately 2,750 acres of property on Florida's mid-Atlantic coast, which included a barrier island on the Atlantic Ocean. That property included 4.99 acres now known as Plat 57, which is part of the entire peninsula known as the Island of John's Island. From 1969 through the mid-1990s, Lost Tree developed approximately 1,300 acres it purchased into the upscale gated residential community of John's Island. The development was made in a piecemeal manner, and not as a master-planned community.

Plat 57 lies on a small peninsula on the Island of John's Island. In the 1980s, Lost Tree developed that peninsula, but not Plat 57. Plat 57 consists of 1.41 acres of submerged lands and 3.58 acres of wetlands with some upland mounds. Although Lost Tree neither 'stubbed out' nor recorded Plat 57 when it developed the rest of the peninsula, an April 1986 appraisal stated that the peninsula development is "substantially completed." Lost Tree did not consider Plat 57 for development until approximately 2002, when the company learned it would obtain "mitigation credits" as a result of improvements a neighboring landowner had agreed to make as part of a development project.

Lost Tree identified Plat 57 as a property that could be developed profitably to exploit the mitigation credits. Lost Tree obtained all state and local approvals to develop Plat 57 into a site for one residential home. In August 2002, Lost Tree filed an application for a § 404 wetlands fill permit from the United States Army Corps of Engineers. However, the Corps denied Lost Tree's § 404 permit application in August 2004, stating that less environmentally damaging alternatives were available, and that Lost Tree "has had very reasonable use of its land at John's Island."

Lost Tree filed an action with the Court of Federal Claims, asserting that the Corps effectively deprived Lost Tree of its property such that it is entitled to just compensation under the Fifth Amendment. The trial court held that no compensable taking had occurred. However, the Court of Appeals for the Federal Circuit reversed and remanded the case for reconsideration. The key issue on appeal was whether the trial court had properly defined the relevant parcel under the takings analysis.

The definition of the relevant parcel of land is a critical part of the regulatory takings analysis because that definition determines the extent of the economic impact wrought by the regulation. The extent of the economic impact affects two key analyses: (1) whether a particular regulation has deprived a landowner of all economically beneficial or productive options for the property's use, and thus constitutes a categorical taking under *Lucas v. S. Carolina Coastal Council,* 505 U.S. 1003 (1992); and (2) whether, in light of the economic impact of the regulation on the claimant and on investment-backed expectations, a compensable taking has occurred under the alternative "ad hoc, factual inquiry" in *Penn Central Transportation Co. v. New York City,* 438 U.S. 104, (1978).

In this case, the Federal Circuit pointed to two "helpful guideposts" that the Supreme Court has provided to determine the relevant parcel in regulatory takings cases. First, "the property interest taken is not defined in terms of the regulation being challenged; the takings analysis must focus on 'the parcel as a whole.'" Second, "the 'parcel as a whole' does not extend to all of a landowner's disparate holdings in the vicinity of the regulated property." The Court of Appeals further recognized that it has taken a "flexible approach" in determining the relevant parcel where the landowner holds other property in the vicinity, with the critical issue being the economic expectations of the claimant with regard to the property. One the one hand, when a developer treats several legally distinct parcels as a single economic unit, together they may constitute the relevant parcel. On the other hand, the relevant parcel may be a subset of the original purchase where

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the owner develops distinct parcels at different times and treats the parcels as distinct economic units.

In this case, the trial court rejected the government's argument that the entire John's Island community in the vicinity of Plat 57 is the relevant parcel for the takings analysis. The trial court also rejected Lost Tree's argument that the relevant parcel was Plat 57 alone. The trial court determined that the relevant parcel is Plat 57 in combination with another adjacent developed parcel and scattered wetlands in the vicinity still owned by Lost Tree within the larger community of John's Island. (However, because the trial court found that the Corps' denial of the § 404 permit application diminished the value of those combined properties by approximately 58.4%, the trial court found that the diminution in value was insufficient support a takings claim.)

On appeal, the Federal Circuit concluded that the trial court erred in the definition of the relevant property for the takings analysis. The adjacent parcel of land owned by Lost Tree (which the trial court included in its analysis) was brought to grade and had water and sewer lines stubbed out to them for eventual sale as home sites. That adjacent parcel, and other wetlands owned by Lost Tree in the vicinity, were considered part of the development by Lost Tree; but not Plat 57. In fact, Plat 57 was absent from the development plans until at least seven years after the development of the entire John's Island community was considered complete. In short, Lost Tree did not consider Plat 57 part of the same economic unit as the larger John's Island community. The Court of Appeals concluded: "[T]he mere fact that the properties are commonly owned and located in the same vicinity is an insufficient basis on which to find they constitute a single parcel for purposes of the takings analysis."

The Court of Appeals held that the relevant parcel for the takings analysis is Plat 57 alone. Accordingly, the Federal Circuit reversed the judgment and remanded the case to the trial court to first determine the loss in economic value to Plat 57 suffered by the developer as a result of the Corps's denial of the § 404 permit, and then to apply the appropriate framework to determine whether a compensable taking occurred. ■

Lost Tree Village Corp. v. United States, ___ F.3d ___, 2013 U.S. App. LEXIS 690 (Fed.Cir. 2013)

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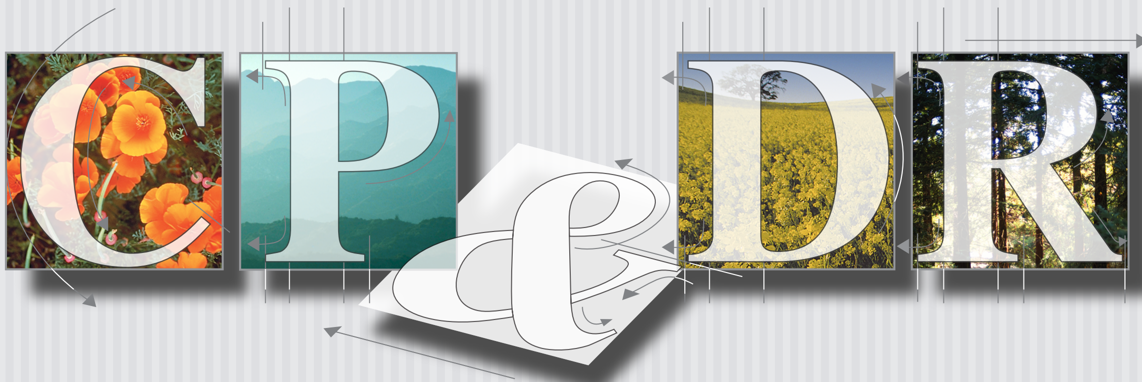

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Ninth Circuit Upholds Local Directional Sign Restrictions

BY WILLIAM W. ABBOTT, ABBOTT & KINDERMANN, LLP, SACRAMENTO

Not all signs are created equal. The Ninth U.S. Circuit Court of Appeals has upheld local regulations in Arizona restricting directional signs to more rigorous standards as compared to other forms of non-commercial speech.

As part of its overall regulatory code, the City of Gilbert, Arizona, enacted various sign regulations. The regulations generally require a City-issued sign permit unless the sign qualifies under one of 19 different exceptions. Three of the 19 exceptions involved:

1. Temporary directional signs for a qualifying event,
2. Political signs and
3. Ideological signs

Temporary directional signs subject to the exemption were subject to specific limitations not applicable to political and ideological signs including size, location (excluded from public right of way), and duration (same day only). A local church filed suit to invalidate the restrictions as applied to signs erected by the church, arguing that the City regulations constituted impermissible content regulation, violated equal protection rights, and interfered with freedom of religious practices protected under Arizona law. The district court rejected these arguments, as did the Ninth Circuit.

The case had a somewhat unique posture before the Ninth Circuit. The case had previously gone up on a denial of a request for a preliminary injunction. The resulting denial of the appeal by the Ninth Circuit had the effect of resolving a number of legal issues for the later cross motions for summary judgment filed in the district court. With respect to the cross motions for summary judgment, the district court ruled in favor of the City and Good News appealed. The Ninth Circuit affirmed.

Although the exercise of segregating sign types between directional, political and ideological involved some review of sign content, drawing such distinctions between general categories was acceptable in circumstances in which the ordinance was neutral as to signs within a particular category. Each exemption was based upon objective criteria and no distinction was based upon the individual sign content. The court then focused on whether or not the ordinance was "narrowly tailored" to serve a legitimate government interest.

There was no dispute that the City's interests in aesthetics and safety were significant. The court went on to note that the same constitutional considerations in protecting political, religious and ideological speech did not apply to temporary directional signs, the effect of which was to subject an ordinance creating an exemption for directional signs to less judicial scrutiny as compared to more protected speech. On the evidence before the court, the court concluded that the regulations of temporary directional signs were reasonable.

Turning to protections under Arizona's freedom of religion statute, the court also upheld the ordinance and regulations as it was neutral in character and was not a "substantial burden." The appellant's equal protection claims were also resolved in favor of the City. ■

Reed v. Town of Gilbert, Arizona (9th Cir. Feb. 8, 2013, No. 11-15588) ___F.3d ___.

Plastic Bag Fee Not Subject to Proposition 26

BY WILLIAM W. ABBOTT, ABBOTT & KINDERMANN, LLP, SACRAMENTO

A 10-cent-per-plastic-bag fee imposed by Los Angeles County is not subject to Proposition 26 because the revenues are retained by the retailers and not given over to the county, an appellate court has ruled.

The County of Los Angeles enacted an ordinance prohibiting retail stores from providing plastic carryout bags and requiring the stores to charge customers 10 cents for each paper bag provided. Among other provisions, the ordinance provided that the money received by the store for recyclable paper carryout bags must be retained by the store and used only for (1) the costs of compliance with the ordinance; (2) the actual costs of providing recyclable paper bags; or (3) the costs of educational materials or other costs of promoting the use of reusable bags.

Taxpayers, along with a manufacturer of plastic bags, filed suit alleging that the fee violated Proposition 26 because the 10-cent charge was in fact a tax that had not been approved by voters. Proposition 26 was passed by the California voters in 2010, and was intended to fill in coverage gaps resulting from judicial interpretations of prior tax control initiatives: Propositions 13 and 218. The trial court rejected this argument on the basis that the collected revenues (10-cents for each recyclable paper carryout bag) were retained by the retail establishment, not the government. As such, the 10-cent fee was not subject to Proposition 26. The plaintiffs/petitioners appealed.

The appellate decision includes a succinct history of key Proposition 13 and 218 decisions. The court also analyzed Proposition 26 in detail, and acknowledged that the measure was ambiguous on the question of "who gets the funds?" Reading the measure as a whole, the appellate court reached a similar conclusion to that of the trial court: as the enactment did not result in revenue to the county, it was not subject to Proposition 26, and therefore, was not subject to voter approval requirements. ■

Schmeer v. County of Los Angeles (February 2, 2013, B240592) __Cal.App.4th ___.

Santa Barbara River Mining EIR Upheld

BY WILLIAM W. ABBOTT, ABBOTT & KINDERMANN, LLP, SACRAMENTO

The Court of Appeal has upheld an environmental impact report dealing with mining in a dry riverbed in Santa Barbara County.

Troesh Materials, Inc. submitted an application to the County of Santa Barbara ("County") to operate a new mine within the dry bed of the Cayuma River. The mine would be positioned away from the active streambed and roughly 1,500 feet upstream from an existing, active mine. Potential excavation could proceed to a maximum depth of 90 feet, with an average production of 500,000 cubic yards per year.

Save Cayuma Valley, the petitioner, filed a CEQA petition for writ of mandate, which was denied in the trial court. The ensuing appeal involved two topical areas: hydrological and water resource (supply/quality) impacts. As to the first area, the appellate court upheld the County's use of a threshold of significance specific to this proposed project. The County was not compelled to use CEQA's Appendix G thresholds, nor was it obligated to explain why it elected to not use Appendix G thresholds, nor was it obligated to formally adopt the alternative threshold.

Addressing appellant's challenge to the impact conclusions, the appellate court applied the substantial evidence test and concluded that ample evidence (based in part on the evidence and experience acquired from the existing mine located 1500 feet away), existed that there would be insignificant impacts resulting from headcutting or scouring. Appellants also criticized the EIR's suggestion of no impacts followed by then the addition of a proposed mitigation measure, arguing internal inconsistency. The EIR acknowledged that there was some uncertainty in the impact analysis, thus, the appellate court found no inconsistency in the use of backstopping mitigation, but simply a conservative CEQA assessment.

The appellate court then assessed the challenge to one of the mitigation measures. The dispute centered on a mitigation measure responsive to potential hydrology impacts. Despite the EIR's analysis that the impacts would be not be significant, the EIR also recognized the potential for uncertainty, and on that basis, included a mitigation measure, and with that measure, concluded that there would be a less than significant impact. This measure required semi-annual surveys up and downstream be submitted to the State's Office of Mine Reclamation ("OMR"), the County's Planning and Development Department, and the County's Flood Control District as part of OMR's SMARA compliance review.

The purpose of this review would be to "confer with the County agencies to modify the mining pit layout, width and/or depth to avoid these impacts" should those be detected as part of the review. Although this requirement lacked the detail typically sought in performance based mitigation, the appellate court concluded that as this mitigation requirement was part of the EIR's discussion of hydrologic impacts, the court could rely upon that analysis to establish a context for understanding the mitigation requirement. In other words, the discussion within the EIR provided the missing framework and context to shore up the mitigation requirement. Accordingly, the appellate court rejected appellant's arguments that mitigation lacked the required performance standards to avoid a challenge of deferred mitigation.

The final matters of concern involved water supply and water quality. Appellant claimed that it was error for the lead agency to use the same threshold of significance for both direct and cumulative water supply impact, further arguing that the cumulative effects had been ignored. The appellate court disagreed, concluding that the standard that was used satisfied the required cumulative analysis, and despite the failure to look at non-cumulative effects, the error was rectified by the more rigorous cumulative impact analysis.

The appellate court did agree with the appellant that insufficient evidence supported the conclusion of no impact to groundwater, given that the EIR contained potentially conflicting data as to groundwater levels. The County had required compliance with a mitigation measure designed to protect groundwater contamination by requiring a six foot separation between depth of excavation and groundwater, the effectiveness of this strategy which was uncontested. However, in this particular situation, the appellant could not show that the EIR's unsubstantiated conclusion regarding no impact resulted in prejudicial error. Accordingly, the petition for writ of mandate was properly denied. ■

Save Cayuma Valley v. County of Santa Barbara (2013) ___ Cal. App. 4th ___.

Redondo Beach Voters Decline to Phase Out Power Plant

BY WILLIAM FULTON

After a bruising campaign that saw energy company AES spend hundreds of thousands of dollars, Redondo Beach voters have rejected a local ballot initiative that would have rezoned AES's beachfront power plant to parks and commercial uses.

AES still must receive California Energy Commission approval to rebuild the plant, which must stop using ocean water to cool its steam turbines no later than 2020. Defeat of Measure A, however, makes CEC approval of continuing power plant operations more likely.

A group of local residents – many of whom were also involved in the plan to kill the "Heart of the City" development plan a decade ago – placed Measure A on the ballot. The zone change could have been overruled by the Energy Commission but that would have been unlikely.

"We don't understand why anybody would support building industrial blight in the harbor when we're trying to invest hundreds of millions in the revitalization of the harbor," Measure A supporter and City Council candidate Jim Light told the Daily Breeze. Light now faces Measure A opponent Jeff Ginsburg in a runoff election in May for the city council seat in District 1, located near the power plant.

Measure A lost by a vote of 53%-47%. The initiative lost in every City Council district in the city except District 2, where the power plant is located. About 54% of the voters in District 2 supported Measure A. Even in District 2, however, mail voters supported the measure while precinct voters opposed it. The City Council and the Chamber of Commerce opposed the measure.

The initiative's backers spent about $80,000 on their campaign, while the opponents spent more than $330,000, of which virtually all came from AES. ■

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>>> It's *Groundhog Day* For Steinberg's Redevelopment Bill

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vote, with one Democrat, Ed Hernandez, abstaining. The measure is next headed for a vote in the Senate Transportation and Housing Committee, which has not yet scheduled a hearing, according to Brian Weinberger, a consultant to the Governance and Finance Committee. (The bill is being heard by a second committee because the subject matter crosses jurisdictions of both committees, according to Steve Shea, an aide to Steinberg.)

The outcome of SB 1 may be tied to a number of other bills on redevelopment that are expected to reach the governor's desk at the same time.

With little doubt about its passage in the legislature, SB 1 is expected to land on the governor's desk soon.

In remarks on SB 1 to the committee, Steinberg said "the concerns that led to the veto are being resolved, and by late spring most of the successor agencies are likely to be deemed compliant with the asset dissolution requirements of AB 26X and AB 1484."

Steinberg noted that Proposition 30's passage left the state in

"a much stronger fiscal position." He added, "I believe that 2013 will be the year that we can put that chapter behind us and find new ways to move forward and fill the void in local economic development and housing policy."

So the real question is what will Governor Brown do? Will he continue to fight redevelopment? Or reward his party, which is expected to have a veto-proof majority when the bill gets to him? An aide to the governor refused comment on Brown's position on the bill, saying "we don't generally make comments on bills until they are on his desk."

Brown has told the newly emboldened State Legislature not to overplay its hand and overspend. Whether that attitude will carry over to redevelopment remains to be seen.

But in Brown's veto message last year on SB 1156, he provided hope to redevelopment's proponents, by saying, "I am committed to working with the Legislature and interested parties on the important task of revitalizing our communities."

"I don't think any doors were slammed last year," said Dan Carrigg, legislative director of the League of California Cities.

Steinberg's latest bill prevents redevelopment money from coming from local school districts, a problem that redevelopment agencies faced before redevelopment ended in February 2012. SB 1 also fits in with legislative mandates to promote infill development and low polluting industry in order to reduce global warning.

Under SB 1, new redevelopment agencies would be known as sustainable communities investment authorities, and would focus on developments in areas around mass transit, small walkable communities and clean manufacturing. In addition, 20% of the resources of the new agencies will be spent on affordable housing for low- and moderate-income families. Steinberg's bill would require independent financial audits every five years.

The new law is expected to focus development on urban cores, Carrigg said. However, he said that SB 1 and other new bills on redevelopment before the legislature won't recreate something "as robust as redevelopment."

"But cities will get more tools that help create a toolbox to respond to the challenge of urban California,"he said.

A Governance and Finance Committee analysis of the bill forsees fewer areas being eligible for redevelopment. "Not all cities and counties have territory within their jurisdictions that meets SB 1's relatively narrow requirements for the formation of project areas," the analysis says. In addition "...SB 1 will generate less tax increment revenue for local governments than was generated by redevelopment."

Carrigg predicts it would take a few years before tax increment areas could be set up and then raise enough funds to finance new projects.

The outcome of SB 1 may be tied to a number of other bills on redevelopment that are expected to reach the governor's desk at the same time. Some of the bills are new, and others are similar to ones Brown vetoed last year. Those bills include:

-- SB 33 by Lois Wolk, D-Davis, which makes it easier for local governments to form infrastructure financing districts. A similar measure, SB 214, was vetoed by Brown last year. His veto message said the new law would have changed the focus to new tools "instead of winding down redevelopment."

--SB 391 by Mark DeSaulnier (D-Concord), which would generate $500 million in affordable housing funds. In contrast, under redevelopment, $1 billion in money for affordable housing was generated, Carrigg said.

--AB 294 by Chris Holden (D-Pasadena), which directs the California Infrastructure and Economic Development Bank to work with local government on transit-oriented development and affordable housing projects. The measure would also allow an infrastructure financing district to use the Educational Revenue Augmentation Fund portion of incremental tax revenue.

--AB 229 by Assembly Speaker John Perez (D-Los Angeles), which would expand types of local projects that are financed by existing infrastructure financing districts. Brown vetoed the similar AB 2144 in September.

--AB 243 by Roger Dickinson (D-Sacramento), which would authorize new redevelopment districts, and issuance of debt for those areas with 55% of the vote.

Said Carrigg of the League of California Cities: "I think we're early in the process. Things can mature later in the year." ■

>>> What's Next for CEQA: Major Reform or Incrementalism?

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reform in Sacramento has broken down along partisan lines. Pro-business Republicans, including the homebuilders and the Chamber of Commerce, would say CEQA needed to be repealed or significantly weakened because it put California at a competitive advantage compared to surrounding states. Pro-environment Democrats would hold the line, saying CEQA protected both the environment and the right of citizen and neighborhood groups to protect their interests. As a result, there has been little CEQA reform in the Legislature over the years.

The CEQA fault lines have shifted in recent years, as some Democrats have begun to call for major reform.

But the CEQA fault lines have shifted in recent years, as some Democrats have begun to call for major reform. Since becoming governor again two years ago, Jerry Brown – an unfettered environmentalist in his first gubernatorial stint 35 years ago – has become a significant critic of CEQA, proposing that the law be streamlined for both infill and renewable energy projects. Brown expressed considerable disappointment at Rubio's resignation.

Now the pendulum seems to be swinging back toward the CEQA status quo, at least in the Legislature. So, with Rubio gone, Brown on the warpath, and CEQA advocates on the defensive, what's likely to happen?

It would appear as though CEQA reform could take three directions: the Rubio approach, a greenfield/infill split, or incremental reform.

The Rubio Approach: One aspect of CEQA that has always driven critics crazy is the fact that its practitioners can apply shifting and inconsistent standards of environmental protection, which often don't line up with the standards contained in substantive environmental laws, such as the California Endangered Species Act. Rubio had proposed revising CEQA so that if environmental standards in the substantive laws are met, no CEQA analysis is required. On the surface this idea makes sense, though it would probably require the state to revise the standards in other environmental laws so they are consistently strong. But CEQA defenders oppose this idea, partly because it would reduce their ability to use CEQA as a hammer on developers.

The Greenfield/Infill Split: A second emerging idea – one that was discussed at the beginning of the Brown administration – would be to create two separate CEQAs, one for greenfield projects and one for infill projects. Infill advocates such as Gov. Brown are often steamed that good projects in infill locations get hung up because of CEQA traffic analysis and other procedural CEQA hurdles. A separate infill law could limit the scope of CEQA analysis and make it more difficult to oppose such projects. CEQA defenders don't like the idea of limiting citizen power over infill projects, especially in environmental justice situations.

Incremental Reform: This appears to be the approach Steinberg wants to take in SB 731 and, if Steinberg sides with the CEQA defenders, it may be the only approach that is politically feasible. As Steinberg introduced it, SB 731 calls for statewide significance thresholds on noise, aesthetics, parking, and traffic levels of service as well as land use impacts. The bill also calls for a variety of procedural changes, including limiting "late hits" and "document dumps," defining "new information" more specifically, and directing trial judges to focus only on inadequate portions of environmental documents rather than remanding the entire document for review.

All these would be welcome reforms – especially more consistency in significance thresholds, which CEQA critics have argued in favor of for the last 20 years. But they wouldn't fundamentally alter the law. CEQA would still be a procedural law, and even the simplifying changes would be implemented in context of a complicated set of procedures. As the debate over implementation of SB 226 has shown, how helpful this is depends a lot on your perspective. If you're a down-in-the-trenches CEQA practitioner, you probably think anything helps. But if you believe that the complicated procedural nature of CEQA is the fundamental problem, then you probably think these changes don't amount to much.

At the core of this debate is the basic role that CEQA plays. By proposing that CEQA re-focus on standards of environmental protection, Rubio had put his finger on the thing that people either love or hate about CEQA: It's basically a '70s law, focused on process rather than substance. As CEQA lecturers (including me) have had to explain endlessly, the primary goal of CEQA is not to protect the environment. The primary goal is to foster a vigorous debate about the environmental consequences of governmental decisions and fuel that debate with lots of information. The secondary goal – one almost as important to the CEQA diehards – is to empower citizens to challenge their government whenever they think it is appropriate to do so.

Over the past 30 years, in California and elsewhere, we have seen a gradual shift away from this mindset in many situations, as politicians and policymakers alike have placed greater emphasis on "getting things done" while substantively protecting the environment and less emphasis on procedure and analysis. Brown, Rubio, and other Democrats would still like to move in that direction. But with Rubio gone, the CEQA diehards appear to have the upper hand for now. ■

There's No Undoing Those Hardened Commute Patterns

Not long ago, the Census Bureau released some new analyses of commuting, focused especially on "mega-commuting" – that is, commuters who drive more than 50 miles and 90 minutes one way. The numbers are predictably frightening – these folks travel extremely long distances, using up a lot of time, gas, and road capacity in the process.

But mega-commuters only make up about 2% of all commuters. The bigger message from the Census data is a much more prosaic – and discouraging – message about ordinary, day-to-day commuting.

Planners in California and elsewhere often believe that by changing land use patterns, we can change commuting patterns. But commuting patterns are stubbornly persistent. Once they are established, they never change. They're basically fixed. It's so common that most of the time we don't even notice.

In Southern California, for example, we talk constantly about the problem of commuters from Riverside County to Orange and San Diego counties. And these numbers are indeed big – 67,000 to Orange and 36,000 to San Diego. But they are dwarfed by some of the more mature county-to-county commuting relationships.

The strongest commuting relationship in the state is between Los Angeles and Orange County, and the cross-commute is almost exactly even – with 181,000 commuters traveling from L.A. to Orange and 178,000 the other way. As Figure 1 show, the commuting relationships between Santa Clara County and Alameda and San Mateo counties—though much smaller and tilted somewhat toward Santa Clara – are similar.

Indeed, even the cross-commutes between San Bernardino and Riverside counties – two counties generally considered bedroom suburbs – dwarf Riverside's connection to Orange and San Diego. Almost 90,000 people commute each day from Riverside to San Bernardino, while 65,000 people go on the other direction. And who would believe that there are just as many Ventura-LA commuters as there are Riverside-Orange commuters? (As more jobs have been created in Ventura County, the Ventura-LA number hasn't declined; instead, the LA-Ventura number has gone up.)

So, the moral of the story isn't that better land use and transportation planning will change hardened commuting patterns. Those will probably stay. All California planners can hope for is to create new patterns that new commuters will follow.

– BILL FULTON | MARCH 24, 2013