CP&DR

VOL. 28, NO.4 — APRIL 2013

CALIFORNIA PLANNING & DEVELOPMENT REPORT

Chula Vista Bayfront Plan Shows Power of Consensus-Building

Early one Sunday morning in early February, the South Bay Power Plant in Chula Vista – a fixture on San Diego Bay for decades – was blown up. But it wasn't because terrorists had targeted the plant. It was because city and port officials – along with a developer and environmental groups – had finally reached agreement, after 14 years of negotiation, on how to move forward with a development project.

The Chula Vista Bayfront Master Plan – which calls for the construction of thousands of hotel rooms, a commercial harbor, a conference center, and 1,500 townhomes on a small portion of the 556-acre site – is being touted by land use experts around Southern California as a win-win for the developer, the City of Chula Vista, the Port of San Diego, and environmental groups. The deal was completed after 14 years of negotiation and threatened lawsuits and even included the participation of a former Center for Biological Diversity employee who wound up working for the developer, Pacifica Companies.

The Coastal Commission approved the project unanimously, leading Pacifica's Alison Rolfe to quip: "I got a call from the governor's office. They never heard of unanimous support!"

The key deal point appears to be a land swap between Pacifica and the Port, which allowed Pacifica to take control of the developable portion of the property while the Port focused on conservation. But ultimately it was the willingness of the Bayfront Coalition – an assemblage of environmental groups that threatened litigation over the project – to sit down and

– CONTINUED ON PAGE 7

insight
WILLIAM FULTON

The Year of Incremental CEQA Reform

So, it looks like we are going to have CEQA reform this year after all. Maybe it won't be the sweeping reform that former state Sen. Michael Rubio was calling for – but it will probably be a bill that can pass the legislature and be signed by Gov. Jerry Brown.

Last month in this space, I suggested there are three possible paths to reform of the California Environmental Quality Act – sweeping Rubio-style reform, a split in environmental analysis between infill and greenfield projects, and incremental reform. The Rubio approach, which would have done away with CEQA review if a project meets other environmental standards, is dead for this year. Brown appears to favor an infill-greenfield split, but isn't doing much to promote it right now. Indeed, after returning from his trip to China – designed, among other things, to gin up interest in private investment in the high-speed rail project – Brown declared CEQA reform dead for this year.

That leaves incremental reform – which is what Senate leader Darrell Steinberg, D-Sacramento, proposed in late April when he provided fleshed-out details for SB 731.

The proposed incremental changes include statewide significance treshholds on some topics including traffic; some reforms to CEQA litigation procedures; and $30 million in annual

– CONTINUED ON PAGE 9

Inside

WHAT'S THE DEAL WITH LA'S DIGITAL BILLBOARDS?

In 2006, CBS and Clear Channel made a deal with the City of Los Angeles allowing them to put up close to 100 digital billboards, most of which are located in the West Los Angeles and Hollywood areas. The deal prompted a lawsuit fromcompetitor company, Summit Media, which has resulted in a long-lasting and heated debate between billboard companies and the city. Now most of the signs have finally gone dark after a recent court order forced Clear Channel to turn off its 82 billboards. As the upcoming court hearings consider the fate of the remaining billboards, company leaders are hoping that the city will create a new digital billboard agreement.

LA MAYOR APPROVES $1.1 BILLION REDEVELOPMENT PROJECT

Los Angeles Mayor Antonio Villaraigosa signed off on a $1.1 billion redevelopment project for University Village near USC. The new development includes 350,000 square feet of retail space and new housing and academic areas for students, making it the largest project in the history of South Los Angeles. The project's construction could start as early as this year, and will be developed in phases until its expected completion in 2030.

CENTRAL VALLEY GROWTH WARS CONTINUE

After the City of Fresno offered to drop its lawsuit against Madera County's proposal for a 5,200-unit residential development, county officials agreed to meet with the city to further discuss pending lawsuits and regional growth disputes. But just as it seemed Central Valley leaders were starting to work towards settling the region's growth wars, the resurfacing of a five-year-old growth plan between Fresno and Madera may have refueled the debate. The growth plan was part of a 2006 lawsuit settlement signed by both the city and county of Fresno and Madera County over Madera's proposed Central Green development. The settlement called for a comprehensive study to identify regional growth and transportation needs and develop financing strategies to fund future infrastructure. Now Madera officials are proposing that the findings from the 2008 study be revisited and will likely demand the inclusion of the plan's recommendations during the upcoming meetings. This should make for an interesting twist in the efforts towards reaching a mutual growth strategy since the 2008 study essentially favors outward growth, a development trend that Fresno officials largely oppose.

REDEVELOPMENT ROUNDUP

LA CREATES NEW ECONOMIC DEVELOPMENT DEPARTMENT TO FILL CRA VOID

The Los Angeles City Council has approved initial plans for the city to create a new Economic Development Department (EDD). City officials hope that the new department, which will work alongside a nonprofit economic development corporation, can serve to replace the now defunct CRA. According to a report released by the city's Chief Administrative Officer, the creation of the EDD will require consolidation and reorganization of existing city departments, namely of the Community Development Department.

CRA MISSTEP SPARKS LAWSUIT AGAINST CHINATOWN PROJECT

The Asian Pacific American Labor Alliance L.A. and the Southeast Asian Community Alliance have filed a lawsuit against a Wal-Mart grocery store development in Los Angeles's Chinatown. The groups opposing the development claim that the L.A. Community Redevelopment Agency board did not review the project before building permits were issued for development, and as such, are no longer valid. The current lawsuit is just one of the many attacks brought against the Wal-Mart development, however the controversial project is still scheduled to open later this year.

DOF RETURNS $11 MILLION TO PLACER COUNTY

After the end of redevelopment in California last year, the state Department of Finance has finally returned the $11 million it has been withholding from Placer County. The county intends to use the funds for highway improvement projects in north Lake Tahoe and Auburn.

CALIFORNIA CITIES: TOWARDS A MULTI-MODAL FUTURE

PRESIDENT OBAMA'S NEW BUDGET GIVES $130 MILLION TOWARDS TWO LA METRO PROJECTS

For the first time, two of L.A. Metro's big projects, the Regional Connector and the Purple Line Extension will receive federal funding. President Obama's proposed 2014 transportation budget includes the

– CONTINUED ON PAGE 3

CP&DR

William Fulton
Editor and Publisher

Josh Stephens
Associate Editor

Susan Klipp
Circulation Manager

Morris Newman, Kenneth Jost
Contributing Editors

Abbott & Kinderman, LLP
Legal Digest

is published semi-monthly by

Solimar Research Group
Post Office Box 24618
Ventura, California 93002

Telephone / Fax: 805.652.0695

Subscription Price: $238 per year

ISSN No. 0891-382X

Visit our website:
WWW.CP-DR.COM

You may e-mail us at:
INFO@CP-DR.COM

– CONTINUED FROM PAGE 2

allocation of $65 million towards each of these two projects. Further, the proposed budget contains a bond program that will subsidize the bond's interest for major transit projects. Although Metro was hoping to receive 100% of the bond's interest, the budget calls for only 28% of interest to be subsidized.

HSR: GOVERNOR SEEKS INVESTMENT FROM CHINA AND OBAMA'S NEW BUDGET

There has been a lot of news this month regarding funding for California's High Speed Rail. President Obama also showed his support for the HSR in the 2014 transportation budget by proposing $40 billion over the next five years in passenger rail programs.

Governor Brown was in China trying to land investors to help fund the state's "green" projects, including the HSR. During his visit, the governor was able to get an up close look at China's impressive bullet train network, leaving him even more excited for the realization of California's HSR and other infrastructure projects, like his $24 billion plan to build water tunnels under the Sacramento-San Joaquin River Delta. Although the governor claims California needs to be more aggressive in infrastructure improvement projects, such as the HSR, covering the high construction cost remains one of the project's most controversial and pertinent issues.

Despite cost concerns, the California High Speed Rail Authority has selected a bid from Tutor Perini-Zachry-Parsons for the first construction segment of the HSR (Central Valley section). Although the winning company received the lowest technical score, it was able to beat out four other companies with proposing the lowest construction cost of $985 million. According to *California Watch*, the winning company has a tainted record of lawsuits and high cost overruns. The Bay Citizen reported that eleven of Tutor's Bay Area projects in the past twelve years have caused local governments more than $765 million over initial bid amounts. In the upcoming weeks, rail officials expect to bring their contract to the Board of Supervisors and said that the bid may be awarded to another company if the best-value bidder cannot meet their contract. ■

legal digest

TOD Project's EIR Upheld After Retail Component Is Dropped

BY WILLIAM FULTON

The First District Court of Appeal has upheld the use of a specific plan exemption from the California Environmental Quality Act for a project at the Dublin/Pleasanton BART station, even though the mixed-use aspect of the project – which was studied in the environmental impact report – had been dropped.

In 2002, the City of Dublin approved the Eastern Dublin Specific Plan, which called for 2 million square feet of commercial development, 70,000 square feet of retail, and 1,500 high-density housing units. At the time, the city also approved a program EIR for the specific plan. The specific plan included permitted land uses and development standards in a so-called "Stage 1" development plan and called for individual parcels to subsequently submit a more detailed "Stage 2" development plan that included rezoning.

Avalon Bay Development controlled a 7.2-acre parcel within the specific plan area known as Site C, which was permitted up to 405 high-density housing units and 25,000 square feet of retail space. Over the years, Avalon Bay submitted several development proposals that met these criteria but also included such other components as a fitness center and parking garages. However, these proposals were withdrawn as market conditions changed.

Finally, in 2011, Avalon submitted a new proposal that dropped the retail but added 100 housing units where the ground-floor retail would have been located. The company argued that there was no market for the retail – retail space already constructed by Avalon had not leased in four years – and that the ground-floor housing units could be converted to retail in the future if market conditions were more favorable.

In approving the project, the city invoked Government Code section 65457, which provides a CEQA exemption for residential projects that are consistent with an approved specific plan.

citizen group called Concerned Dublin Citizens sued, arguing that because the project is a mixed-use project, not a residential project, and therefore does not qualify for the exemption; and additionally that the increase in the residential component should trigger additional environmental review. Alameda County Superior Court Judge Evelio M. Grillo ruled in favor of the city and the First District Court of Appeal, Division Three, upheld the ruling.

The appellate court struck down three arguments by the plaintiffs in turn.

First, the appellate court concluded that the project is a residential project, not a mixed-use project. Although Avalon Bay spoke of eventually converting the ground-floor units to retail, "The only project that has been approved by the city for site C is development of 505 residential units and ancillary features," wrote Justice Stuart R. Pollak for the unanimous three-judge panel. "As the [trial] court noted, conversion of some of the approved residential units to commercial use, if later proposed, would be subject to site development review under Dublin Municipal Code section 8.104.040."

Second, the court rejected the plaintiffs' argument that the project, as approved,

– CONTINUED ON PAGE 5

– CONTINUED FROM PAGE 4

is inconsistent with the Eastern Dublin Specific Plan because it does not contain retail space and therefore does not qualify for the exemption. "While the transit center is designed to combine residential and commercial use in a sustainable, transit friendly environment, commercial development in site C is not required by the specific plan," Pollak wrote for the court. "The transit center retains its mixed-use character whether or not each of the several sites within the center includes mixed usage."

Finally, the court rejected Concern Dublin Citizens' argument that the exemption should be overridden by Public Resource Code Section 21166, which specifies that a supplemental EIR should be undertaken if significant changes to the project take place or new information comes to light. The plaintiffs' argued that the old EIR did not address greenhouse gas emissions, especially in light of new standards issued by the Bay Area Air Quality Management District in 2012. However, the court noted that those standards had been set aside by a court ruling.

"The transit center retains its mixed-use character whether or not each of the several sites within the center includes mixed usage."

The appellate court specifically rejected the plaintiffs assertion that this case should not follow the ruling in *Citizens for Responsible Equitable Environmental Development v. City of San Diego* (2011) 196 Cal.App.4th 515, 532, which the trial court used in setting aside the Bay Area air quality rules. In that case, the appellate court in upheld a local agency's determination that new information about GHG emissions did not require supplemental environmental review under Public Resources Code section 21166.

Concerned Dublin Citizens argued that this case is distinguishable from the San Diego case because "the petitioners there ~~li~~mit[ed] themselves to generalized assertions that global warming was a problem while here the appellants rely on the issuance of new threshold guidelines which could not have been known in 2002. "

"However," wrote Justice Pollak, "the adoption of guidelines for analyzing and evaluating the significance of data does not constitute new information if the underlying information was otherwise known or should have been known at the time the EIR was certified.

The appellate court's ruling in *Concerned Dublin Citizens v. City of Dublin,* A135790, can be found at http://www.courts.ca.gov/opinions/documents/A135790.PDF ■

County of Los Angeles v. City of Los Angeles

BY WILLIAM W. ABBOTT

The latest illustration of intergovernmental non-cooperation examines the circumstances in which cities can route sewer lines through county rights of way, all without county approval.

The facts involve the City of Los Angeles upgrading the capacity of its line to its Hyperion Treatment Plant in Playa Del Rey. Serving the coastal portions of the City, the existing 48-inch line was installed in 1958 but lacked the capacity to serve major storm events. The City studied various options for installing a new 54-inch diameter line. Most of the routing would take place in City streets, but one route involved use of public streets and a public parking lot located in the jurisdiction of the County. For environmental reasons, the City ultimately approved the alignment involving County streets. The County filed a petition for writ of mandate, alleging violations of the Public Utilities Code and CEQA. The trial court rejected the CEQA claim, but granted relief pursuant to the Public Utilities Code claims, effectively holding that County approval was required. The City appealed. The appellate court reversed the trial court.

The City made two claims. First, the City argued that it possessed the inherent police power to construct in the County's street. Alternatively, it argued that Public Utilities Code sections 10101 through 10105 gave it that authority. The Court of Appeal declined to accept the City's 'inherent power" argument, finding that sufficient authority in the Public Utilities Code supported the City's action.

In interpreting the statutory scheme, the appellate court recognized that cities have the express right to build utilities lines outside of its borders. (Public Utilities Code section 10101.) If the proposed line is to be located in another city, then sections 10102 and 10103 call for interagency review, with the option to go to court to resolve the necessity of the proposed use in the neighbor city right of way. However, the court concluded that these procedures do not apply if the affected right of way is a county, as a county is not a municipal corporation but is a political subdivision of the state of California. In those circumstances, the city can proceed when the alignment is necessary and convenient.

The appellate court stated that the appropriate form of judicial review was ordinary mandamus, and that the decision of the approving city would not be overturned unless arbitrary or capricious, a very deferential standard. The appellate court concluded that the trial court had effectively reweighed the evidence, and failed to adhere to the necessary level of deferential review as to what was necessary or convenient. The matter was reversed and remanded to the trial court to apply the correct standard of review. ■

County of Los Angeles v. City of Los Angeles (March 14, 2013, B236732) ___Cal.App.4th ___.

Court Declines to Give Break to CEQA Plaintiff Who Filed Late

BY KATHERINE J. HART

In *Alliance for the Protection of the Auburn Community Environment v. County of Placer,* the Third District Appellate Court held that California Code of Civil Procedure section 473 does not provide relief from a petitioner's mistake that resulted in the late filing of a CEQA petition. While the provisions of section 473 are to be liberally construed, the statute cannot be construed to offer relief from mandatory deadlines deemed jurisdictional in nature such as Public Resources Code section 21167.

In 2008, Bohemia Properties, LLC submitted an application to the County of Placer (County) for the development of a 155,000-square-foot building. The County required that an environmental impact report (EIR) be prepared for the project. After the requisite hearings, the Planning Commission certified the EIR and approved the project in July 2010. Alliance filed an appeal to the Board of Supervisors, which was heard on September 28, 2010. The Board denied the appeal and again certified the EIR and approved the project. The County timely filed and posted a notice of determination on September 29, 2010.

Pursuant to Public Resources Code section 21167(c), an action to set aside an EIR must be filed within 30 days from the date of the filing of the notice of determination. In this case, the Alliance was required to file its CEQA petition on or before October 29, 2010. However, Alliance did not file its petition until three days later on November 1, 2010.

Bohemia filed a demurrer to the petition, alleging the petition was not timely filed. Alliance filed a motion for relief under CCP section 473, as well as an opposition to the demurrer, on the grounds that the late filing resulted from a "miscommunication with the attorney service as to the deadline for receipt of the Writ." The trial court sustained Bohemia's demurrer without leave to amend and denied Alliance's motion for relief on the grounds of mistake and excusable neglect on the grounds that the 30-day statute of limitations contained in Public Resources Code section 21167 is mandatory and does not provide for an extension of time to file a petition based on a showing of good cause.

In interpreting CCP section 473, the appellate court looked to the California Supreme Court case of *Maynard v. Brandon* (2005) 36 Cal.4th 364 *(Maynard)*. In *Maynard*, the Supreme Court considered whether relief under section 473 was available for a party who failed to comply with the 30-day statute of limitations in the Mandatory Free Arbitration Act. The Court held that it did not, noting that section 473 provides relief only for procedural errors (i.e., untimely demands for expert witness disclosures, etc.). The appellate court also looked to *Kupka v. Board of Administration* (1981) 122 Cal. App.3d 791, wherein the court held that section 473 could not operate to provide relief for the late filing of a petition for writ of mandate to review an administrative decision on the basis that statute of limitations are not flexible in nature, but are firmly fixed, unless the legislature expressly provides for an extension based on a showing of good cause.

The court of appeal in this case noted that while the provisions of section 473 are to be liberally construed generally, and further, that CEQA should be broadly interpreted to protect the environment, CEQA also clearly requires prompt resolution of lawsuits claiming violations of it. Alliance argued that other courts have required relief to CEQA's 30-day statute of limitations, but the court distinguished each case Alliance offered in support of its argument and specifically noted that none of the cases proffered by Alliance related to section 21167.

Moral: If you are a petitioner and you are going to file a petition for writ of mandate to challenge an agency's actions under CEQA – whether that challenge is procedural or substantive in nature – compliance with the statutes of limitations under Public Resources Code section 21167 are mandatory. CEQA provides three distinct statutes of limitations - a 30-day, 35-day, and 180-day statute of limitations - depending on the specifics of the CEQA challenge and whether a notice of exemption or notice of determination was properly filed and posted. Strict compliance is required as failure to timely file a petition for writ of mandate pursuant to CEQA will not be excused. ■

Alliance for the Protection of the Auburn Community Environment v. County of Placer (April 2, 2013, C067961) ___Cal.App.4th ___; *2013 Cal. App. LEXIS 256.*

>>> Chula Vista Bayfront Plan Shows Power of Consensus-Building

– CONTINUED FROM PAGE 1

negotiate pre-lawsuit that appeared to make the biggest difference.

In the end, the parties signed two settlement agreements – a document typically negotiated after a lawsuit is filed, not before – in order to nail down the deal points.

"I got a call from the governor's office. They never heard of unanimous support!"

"One thing about CEQA," says Rolfe, who previously worked for both the Center for Biological Diversity and the Chula Vista mayor's office. "Mitigations don't always get done, which is a nice way of saying it. We needed to have more than mitigation in a CEQA document, we want a stipulated settlement agreement and some enforcement up-front. Not a lawsuit, just let's agree, so we have the confidence to know what's going to get done after the project goes through and not rely on CEQA."

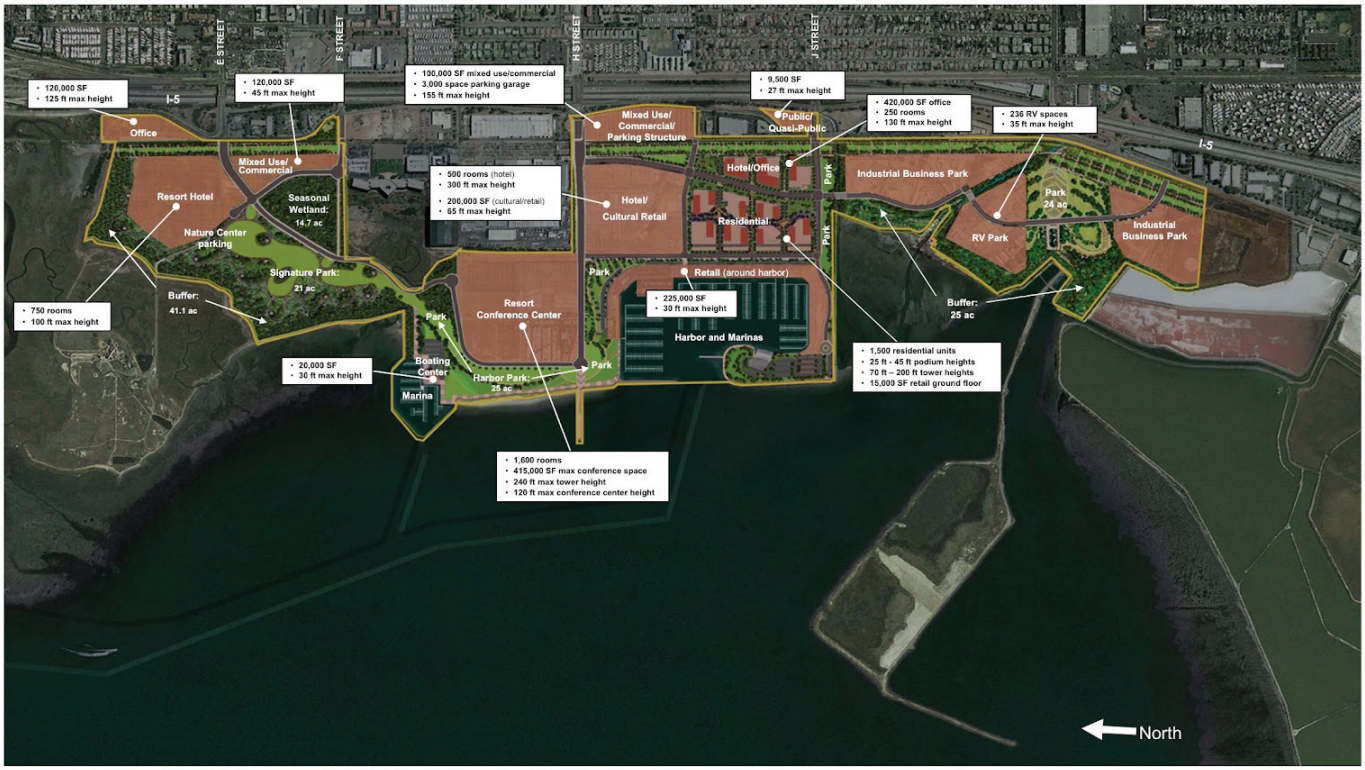
The story of the Bayfront Master Plan begins in 1999, when the Port of San Diego purchased the South Bay Power Plant, a 700-megawatt plant that had sat on the bay in Chula Vista since 1960. The Port leased the plant to power generating companies until 2010, when it was decommissioned.

Beginning in 2002, however, the Port and the city began to negotiate the possibility of a development project on the property.

"It is definitely a scar," said Ann Moore, president of the Port board. "We took a look at it and thought, we need to bring this down." Now a lawyer with Norton, Moore and Adams in San Diego, Moore is a former Chula Vista city attorney.

"Early on there wasn't 100% commitment at the political level," says City Manager Jim Sandoval. "This coalesced over time. At the Port, we have one vote out of seven. When you are dealing with projects like this and deal with more than one agency, it takes a tremendous amount of financial resources. Unfortunately we have been having to cut gardeners and custodians, but we hung onto this project team, because of the benefit to the community."

– CONTINUED ON PAGE 8



Chula Vista Bayfront Master Plan Illustrative
Locally-Approved Land Use Plan by
City of Chula Vista and Port of San Diego

– CONTINUED FROM PAGE 7

He said the port and the city each took on what they were good at – large-scale planning in the case of the city, real estate expertise in the case of the Port.

The entire deal could have been scotched, however, if environmentalists had decided to fight it and litigate. But the environmental coalition took a different approach.

"What we decided to do," says Laura Hunter of the Environmental Health Coalition, "was come in out of our foxholes, just try to sit down together and look at anything that could be done, listen to each other about what their interests are. We started looking out for each other's interests. Sitting in one of our analysis meetings, the guy from the business association began to learn about (bird) nesting, and I learned what internal rate of return was."

She added: " Instead of spending our energy vilifying each other, we could talk about what the issue really is, once you get a trustful communication going, then all things are possible."

The critical element of the deal was a 3-for-1 land exchange between the Port and Pacifica, with the Port surrendering 35 acres of developable land in exchange for 97 acres of conservation land. Pacific surrendered a net of more than 60 acres, but of course received acreage in return that could actually be developed.

The power plant itself was located on the bay side of I-5 at approximately L Street. The Chula Vista Marina is located just north of the site, at approximately J Street. The Sweetwater Marsh National Wildlife Refuge is located even farther north, at approximately E Street. Under the land transfer, Pacifica gave the Port 95 acres of land adjacent to the wildlife refuge for conservation purposes. In exchange, the Port gave Pacifica 35 acres of developable land adjacent to the Marina.

Because Pacifica now has a smaller footprint on which to build, the developer had to propose building heights of up to 200 feet. Ordinarily, such tall buildings might stimulate strong opposition, but opposition in this case was mitigated by two factors. First, the buildings were replacing an eyesore that had blocked the bay from the city for 50 years. And second, it was clear that the tall buildings were paying for the conservation land via the land trade.

"Once everybody understands the underlying principal of why we had to do that [plan for 200-foot building heights], everybody was advocating for the land trade," said Rolfe.

Sandoval said the main goal was to protect view corridors, rather than simply keep buildings short. "I've never met anybody who can see through a one-story building," he said. "To me it's more important to protect view corridors than building heights. Yet that's something people never do." ■

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

– CONTINUED FROM PAGE 1

funding to the Strategic Growth Council to continue providing statewide planning grants.

The details received a positive response from both CEQA reformers and CEQA defenders. The CEQA Working Group, a business and labor group that has called for major CEQA reform, called the bill "meaningful CEQA reform", while Bruce Reznik of the Planning & Conservation League, which heads the CEQA Works coalition that has defended the law, was quoted as saying: "I think there's actually quite a bit that we can get behind."

Incremental this year's CEQA reform may be, but – unlike the past -- CEQA reform is on the legislature's permanent agenda.

News coverage around the state focused on the possibility that the bill will speed construction of a new basketball arena in Sacramento, largely because that's what the Sacramento Bee focused on in its coverage.

Here is what the bill would do as reported by Steinberg's office:

1. Statewide standardized environmental thresholds for the environmental impacts of traffic and noise for infill projects. Projects meeting these thresholds would not be subject to lawsuits for those impacts under CEQA and would not be required to do more for those thresholds in environmental documents unless required by a local government. Also excludes project aesthetics from CEQA consideration.

These aspects of a project impacts are currently common elements for CEQA litigation and typically are most complicated for lead agencies and project proponents to analyze and mitigate.

2. Better state-level planning to reduce CEQA legal challenges and incentivize smart planning by amending the Government Code Specific Plan section to exclude unsubstantiated opinion for "new information" that would trigger additional revisions to the Environmental Impact Review. Also appropriates $30 million for SB 375 (of 2008) planning grants based on competitive process.

This expands the current CEQA exemption for specific planning so that projects undertaken pursuant to that local plan and EIR are not subject to further review or CEQA lawsuits. Further, local governments typically prioritize investment in smart growth plans.

3. CEQA streamlining for clean energy projects and formalizes a Renewable Energy Ombudsman position to expedite renewable siting.

This would cut red tape on large renewable energy projects and establish a position in the Office of the Governor to champion renewable energy projects within the State Government.

4. CEQA lawsuit reforms to speed up disposition of legal challenges. Specifically:

-- Allows the lead agency to comply with notices and findings on EIR's through the Internet;

-- Allows the 30-day statute of limitations to bring actions under CEQA to be tolled by mutual agreement of parties in order to facilitate settlements;

-- Authorizes project proponents to request and pay for concurrent internet-based preparation of the administrative record for all projects to reduce litigation delays, saving months if not a year off project delays;

-- Allows courts to issue partial remands of environmental documents to reduce re-notice/recirculation/litigation delays where lead agencies have been found to be in violation of the law;

-- Directs the Attorney General to track lawsuits and report to the Legislature in order to provide lawmakers and the public with accurate information on whether or not CEQA is being abused by vexatious litigants

These are all feel-good reforms that everybody can agree on. Like SB 226, the infill streamlining legislation passed in 2011, these changes certainly can't hurt and they can probably help move projects along rather than getting stuck in the CEQA thicket. The statewide significance thresholds for traffic and noise on infill projects is a step in the preferred Brown direction of differentiating between infill and greenfield review – and, for the first time, creates at least some statewide significance thresholds, which has been on the CEQA reform list for at least 20 years.

But, as noted above, they are incremental. They do not alter the fundamental idea of CEQA, which subjects virtually every development project to an environmental review and allows citizen groups easy standing. It's not likely to cut down on the litigation – or threat thereof – by either citizen groups or unions that have occasionally used CEQA to try to block retail projects sponsored by non-unionized retailers.

However, there is one important point to make here: CEQA reform is on the legislative agenda every year now, and every year something gets adopted to try to streamline things. This is a big change from the past. For most of CEQA's 43-year history, the legislature fiddled with it very little. Most of the changes to CEQA came from the courts – and, with a few exceptions, led to an expansion of CEQA review rather than a streamlining of it.

So let's admit it: Incremental this year's CEQA reform may be, but – unlike the past -- CEQA reform is on the legislature's permanent agenda. ■

How Will Anthony Foxx Treat California?

As expected, President Obama has picked a mayor to succeed Ray LaHood as Secretary of Transportation. But it's not Los Angeles's Antonio Villaraigosa. It's Anthony Foxx, the mayor of Charlotte, North Carolina.

Foxx comes to the job with impressive credentials as an advocate of transit, smart growth, and infill development.

As I've written before, there are good reasons to pick a mayor as DOT secretary. There are also good political reasons to pick Foxx. He's an impressive young African-American politician from a purple state that the Democratic Party has targeted for great things. (He was, of course, the host mayor for the Democratic National Convention last year and was given a keynote speaking slot.) It's also unlikely that he could win a statewide election, at least in the short run, given North Carolina's current politics.

More than any other recent DOT secretary, the 41-year-old Foxx resembles Federico Pena, who was appointed by Bill Clinton when he the 46-year-old Latino mayor of Denver who had just built a major airport. Pena occasionally seemed overmatched by the job at first but eventually grew into it and later served as Energy Secretary as well.

Foxx has no executive experience (the Charlotte mayor's job is part-time, paying $22,000 per year), but he comes to the job with impressive credentials as an advocate of transit, smart growth, and infill development. Since becoming mayor in 2009, he has continued to successfully implement the city's light-rail system, which was initiated by his Republican predecessor, Pat McCrory, who's now the governor. He installed the progressive smart growther Danny Pleasant as his transportation director and has pushed to add streetcar lines to the city's transit system, especially to African-American neighborhoods and the University of North Carolina, Charlotte, to the east of downtown.

However, Foxx has clashed on the streetcar issue with McCrory, who has argued that the streetcar project will hurt the city's chances for funding a light-rail extension.

And even though the Democrats have targeted for great things, he does a good job of maintaining the longstanding mayor tradition of maintaining a nonpartisan stance on practical issues. He did this on the topic of infrastructure the other day, and I watched him do it last summer at a Politico breakfast in Washington, when he and Tampa Mayor Bob Buckhorn, also a Democrat, talked about the upcoming political conventions in their cities.

"Historically, these issues have been less partisan," Foxx said at that time. "Charlotte is growing by 30,000 people every year. People are coming for all kinds of reasons. Our challenge as a city is integrating thousands of new people without raising our air quality problems and commute times. Transit infrastructure is so critical."

I met Foxx personally in 2010, when we both participated in the Mayor's Institute on City Design – a federally funded institute that allows mayors to get together to discuss urban design issues. At MICD, each mayor brings an urban design problem to the table and seek advice from other mayors and outside experts. I brought the idea of capping the 101 freeway in downtown Ventura. Foxx brought not an urban development issue but design and traffic problems associated with an affluent suburban employment center on the south side of Charlotte known as Ballantyne. It seemed somewhat odd that Foxx wouldn't bring an urban development or transit issue, but he was determined to address a problem that he truly believed was harming Charlotte's economic expansion.

Concidentally, I'll be in Charlotte the week after next conducting a workshop with city officials on how best to direct public investment in five struggling outlying neighborhoods, most of which won't get rail transit. I'll provide an update at that time.

– BILL FULTON | MARCH 24, 2013

Rumors of California's Demise Are Greatly Exaggerated

Among some conservative circles, it's become fashionable to say that liberals "hate America" any time Democrats try to do, well, anything.

Notwithstanding the illogic of hating one's own home, I don't think that liberals hate America. I just think they (we) have different ideas about how to improve America. What's become disturbingly evident recently, however, is that the Wall Street Journal, a conservative-leaning publication that generally likes big, wealthy things, really seems to have it in for California.

Over the past year or so, the *Journal* has published no fewer than three op-eds, each more desperate than the last, lambasting California's land use policies and their supposed drain on the state's economy. The first two came from Joel Kotkin and Wendell Cox, both of whom are venerable scholars who, though I don't agree with them, have long staked out their places in the spectrum of urban ideology.

Recently, they were joined by Allysia Finley, a WSJ assistant editorial page editor with no apparent experience in land use. I can hear her senior editor saying, "oh, just cook up some crap about California. Readers in Middle America will eat it up."

Borrowing a metaphor from Middle America, Finley's column "The Reverse-Joad Effect," posits that a recent trend of out-migration of lower-income residents from California doesn't just reflect a shaky economy and relatively high real estate prices in the broad sense. Finley she has narrowed down the eastward exodus to—drumroll—restrictive land use policies. That is to say, of all the micro- and macro-economic effects that influence migration, it's land use that deserves the finger pointing. (Finley doesn't actually name any policies, but we'll get to that later.)

The problem is not that suburban land use policies don't work – they worked spectacularly. The problem is that suburbia doesn't work.

You don't have to be a State of Jefferson separatist to admit that our state has problems. I'm as loyal a California patriot as they come, so I know that our budget is a mess, our schools are distressed, and our cities, through improving, have a long way to go. But I'm still going to defend California, and its land-use policies, against specious reasoning and gross distortions.

As I have done in response to Cox and Kotkin in the past, I'd like to extract a few of Finley's gems-though she has far more than either of them did—and offer a few further thoughts.

Finley writes:

It is ironic that many of the intended beneficiaries of California's liberal government are running for the state line—and that progressive policies appear to be what's driving them away.

No, it's not ironic. That's how it's supposed to work. Benefiting from social services doesn't mean that recipients have to stay. In fact, they could have benefited so much that they became prosperous enough to move wherever they choose.

Finley cites no studies or surveys to determine why people are leaving (or even that California's government is liberal; maybe she's too young to remember George Deukmejian, Pete Wilson, or Arnold Schwarzenegger; maybe she's never been to California). Even if there's a grain of truth to this, it's not the policies that are driving people away. It's the consequences of those policies—intended and otherwise—that are driving them away. I don't think anyone is saying, "man, that DU/acre regulation really sticks in my craw; Abilene, here we come."

> *For starters, zoning laws, which liberals favor to control "suburban sprawl," have constrained California's housing supply and ratcheted up prices.*

Naturally, high housing prices can turn people away; we'd all like to pay less. But blaming high housing prices on regulation--and not on supply and demand--seems a bit much. 3.4 *million* people leave the state, and we start with *zoning laws?* Remind me to write to the authors of every major textbook on immigration and encourage them to update their first chapters.

But Finley implies that the healthiest states are those where development is allowed to roam fee. But, while suburbia may have been invented in Levittown, it was perfected and executed on its grandest scale in California, with zoning laws that are imposed on a city-by-city basis.

It's true that liberals generally tend to oppose sprawl. Those liberal policies come in two varieties: first, many liberals favor controls that preserve open space and farmland; second, they often favor policies that promote compact development. Traditionally, these two approaches are supposed to work in tandem in order to ensure an adequate supply of housing in favorable locations while preserving land. It's the conservatives—policymakers, developers, and, often, residents alike—who favor low-density, urban-fringe development and who enact restrictions against higher densities.

The problem is not that suburban *land use* policies don't work – they worked spectacularly. The problem is that *suburbia* doesn't work.

That's why California enacted SB 375, the most significant anti-sprawl legislation in the country. Finley might like to know, though, that SB 375 operates on an incentive system; it has no power to actually restrict sprawl in places where cities want to permit it. She might further like to know that SB 375 wasn't adopted until 2008 and has scarcely been implemented.

> *Land restrictions became common in high-income enclaves during the 1970s—coinciding with the burgeoning of California's real-estate bubble—and have increased income-based segregation and inequality.*

Al Joad, hit the brakes.

OK, so at least we know we're not talking about SB 375. But by

– CONTINUED ON PAGE 12

– CONTINUED FROM PAGE 11

alluding to generic liberal "land restrictions" from the 1970s (Finley has apparently never heard of CEQA), Finley makes it sound like conservatives are clamoring to build townhomes and TOD's while it's the liberals who are forcing them into outer-ring McMansions. Nothing could be further from the truth.

If Finley objects to segregation, income inequality, and almost any other land-use ill you care to name, then she might want to consider, oh, the single most consequential law in the history of California land use: Proposition 13.

Prop. 13 – as conservative a law as there is – has contributed to sprawl in at least two ways. Most directly, it creates incentives for homeowners to stay put; thus impeding the free market and forcing the construction of new homes for, say, young families, on the urban fringe. Perhaps more importantly, it decimates cities' abilities to raise revenue, because it all but freezes revenues in older cities.

Under Prop. 13, when people want good schools and other services, they go to new suburbs where, at least for a little while, brand-new houses sold at market rate generate enough tax revenue to support the services they want. At least until inflation and wear-and-tear catch up with those houses, and the next generation of suburbs appear on the horizon—or maybe they go to another state, with better-funded schools. That's the legacy of "conservative" land use policies. Then again, according to many conservatives (such as Robert Bruegemann in *Sprawl: A Compact History*), this is what we *ought* to want -- so I'm not sure what Finley is complaining about.

As for the very real problem of "income-based segregation and inequality": Where in this country, from the hedges of Greenwich to the gates of Plano, do high-income enclaves not enact measures to control land use and restrict in-migration of "undesirable" neighbors? And since when are these enclaves usually *liberal*?

Remind me what city Wall Street is in?

> *Housing in California is on average 2.7 times more expensive than in Texas. The median house costs $459 per square foot in San Francisco and $323 in San Jose, but just $84 in Houston, according to chief economist Jed Kolko of the San-Francisco based real-estate firm Trulia.*

Finley must have made a hell of a pie after harvesting this data. First, higher housing per square foot doesn't necessarily equate with higher housing costs. Residents of San Francisco might live just as happily with less space, as do their counterparts in Houston. Even so, San Franciscans pay more because they cities more than they do Houston. They're nicer. They offer more, higher-paying jobs. Yay, right? Right??

> *Housing in California is cheaper inland than on the coast, but good luck finding a job.*

Right. That's because land use policies that promote sprawl have forced people to live farther and farther from cities, to the point where jobs are inaccessible from many places where the housing is. Alternatively, liberal policies promoting higher density enable lower-income people to live closer to job centers.

> *The median home in Fresno costs $95 per square foot, but the unemployment rate is nearly 15%, compared with 6% in Houston.*

So, low housing prices are good because homes are affordable or bad because they correlate with weak employment? To say that Finley's logic is circular is an understatement. Her mind is doing donuts in a Walmart parking lot.

> *California's staggering labor and energy costs…have helped kill hundreds of thousands of manufacturing jobs in California's interior. Note: Those are jobs that traditionally served as entry points to the middle class.*

When did California's "interior," wherever that is, have "hundreds of thousands of manufacturing jobs"? Note: pollution causes lung cancer and climate change.

> *Comcast announced in the fall that it is moving 1,000 call-center jobs out of California because of the "high cost of doing business." Facebook,eBay and LegalZoom have opened up Texas offices in the past few years, while PayPal, Yelp and Maxwell Technologies have pushed into Phoenix.*

So it's bad that genuine California-bred companies—many of which are shining stars on Dow Jones' ticker that still employ the majority of their workers in California—have become so successful that they can open satellite offices?

> *Rents are prohibitive, and Sacramento takes 9.3% of every dollar over $49,000—and 13.3% over $1 million—that an individual or small business owner earns.*

Finally Finley cites a specific policy, and a liberal-ish one at that. How it relates to land use, I'm not sure.

This rate places California 13th highest among the 50 states (New York is first, Texas is 44th). It also takes less of that individual's real estate taxes because of Prop. 13. As for the 13.3% rate for million-dollar earners (one million dollars *per year!*), that's the reason that poor people are moving out? If Finley wants poor people to remain in state, shouldn't California raise the top tax rates and lower them at the bottom so as to ease their burden?

> *By contrast, small businesses in Texas have been sprouting like bluebonnets in the spring to meet the demands of an expanding population.*

Good for Texas. The population is expanding in Bangladesh too. Does that mean that Bangladesh offers a high quality of life or a favorable business climate? If population growth was an ideal economic development strategy, then we'd just ban birth control and cut taxes on liquor.

– CONTINUED ON PAGE 13

– CONTINUED FROM PAGE 12

> *More people mean more mouths to feed, bodies to clothe and homes to build.*

We're getting pretty low on Maslow's Hierarchy, aren't we? Ought states promote only those jobs that involve food, homebuilding, and apparel? And don't app developers, farmhands, and actors—i.e. people in every other economic sector—need food, clothing, and shelter too?

> *In his State of the State address this year, Gov. Jerry Brown boasted: "We have the inventors, the dreamers, the entrepreneurs, the venture capitalists…"*

These are the people that Republicans used to call "job-creators."

> *Recall, however, that the Okies—poor as they may have been—provided a gigantic pool of labor that fueled California's postwar boom and helped transform the Golden State into the world's eighth-largest economy.*

Recall, however, that the Oakies were not mere migrants. They were refugees, forced to move westward under a cloud of misery and poverty.

No matter how dehumanized the Oakies must have felt, you just repeat after me: People are not a commodity. They are not a "pool of labor." They are not automatons to be stored in soulless boxes as night. People are individuals with talents, desires, and free will. I won't name the political systems that treat them otherwise, but they certainly aren't capitalism.

> *The Democrats who have had firm control of the state during its years of decline would do well to remember that a society's most valuable asset is always its people, regardless of their wealth or clout.*

And finally: California residents aren't "the state's people." They're Americans. They're free to work, come, and go as they please.

Since few of Finley's arguments are actually valid, it occurs to me, then, that the Journal's contempt is for people, companies, and, by extension, places that actually make things. In the Dakotas they pull money out of the ground, and on Wall Street many people make money out of little but spreadsheets and lies. In California—awful, depressed, repressive California—we make spacecraft that go to Mars. We make movies and music. We make iPads and iPhones and every computer-related piece of hardware and software imaginable. We make medical devices, and we devise techniques for which those devices are used. We make food. And, if spreadsheets and financiers wet your whistle, then we even have venture capitalists who pay for all that stuff.

What's great about living in a nation—and having a national economy—is that instead of fomenting petty (and not-so-petty) rivalries, we have the opportunity to complement each other and draw on each other's strengths. So, if Finley and her ilk want to move to shacks in a god-forsaken corner of Texas, that's their prerogative. If they want to live in a dynamic, diverse, wealthy, innovative, and, yes, sometimes turbulent place with other people who feel the same—then California's doors will always be open.

And California's planners had better plan accordingly. Fortunately for us--rich, poor, native, and newcomer alike--they already are.

– JOSH STEPHENS | APRIL 18, 2013 ■