

# The hydraulics of homelessness: stormwater challenges are linked to encampments in San Jose

BY MARTHA BRIDEGAM

The big camp on Coyote Creek north of Story Road in San Jose is familiar to Sandy Perry and Pastor Scott Wagers, leaders of an activist ministry known as CHAM. But during the past couple of years they have been amazed to see people pour into the place from elsewhere in the city – some of them evicted from an embarrassingly visible camp near the airport. What was a mere few tents now fills a broad open space on the creekside below Story Road and continues along the west bank of the creek. Tents are pitched every few yards, many in tiny courtyards fenced with sheets, tarps and pallets.

Repeatedly demolished and rebuilt, the place has become

known to its residents and the public under a name with jarring historical resonances: the “Jungle” – though the city’s homelessness response manager, Ray Bramson, refers to it firmly as “the Story Road encampment.” Population estimates run from 200 people upward. News reports, some of them lurid, have called it the largest unofficial encampment in the United States. The camp seems physically tidier than some reports suggest but the lack of formally organized sanitation is evident. Social tensions were running high during a visit, in part due to rumors of an imminent eviction sweep that turned out, this particular time, to be false. The city has announced plans eventually to house some creekside campers using vouchers

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## Having no car and plenty of cars

Ever since I moved to San Diego last year without owning a car, people have felt sorry for me. They offer me rides. They wonder where I buy groceries. They ask me how I feel about being nature-deprived. They ask me how I can stand to ride the bus.

I usually smile and nod and acknowledge what they are saying and tell them it really isn’t so bad. I rarely tell them that they are making a fundamental mistake: They are equating owning a car with using a car.

I belong to Zipcar, and there are two Zipcars parked at all times in the parking garage in my apartment building – a MiniCooper wagon and

a Ford Escape SUV – that I can rent whenever I want. In fact, they are located closer to the elevator than my two eternally vacant parking spaces. I also belong to Car2Go. Right now, my smartphone tells me there are six two-seater SmartCars parked within 1,000 feet of my apartment, all available for me to rent on a per-minute basis.

Avis is located four blocks away. Sometimes I rent a car for the weekend, though that seems awfully old-fashioned these days. When I have to drive for work – my office is five blocks from my apartment – I have access to the city motor pool, which is located right

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## Strategic Growth Council announces planning grants

On Friday the Strategic Growth Council announced recommendations for the \$16 million in its third and last round of planning grants under Proposition 84. The 33 recommended awards go before the Council for approval June 3. See <http://bit.ly/1IOYfO3>.

## Santa Barbara creates a land conservation bank

The state and federal fish and wildlife services have approved the 853-acre La Purisima Conservation Bank, which places easements on "critically important grasslands and oak woodlands" outside Lompoc. The project will sell mitigation credits to developers. See <http://bit.ly/1jX0r9k>.

## CEQA petition filed on San Francisco tech buses

Opponents of San Francisco's tech bus shuttle program filed May 1 for court review of the county Supervisors' decision to exempt it from CEQA review. The double-decker buses, which carry city residents to jobs on South Bay office campuses, pay the city a dollar every time a bus makes a stop. Opponents say the buses disrupt public transit but, more important, that they cause displacement by driving up housing prices along the bus routes. While the buses do reduce car trips to the campuses, they have been viewed as both a mitigation and a condition to mitigate. See our prior discussion at <http://www.cp-dr.com/node/3466>.

Respondents named in the suit alongside San Francisco municipal entities include Apple, Genentech, Google and multiple bus companies.

Petitioners include SEIU Local 1021, Elizabeth Alexander, housing activist Sara Shortt, and a nonprofit, the Coalition for Fair Legal and Environmental Transit. See <http://bit.ly/1kRgc0s>. The San Francisco Superior Court case number is CPF 14 513627. Court documents can be downloaded via case number search at <http://sfsuperiorcourt.org/online-services>.

## Judicial Council speeds up CEQA calendars for "leadership" projects

The California Judicial Council issued new rules April 25 on expediting CEQA appeals of large developments designated by the Governor as "leadership" projects under SB 743. SB 743 requires both the trial and appellate courts to complete CEQA review of "leadership" projects within 270 days starting with certification of the administrative record. The Council's report suggests it struggled to set rules that might help parties meet that extremely tight deadline by filing and serving petitions quickly after certification. Other rules on the expedited calendar include tightened briefing schedules, a case management conference within 30 days of the petition's filing, and a hearing on the merits 80 days after that. Notices of appeal must be filed within just five court days. For the whole rule text with its staff report see <http://www.courts.ca.gov/documents/jc-20140425-itemM.pdf>. A recording of the approval meeting is at <http://www.courts.ca.gov/25710.htm>. For details see <http://www.ceqadevelopments.com/2014/05/12/spring-2014-ceqa-roundup/#more-812> and a detailed description at <http://bit.ly/1h2wVKG>.

## Drought and Water Notes

Drops in the bucket of the ongoing water crisis:

- The State Water Resources Control Board issued the first of what may be more "curtailment" orders blocking water use by some holders of post-1914 water rights. On its May 20-21 agenda, the main curtailment discussion, on rights in the Sacramento-San Joaquin River Delta, appeared at first as a resolution proposed for approval but was changed to a public workshop to receive comments. The board did pass a curtailment resolution "due to insufficient flow for specific fisheries" for three creeks feeding the Sacramento River in Tehama County. See the May 20 entries at [http://www.waterboards.ca.gov/board\\_info/calendar/](http://www.waterboards.ca.gov/board_info/calendar/) and [http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/drought/mill\\_deer\\_antelope\\_creeks.shtml](http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/mill_deer_antelope_creeks.shtml).
- As of June 1, a new agency will be managing the Bay Delta Conservation Plan (BDCP), also known as the Delta water tunnel project. The *Sacramento Bee* has details at <http://bit.ly/ToEiXK>.
- Conservation groups sought to extend the comment period on the massive BDCP plan text, which is schedule to expire June 13. See [sacbee.com/11WGILS](http://sacbee.com/11WGILS)
- California Sen. Dianne Feinstein's drought bill passed the U.S. Senate after weeks of delay, after giving up \$300 million in drought relief funds. The bill, SB 2198, has worried environmentalists because of provisions for more water pumping

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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

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[WWW.CP-DR.COM](http://WWW.CP-DR.COM)

You may e-mail us at:  
[INFO@CP-DR.COM](mailto:INFO@CP-DR.COM)

William Fulton  
*Publisher*  
Martha Bridegam  
*Editor*

Josh Stephens,  
Morris Newman, Kenneth Jost  
*Contributing Editors*  
Susan Klipp  
*Circulation Manager*

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- from the Sacramento River Delta. The bill now goes to conference with House Republican leaders. See <http://bit.ly/1jqdRFZ>.
- North Delta Community Area Residents for Environmental Stability was objecting that the BDCP had unfairly printed its 40,000-page EIR only in English although the report itself acknowledges that many residents speak only other languages, principally Spanish: <http://www.centralvalleybusinesstimes.com/stories/001/?ID=25830>
  - *The East Bay Express* was calling the whole thing a “boondoggle”: <http://www.eastbayexpress.com/oakland/the-water-tunnel-boondoggle/Content?oid=3922258>
  - Recycled water is gaining ground as the drought continues. Healdsburg is now making available free municipal recycled water and Paso Robles is considering the same: <http://www.winesandvines.com/templatecfm?section=news&content=132713>
  - ACWA’s town-by-town tally of water-saving restrictions was updated May 13 at <http://www.acwa.com/content/local-drought-response>. It’s a daunting read.
  - The city of Ukiah was considering sharing water with groundwater-starved Redwood Valley (See <http://bit.ly/1oM1NGZ> -- and more on Redwood Valley at <http://www.cp-dr.com/node/3459>.)
  - Lake Cachuma, serving important parts of Santa Barbara County and now down to 36% of capacity, had agreed with local water managers to cut their allocations by 55%: <http://bit.ly/1jPO6Pn>
  - Over opposition from the California Coastal Protection Network (see <http://bit.ly/Sd3lqm>), Santa Barbara was moving towards reactivating its mothballed reverse-osmosis desalination plant: <http://bit.ly/1mDeJe3> It estimated that going through with the restart would cost almost \$29 million: <http://bit.ly/1ICpyLj>
  - Hemet, San Juan Bautista, Hollister and Delano were having problems with nitrates in drinking water:
    - <http://www.pe.com/articles/water-693943-nitrate-nitrates.html>
    - <http://www.pe.com/articles/water-693957-jensen-city.html>
    - <http://bit.ly/1k1ml69>
    - <http://bit.ly/1j4He0u>
  - *Slate* reported 10% of California’s water is going to almond farming: <http://slate.me/1ov9Bww>
  - EBMUD made its first use of an emergency water supply from the Sacramento River: <http://bit.ly/SvnDRO>
  - Water officials sought en banc review of the 9th Circuit’s delta smelt ruling. See <http://www.cp-dr.com/node/3448> and <http://bit.ly/1k38QYN>.
  - The state Department of Water Resources issued a major report showing low levels of groundwater where measured and gaps in monitoring statewide. See <http://bit.ly/R8DgNS>. The *Sacramento Bee*’s Matt Wiser unpacked the results at <http://bit.ly/1ue4zG4>.
  - CNN reported on Orange County’s use of recycled water for drinking at <http://cnn.it/1nOsPNz>
- In other news –**
- The Los Angeles City Council was considering legalizing street vendors: <http://bit.ly/Sd6kEQ> There’s a discussion of ideas for an LA food vendors’ program at <http://myla2050.maker.good.is/projects/streetvendors>.
  - California’s Air Resources Board held its seventh cap-and-trade auction, selling almost \$195 million in 2014 credits and almost \$46 million in 2017 credits. See <http://www.arb.ca.gov/newsrel/newsrelease.php?id=616>.
  - The Air Resources Board also released its first AB 32 Scoping Plan update. See <http://www.arb.ca.gov/newsrel/newsrelease.php?id=613>.
  - Trial began over public access to Martin’s Beach, a private stretch of the San Mateo County coast that the prior owner had opened to the public in exchange for a parking fee. Sun Microsystems co-founder Vinod Khosla, the current owner, faced questioning in court from the Surfrider Foundation’s attorney, the redoubtable Joe Cotchett. For the court drama, which has included a visit to the beach itself, see <http://bit.ly/1kkqjvA> and <http://bit.ly/1gN8Bw2>. The case is No. CIV 520336 in San Mateo County Superior Court, available via <http://openaccess1.sanmateocourt.org/openaccess/civil/default.asp>. The next item on calendar is a dispute over a subpoena to Khosla. The trial itself is now set to resume July 1, 2014.
  - Forest City Development is already looking ahead past the likely June passage of San Francisco’s Measure B on waterfront height limits. It’s reportedly already working toward a November ballot measure to approve its planned major development on Pier 70, at the former vehicle impound lot that was previously the Union Iron Works shipyard. See <http://www.planetizen.com/node/68840>.
  - Unsuccessful parties and others have filed requests to depublish the Woodland “urban blight” EIR case that we discussed at [www.cp-dr.com/node/3472](http://www.cp-dr.com/node/3472). For a little discussion see <http://www.ceqadevelopments.com/2014/05/12/spring-2014-ceqa-roundup/>. The updated online docket is at <http://bit.ly/1qrlrFt>.
  - San Franciscans filed an appeal seeking CEQA review of a city decision to repeal the recent imposition of Sunday parking meter charges.: <http://bit.ly/1kHAISc> ■

# Coastal Commission approves land use plan for Marin LCP update – but with unfinished business

BY MARTHA BRIDEGAM

It wasn't on the epic scale of the Santa Monica Mountains fight, but the Coastal Commission heard passionate arguments about farmers' development rights for most of May 15 before approving a revised Marin County land use plan.

Despite that approval, the meeting ended with two or three big battles still left to fight before the 1981 Local Coastal Program will be fully revised: the specific zoning laws and ordinances of the implementation plan are deferred to a meeting later in the year; the Commission agreed to await a study to rule in detail on preparations for sea level rise in coastal low-lying settlements; and environmentalist objectors may still file suit over an alleged lack of cumulative-impact CEQA analysis for the effects of changed land use rules.

Centrally debated at the meeting was a broadened definition of principally permitted uses for "agriculture", both allowing more construction approvals and insulating some of them from the right of appeal to the Coastal Commission by defining them as "principally permitted uses".

On a social policy level, the question was whether allowing more development rights on farms would help existing farm families and farming practices maintain continuity, or whether it would encourage luxury "hobby farms" to supplant productive agriculture.

The "agriculture" definition, as approved, allows clusters of homes including "intergenerational homes" to reach 7000 square feet, plus 540 for garage and 500 for office space. Since most existing farmhouses are modest older structures, that allows generous room to build a second or even a third house. The right to build out, however, is not absolute: for example, the clusters are allowed per farmer, not per buildable lot, and second "intergenerational homes" are a conditionally permitted use.

Prior housing approvals in West Marin's C-APZ Coastal Agricultural Production Zone have been sleepy: Jack Liebster, principal planner with Marin County's Community Development Agency, said the county had only approved 13 homes in the C-APZ zone since 1987. Those 13 are distinct, however, from approvals in the coastal "villages" and nearby areas not zoned agricultural. Those, he said, might have had "a couple hundred" housing approvals in the same time.

As approved, the land use plan authorizes further residential and other small-scale building on farm property in the two-thirds of the coastal zone regulated as agricultural. Proponents argued that newly authorized "intergenerational homes" (not necessarily required to house blood relatives) would allow farm owners, many of whom are aging, to keep family members – potential successors – in the farm environment even if they didn't always work in agriculture. Liebster, in an interview, said some of the local farm families went back six generations "and they want to stay on their land. You don't do farming for any other reason than, you love it, because it sure doesn't make a lot of money."

Opponents, however, argued that the ability to build "intergenerational" homes as principally permitted uses on the property – and, as a conditional use, second "intergenerational" homes on larger parcels of 180 acres or more – would create incentives to spin off 120- or 180-acre sections of active farms to serve as "estates" or "mini-mansions" for gentleman-farmer luxury purchasers who might not take agricultural production seriously. A comment letter from the West Marin Environmental Action Committee (EAC) further suggested "it could serve as a disincentive to continue Williamson Act contracts."

Rancher Sally Gale, speaking in public comments, supported the plan, saying it was pro-agriculture and "agriculture supports the environment." She praised the authorizations for intergenerational homes, small processing facilities as "principally permitted uses", and on-farm retail sales, saying all contributed to keeping the next generation in farming. She only would have preferred that paid farm tours be allowed without making them conditional uses.

The rules as passed authorize exceptions to the buffer zone distances around watercourses. But Amy Trainer of EAC told the Commission that experienced environmental activists knew the tendency of such an exception, once allowed: "It will become the rule; it's meant to."

As to affordable housing, Liebster said "The LCP is obviously not a housing element or an affordability plan. However we did make provisions for removing barriers to farmworker housing," in compliance with state legal requirements to leave farmworker housing out of density calculations. He said farmworker housing would be allowed up to 36 beds in group living quarters per legal lot, or 12 units or manufactured housing spaces, so long as it serves people working directly on the farm where they live or at nearby farms. Bed and breakfast rentals on farms, however, are conditional uses.

Even in inland, eastern Marin – targeted for denser population since the 1973 General Plan – Liebster said Marin County finds it painfully difficult to create affordable housing.

In public comment at the hearing, Kim Thompson, executive director of the Community Land Trust Association of West Marin (CLAM), said the county suffers from "significant underproduction of housing" and displacement had worsened in the last two years, including due to Internet-mediated short-term rentals competing with long-term tenants. "We have perpetually internally displaced families and singles," she said. Requesting a show of hands, she asked, "Who is concerned about affordable homes? Anybody?" Hands went up. She thanked them. And her two minutes to comment were over.

County staff and Commission chair (also Marin County Supervisor) Steve Kinsey noted at the meeting that although "principally permitted use" project approvals generally would not be appealable to the Commission, some appeals would be

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## >>> Coastal Commission approves land use plan

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available as of right in areas of statewide interest, such as buffer zones near Environmentally Sensitive Habitat Areas (ESHA) and coastal zones nearest the shore -- but Trainer, who was a leading organizer against the new “agriculture” building rights, said those areas would be a small proportion of the whole. “It’s a rollback absolutely,” she said in an interview. “This is a terrible statewide precedent that the commission removed from itself oversight over parts of two-thirds of Marin’s coastal zone.”

Liebster responded on May 21 that decisions in large areas of the zone are appealable to the Commission: “It’s a big area and in fact we tried to measure it and it’s like, more than 11,000 acres out of the 30,000 acres that the Coastal Commission estimates is in the C-APZ zone.” He said “that includes all of the wetlands and streams in primary sensitive habitat areas.”

In other areas, where a principally permitted use right was invoked for a project, appeal above the county level would be by writ petition directly to the courts.

But Trainer’s letters and several speakers’ public comments emphasized the Commission’s function as an institutional check on local action. Trainer told the Commission at the hearing: “Do your job as the gatekeeper.”

Trainer further saw the county as failing to perform needed CEQA analyses, both individual and cumulative, with findings of fact, analyses of changes and offers of alternatives and mitigation measures, on the potential effects of the new land use plan. On the Sunday after the meeting she said, “If the county does not do the CEQA analysis: the individual and cumulative impact analysis required by law, then we’re going to have no choice but to file a lawsuit.”

An EAC comment letter from Trainer before the meeting said the local coastal plan revision “is supposed to be the ‘functional equivalent’ of an EIR,” but contended it had yet to comply with requirements under CEQA Guidelines § 15091 to reach findings needed to “prevent or minimize environmental damage”.

Liebster responded to Trainer’s comments on May 21 saying, “There are two ways to achieve the goals and standards of CEQA. One is to write an independent EIR. The other is to put a program or project through the process of an agency that applies strict environmental rules to that program or process. And that’s what the functional equivalent is.”

The initial Coastal Commission staff report prepared for the meeting referred to provisions of Cal. Public Resources Code §§ 21080.5 and 21080.9 that exempt local government from the requirement of an EIR under CEQA for the preparation of a local coastal program, but that require the Commission to find that approval of the amendment conforms to CEQA.

The Commission report acknowledged that “the amended LUP will not be approved or adopted as proposed if there are feasible alternative or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment.” But it stated: “In this particular case, all of the proposed amendments are being approved as submitted. Thus, there are no feasible alter-

natives or feasible mitigation measures available which would substantially lessen any significant adverse impact on the environment. Therefore, the Commission finds the subject LUP, as amended, conforms with CEQA provisions.”

(The term “functional equivalency” is sometimes used to refer to the CEQA Guidelines § 15251 exemptions for specified regulatory processes including LCP preparation. The phrase does not appear in the main text of the regulation but presumably derives from the rule’s discussion notes, which Liebster cited. Per a 2002 California Research Bureau report, “Are ‘Certified Regulatory Programs’ Functionally Equivalent to CEQA?” the discussion notes read, “Certification of a program formally recognizes that an environmental analysis undertaken in compliance with the certified program is the functional equivalent of a CEQA analysis.” See <https://www.library.ca.gov/crb/02/05/02-005.pdf>. Section 15251 of the guidelines is at <http://bit.ly/1jtvCbY> and § 15091 is at <http://bit.ly/1sVC4JP>. Public Resources Code § 21080.5 is at <http://bit.ly/1sVA5Fj>.)

### Long memories at public comment

Powerful suspicions and long memories characterized many anti-development public comments.

Gerald Meral, recently retired deputy resources secretary for California, said the new housing on farms wasn’t really restricted to farm family members and wouldn’t likely address the affordable housing crisis because it would provide just a few units, far from amenities like grocery stores. Like many speakers, he said he’d been among those who helped in the original campaign for Proposition 20, the founding ballot measure for the Coastal Act. And like many, he expressed concern for the public right to appeal decisions to the Commission.

Speaker Alden Bevington of West Marin, identifying himself as a systems analyst, said “If I were a developer, and I’ve worked with a number in my career, I could game this system as it is now proposed.” He warned the Commission not to underestimate “the power, tenacity, and, um, legal departments of development capital protecting its interests.”

The most irritable disputes turned on specific numbers of houses that would be permitted, particularly on the origins of a calculation widely mentioned by speakers: that the new rules would allow construction of 129 more homes – called by some speakers “mini-mansions” – creating 1 million potential square feet of construction.

A widely distributed email text, attributed to Sierra Club members, reportedly had emphasized the million square feet and the concern about appeal rights in a way some found alarmist.

By Liebster’s calculation, 83 legal lots existed where houses could be built for the first time, and 27 more sites existed for possible “intergenerational homes.”

Trainer provided slides to explain the 129-unit figure. One of these, drawing on a January 2013 Board of Supervisors staff report, counts up 83 possible new farmhouses, 15 “first” intergenerational units, and 31 additional units that would further be

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allowed by a zoning density of one unit per 60 acres. Supposing other restrictions such as Williamson Act contracts were lifted, the same presentation increases the potential count of units to 263, and the caption speaks of a million possible square feet.

In an interview, Liebster, considering the figures a little differently, agreed it was possible to arrive at a future maximum buildout total of 1 million square feet, but he said even so that would represent only 0.075% of the “C-APZ” coastal agricultural zone’s land, and that maximum buildout would be unlikely to happen “within our respective lifespans.”

After a debate within its afternoon deliberations, the Commission chose not to defend the foggy Marin Coast preemptively against the (currently theoretical) menace of vineyards and tasting rooms. Although the weather and soils currently make the Marin coast unsuitable for viticulture, speakers didn’t rule out the chance that, between climate change and growers’ innovations, someday the area could be growing grapes.

Commissioner Dayna Bochco’s motion, defeated 7-5, would have distinguished vineyards from other agriculture as a conditional use, not a principally permitted use. “Viticulture is different than any other kind of farming,” she said. “I don’t care if it’s orange trees or mushrooms or any other kind of use. Viticulture is its own world.” But other speakers suggested if grapes could be singled out for different treatment, so could any other crop.

For development sites on bluffs, the Commission adopted a strict rule based on Southern California experience: pick a spot that will not fall into the sea for a century, even without a seawall to protect it. However they agreed to wait for a study before issuing detailed rules to address sea-level rise in low-lying areas like Stinson Beach.

On coastal construction rules, Liebster said afterward, “most of these have been forged in the crucible of conditions on Solana Beach in San Diego County,” where development near the edges of eroding bluffs is the issue. For Marin, he said, the Commission agreed to consider the different issue of low-lying settlements in the form of a future expected amendment. The county has grants for its study on the matter of \$200,000 from the state Ocean Protection Council and \$54,000 from the Commission, he said. As a stopgap measure, he said for now the Commission had adopted a rule to raise new construction, including substantial renovations, a yard above the level marked by FEMA as the area’s current Base Flood Elevation.

Liebster called the approach to sea level rise in a place like Stinson Beach “really a difficult problem... I can’t even visualize the answer at all, so it’s going to take a lot of creativity to do this.” Houses could be raised on stilts, he noted, but how would they be reached? Where would cars park?

For its May meeting the Commission was surrounded by a distinctive West Marin sense of context and place. Meeting in the town of Inverness on the Point Reyes peninsula, fed Hog Island oysters at an evening reception, and led by West Marin’s own county Supervisor, current Commission chair Steve Kinsey, the Commission heard local public commenters speaking vigorously on and for their familiar home ground.

The meeting could be less locally rooted when the Commission hears the implementation plan proposal that must also be approved to clinch Marin’s Local Coastal Plan (LCP) revision. Having originally meant to hear and approve the whole LCP at Inverness, the Commission agreed about six weeks beforehand (according to Trainer) to split off the implementation plan for later review. The timing of the implementation plan hearing could be difficult, as the Commission’s next meeting within easy driving distance is many months ahead: November in Half Moon Bay. Trainer suggested the meeting would likely be sooner but far out of town; Liebster was looking as far ahead as the December meeting, which will be set somewhere in the Bay Area.

Showers of last-minute paper descended in the form of last-minute addenda, and then several supplemental votes on Commissioners’ motions. It left all sides in cleanup mode, still trying to work out days later what exactly had been approved.

The plan directly addresses coastal areas *not* governed by Marin’s two large federal parks landholders, the Golden Gate National Recreation Area and Point Reyes National Seashore, though the federal areas may be affected indirectly by the Commission’s power to enforce consistency in land management throughout the area. The land use plan, for example, does not directly affect the Drake’s Bay oyster farming dispute, which concerns a federally managed area of Point Reyes.

The meeting’s agenda, which now appears with annotations showing Commission decisions, is now posted at <http://www.coastal.ca.gov/meetings/mtg-mm14-5.html>. ■



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# Fitch announces improved outlook on ex-Redevelopment bonds

BY MARTHA BRIDEGAM

The Fitch Ratings service on May 1 announced it was ready to take a sunnier view of tax allocation bonds (TABs) administered by successor agencies in California's redevelopment dissolution. The changed view could affect both the sale prices of existing bonds and the interest rates available to successor agencies when they refinance their existing debt with refunding bonds.

The announcement said, "Fitch will now consider California TAB liens to be closed and surplus housing revenues to be available for non-housing TAB debt service, as applicable. These changes likely will result in a moderate number of California TAB upgrades."

It said that in the first days after California dissolved its redevelopment agencies, the service "considered the legislation's negative effects on credit quality, but excluded potentially positive effects." But on review, analysts had found two things to like about the successor agencies' wind-down role. First, if the successor agency's 20% housing set-aside of the tax increment is more than enough to make currently due payments on housing-related bond debts or other "enforceable obligations", then the overflow can now be used to pay off non-housing bonds. Second, because successor agencies are barred from increasing their bond debt, no additional liens are being created to compete for funds, hence "All TAB liens have been effectively closed."

Susan Bloch, a partner with Burke, Williams and Sorensen who works on redevelopment wind-down, housing, and public finance issues, explained that since the existing housing set-aside funds would be either already redistributed or already encumbered, the new Fitch view mainly addressed the continuing influx of tax-increment funds. Referring to the semi-annual Recognized Obligation Payments Schedule (ROPS) process, she said, "Now all the money is in one pot and it gets allocated to the successor agencies twice a year to pay for enforceable obligations including the debt service."

Property tax specialist Marty Coren of HdL Coren and Cone said housing construction would not be affected because the 20% housing requirement was already lifted by the dissolution of Redevelopment.

For Tom Hart of the California Redevelopment Association, the new policy was "bittersweet because if the legislation... would've been more defining, Fitch wouldn't have had to downgrade in the first place and a lot of these

issues about the bonding would've not materialized." Noting the large number of lawsuits over post-redevelopment financial disputes, he said the dissolution legislation "really put successor agencies in a bad position, and then you have the Dept of Finance making administrative decisions that could've been perceived as outside the legislation, and that's why there were so many lawsuits."

At least one effect of the new Fitch policy is already visible: on May 2, citing the new policy among other factors, Fitch upgraded a subordinate bond issue by Oakley Redevelopment Agency from 'BB' to 'BB+' and changed its outlook from 'Negative' to 'Stable', while confirming existing ratings and outlooks for some of the city's higher-rated Redevelopment TABs.

The authors of the Fitch report, analysts Scott Monroe and Yueping Liu, noted in an interview that the major benefit of savings on refunding bonds would flow to the overlapping taxing entities, which receive tax increment funds not needed for the successor agencies' approved "enforceable obligations". Since the only purpose of a successor agency is to wind down and close out redevelopment functions, they said it would be hard to define what benefit a successor agency would receive.

Liu said the change probably wouldn't speed up the wind-down process unless it generated significant savings on a bond issue's interest obligations, or unless the debt was structured to be paid off faster.

On the other hand, Monroe and Liu said issuers that had lower ratings might see a benefit in reduced insurance costs.

Coren pointed to a separate new interpretation that could also affect ability to repay bonds. A DOF letter, dated April 2, suggested that the end of Redevelopment had also brought an end to a limitation that applies in project areas created before the AB 1290 reforms took effect in 1994. In those older project areas, bonds have been subject to limits on the total amounts of tax increment income that may be collected from project areas. According to the April 2 letter, the DOF "advises county auditor-controllers to not apply tax increment caps to bar payment of Finance-approved enforceable obligations" if those caps had not been reached as of Redevelopment's dissolution. DOF's interpretation, if correct, removes one possible barrier to paying off bonds for older project areas.

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## >>> Fitch announces improved outlook

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However, Coren wrote that “The release of the Dept. of Finance letter triggered a discussion of the issue by the [California Redevelopment Association] Technical Committee. The bond counsel members of the committee expressed reluctance to rely on the Finance letter as it has no force in law.” Some question remained whether a successor agency might still need to set aside funds in escrow to be sure of meeting payments as of scheduled deadlines.

The Fitch analysts said they rated refunding bonds issued by the Morgan Hill successor agency in November. They mentioned a privately placed issuance and another in progress that they could not discuss by name, and noted that Standard & Poor’s has rated several more.

Several large municipal successor agencies have now issued refunding bonds, including a pooled effort by Los Angeles County to coordinate several city-level successor agencies’ reissues.

### Links:

- *BusinessWire* press release on Fitch TAB ratings: <http://dlvr.it/5XxSbc>
- *BusinessWire* announcement on Oakley: <http://dlvr.it/5YRjBC>
- On the LA County bond refunding program: <http://ceo.lacounty.gov/RDD/122413%20Program%20Update.pdf> ; <http://ceo.lacounty.gov/rdd/Bond%20Refunding%20Program.pdf>
- The DOF April 2 letter is at [http://www.cp-dr.com/sites/default/files/DoF%20Ltr%20Limits\\_0.pdf](http://www.cp-dr.com/sites/default/files/DoF%20Ltr%20Limits_0.pdf).
- Subsequent Fitch ratings statement on Redding bonds that also referred to the announcement: <http://bit.ly/1okJSaq> ■

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# Why to read that Sacramento County court file soonest

BY MARTHA BRIDEGAM

If you think browsing court records in public policy lawsuits is a sensible use of time – and since you’re reading this publication, you may – here’s a warning that, if you don’t work in California or federal government, the best time to read court documents in Sacramento Superior Court is before July 1. On that date, unless local court officials relent, online case records will become expensively paywalled.

The fee plan, which is still tentative for now (comments are due June 6) has been criticized locally as a setback for public access, and as a special hardship for security companies and others conducting background checks or interested in criminal cases. The *Sacramento Bee*’s editorial board called it “unfortunate but not outrageous.”

But the fee plan’s effects extend far beyond the local concerns of one county. Sacramento County Superior Court judges regularly hear matters of statewide importance, including disputes that both affect and shed light on the deep levers of California power relations. In the area of land use, such topics include water rights, state authority over major public works, taxation, and the post-redevelopment wind-down. Concerned Californians throughout the state will now have to pay to research such matters unless they qualify for exemption as participants in the case researched.

Name searches will cost a dollar each, or somewhat less at bulk rates for frequent searchers. PDF document downloads will cost a dollar for each of the first five pages and 40 cents for each page thereafter, up to a maximum of \$40 per document.

Because of a fee exemption for California and federal governmental staff, private individuals and organizations will face a lopsided obligation to pay for research on cases where they are not direct participants.

The fee plan’s major way of accommodating researchers who can’t afford document fees will be to let them visit the courthouse in person and view records at kiosks. That may be practical if the case is, say, a Sacramento eviction and the researcher is a local Sacramento tenant researching a landlord’s course of conduct. It becomes less practical if the researcher is a civic activist living in Bakersfield and the case is, say, the document-heavy four-year litigation on the validity of the Monterey Plus Project that followed from the Monterey Amendment water rights agreement on water deliveries to Southern California. (This is the litigation that recently produced a decision invalidating the EIR for current management of the Kern Water Bank,

discussed at <http://www.cp-dr.com/node/3456>.)

An advantage of the new system is that people with accounts can subscribe to notifications of filings in cases whether or not they are participants. Also, a researcher who knows a case number (or a criminal defendant’s XREF number) may call up the case docket for free. It’s just name searches and documents that cost.

In news interviews and their own announcement memo, local court officials have attributed the paywalling to budget cuts and to the need to pay for the sophisticated new data portal that will be managing the paywalling process. The new portal won an award in November.

That same new portal, which went live in early April, is already requiring users to establish a free account to search for cases by party name or to download documents. Although searches and PDF downloads are currently free, they already must be obtained through an account that allows for “Purchases” of name searches and, for PDFs, a “Document Cart” and “Checkout” process. These processes take the user through the hair-raising step of racking up fees that would apply if the order were after July 1. In a major long-running litigation docket like the Monterey/Kern dispute, the cost for PDFs of the complex administrative and scientific record can get into thousands of dollars. Those thousands are currently hypothetical but as of July 1 they will be real enough.

Below is a starting list of Sacramento case numbers, and links to lists of Sacramento cases, on widely followed issues with statewide effect such as water disputes, high-speed rail and post-redevelopment disputes. Readers are invited to share more case numbers in comments at the foot of this article or on CP&DR’s Twitter account at [http://twitter.com/Cal\\_Plan](http://twitter.com/Cal_Plan).

## Links:

- Court notice describing the fee plan and explaining where to send comments by June 6: <http://bit.ly/1oHb0xj>
- November 2013 press release on the court’s award for its new access system: <http://bit.ly/1ji7hBc>
- Court site’s main explanation on the new fee system: <https://services.saccourt.ca.gov/PublicCaseAccess/>
- Public Case Access account creation page: <https://services.saccourt.ca.gov/PublicCaseAccess/Account/CreateAccountType>

– CONTINUED ON PAGE 10

## >>> Why to read that Sacramento County court file soonest

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- *Sacramento Bee* on the paywalling plans: <http://bit.ly/1jQJXzd>
- *Sacramento News & Review* on hardships for security companies: <http://bit.ly/1nyfQ2s>
- *Sacramento Bee* on implications for criminal courts research: <http://bit.ly/1sCUu3C>
- *Sacramento Bee* editorial -- “unfortunate but not outrageous”: <http://bit.ly/1jwY2SM>

### Starting list of cases and case numbers:

- Sacramento Superior Court Complex Case Calendar: <http://www.saccourt.ca.gov/civil/complex-case-calendar.aspx>  
Dispute between San Diego County and some cities in the county over post-redevelopment tax revenues: *City of Chula Vista v. Sandoval*, Case No. 34-2014-80001723
- Dispute, currently on appeal, over the validity of California’s cap-and-trade program:  
*California Chamber of Commerce v. California Air Resources Board*, Case No. 34-2012-80001313 and 34-2012-80001464
- Monterey Plus and Kern Water Bank litigation described above, in two companion cases:  
*Central Delta Water Agency, et al. v. CA Dept. of Water Resources*, Case No. 34-2010-80000561  
*Rosedale-Rio Bravo Water Storage District v. CA Dept. of Water Resources*, Case No. 34-2010-80000703
- Challenges to the validity of High Speed Rail bond financing, now on appeal with 3d Appellate District (see news coverage at <http://cbsloc.al/1jihRIn>):  
*John Tos vs. California High Speed Rail Authority*,

Case No. 34-2011-00113919

*High Speed Rail Authority v. All Persons Interested...*,  
Case No. 34-2013-00140689

- Challenges to the Merced-Fresno section of the High-Speed Rail project in litigation that is now mainly concluded: Case Nos. 34-2012-80001165, 34-2012-80001166 and 34-2012-80001168
- The key opening post-Redevelopment case, *League of CA Cities v Matosantos*, decided in December 2013 (Many documents at <https://www.cacities.org/AB1484lawsuit>): Case No. 34-2012-80001275
- The key post-Redevelopment clawback case, recently also appealed, of *City of Brentwood v. CA Dept. of Finance*, discussed at <http://www.cp-dr.com/node/3478>: Case No. 34-2013-80001568. (Direct link to online docket: <http://bit.ly/1kdSwmQ>.)
- Post-Redevelopment successor agencies’ disputes with the state Department of Finance, all in Sacramento county courts, summarized with case numbers at the Gibson Dunn site: <http://bit.ly/1mMsRP9>
- May 15 summary of post-Redevelopment court cases by the League of California Cities site, naming Sacramento County Superior Court judges and departments, and case numbers minus the uniform Sacramento County prefix of “34-”: <http://bit.ly/SfrHFh>.
- Verizon’s property tax dispute with 38 California counties:  
*Verizon California Inc. v. California State Board of Equalization, et al.*, Case No. 34-2014-00157245

Readers, what other cases of statewide importance would you add? Please offer any suggestions in comments at <http://www.cp-dr.com/node/3488>. ■

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# Governor's May Revisions move some on IFD choices, not much on housing

BY MARTHA BRIDEGAM

The traditional May Revisions to Gov. Jerry Brown's budget proposal offer a big financing possibility for Infrastructure Financing Districts (IFDs), but relatively shallow support for efforts to finance and protect housing specifically.

The Governor's "May Revise" proposal would "clarify" that cities and counties could securitize their Vehicle License Fee (VLF) Swap income to finance the Governor's proposed "Enhanced" IFDs, potentially doubling the districts' power over tax revenue. The proposal would allow such districts to support housing among other purposes, and would provide some protections to keep housing affordable, but the proposal offers no real replacement for Redevelopment's former 20% housing set-aside.

The proposal would let alone the existing, relatively limited provisions for IFD creation that have been available to municipalities for years. Separately, it would authorize "Enhanced IFDs" with the new characteristics the Governor previously proposed, plus a few more. Features already on the table include a broadened list of project categories that IFDs could finance, and a requirement of a 55% approval vote instead of the existing two-thirds requirement. (See <http://www.cp-dr.com/node/3480> for details.)

The "May Revise" includes a nod to the broadly expressed objection that IFDs would not replace Redevelopment's former 20% set-aside of tax increment funds for low- and moderate-income housing. The new proposal would not actually require Enhanced IFDs to build housing, but it at least would allow such districts to finance affordable housing and would require long-term affordability covenants of 45 to 55 years for any affordable housing created or replaced. It would "clarify" that the districts "must replace any low- or moderate-income housing that is removed as part of a project plan, as is required under current IFD law".

While the housing concessions go a little farther than before, they didn't impress some affordable housing proponents. The Western Center on Law and Poverty posted a critical analysis of the May Revise proposal as a whole, saying it "fails to invest in poor Californians." Alongside criticisms of health and public benefits provisions, it said the May Revise "provides little in the way of new housing proposals." It said the May proposal for Enhanced IFDs "proposes some better housing protections... but there was essentially no movement on the litigation quid pro quo," meaning the continuing proposed requirement that jurisdictions wrap up their disputes with the state over distribution of ex-Redevelopment assets before using the Enhanced IFD mechanism.

The Western Center analysis said proposals for the use of cap-and-trade revenues, such as those by Senate President Pro Tem Darrell Steinberg, are "a focus for housing advocates," but the May Revise "contains no new proposals on the use of that funding and neither the Governor nor his staff addressed the issue."

Additionally, the new "Enhanced IFD" proposal would "clarify"

that "monies received by cities and counties pursuant to the Vehicle License Fee Swap may be securitized to fund Enhanced IFD projects" and that, if local voters approved, an Enhanced IFD could impose "new fees or assessments to support projects identified in an Enhanced IFD project plan."

In its largely positive response to the budget proposal, the California Economic Summit organization estimated that the VLF Swap securitization option "would nearly double the property tax share available to IFDs, making about \$400 million available each year for local infrastructure development."

Under the Governor's revised proposal, only Enhanced IFDs, not old-style IFDs, would carry the requirement that municipalities first resolve their disputes with the Department of Finance over the status of ex-Redevelopment assets and receive Findings of Completion on any required paybacks. The Governor's budget summary notes this distinction would give cities continuing access to the old-style IFD process regardless of their post-Redevelopment status. However, that's a minimal concession, since IFDs have only been approved three times in two decades; the Western Center analysis called the old mechanism "virtually unusable". (See <http://www.cp-dr.com/node/3433>.)

## For more details see:

- The Governor's May Revision budget proposal summary (Proposed IFD changes are at Page 63): <http://www.ebudget.ca.gov/FullBudgetSummary.pdf>
- The League of California Cities analysis: <http://bit.ly/1lDa76W>; <http://bit.ly/1nscfWV>
- *San Mateo Daily Journal* collecting several Bay Area legislators' written responses to the May Revise, including Mullin's: <http://bit.ly/1gfz7TO>
- The California Economic Summit response to the May Revise, including a link to figures on the VLF Swap possibility: <http://bit.ly/1lzOztp>
- Western Center on Law and Poverty responses: <http://bit.ly/1T16rZ> and <http://bit.ly/1lAtRQo>

## Further on state revenue predictions:

- Legislative Analyst's Office (LAO) suggesting actual state General Fund revenues may exceed the May Revise assumptions by more than \$2 billion: <http://lao.ca.gov/Publications/Detail/3017>
- *Sacramento Bee* on that LAO report: <http://bit.ly/1mLzMWj>
- LAO prediction, made earlier this May, that property tax revenues will rebound: [lao.ca.gov/Publications/Detail/3010](http://lao.ca.gov/Publications/Detail/3010)
- Cate Long's "Muniland" blog at Reuters with exegesis on the LAO property tax report: <http://reut.rs/1t8CWgd> ■

# legal digest

## Court looks to residents' wishes in pre-2014 mobile park conversions

BY MARTHA BRIDEGAM

When a mobile home park's owner proposes to convert it from space rentals to resident ownership, a local agency must "consider" the results of a survey of resident support. Residents have never had the definite right to prevent conversion by a vote -- not even under the new SB 510, which allows (but does not require) local agencies to disapprove conversions based on lack of majority tenant support. But resident surveys do carry some weight. How much?

In *218 Properties v. City of Carson*, California's Second District Court of Appeal considered two conversion applications, filed in 2009, in which majorities of survey respondents opposed conversion. Although SB 510 was not binding for cases of that vintage, the court viewed the newer law as "instructive on what the Legislature may have envisioned all along."

On that basis it found the Carson City Council properly disapproved a proposed conversion at the Park Granada Trailer Lodge, owned by 218 Properties, LLC, where 20 of 26 renters answered the survey and all 20 opposed conversion. However, it agreed with the trial court that the council should have allowed conversion of 225-space Imperial Avalon park, where only 82 residents responded to the survey: 46 against, 18 in favor, and "18 did not state an opinion".

In mobile home park conversions, the very first sale of a previously rented space removes the whole surrounding park from local rent control. (After that first sale, state-level protections, which may be less strict, still limit rent increases for low-income tenants in conversions under Government Code Sec. 66427.5.)

State law therefore requires a survey of residents' wishes as part of a local review to consider whether the park owner's true purpose in beginning to sell spaces is to switch entirely to resident ownership (viewed as legitimate) or only to end the application of local rent control (viewed as a "sham").

Reviewing pre-2014 conversion law, the court cited *Colony Cove Properties, LLC v. City of Carson* (2010) 187 Cal.App.4th 1487 and *Goldstone v. County of Santa Cruz* (2012) 207 Cal.App.4th 1038 for the rule that local agencies are entitled to base some part of their conclusions on the residents' wishes. It cited *Chino MHC, LP v. City of Chino* (2012) 210 Cal.App.4th 1049 for the countervailing rule that (in its own paraphrase) "a local agency may rely on the survey to find the conversion is a sham, but it may not make that finding based solely on a lack of majority support among the residents for the conversion." Under *Chino*, it said, either majority disapproval or the landlord's subjective wish to avoid rent control was not enough to stop a conversion.

In light of those cases plus the implications of SB 510, the court considered not only the surveys from the Park Granada and Imperial Avalon parks, but the overall realism of the respective owners' plans to convert to resident ownership. At the larger Imperial Avalon park, it said, the owner "expected to sell 25 to 35 percent of the park's lots to current residents in the first 180 days" -- but that was unlikely at Park Granada, where all the survey respondents opposed conversion and all or most residents were low-income. Lacking "overwhelming" evidence that the Park Granada property would truly convert

to full resident ownership, the court agreed the council had acted properly in disapproving that conversion.

Turning to an alternative argument by the city of Carson, the court found the Council also could not properly reject the Imperial Avalon conversion based on inadequacies in its required Tenant Impact Report. It agreed with the trial court that the Carson council could not properly second-guess a finding by the city's planning commission that the report was complete, and that if the council wanted more information it should have asked the owner for it before declaring the report insufficient.

In concurring, Presiding Justice Tricia A. Bigelow relinquished her prior dissenting opinion in an unpublished 2010 case, *Carson Harbor Village, Ltd. v. City of Carson*, Case No. B211777, which, she wrote, was later denied review by the Supreme Court. She had argued that Sec. 66427.5 as it then stood did not allow a local agency to reject a conversion based on opposition in a residents' survey. Now, she wrote, in light of subsequent rulings and developments, "that view will no longer carry the day," and at any rate "Cases going forward... will need to be addressed under the new statute."

The case is at <http://www.courts.ca.gov/opinions/documents/B241969.PDF>.

Staff reports from the Carson Planning Department on the parks are at <http://carson.ca.us/content/files/pdfs/planning/sr/2010-03-09/71207.pdf> and <http://ci.carson.ca.us/content/files/pdfs/planning/sr/2010-02-23/mobl.pdf>. ■

## SCOTUS review denial upholds LA County runoff liability

BY MARTHA BRIDEGAM

The Supreme Court's refusal to review a Ninth Circuit ruling has fastened responsibility more tightly on Los Angeles County and its flood control district for pollution in untreated runoff from city streets that travels through storm sewers to the Los Angeles and San Gabriel Rivers. The Ninth Circuit ruling, issued last August, said the two government entities needed to do more than monitor the high levels of toxins and fecal coliform: when results showed that storm sewer flow into the rivers violated the terms of existing discharge permits, the county and the district had to respond.

The county had sought to diffuse responsibility for the high pollutant levels detected at its monitoring stations, arguing that part of the fault rested with private and public entities upstream whose drains feed into the county system.

The water quality journal *Stormwater* reported the county was preparing to impose fees to pay costs of the cleanup, "an estimated \$8 billion over 20 years."

The ruling was a victory for two plaintiffs: the National Resources Defense Council and LA Waterkeeper (captioned under its former name, Santa Monica Baykeeper).

The matter now returns to federal district court for proceedings on the remedies portion of the case, which was stayed pending the decision on liability.

The *LA Times*' Bettina Boxall writes that LA County is already working on "green infrastructure" efforts to mitigate runoff in new projects, and "The county and cities are considering construction of regional infiltration basins to collect runoff to recharge aquifers."

### Links:

- Bettina Boxall, *LA Times*: <http://lat.ms/1qawNCb>
- NRDC statement: <http://www.nrdc.org/media/2014/140505.asp>
- *Stormwater* journal report: [http://www.stormh2o.com/SW/Forum/Paying\\_for\\_the\\_LA\\_Cleanup\\_1965.aspx](http://www.stormh2o.com/SW/Forum/Paying_for_the_LA_Cleanup_1965.aspx)
- LA Waterkeeper: <https://lawaterkeeper.org/news/>
- SoCal Public Radio: <http://www.scpr.org/news/2014/05/05/43977/supreme-court-says-la-county-is-responsible-for-st/>
- Underlying 9th Cir. opinion: <http://cdn.ca9.uscourts.gov/datastore/opinions/2013/08/08/10-56017.pdf>
- Supreme Court docket: <http://www.supremecourt.gov/search.aspx?filename=/docketfiles/13-901.htm> ■

## 9th Cir upholds Salton Sea summary judgment

BY MARTHA BRIDEGAM

The Ninth Circuit ruled May 19 that Imperial County and its Air Pollution Control District had standing to sue the Department of the Interior over its Environmental Impact Statement allowing contracts for diversion of Colorado River water from the Imperial Valley to Southern California coastal water systems, principally San Diego's. However, it found the EIS was not wrong under the National Environmental Policy

Act, and so the transfers properly went through.

The concern in the EIS was that diverting water away from the Salton Sea would shrink it, exposing more fine dust along its shores and worsening local air quality. Finding that the district court made the right decision for partly wrong reasons, the Ninth Circuit upheld the lower court's grant of summary judgment

to throw out the case.

The Associated Press reported "Critics sued on similar grounds in state court and lost." <http://bit.ly/1iLSQgg>

The case is *State of California ex rel. Imperial County Air Pollution Control District v. U.S. Department of the Interior*, at <http://cdn.ca9.uscourts.gov/datastore/opinions/2014/05/19/12-55856.pdf>. ■



## Environmental groups appeal Tahoe challenge to 9th Circuit

BY MARTHA BRIDEGAM

The weary battlers over Lake Tahoe's Regional Plan Update (RPU) are in for another round. On May 7 the Sierra Club and Friends of the West Shore appealed the decision by U.S. District Judge John Mendez that upheld the 2012 RPU as appropriately reconciling current scientific and regulatory practice with the prior 1987 Regional Plan scheme and overarching environmental law.

Earthjustice, the environmental nonprofit firm representing the plaintiffs, issued a statement based on elements of its district court arguments, saying the RPU is too optimistic about its own effects on the lake basin environment, and that its incentives to replace "aging, poorly located" projects with denser, better-mitigated urban ones will allow too much construction to serve the lake overall. It quoted Tahoe area Sierra Club leader Laurel Ames as saying the defendant Tahoe Regional Planning Agency (TRPA) "has abandoned its

core mission to restore and protect Lake Tahoe's environment."

TRPA issued a cool response quoting Executive Director Joanne Marchetta as saying, "While the appeal makes its way through the legal process, we will continue to put the substantial environmental benefits of the plan into place." In a *Tahoe Daily Tribune* opinion piece, Steve Noll, former board chair of the Lake Tahoe South Shore Chamber of Commerce (TahoeChamber), wrote in part, "While for many of us this is disheartening I believe that the science utilized by the TRPA in the RPU was solid, and that common sense will again prevail."

Links:

- Some of CP&DR's prior coverage on the plan and the dispute: <http://www.cp-dr.com/node/3471>, <http://www.cp-dr.com/node/3435> and <http://www.cp-dr.com/node/3223>.

- *Tahoe Daily Tribune* coverage: <http://www.tahoedailytribune.com/news/11331878-113/plan-lake-regional-tahoe>
- Earthjustice's statement: <http://earthjustice.org/news/press/2014/conservation-groups-continue-to-fight-to-protect-lake-tahoe-from-development>
- TRPA's response: <http://www.trpa.org/11354/>
- Response from Steve Noll of TahoeChamber: <http://www.tahoedailytribune.com/southshore/11342023-113/plan-tahoe-area-regional>
- Short news report, long debate in comments thread, *Lake Tahoe News* – worth a glance as indicator of continuing strong local sentiment: <http://www.laketahoenews.net/2014/05/trpa-regional-plan-court-decision-appealed/> ■

## Pomona can sue business for 1920s-50s fertilizer imports

BY MARTHA BRIDEGAM

The Ninth Circuit will let the City of Pomona return to trial court with testimony by an expert witness on the likely origins of perchlorate molecules in the city's water supply. The court's opinion said Dr. Neil Sturchio of the University of Illinois at Chicago had offered testimony, based on "stable isotope analysis," that – in the court's paraphrase – the "dominant source of perchlorate in the Pomona groundwater is from the Atacama Desert in Chile" and had "the same distinctive isotopic composition" as perchlorate in naturally formed sodium nitrate fertilizer that the defendant, SQM North America, "imported into southern California from

Chile... between 1927 and the 1950s."

In an evidentiary hearing under *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), the district court had excluded Dr. Sturchio's testimony as unorthodox, taking the heart out of the city's case. The Ninth Circuit, however, found Dr. Sturchio's methods were sufficiently reliable, scientifically acceptable, and capable of being re-tested by others, to make his testimony at least worth hearing.

The appellate ruling further agreed with the district court that the case should not be thrown out based on either

the statute of limitations or SQM North America's argument that Pomona's claim was barred by the "economic loss rule" for being insufficiently direct. The Ninth Circuit found Pomona's suit could go forward because the city had a direct enough property claim on its groundwater rights, and a strong enough argument that recent discovery of the problem made the timing of its suit acceptable.

The case is *City of Pomona v. SQM North America Corp.*, at <http://1.usa.gov/PYHyqf>. ■

# Legislative Roundup: Cap and Trade comes down to the wire

BY MARTHA BRIDEGAM

The transit-focused housing proposal from Senate President Pro Tem Darrell Steinberg, D-Sacramento, was being portrayed as the main state-level hope for new affordable housing funds this legislative season. Redevelopment is gone, Gov. Brown's proposed successor institutions to Redevelopment are weak on housing, bond funds for housing are running low, and the veterans' housing bond issue on the June ballot carves out a sympathetic subpopulation rather than address the whole need.

So that leaves Steinberg's proposal for the proceeds from state cap-and-trade carbon auctions, which as proposed in April emphasized transit-oriented development and "smart growth", and called for at least 20% to go to affordable housing. We summarized the plan in April at <http://www.cp-dr.com/node/3477>.

The Sacramento Bee's *Dan Walters* wrote (See <http://bit.ly/1h9bbT0>) that three proposals had actually emerged: Steinberg's, the prior proposal by Gov. Jerry Brown, and a version adopted by the Senate Budget and Fiscal Review Committee as of May 23 with \$450 million for transit and rail and some "sustainable communities" funding. The League of California Cities had a report as of May 21 at <http://bit.ly/1jXKnVY>.

The Governor's cap-and-trade proposal emphasizes high-speed rail, other transportation, and varied further projects with environmental preservation aspects (but with \$100 million for grants via the Strategic Growth Council). It hasn't

budgeted much in the May Revise per the League of Cities summary at <http://bit.ly/11Da76W>.

Backers of the Steinberg plan are promoting a study by the advocacy group TransForm (see <http://bit.ly/11kA5M8>) reporting that poorer people who live near transit are more likely to use it than richer neighbors with the same access. See *StreetsblogLA* at <http://bit.ly/1hZ78Dp> for details, but also for a thoughtful argument in comments about whether U.S. transit construction patterns may put "transit villages" too near polluting freeways, with health consequences for residents.

Meanwhile the Air Resources Board issued its greenhouse gas emissions inventory for 2012 in a bouncy press release at <http://bit.ly/1oP4AMF>, but as parsed by the Environmental Leader publication at <http://www.environmentalleader.com/2014/05/19/california-emissions-rise-1-6/> it shows a 1.7 percent increase from 2011 to 2012 in total greenhouse gas emissions – see also the main report at [http://www.arb.ca.gov/cc/inventory/pubs/reports/ghg\\_inventory\\_00-12\\_report.pdf](http://www.arb.ca.gov/cc/inventory/pubs/reports/ghg_inventory_00-12_report.pdf).

Governor Brown is still stumping for his high-speed rail project, which he seeks to back with a large proportion of cap-and trade revenues, recently defending it passionately to the *San Francisco Chronicle* editorial board: <http://bit.ly/1sNWTH7>. The estimated cost of the Fresno-to-Bakersfield segment rose another billion dollars in early May to

\$7.13 billion according to the *LA Times* at <http://www.latimes.com/local/la-me-bullet-train-costs-20140508-story.html>. However, the state High Speed Rail Authority has approved the project's 20,000-page environmental impact report for that segment (<http://bit.ly/1o0UvyS>). Per the *LA Times*, "Construction on the first 29-mile segment through Fresno is supposed to start by July."

## A Prop 13 breakthrough?

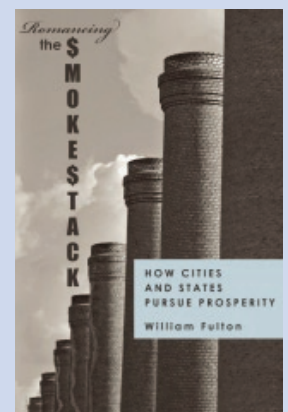
**AB 2372**, by Assemblymember Tom Ammiano, D-San Francisco, and Assembly Revenue & Taxation Committee Chair Raul Bocanegra, D-San Fernando Valley, has won surprising support from business and antitax groups, even the Howard Jarvis Taxpayers Association, for a compromise that represents new willingness to nibble at the edges of Proposition 13. The measure would not disturb California's generations-old property tax freeze at its core, but would stop businesses from ducking reassessments of their new real estate purchases by dividing up formal ownership of new properties.

The *San Francisco Bay Guardian* weekly credited the crucial difficult work of the negotiation to Bocanegra: <http://bit.ly/1qR5I7n>. The *LA Times* has more background at <http://lat.ms/1jPJusv> and, on the Jarvis organization's historic concession, at <http://lat.ms/1mpihSR>. The state's tracking page on the bill with text, status and a committee analysis is at <http://bit.ly/1i0mbN1>. It passed out of the Assembly suspense file May 23.

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## Romancing the \$Smoke \$tack How Cities And States Pursue Prosperity

*Bill Fulton's Book On Economic Development*



## >>> Legislative Update: SB 1260 held off floor

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To antitax groups, the measure could be more a lesser evil than a desired goal. Former *LA Times* reporter Anthony York asked on his Twitter feed if the Jarvis group was “preempting split roll, or stoking momentum?” <https://twitter.com/anthonyyork49/status/466609572653051904>.

The *Sacramento Bee*’s Dan Walters likewise suggested at <http://www.sacbee.com/2014/05/13/6402618/the-buzz-compromise-reached-on.html> that “The deal falls well short of a full ‘split roll’, which would completely remove Proposition 13’s limits from business property, long a goal of liberal groups.”

A bill actually is afoot in the Legislature that opponents are calling “split roll” but it’s arguably not a “full split roll” either – it’s only an effort to legislatively overrule the 2013 case of *Borikas v. Alameda Unified School District* (analysis from Meyers Nave at <http://bit.ly/1IXJM5d>, text at <http://www.courts.ca.gov/opinions/archive/A129295A.PDF>.) Sen. Lois Wolk’s **SB 1021** would allow school districts to impose variable rate parcel taxes according to property type. It has drawn opposition from the California Apartment Association (see [http://www.caanet.org/news\\_events/caa-keep-fighting-split-roll-parcel-tax-fund-school-districts/](http://www.caanet.org/news_events/caa-keep-fighting-split-roll-parcel-tax-fund-school-districts/)) and an April legislative analysis lists a long string of further antitax and business opponents. The measure further seems to be a popular punching bag for right-wing bloggers online. However, it has passed the state Senate and went to its first Assembly committee on May 12.

### If you’re keeping score at home: a suspense file tally

The California Special Districts Association posted spreadsheets on Dropbox of bills’ fates in the May 23 hearings on Assembly and State Senate suspense files. See <http://bit.ly/1tKgJVX> for the Assembly and <http://bit.ly/1nsbj2l> for the Senate.

One edgy bill that made it through was **SB 1132**, the anti-fracking measure by State Sens. Holly Mitchell and Mark Leno.

It passed with clarifying amendments. For more see <http://www.cp-dr.com/node/3475> and <http://bit.ly/RiQt7c>. Mitchell, a Los Angeles Democrat, has expressed concern for her district as close to “the largest urban oil field in the country” in Inglewood.

**SB 1260**, the DeSaulnier bill for a 25% affordable housing set-aside requirement on either Redevelopment-type or IFD tax-increment districts, did not make it off the suspense file at the May 23 Senate Appropriations hearing.

Another ambitious housing bill, **AB 2175** (Daly & Ting) to strengthen renters’ rebates, also stayed stuck in the Assembly suspense file May 23.

### Additional bill standings

Here’s a review in links of some state-level legislation we’re following that’s relevant to land use, housing and the environment. In addition to the links provided here, the “Bill Information” section at <http://leginfo.legislature.ca.gov/> has status updates and texts for all bills and helpful legislative analyses for most.

**AB 1537 (Levine)** - This bill to change Marin County’s status from urban to suburban would reduce default zoning densities for the county from 30 to 20 units. The Marin IJ has analysis at <http://bit.ly/TQD1Jd>. The measure passed the Assembly May 19 and was awaiting committee assignment in the Senate Rules Committee.

**SB 968 (Hill)** - Billionaire Vinod Khosla has reportedly hired lobbyists to fight SB 968, Sen. Jerry Hill’s bill to have the State Lands Commission negotiate the purchase from Khosla of Martin’s Beach, a popular privately owned beach in San Mateo County that Khosla closed to public access. The public had long been allowed to visit there for the cost of parking in a private lot. (See <http://bit.ly/1pv2UIs>.) Despite a reported lobbying push against the measure, SB 968 made it out of the Senate Appropriations suspense file May 23 by a vote of 5-2.

**SB 270 (Padilla)** - State Sen. Alex Padilla, also a candidate for California Secretary of State, continued to advance his bill for a statewide plastic bag ban, SB 270. *Sacramento Bee* columnist Mariel Garza wrote this weekend at <http://www.sacbee.com/2014/05/18/6411959/mariel-garza-ban-single-use-plastic.html> that Padilla was facing attack ads from the plastic industry over the matter. But the bill has passed the Senate, has survived one Assembly committee vote, and next goes to Assembly Appropriations.

### AB 2493 (Bloom) - Post-Redevelopment funds retention

This bill by Assemblymember Bloom, D-Santa Monica, would return some \$750 million to successor agencies to finish redevelopment projects. By the end of April it had passed two Assembly policy committees and had passed out of the suspense file at Assembly Appropriations. For Bloom’s comments in the local *Santa Monica Lookout* see <http://bit.ly/1jwkF9e>. The League of California Cities, which supports it, has a tracking page and support letter at <http://bit.ly/Q8J612>.

### SB 1129 (Steinberg) - Post-Redevelopment cleanup

SB 1129, a post-redevelopment cleanup bill with League of California Cities support, would give cities’ successor agencies more authority in several areas, notably to enter contracts. It was heard May 5 in Senate Appropriations and passed out of the suspense file with amendments on May 23. For an endorsement statement by the City of Glendale see <http://bit.ly/SvBvzv>. The League’s comments on this and a crop of other March-introduced bills on the Redevelopment wind-down are at <http://bit.ly/1igufww>.

**SB 1 (Steinberg)** - Emphasizing transit-oriented “smart growth” in a quasi-revival of Redevelopment. Remains on the “Inactive” file. For background on this and other efforts to fill the vacuum left by Redevelopment’s demise see <http://www.cp-dr.com/node/3480>

**AB 2280 (Alejo)** - This bill to re-create some elements of Redevelopment with a

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## >>> Legislative Update: CEQA appeal limit failing?

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housing emphasis passed the Assembly May 8 and was referred to two Senate policy committees. See League of Cities analysis at <http://bit.ly/OUOtRg>.

**SB 33 (Wolk)** - SB 33, which would remove the requirement of a popular vote from infrastructure finance districts, remained formally dormant but still informally under consideration, as discussed at <http://www.cp-dr.com/node/3480>.

**AB 2729 (Medina)** - Would expand use of the California Infrastructure and Economic Development Bank, or “I-Bank” to finance more infrastructure surrounding shipping and transport. Brought to a hearing for discussion April 22 but not moving at present.

### **AB 1404 (Leno) - San Francisco Redevelopment housing backlog**

The San Francisco-specific SB 1404, originated by the city government, passed the State Senate May 12 and went to two Assembly policy committees. The measure would both require and allow the successor to the city’s redevelopment agency to replace over 5000 units of affordable housing that were destroyed during 1955-1975 “urban renewal”. See <http://www.cp-dr.com/node/3480>.

### **AB 2292 (Bonta) - Freight Rail, redevelopment sites**

AB 2292, per the Assembly Local Government committee’s analysis, would “allow an infrastructure financing district [IFD] in the Oakland Army Base, Howard Terminal or Coliseum City in the City of Oakland to finance public capital facilities or projects that include freight rail.” All three sites are subjects of major redevelopment planning; the latter two are competing sites for pro sports stadiums. (See <http://www.cp-dr.com/node/3476>.) Per the author’s statement in the analysis, “we need to include freight rail as an eligible expense for IFDs” to improve the city’s transportation capacity and emissions reduction through rail use. The measure was ordered to a third reading in the Assembly on May 23.

### **AB 2549 (Ridley-Thomas) - Milpitas**

The Assembly has passed AB 2549, to create a local commission to address Milpitas’ especially deep post-Redevelopment funding losses. It is before the State Senate’s Governance and Finance Committee.

### **SB 391 (DeSaulnier) - Affordable housing via recording fees**

SB 391, which would raise funds for affordable housing with real estate recording fees, remains formally before Assembly Appropriations, having passed the Senate last year. It did not go anywhere in the May 23 suspense file hearings.

### **AB 2417 (Nazarian) - Recycled water**

AB 2417, on “purple pipe” distribution of recycled water, passed the Assembly May 23 and moved to the Senate. It would create an exemption from CEQA for new or existing recycled water pipelines of less than eight miles. The Association of California Water Agencies (ACWA), which backs the measure, had background in April at <http://www.acwa.com/news/state-legislation/acwa-sponsored-ab-2417-clears-first-committee>.

### **AB 1739 (Dickinson) - Groundwater management**

Another ACWA-backed bill, AB 1739, passed out of the suspense file May 23. Per the water committee’s legislative analysis it would require “sustainable groundwater management in all groundwater subbasins determined by the Department of Water Resources... to be at medium to high risk of significant economic, social and environmental impacts due to an unsustainable and chronic pattern of groundwater extractions exceeding the ability of the surface water supplies to replenish the subbasin.” See <http://www.acwa.com/news/groundwater/assembly-committee-approves-groundwater-legislation>

**SB 1077 (DeSaulnier)** - SB 1077, which calls for a tax based on vehicle miles traveled, made it out of the suspense file May 23. The Southern California Association of Governments has been talking it up (see <http://bit.ly/1nkxKTG>) but the measure was questioned last

fall on privacy grounds (see <http://lat.ms/1jwnuHj>).

**SB 1439 (Leno) - Ellis Act restrictions**  
State Sen. Mark Leno’s Ellis Act restriction measure, SB 1439 (discussed previously at <http://www.cp-dr.com/node/3477>) now has a heavy weight of tech industry endorsers behind it (see <http://beyondchron.org/news/index.php?itemid=12611>). The measure went to a third reading May 13 in the Senate. Assemblymember Tom Ammiano’s **AB 2405**, which would have limited the Ellis Act more strongly and provided tenant litigants with other procedural protections, failed to clear the Assembly Judiciary Committee on April 29.

### **SB 1451 (Hill & Roth) - CEQA procedural restrictions**

A widely shared commentary by the Miller Starr Regalia law firm was advocating for SB 1451, which would limit the ways petitioners could place allegations of CEQA violations on the record. Principally, it would exclude allegations from court review if the alleged violations were known, or could have been known with reasonable diligence, during the public comment period, but were brought to the agency’s attention at another time. The legislative summary and the Miller Starr essay describe the measure as designed to stop use of “document dumping” as a tactic to delay a decision or preserve a record. A committee hearing was canceled, however, and the Miller Starr firm reports the bill may be dead for the season. See <http://bit.ly/SfjoZW>

### **SB 69 (Roth) and AB 1521 (Fox) - Restore Vehicle License Fee revenue**

These two somewhat different measures, both supported by the League of Cities (and discussed previously at <http://www.cp-dr.com/node/3464>), would restore features of the 2004-2005 budget deal’s “VLF-property tax swap” and transfer back vehicle license fee income to local jurisdictions, undoing the work of 2011’s SB 89, which repurposed the vehicle license money to help with “realignment” additions to the functions

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## >>> Legislative Update: VLF swap bill moves ahead

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of county carceral systems. (Compare [http://www.cdcr.ca.gov/about\\_cdcr/docs/realignment-fact-sheet.pdf](http://www.cdcr.ca.gov/about_cdcr/docs/realignment-fact-sheet.pdf).) The two current bills would especially help recently created municipalities such as Jurupa Valley. Per an AB 1521 legislative analysis, “SB 89 had the effect of eliminating over \$15 million in the Motor Vehicle License Fee (MVLFA) revenues in 2011-12 from four newly incorporated cities (Menifee, Eastvale, Wildomar, and Jurupa Valley).” SB 69 passed the Senate last year, but with a different text focused on education funding. It was amended to substantially its current form in September 2013, then sat with formally unchanged status until it began to move in the Assembly a few weeks ago. It was read a second time and amended in the

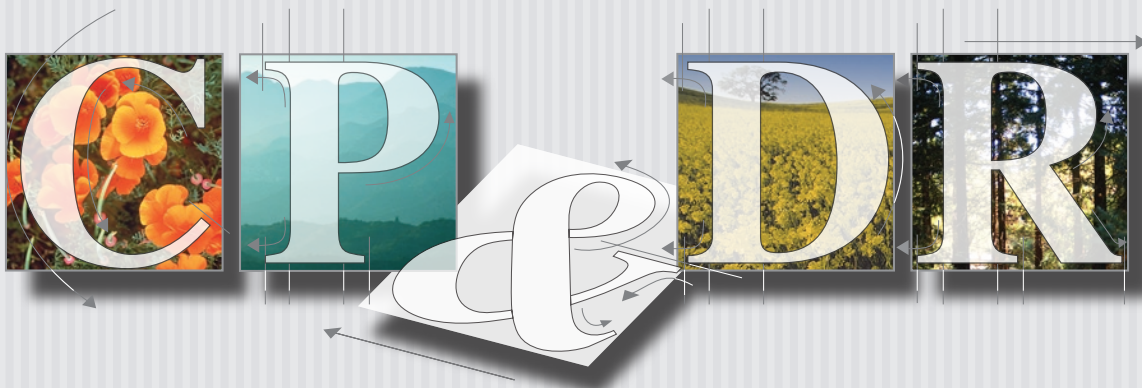
Assembly on May 6 and moved to the Rules Committee. AB 1521 made it off the suspense file May 23 in the Assembly. It passed the Assembly May 27.

### **AB 1513 (Fox) - Residential property: possession by declaration**

The California Association of Realtors was sponsoring a measure, also supported by the California Police Chiefs Association, described as meant to assist landlords, security companies and police in removing squatters from vacant properties. It would allow a landlord to declare ownership of a property, register it as vacant, and challenge allegedly unauthorized occupants to obtain or present proof of a right to remain within 48 hours. Some tenant activists had begun

campaigns against the measure because they argued it could create an extrajudicial eviction process, giving landlords an end run around the more procedurally complex and time-consuming procedures of the standard California “unlawful detainer” eviction. (See e.g. <http://bit.ly/RjmiN5> and <http://killthebillcoalition.com/about/>) Assembly bill analyses as posted on the measure’s official page at <http://bit.ly/1iooOZ2> set out the dispute in detail. Opponents listed as of the May 16 floor analysis included the statewide Tenants Together group and the Western Center on Law and Poverty. The measure passed the Assembly May 19 and is with the Senate Rules Committee for assignment. ■

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# Land Use Ballot Measures

BY CP&DR STAFF

A small mixed bag of land-use ballot measures will appear on local ballots around the state next week. Perhaps most significant are a referendum on a community plan near the shipyards in San Diego and a proposed height limit in San Francisco. A variety of smaller cities will be voting on water districts, paid parking kiosks, bridges, small development projects, a farmer's market structure near a Frank Lloyd Wright civic center, and even a sales tax for lake cleanup. Here's the statewide rundown:

## Lake County

Measure L would increase sales tax in the county by a half-cent for 10 years to pay for the eradication of weeds, algae and invasive mussels from Clear Lake, the restoration of wetlands in the county and the improvement of water quality. Because it's a tax, a two-thirds vote is required. [http://ballotpedia.org/Lake\\_County\\_%22Healthy\\_Lake\\_Tax%22\\_Sales\\_Tax,\\_Measure\\_L\\_\(June\\_2014\)](http://ballotpedia.org/Lake_County_%22Healthy_Lake_Tax%22_Sales_Tax,_Measure_L_(June_2014))

## Los Angeles County

### *City of Monterey Park*

Measure A asks Monterey Park voters to approve a general plan amendment and a rezoning of commercial land to permit the Olson Co. to construct an 80-unit residential development on an undeveloped 9-acre parcel of land on Potrero Grande Drive near Resurrection Cemetery, must off the 60 freeway. The vote is required by a 1982 city ballot measure that

requires voter approval for a change in land use designation. Olson is a Seal Beach-based developer that specializes in townhome and small-lot-single-family infill projects. More information at the following City Council staff report: <http://www.ci.monterey-park.ca.us/AgendaCenter/ViewFile/Agenda/02192014-569>

### *City of Signal Hill*

Voters in the small City of Signal Hill, near Long Beach, will decide the fate of Measure U, to require a 2/3 vote for all "taxes, assessments and fees" and sunset them after 10 years. See <http://bit.ly/1wf6H1h>. Measure U is supported by a group called Signal Hill Community First (<http://www.signalhillfirst.org/>) The *Long Beach Press Telegram* reports supporters lost a challenge to the way the city presented the measure on the ballot: <http://bit.ly/1nkMTnX>. It's unclear whether the measure would apply to impact fees and other fees developed as part of the land-use process. The city claims it will lose 13% of local tax revenue as a result of the measure; proponents say the measure will not apply to all city fees.

## Marin County

Marin county's Measure B would create permanent structures for a farmers' market at Frank Lloyd Wright's historic Marin Civic Center building. The *Marin IJ* supports the measure and recounts some history of the prior referendum that led to strict voter-

approval requirements for changes around the Marin Civic Center building: <http://bit.ly/1ns5gLk>. See also <http://www.smartvoter.org/2014/06/03/ca/mrn/meas/B/> and a snarkier appraisal of the plan (with some cinematic history of the complex) at [http://www.northbaybiz.com/Columnists/Only\\_in\\_Marin/Organically\\_Grown.php](http://www.northbaybiz.com/Columnists/Only_in_Marin/Organically_Grown.php).

## Monterey County

The Monterey Peninsula Water Management District's Measure O would establish a policy preference in favor of a publicly owned water district. But a court ruled the ballot description couldn't say that Measure O would guarantee public ownership and save money. <http://www.cp-dr.com/node/3467>.

## Placer County

### *City of South Lake Tahoe*

South Lake Tahoe's Measure P, if approved, would end a kiosk-based parking fee program in busy tourist areas. See <http://www.cityofslt.us/index.aspx?NID=743>

## San Diego County

### *City of San Diego*

Propositions B and C are a referendum on the City Council's approval of the Barrio Logan Community Plan and associated changes in the zoning code. Industrial landowners placed the measures on the ballot after failing to reach a compromise with community-based organizations

## >>> Land Use Ballot Measures

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in the old neighborhood adjacent to the San Diego shipyards, where residential and industrial uses are intermixed. The issue is discussed at <http://www.cp-dr.com/node/3473>. Recent debate has centered on whether the city-approved plan would actually make air quality worse: <http://voiceofsandiego.org/2014/05/19/fact-check-clearing-the-air-in-barrio-logan/>

*(Disclosure: William Fulton, publisher of CP&DR, is Planning Director for San Diego.)*

### City and County of San Francisco

Measure B, which would require a vote for all future height limit variances on the waterfront, lost some of its point when the Warriors basketball team management gave up their contested effort to build an arena on Piers 30-32 near the Golden Gate Bridge, and instead picked an arena site farther south in Mission Bay near Third and 16th Streets. Considerable future development plans are still at stake, however, notably for the old Union Iron Works property at Pier 70. For Measure B see <http://www.sfgov2.org/index.aspx?page=4279> and our February discussion at <http://www.cp-dr.com/node/3443>. On the Warriors see <http://bit.ly/Q9kLbg>. On Pier 70, which for years was a backwater of warehouses, studios and a huge car impound barn, see developer Forest City's plans at <http://pier70sf.com/> and

artist Wendy MacNaughton's impressionistic history of the place at <http://pier70community.com/>.

### San Mateo County

#### *Half Moon Bay*

The small San Mateo County coastal town of Half Moon Bay can often be counted on for lively land use ballot measures and this June's Measures E and F are no exception. Measure E – backed by the City Council – would allow the city to demolish Main Street bridge and build a new, wider bridge that would include accessible walkways. Measure F would call for more modest renovations of the bridge and require any future attempt to demolish the bridge to be approved by voters. The measure would also make preservation of the “historical, visual, and physical integrity (including appearance and character)” of the bridge the official policy of the city of Half Moon Bay. Caltrans recently gave the bridge a sufficiency rating of 24 out of 100. <http://www.smdailyjournal.com/articles/news/2014-05-20/council-control-of-bridge-up-for-vote-half-moon-bay-to-decide-whether-main-street-bridges-fate-is-in-public-hands/1776425123473.html>

### Santa Clara County

#### *City of Los Gatos*

If approved, Measure A would authorize the appropriate changes in zoning and construction code

regulations to allow a development project to go forward, creating two 65-foot tall buildings, two 50-foot tall buildings and a 35-foot tall parking garage at 90-160 Albright Way and 14600 Winchester Boulevard. Currently, the town's General Plan limits construction in this area to only 35 feet in height. (See <http://bit.ly/1puHMIP>, and see <http://www.cp-dr.com/node/3443> on the dispute over signature gathering that preceded the measure's placement on the ballot.)

### Santa Cruz County

#### *City of Watsonville*

Measure J in the City of Watsonville would require a citywide election to decide on the new names of any public places, such as parks, public buildings, bridges, plazas, courtyards and airports. The process would allow each of the seven City Council members to propose a name for the public place in question. The names would all be put before voters at an election, and the name that received the greatest number of votes would become the official name of that public place. The measure emerged from a 2010 plan to name Watsonville Plaza for Dolores Huerta of the United Farmworkers. See <http://bit.ly/1nv8vPK>. ■

## >>> The hydraulics of homelessness

— CONTINUED FROM PAGE 1

and to empty the “Story Road encampment” of habitation. And yet Perry said in mid-May the current population was higher than he’d ever seen it.

And that camp is only the largest of an estimated 66 encampments on the city’s waterways, housing at least 1230 people as of a January 2013 count.

These encampments are at the center of a slow collision. Strong civic and legal pressures to reduce pollution of the city’s waterways are up against equally strong civic and legal pressures to house or otherwise manage the city’s exceptionally large population of homeless people who live, not in shelters, but literally outdoors. Adding to these pressures is San Jose’s civic effort to maintain a public image as a prosperous place and to promote its urban streams as safe, pleasant sites for recreation and nature study, which reduces the number of places campers can go.

A glance at a terrain map (see <http://goo.gl/maps/EXPPw>) shows why San Jose shares in California’s old tradition of creekside encampments by marginalized people, and why civic planners could have reasons to wish otherwise. As Bramson says, the city has two “large riparian corridors and moderate temperatures,” hence lends itself to camping. (Mostly moderate, that is. Three people died of exposure in the city during last December’s cold snap. <http://bit.ly/1d6G0kk>) Coyote Creek and the Guadalupe River (and, less extensively, Los Gatos Creek) run for miles through suburban and urban neighborhoods, broadening frequently into parks. The waterways are logical choices for hidden campsites. They are also a logical focus for civic efforts to build a denser, more prosperous

urban core.

### Density without infrastructure

At present sanitation infrastructure is neither provided nor permitted for any of the camps except to the extent some may be near public parks with restrooms. People at the “Jungle” say they get drinking water from nearby fast food restaurants, gas stations, or householders’ outdoor taps. Showers are at friends’ homes or social service centers such as Grace Baptist Church, a mile away. In one advance, a city-assisted nonprofit, the Downtown Streets Team, has begun to work with currently and recently homeless “workexperience” crews to remove garbage from active encampments in cooperation with residents. However the city disfavors contact between housed cleanup volunteers and active encampments, and activists complain they have been discouraged from bringing dumpsters to the camp.

Coyote Creek, which has the most campers, is the most trash-blighted waterway in San Jose and probably the Bay Area. In 2012 Save the Bay singled out Coyote Creek as possibly the worst of five “trash hot spots” it said were in violation of the Clean Water Act. (See <http://www.savesfbay.org/bths-media-center>.) The creek is choked with “trash dams” of plastic, styrofoam food packages, and other debris. The water, when it can be seen at all, is not to be touched without precautions. Reliable reports that a few steelhead trout frequent its waters are a tribute to the heroism of fish.

The man who introduced himself as chief of security at the “Jungle” willingly supported cleaning up the water. Pointing out a knot of trash in the creek, he

## Guadalupe River Park: kids’ programs and salmon vs. encampments

Leslee Hamilton, executive director of the Guadalupe River Park Conservancy, says “The biggest challenge to me being successful in my job is the presence of homeless people.”

Hamilton speaks glowingly of the Conservancy’s programs in science and nature education, which reach about 4600 children a year. She says the program has a chance to inspire kids who have few other chances to study natural habitats. “Kids get off the bus here and their eyes get wide.”

But because of encampments, Hamilton said teachers sometimes feel unsafe and donors become concerned about safety. Though she saw the safety issue as “largely the perception,” its effect is major: a report of a survey on the Guadalupe River Park showed 30 of 76 people who answered open-ended questions “mentioned homeless issues, security and/or safety.”

Among campers she meets, she said, there truly are some who “I don’t feel safe interacting with.”

The Guadalupe River has been a subject of energetic camp evictions for more than 20 years, and was the subject of a flood-control and parks project on the Guadalupe River from 2001 to 2005. The project cost \$327 million, including \$99 million in Redevelopment funds -- sums that impose perspective on the homelessness response program budgets of a million or two at a time. (See <http://www.sjredevelopment.org/ProjectGallery/GuadalupeRiverFloodControlFacts.pdf>.)

Part of the Conservancy’s work is with the the area near the airport where the former large camp was evicted. It’s a former subdivision where houses were demolished because of their nearness to the runways. She said volunteers there were growing roses and orchards: “We’re slowly converting it to gardens.”

Detriments from continued encampments on the Guadalupe River are real, she said, ranging from runoff pollution to more inventive damage: shopping carts used as fish traps; makeshift stairs cut into the banks. A friend who does EIRs told her “someone would be in jail by now” if a business did anything similar. She pointed out a YouTube video dramatizing the contrasts: a naturalist who was fortunate to spot king salmon spawning in the urban reach of the river also filmed trash in the water nearby. [https://www.youtube.com/watch?v=SNMrODZ\\_Hgk](https://www.youtube.com/watch?v=SNMrODZ_Hgk)

Like many administrators speaking on the subject, Hamilton mentioned a need for better regional cooperation among the small and sometimes insular municipalities of the South Bay. She saw the Los Angeles region as an encouraging model.

Meanwhile, she noted, San Jose lost some affordable housing funds in the dissolution of Redevelopment, and rents kept going up. She had heard a developer say rents needed to rise even more downtown before it would “pencil out for him” to turn a downtown parking lot into housing. “Rents are so bloody high now, it’s just hard to imagine,” she said. ■

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## >>> Hydraulics: Clean water rules apply

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said, “Give me a job and I could help maintain a lot of the city’s property.” He welcomed a suggestion that portable toilets or dumpsters might relieve the camp’s sanitation problems, saying he could ensure they were looked after and kept clean.

Raul Hernandez, who may be the camp’s longest-term resident, said, “I have no clue why they want us all, you know, to be segregated into this location here and [that they would] not put in, like, garbage bins, not put in water, not put in toilet and shower, you know...”

And yet his friend “Baby James” Castaneda said the camp is “a place not really messed with because they’d rather have us all in one area than be out on the streets... I think less crime is happening, you know what I mean, because we have a place to stay.”

Their comments recalled an academic paper by Chris Herring, a sociology grad student at UC-Berkeley, titled “The New Logics of Homeless Seclusion.” Herring suggests large-scale U.S. encampments result from increased social exclusion and appearance-conscious policing that cause excluded people to group together, whether their sites are illicit or legalized, self-organized or formally administered (or even ominously fenced). He also argues that encampments, even when formally disapproved, are a convenience for authorities, keeping poor people out of

prosperous neighborhoods and providing settings for displays of official competence in the form of sweeps. <http://www.rc21.org/conferences/berlin2013/RC21-Berlin-Papers-4/24.1-ChrisHerring-1.pdf>

### Stormwater cleanup pressures

One source of regulatory pressure for cleanups is a deadline that falls later this year for stormwater discharge permittees in urbanized parts of the Bay Area, including Santa Clara County, to show they have reduced trash in watercourses 40% since the permit’s issuance in 2009. (See <http://bit.ly/1p8O8Kd>.) The requirement is under Provision C.10 of their shared Municipal Regional Stormwater Permit. A planning report from San Jose last January, also under Provision C.10, emphasized Coyote

Creek efforts including “Clean Creeks, Healthy Communities”. (See <http://bit.ly/1kgi6cl>.) The Municipal Regional Stormwater Permit is scheduled for renewal next year but has not yet begun its public hearing process.

San Jose shows strong official awareness of the trash problem, and of its contribution to worldwide pollution such as the Great Pacific Garbage Patch. The city hosted a “Trash Summit” on the implications last year: <http://www.stormh2o.com/SW/Forum/1823.aspx>

And there is apparently some political will to support clean water. A November 2012 “Safe, Clean Water” ballot measure (see <http://www.valleywater.org/SafeCleanWater/Report.aspx>) renewed a prior parcel tax for creek protection, flood control and cleanup that was passed in 2000. According to election news at

the time, it was to assess \$39 per home, raising \$548 million over 15 years. (See [http://www.mercurynews.com/ci\\_21943977/santa-clara-county-548-million-parcel-tax-flood](http://www.mercurynews.com/ci_21943977/santa-clara-county-548-million-parcel-tax-flood).)

Bay Area discussions proceeded in awareness that the Los Angeles regional water board has had more definite standards for trash in urban rivers for years. Under a 1999 consent decree settling environmental litigation, the local water board approved a trash TMDL (Total Maximum Daily Load limit) under the Clean Water Act for the Los Angeles River. See <http://www.epa.gov/waters/tmdl/docs/34863->

[RevisedStaffReport2v2.pdf](#). Trash TMDLs now exist for several major watercourses in the Los Angeles region: [http://www.waterboards.ca.gov/water\\_issues/programs/tmdl/](http://www.waterboards.ca.gov/water_issues/programs/tmdl/)

As discussed elsewhere in this issue, a denial of Supreme Court review recently added authority to last year’s Los Angeles County stormwater cleanup decision in *NRDC v. County of Los Angeles*, available at <http://cdn.ca9.uscourts.gov/datastore/opinions/2013/08/08/10-56017.pdf>. The decision places responsibility for cleanup of the Los Angeles and San Gabriel Rivers on Los Angeles County, and reportedly has the county considering how to raise as much as \$8 billion over 20 years, possibly through stormwater fees imposed on individual properties – see [http://www.stormh2o.com/SW/Forum/Paying\\_](http://www.stormh2o.com/SW/Forum/Paying_)



A “TRASH DAM” ON COYOTE CREEK AFTER A MORNING’S CLEANUP WORK, photo by Kari Olandese

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## >>> Hydraulics: a new kind of stewardship?

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[for\\_the\\_LA\\_Cleanup\\_1965.aspx](http://www.cp-dr.com/node/3470).

### Fish and Wildlife: catchy complaint, nuanced followup

As noted previously at <http://www.cp-dr.com/node/3470>, the *San Jose Mercury News* reported prominently in March that a complaint was filed with the San Francisco Bay Regional Water Quality Control Board by a Lt. Byron Jones, a Fish and Wildlife warden previously with the San Jose Police Department. The newspaper's account attributed the action both to Jones and to "state wildlife officials" and it said the complaint "charges that city administrators and police 'have refused to remove the encampments and protect the water'."

On inquiry, however, Jones' action appeared not to reflect a broad policy position.

Chris Elias, the watershed manager with the Santa Clara Valley Water District, said he understood the warden "was acting in his own capacity as an investigator for the Department of Fish and Wildlife on this issue but he was not representing the department's overall approach to dealing with this complex issue," meaning "the issue of illegal encampments along local waterways."

Bramson and Dale Bowyer, a section leader on stormwater issues at the regional water board, confirmed that regional board staff had asked city officials for details about their approach to encampments but had not taken formal enforcement action. Bowyer said, "we are satisfied in general" with "what they have told us about their efforts to deal with the problem" but the board was still expecting a written report from the city.

Fish and Wildlife department spokesman Andrew Hughan tried to follow up an inquiry but reported he "was unable to speak to Lt. Jones and cannot verify the specifics of the complaint."

Generically he wrote, "We have very specific rules about stream beds and any activity that happens in, or in the vicinity of streams and rivers that carry State waters. At the core of the issue is that you can't go to the bathroom in Coyote Creek and other state waterways, and it's important that cities do whatever they can to prevent it. The homeless encampments are a city issue, not a state one, but we are more than willing to work with the city to try and find a good, safe and dignified solution. Whatever the solution the city comes up with, whether it is portable toilets

or a permanent building, it just has to be addressed. It's unusual for the department to issue a citation or complaint to a city or jurisdiction but this shows how important the water issue is to us... At the end of the day it just can't be ignored."

### A different kind of concerned neighbors

Environmental stewardship groups are deeply established in Santa Clara County. Many neighborhood groups pick up trash along creeks. At least one group, known as CHEER, is known for engaging campers in cleanups in the south part of the county alongside legal and lobbying efforts. The Silicon Valley Toxics Coalition has been prominent in calling the tech industry to account. Demands and efforts to clean the water are nothing new.

But there are some new approaches in a "think globally, act locally" neighbors' group forming to address Coyote Creek's water pollution and encampment crises together. They come at the problem, not with the usual neighborhood group's law-and-order demand to remove campers, but seeking to apply the ecological principle that people and materials can't simply be thrown away.

The founders have exceptional credentials

for neighborhood beautifiers. They include Ted Smith, founder of the Silicon Valley Toxics Coalition; Pat Ferraro, a Water District board member for years and former director of the Silicon Valley Pollution Prevention Center; Eric Rosenblum, former division manager with the South Bay Water Recycling program, now founder of a private firm, *EnviroSpectives*; and Lisa Benham, a recent master's graduate of the San Jose State environmental studies program who worked four months as a post-Katrina cleanup volunteer in New Orleans and runs a community garden program in San Quentin Prison.

The group began by hosting presentations it called "Frank Talks" in memory of the late Frank Schiavo, a pioneering environmental studies professor at San Jose State. Recently it edged toward founding an organization, tentatively called the Mid-Coyote Creek Action Group.

### Small programs address encampments

At a "Frank Talk" they hosted on May 17, and in a later interview, Bramson offered a picture of pilot programs and



AN ENCAMPMENT SEEN FROM EAST OF THE MAIN STORY ROAD CAMP

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# >>> Hydraulics: small programs try to stop recurring camps

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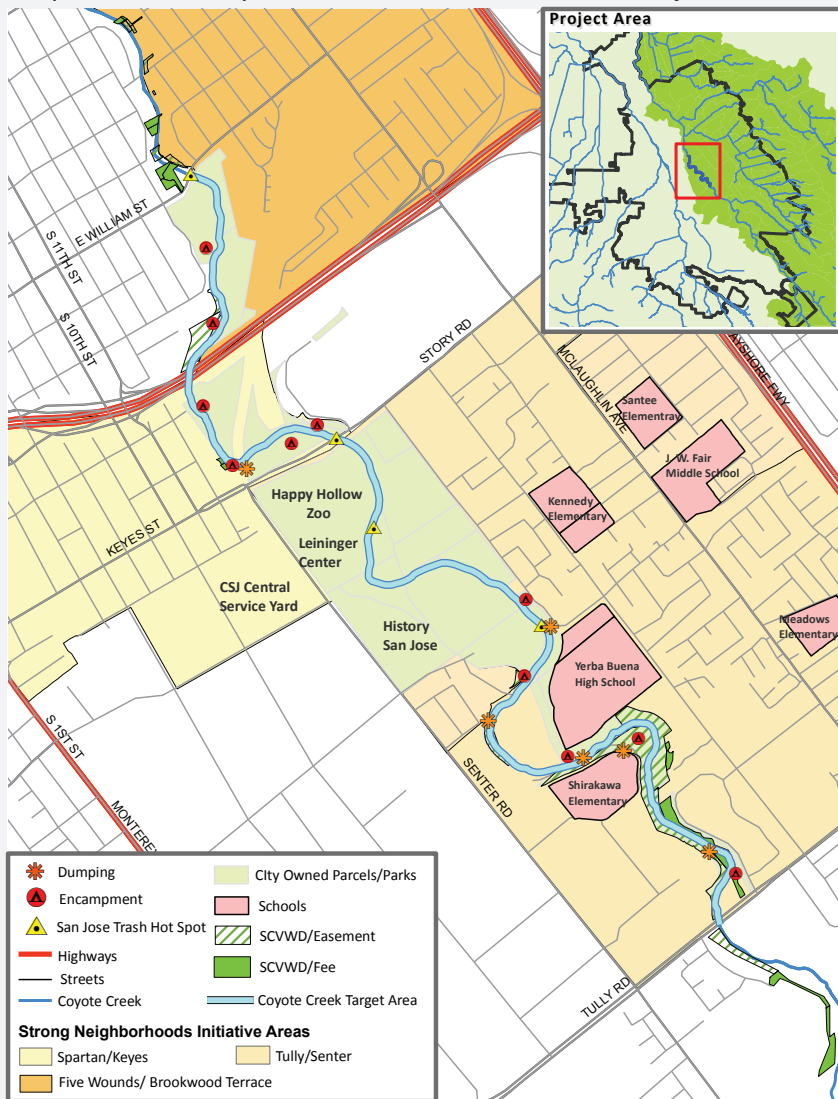
cleanup programs seeking efficient uses of limited funds amid profound unmet housing needs. For example, the City Council has voted \$1.67 million for each of three years for “encampment abatement” by city and Santa Clara Valley Water District staff, including park rangers, removing “48 large encampment cleanups each year”.

Jim Choate of the water district, also speaking at the Frank Talkevent, said funding from the “Safe, Clean Water” ballot measure helps pay city and district staff to work “about 7 to 10 days a month specifically on homeless encampment cleanups.” He reported 1260 cubic yards of trash removed from the Coyote watershed in the first four months of 2014.

An EPA grant that, as locally matched, amounts to almost \$1 million over four years supports the “Clean Creeks, Healthy Communities” program. It partly funds the Downtown Streets Team cleanup work. (See <http://www.epa.gov/region9/mediacenter/cleancreeks/program-snapshot.pdf>; <http://www.sanjoseca.gov/index.aspx?nid=1490>.) The Downtown Streets Team rewards “work experience” labor with items such as grocery vouchers rather than cash. After tests of commitment -- new participants must first attend four scheduled meetings -- it provides counseling, referrals and other assistance. Two formerly homeless young women, who were also volunteering with CHAM, said they participated in the Downtown Streets Team program because they felt it offered them genuine possibilities for jobs and housing.

A further city appropriation of \$2 million in each of two

Map 2: Community Based Creek Trash Reduction Project Area



“CLEAN CREEKS, HEALTHY COMMUNITIES” PROJECT AREA INCLUDING THE STORY ROAD INTERSECTION AND “JUNGLE” CAMP, AT [HTTP://WWW.SANJOSECA.GOV/DOCUMENTCENTER/VIEW/794](http://www.sanjoseca.gov/DocumentCenter/View/794)

years is meant to serve some 200 people with housing vouchers. Chris Richardson, director of program operations for the Downtown Streets Team, told the neighbors’ group “Our goal is to house 100 people from one of the creek encampments, prove that this model works, and maybe expand from there.” According to Richardson and Bramson, the idea is to help 100 people, via case management and temporary housing subsidies, to find jobs that will support them, if not in market-rate housing, then at least paying their own rents in affordable housing. Another 100, Bramson said in an interview, would be “chronically homeless,” under a definition that connects long-term homelessness to a “significant physical or mental health barrier.”

Later Chris Elias, the district watershed manager, said it was his understanding 66 creekbred residents had already been “connected to housing” as distinct from the 200 planned

vouchers.

And for everyone else?

Ideas circulating in San Jose included “microhousing” on the model of Dignity Village in Portland – a subject of a recent report request from the City Council – and “master leasing” of hotel rooms on the (deeply controversial) model of San Francisco’s large Tenderloin-centered hotel program. It was not clear which of them would be funded, nor how much.

### Sanitation as harm reduction?

So why, actually, if only for the time being, couldn’t the condition of the creek and the health of its inhabitants be spared,

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## >>> Hydraulics: Where should people live?

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on a harm-reduction theory, with portable toilets, a tank on stilts with clean drinking water, dumpsters regularly emptied, maybe even shower stations?

Richardson said at the neighbors' meeting that portable toilets had to be maintained daily. "They get flipped a lot. It's been unsuccessful in other communities."

Well, then, someone suggested, if not by the creekbed, then maybe near a transit station, or at a vacant building, or under the freeway?

Bramson said, "You know, absolutely. So we're looking at the idea of funding resource centers where people can go and access those services." But "A serious consideration we have to have as a city is the concept of these encampments, and whether or not we legitimize them as communities." He said that was not something the city would support.

Elias took a similar position later in his interview: "The view that we take is this: the local waterway is not meant for human habitation and then to try to provide amenities is only further encouraging that type of lifestyle. So the solution that we've all agreed to is that housing is the best option and... that's what we're all working toward. So we don't provide amenities for individuals to use. If it's difficult as it is to ensure that they don't threaten [the] waterways with any kind of pollution, we don't think that providing further amenities would further the end goal and the end goal is housing."

At the meeting, Rosenblum, quoting Stewart Brand, said half a billion people worldwide were living in informal communities without centralized infrastructure. He suggested, "being part of the modern capital economy is a trick that not everybody seems to be able to pull off," and said he didn't know if everyone would find apartments. He felt he didn't have answers either: "I love the creek. I wish I was able to actually touch the water without getting sick."

### Next steps

As Herring's paper notes, encampments may be useful stopgaps in the absence of conventional housing, but they recognize wildly different levels of dignity, agency and self-government.

In exploring some of these questions, Sandy Perry and his CHAM colleagues, Pastors Scott Wagers and Adrienne Lawton, wrote a statement based on their experience in outreach and as past managers of a shelter. They said encampments were not substitute for housing and if provided must be truly temporary – but within that limit they saw possibilities for vacant buildings,

hotels, legal camping, vehicle sleeping or micro-housing. At any legal temporary campsite, they viewed clean running water and sanitation as necessary but best placed away from watercourses and with adequate security. They argued legal temporary housing "must empower residents to govern their own communities" and to organize for more substantial housing, and "Cities should close down existing "illegal" encampments only by housing people or by providing safe, sanitary, legal temporary housing, not by expensive police sweeps that only force people to move to other equally "illegal" locations."



PAT FERRARO, THE FORMER DIRECTOR OF THE SILICON VALLEY POLLUTION PREVENTION CENTER, AND WIL HENNINGER, A HIGH SCHOOL GEOGRAPHY TEACHER, STRIKE AN "URBAN GOTHIC" POSE AFTER A CLEANUP ON COYOTE CREEK

Meanwhile Ted Smith, thinking as an environmental activist successful in past lawsuits, was considering what kind of complaint or demand it would help for concerned citizens to bring in light of the tech economy's "economic polarization." He felt encouraged that government agencies were seeing the need to solve creek pollution and encampment problems collaboratively, but said "I don't see the real energy to solve the problem." He said clean water laws on the books should be enforced but "One of the reasons we wanted to get this discussion going is there's a lot of people that want to see something happen but don't want to see more sweeps."

"I find that too often, people can develop a problem statement easier than they can develop a solution statement and I think you need both," Smith said. So it wouldn't work to enter the political or legal arena "without having a pretty clear sense of what it is you want." And he said, "I'm not quite there yet." ■

## >>> Having no car and plenty of cars

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downstairs in a parking lot outside my office building. I usually take a taxi to the airport (two miles away); from my apartment window I can see whether there are any taxis waiting for a fare at the Doubletree Hotel across the street.

And when I don't know what else to do I call Uber X. Right now my smartphone says there are five Uber X vehicles within four blocks of my apartment.

Cars? I have more cars than I know what to do with. I use cars all the time, in order to go all kinds of places, and I am never without access to a car. My overall automobile cost is probably less than half of what it was when I owned a car – because I usually pay for a car only when I am traveling in it, not when it is just parked somewhere.

I'm well aware that I am on the leading edge of this whole “car-sharing” thing and that the vast majority of people don't have the same options because of where they live and work. But the fact that I am doing just fine without owning a car in a traditionally suburban place like San Diego suggests that something important is going on, at least in modern urban neighborhoods: Our complete reliance on a “monoculture” of owner-occupied automobiles is being augmented with a much more varied ecosystem that includes not just alternatives to driving, but many different ways to use a car.

The urban transportation infrastructure obviously also includes walking, bicycling, and rail and bus passenger service. (Because I limited my discussion above only to cars, I didn't even mention that I can walk to the Santa Fe Depot in downtown San Diego from either my apartment or my office, making it easy for me to get to downtown Los Angeles without a car.) In California cities, these choices have not traditionally been “robust,” as they say. But when they are augmented by the range of car-sharing options I listed above, the entire system becomes a much more powerful option. You can take a regular bus or train to a destination and then use a car-sharing service like Uber X if you get stuck later on in the evening when service is bad or nonexistent. (I have done this several times.) Or – perhaps most important – you can use a car-sharing service as the “last-mile” solution to get to and from a rail stop. (This is part of the reason why car-sharing services have been more successful in Los Angeles than even the vendors thought they would be. In such a spread-out city, solving the last-mile problem is huge.)

At the recent Southern California Association of Governments annual general assembly, transportation infrastructure guru Dan Sturges noted that any successful transportation system has to function like the vines that Tarzan uses in the jungle. Swinging from one vine isn't enough. The next vine always has to be there, ready to grab, or else the whole system falls apart. All

transportation systems work like this, but if they work well we don't even notice. For example, we routinely take off on long car trips, confident that the infrastructure of well-placed gas stations will be available to us before we run out of gas.

The same is true for car-sharing. The more options we have, the more powerful the system becomes. We can move about the city using lots of them, confident that the next swinging vine will always be there.

Obviously, many people – especially in suburban locations – will always have activity patterns that will require them to own their own cars, drive them everywhere, and leave them parked most of the time. But for even semi-urban locations – such as old close-in single-family neighborhoods adjacent to commercial corridors – the swinging vine option is pretty viable.

Indeed, the swinging vines can help transform these neighborhoods much faster than public transit alone ever could do. And success is likely to feed on itself. The more people use these options, the less parking these neighborhoods are going to need. Obviously, heavy use of Uber or Lyft cars, which are constantly circling around, reduces the need for parking. But research also suggests that one Car2Go or Zipcar – which the user has to park somewhere – has a similar impact because as a short-term rental car it will be driven more and parked less. Plus you can park two Car2Go SmartCars in one parking space.

When less parking is needed, more land can be devoted to new buildings, which means a greater concentration of both people and destinations in one place, which means even less need for parking and greater opportunities for using the swinging vine.

From this perspective, the traditional suburban model seems pretty archaic – and expensive. Cars that are parked virtually all the time, at great expense to their owners? Huge amounts of land devoted to parking that could be devoted to more profitable or more human-scale uses? How rigid! How inflexible! How expensive! How 20<sup>th</sup>-Century!

Obviously, this suburban model will be with us for a long time because so many people live and work in suburban locations – often with long commutes. They will have little choice but to own their own car, drive it everywhere they go, and park it virtually all the time. And huge numbers of people will continue to make the suburban choice. But for urban and semi-urban neighborhoods, car sharing seems like an almost miraculous way out of the conflict between density and driving. And in those neighborhoods, the ongoing and often inevitable transition away from the suburban model will become more viable, cheaper, and much easier to plan for. ■