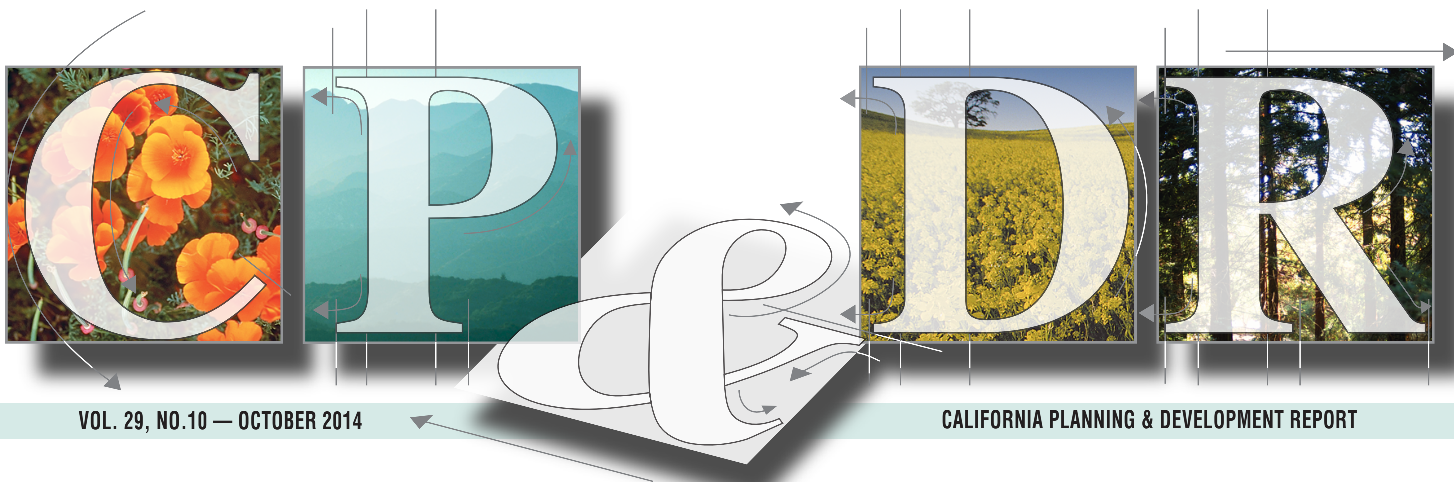


VOL. 29, NO.10 — OCTOBER 2014

CALIFORNIA PLANNING & DEVELOPMENT REPORT

Seventy Land Use Measures On Local Ballots

BY MARTHA BRIDEGAM AND CP&DR STAFF

California's November 4 ballots are rich with local tax and land use measures. It's a sign of fiscal pain in local governments, and credible optimism that voters can and will accept taxation – though we'll find that out in a few days.

At the state level, Gov. Jerry Brown is campaigning indirectly for reelection by stumping for Propositions 1 and 2, the water bond and "rainy day fund" measures. As of Saturday the *Sacramento Bee* reported Brown's television ads had yet to mention directly that his continued governorship requires voter ratification.

Two Web sites have taken on the exhausting task of presenting local ballot questions one by one: The invaluable Ballotpedia has a huge collection of sub-pages for California statewide and local measures on all topics. CalTax has posted an astonishing table describing local tax measures.

Our own attempt to pick only the planning and taxation measures most closely related to land use came up with more than 70 of them. At best we can only scratch the surface of a list like that.

So what we have for you here are selected spoonfuls from this river of electoral complexity, picking up some of the big clusters of measures that you just knew were going to form in the especially self-involved metropoli, and looking around at some other clusters of less urban

– CONTINUED ON PAGE 19

insight WILLIAM FULTON

Post-Redevelopment financing: is it getting easier?

Tax-increment financing isn't coming back anytime soon. But the state government hasn't squeezed as much money out of redevelopment as expected. So what happens next? What tools does the state provide to California's local governments to stimulate new development – especially infill development, which the state is trying to encourage through policies designed to decrease greenhouse gas emissions and achieve other goals?

The short answer is not much – at least not compared to redevelopment, which at

– CONTINUED ON PAGE 22

inside

NEWS:

- *Centennial project complicates Antelope Valley plan*....... Page 3
- *As deadline approaches, SGC tweaks cap-and-trade program*....... Page 8
- *Should cost containment count for more in affordable housing?*....... Page 17
- *Union-backed CEQA appeal blamed for killing factory expansion*....... Page 18

LEGALS DIGEST:

- *Two wins for the Pacific Legal Foundation*....... Page 11

OPINION:

- *Josh Stephens on traffic, education, and Prop. 13*....... Page 26

inbrief

THE PROGRESSIVE DEMOCRATIC COMMUNITY IN SAN DIEGO has split openly over the question of allowing more density near light-rail stops, especially in mostly white middle-class neighborhoods.

In particular, environmental attorney Marco Gonzalez – who stood alongside former City Councilmember Donna Frye in calling for Mayor Bob Filner's resignation last year – has now broken with Frye on the density question.At a forum sponsored by the San Diego Housing Federation recently, Gonzalez – brother of Assemblywoman Lorena Gonzalez – said: "From within the environmental community I thought it was important for us to say, 'If we're going to fight sprawl, we have to incentivize infill' (dense projects within already-developed areas). So we had to ask ourselves some tough questions, and what I'm doing now at this point in my career is asking those people who used to be my clients, those activists, those community-character-spouting residents, to really address these presumptions."

Gonzalez's longtime ally Frye has been a leader in opposing more density in the Clairemont district along the planned Mid-Coast light-rail line. She has been joined by interim Councilmember Ed Harris, a former head of the city lifeguard union, and failed City Council candidate Sarah Boot, both of whom – like Frye – share Gonzalez's natural constituency of coastal environmentalists.

THE CITY OF MARINA CONTINUES TO OPPOSE AN EFFORT by the Cal-American water utility to drill a slanted test well to check if an aquifer under the ocean floor is suitable as a water source for a desalination plant. A news feature in *Environment & Energy Publishing* quoted local officials and activists as opposing the plan on grounds that the well, once dug, might end up being used for a desalination operation, or might itself worsen saltwater intrusion.

The *EEnews* article linked to comments by the Remy Moose Manley firm on behalf of the Marina Coast Water District, opposing the Cal-Am appeal, alleging in part that the project's Draft Initial Study and Mitigated Negative Declaration failed to consider likely future uses of the well. The Monterey Bay National Marine Sanctuary's draft Environmental Assessment Report on the project from last June is here. The California Coastal Commission will take up the well proposal at its November 12 meeting. (See Items 14a and 15a at http://coastal.ca.gov/mtgcurr.html.) For more on the history and context of Monterey's water supply plans, see Larry Sokoloff's report at http://www.cp-dr.com/node/3598.

CALTRANS AND LOS ANGELES METRO were reportedly contemplating a monster pair of tunnels to extend the 710 freeway for nearly five miles under South Pasadena – at a cost of $5 billion. The LA Times a bit unfairly noted it would be longer than Boston's "Big Dig". Longer, maybe. But more trouble? The Big Dig was a nightmare of a highway undergrounding job in a densely built 350-year-old city with four seasons and a high oceanfront water table. In the middle of it, Rep. Barney Frank once suggested that, rather than depress the Central Artery, it would be cheaper to raise Boston. So, five miles under the San Gabriel Valley? Technically speaking, could it be any worse? Politically, though, it could be.Neighborhood groups have been fighting the 710 extension since 1965.

OIL WAS IN THE NEWS when rail carriers filed suit in federal court seeking to block California's SB 861 from taking effect to impose new safety measures for oil trains. And the Center for Biological Diversity alleged that fracking wastewater had been illegally injected into the ground where it could harm Central Valley aquifers. In Sacramento, InterState Oil Co. agreed to settle a CEQA lawsuit by stopping its use of McClellan Business Park as a site to transfer crude oil from trains to

– CONTINUED ON PAGE 24

William Fulton
Publisher

Martha Bridegam
Editor

Josh Stephens,
Morris Newman, Kenneth Jost
Contributing Editors

Susan Klipp
Circulation Manager

is published semi-monthly by

Solimar Research Group
Post Office Box 24618
Ventura, California 93002

Telephone / Fax: 805.652.0695

Subscription Price: $238 per year

ISSN No. 0891-382X

Visit our website:
WWW.CP-DR.COM

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

Copyright © 2014. All rights reserved. This publication may not be reproduced in any form without the express written consent of Solimar Research Group.

New Antelope Valley plan complicated by Tejon's Centennial project and new solar array rules

BY MARTHA BRIDEGAM

A new template for land use and preservation is forming across some 1,800 square miles of Los Angeles County's high, dry northeastern backlands. Its first increment could establish some key development permissions by mid-November, especially affecting the large Centennial new-town design, other construction plans, and solar energy arrays.

The Antelope Valley (AV) Area Plan is tentatively scheduled for a vote by the LA County Supervisors on November 12. That approval, if granted, will be significant – especially for the currently rural site along Highway 138 where the Tejon Ranch Co. has for years been laying regulatory groundwork to build a master-planned town it calls Centennial. There are also General Plan revisions afoot in two areas that affect the AV Plan area most: changes to boundaries and rules for Significant Ecological Areas (SEAs) and a renewable energy ordinance. (A plan to develop transit-oriented districts (TODs) is part of the same General Plan update process but affects more urban areas. The north edge of its "overview map" is in Pasadena.)

The Antelope Valley plan area covers rugged northeastern Los Angeles County, from the southeast-slanting San Andreas Fault to the Ventura, Kern and San Bernardino County lines, excluding incorporated areas around Lancaster and Palmdale, and applying as a limited overlay to federal property such as Edwards Air Force Base. It extends south of the fault to include the whole mass of the San Gabriel Mountains (including the new San Gabriel Mountains National Monument), and the north half or so of the Angeles National Forest above Santa Clarita.

The Centennial site is near the current northern limit of suburban development that looks toward Los Angeles. Above it are mountain ridges that, for the present, occupy a gap between the footprints of greater Los Angeles and greater Bakersfield.

Mark Child, deputy director of advance planning with the L.A. County Department of Regional Planning, said the proposed SEA designation and governing ordinance changes would most affect the Antelope Valley area rather than other parts of L.A. County, especially now that sensitive habitats in the Santa Monica Mountains are being separately regulated by the new Santa Monica Mountains Local Coastal Plan and, farther inland, the Santa Monica Mountains North Area Plan. He said some SEAs are affected in the San Gabriel Valley and Puente Hills, but they are small in comparison to the Antelope Valley.

Environmental and community activists' concerns have included keeping rural places rural, ensuring "heavy agriculture" upzoning doesn't allow solar arrays as of right (Child said it doesn't), and, especially, limiting density in three "Economic Opportunity Areas" (EOAs) that the AV Area Plan designates for concentrated development. They have also questioned whether enough big-picture environmental regulation is in place to avoid harmful cumulative effects. Major affected landscapes include the western tip of the Mojave Desert with its wild poppy fields and Joshua trees, and the knot of the Coast, Transverse and Sierra Nevada mountain ranges, including condor habitat, where I-5 climbs over Tejon Pass toward LA from the foot of the Central Valley.

Landowners, from owners of single-house lots to managers of mining and ranching concerns, have been asking nervously how certain they can be of future requirements under tiered processes that the program-level rules are designed to set up but not resolve. In addition to Centennial and other housing developments, major affected industries and projects under the AV Area Plan and General Plan amendments include aggregate mines, cattle ranchlands, oil and gas wells, and solar energy businesses.

For L.A. County's rural lands at present, it isn't easy to parse what will be decided where, how conclusively, and when. There are multiple rulemaking tracks; there are tiering provisions in the proposed rules that defer major decisions selectively, and there's uncertainty yet to resolve on how the new rules will take up the threads of older planning processes.

The AV Area Plan and Centennial

As previously reported at http://www.cp-dr.com/node/3587, the Regional Planning Commission approved

– CONTINUED ON PAGE 4

>>> Antelope Valley plan complicated by Centennial

– CONTINUED FROM PAGE 3

the AV Area Plan September 27. Its accompanying Draft EIR remained open for comment until October 6 – viewed as procedurally possible because the Commission's action September 27 was only a recommendation to the Board of Supervisors; the Supervisors bear responsibility for definitely approving the plan and certifying its EIR. which will probably occur at the same time. (Sitting as the Airport Land Use Commission, the Regional Planning Commission approved the plan's compatibility with relevant airport plans.)

The new plan would encourage the proposed Centennial development by establishing policy statements in favor of upzoning at the intended town site.

The AV Area Plan, updating the existing 1986 General Plan component for the area, has been under review since 2008 in what has also been labeled the "Town and Country" planning process. However, new versions of the plan, and an extensive new Draft EIR, were published on a brisk schedule this summer, with the DEIR Notice of Preparation (NOP) posted June 12, revised planning documents posted July 23 and August 22, and the extensive DEIR documents posted August 22. (Comments on the AV Area Plan leading up to the September 27 hearing are labeled as "correspondence" and "supplemental package" documents as part of the meeting materials.)

The new plan would encourage the proposed Centennial development by establishing policy statements in favor of upzoning at the intended town site. However, it would not allow building permits to be granted for the new densities as of right. Centennial's proponents would still have to bring a more detailed proposal through a full specific plan review process – and it's not clear when they will decide the time is ripe for them to follow through.

According to Child and Supervising Regional Planner Susan Tae, out of the three "Economic Opportunity Areas" (EOAs), only the west EOA, which includes the Centennial site, has a strict provision to ensure future review is coordinated. Any proposal to build more than five units of housing in the west EOA would trigger a requirement to begin a full specific plan coordinating infrastructure and environmental protections for the whole area. The county could also choose to begin a community plan there in the next five years. The published summary of September 27 changes to the AV Area Plan says affected properties in the west EOA are those of two particular owners: the Tejon Ranch Company and Bruce Burrows.

In the west EOA, the AV Area Plan sets as general policy the possibility of zoning levels up to maximum caps described in the Plan's Map 2.1. The green-veined yellow patches of H5 zoning (five housing units per acre) as shown in the map's upper left corner would be defined as generically appropriate for the east half of the proposed Centennial development site.

Later on, the actual zoning changes would need to be adopted legislatively as part of a future specific or community plan, and their exact values would depend on the overall design of the project as then proposed. (In a choice that confused some activists, the DEIR's Figure 3.7, at Page 27 of Chapter 3, sets out the lower A-2-10 "heavy agriculture" densities that would apply without a specific plan.) The Center for Biological Diversity has objected starting at the NOP stage to the use of any H5 zoning on the Centennial site.

As of a Tejon Ranch Co. amended 10-K filing with the Securities and Exchange Commission last March, the company was still discussing plans for 23,000 units of housing at Centennial. County planning staff say the maximum buildout under zoning envisoned by the AV Area Plan would be less – more like 17,000 units – but either would be a long way from the site's current population of zero. The Tejon Ranch Co. as of its March report held a 72.83% interest in the project's proponent entity, Centennial Founders, LLC, with minority partners Tri Pointe Homes (formerly Pardee Homes), Lewis Investment Company and Standard Pacific Corp. . (For prior discussion of Tejon Ranch real estate plans in the context of the Kern Water Bank EIR ruling see http://www.cp-dr.com/node/3597.)

– CONTINUED ON PAGE 5

>>> Antelope Valley: complex multi-track process

– CONTINUED FROM PAGE 4

SEA boundaries changing by stages

Proposed new SEA boundaries are important for Centennial and for the AV area plan in general. Although the new SEAs are larger, it's disputed whether they actually increase environmental protection. Where former SEAs required buffer zones to surround them, the new approach is to expand the defined boundaries to include buffer zones within them. Similar changes were already adopted in 2011 for the Santa Clarita Valley area, which includes the Newhall Ranch planned-town site. (See http://planning.lacounty.gov/sea/proposed.)

The Commission's September 27 action removed the SEA designation from a major area of the Centennial town site, between its east boundary at a farm road incongruously named "300th Street", and the west branch of the California Aqueduct, which forms a north-south divider across the site. (A separate SEA pullback limited barriers to development in the Central Economic Opportunity Area southwest of Edwards. For details see the September 27 summary document.)

Child wrote that the west EOA changes "aim to strike a balance between habitat conservation and environmental protection, and economic development that is important to the Antelope Valley and Los Angeles County as a whole. As the most valuable habitat and habitat linkage within this landholding is on the western end where the SEA designation remains, the area removed seems not as critical to the overall viability of SEA protections in the area."

But Greg Medeiros, vice president of the Centennial Founders LLC development entity, asked the Commission on October 8 to also remove SEA status from the area west of the Aqueduct, saying, "Both commercial and residential land use remain within the SEA overlay within the west EOA boundary. This commercial development is critical in developing a balanced community that can provide necessary services and jobs." He assured: "Removing the SEA designation does not mean that biological resources will be ignored. Project-level environmental review during site design within the EOAs will require avoidance and mitigation if necessary to comply with both CEQA and Fish and Wildlife permitting requirements."

Countywide, the proposed SEA changes have been divided among three different regulatory calendars: Some SEA boundary revisions that form part of the AV Area Plan will be before the Supervisors for approval November 12. SEA boundary changes elsewhere in the county go to the Regional Planning Commission as part of a General Plan update item December 10. Revisions to the current Draft 6 of the SEA Ordinance, which calls for protective measures to be determined in part by environmental reviews of each building site, were taken off calendar as of the Commission's October 8 meeting to allow more discussion.

The issues taken off calendar as "ordinance" matters include issues such as whether existing uses will be grandfathered. For example, at the October 8 hearing, Jeff Mace of ERA Energy asked if his company's 3000 acres of oil and gas wells and grazing land would be subject to new SEA requirements with effects such as new fencing requirements.

Some landowners saw the proposed environmental review process as a source of uncertainty. At the hearing, land use consultant Peter Gonzalez said he couldn't clearly advise a landowner on building rights in an SEA zone if a county biologist's review still had to determine each parcel's level of sensitivity under the proposed SEA ordinance. Marta Golding Brown, representing the Building Industry Association for Los Angeles and Ventura Counties, told the Commission that the proposed mitigation ratios were excessive in requiring up to four acres open space for one acre of disturbed land, and the SEA boundaries themselves were oversized: "The SEA expansion virtually walls off all unbuilt or remaining lands in the jurisdiction. As a result, future population growth will need to be accommodated by dramatically increasing densities in the existing developed areas." She urged the Commission to combine SEA and CEQA mitigation processes in a single procedure and closed with the comment, "Please reduce the SEA overlays in the county to those areas having biota to protect."

Environmental advocates weren't happy with the proposed SEA ordinance either: some said it had the unintended effect of elevating mitigation into a first choice for developers instead of encouraging them to avoid doing harm in the first place. Gary George of Audubon California told the Commission, "It's kind of a free pass straight to

– CONTINUED ON PAGE 6

>>> Antelope Valley: will 2008-era work be reused?

– CONTINUED FROM PAGE 5

compensatory mitigation."

Another environmental concern was whether single-family homes ought to be exempted from SEA requirements, or whether they, too, should be required to reduce their footprints.

Hearings are expected this winter on a renewable energy land use ordinance for projects such as solar arrays.

High SEAs

A perennial concern in northwestern LA County has been whether the SEAs in the high desert and mountains provide sufficient "connectivity" or "linkages" for wildlife to travel among the several types of habitat that converge in the area, especially where I-5 traverses the Grapevine. (A slightly dated but informative "connectivity and construction" map from April gives a sense of the principles guiding SEA designations.)

Child said a key purpose of updating the boundaries was to allow for linkages – not necessarily to maintain land in "pristine" condition, but to allow for wildlife movement – for example, by maintaining a corridor of grassland that might not itself be valuable habitat, but that would allow wildlife to move between developed areas.

For the Centennial site an added uncertainty for activists is whether currently envisioned planning processes will make use of the work already done in an SEA-related environmental advisory process on a prior Centennial specific plan effort that was begun in 2008 but then deferred.

As suggested by a 2008 Center for Biological Diversity press release, the SEATAC was sympathetic to critics who questioned not just how development might be made more eco-friendly at Centennial, but why any new project had to be built on the site. The September 8, 2008, minutes of a SEATAC meeting on Centennial, still available on the county's site, shows a level of concerned review that gets literally into the weeds. The board discusses protection of grasslands, creekside habitat, watersheds and linkages, concerns about "leapfrog" developments surrounded by open space, the fortunes of species including badgers, lizards, owls, pumas, and the Tehachapi Pocket Mouse, a request to hear more about the futures of antelopes and raptors, and possible relocation of the Pacific Crest Trail onto the Tejon Ranch lands.

Child wrote: "The future level and scope of environmental/ biological review in this area would not be less careful than the review by SEATAC in 2008. The project is still subject to CEQA requirements and the County's consultation with responsible and trustee agencies would ensure that the project identifies and mitigates for any and all potential environmental impacts, including biota. Comments received from SEATAC regarding the project specifically, and the general region as important habitat land, would still be applied in the review of the project." Tae wrote that where SEATAC review is currently required for all SEA Conditional Use Permits (CUPs), the new ordinance would direct some projects to the county biologist, and others to SEATAC, with SEATAC "considered the higher review".

Centennial's design was publicized more specifically before about 2008. The project stressed its environmental smart growth aspirations, discussing ways the project could be environmentally responsible and partly self-contained, even if residents commuted to jobs elsewhere. Now Centennial's main link from the Tejon Ranch Web site is a "Coming Soon" placeholder page. More detailed prior materials on the plan, including previews of the town's design, have been taken offline since last September. The Centennial Scout, a weblog formerly maintained for Centennial Founders, LLC by its community development manager, last posted in August 2011.

It remains uncertain when the Centennial Founders management may decide the time is right to go ahead with their specific plan. So it's clearly enough in the project's interest to lock in as many permissions as possible for the 20-year duration of a General Plan update. In the meantime, the Ranch's interest sounds warmer with respect to its more recently proposed Grapevine development in Kern County. The Tejon Ranch Co.'s amended 10-K as filed in March

– CONTINUED ON PAGE 7

>>> Antelope Valley: Solar array hearings this winter

– CONTINUED FROM PAGE 6

2014 stated, "California regulatory dynamics may impact the future ability to entitle new development so we began the land planning and entitlement process for Grapevine during 2013 to take advantage of the existing favorable pro-business and political climate in Kern County."

The Tejon Ranch is the subject of a 2008 settlement in which five environmental groups, including the Sierra Club but not the Center for Biological Diversity, agreed not to oppose future development on the ranch in return for a conservation program affecting much of the Tejon Ranch land. Opposition to Centennial and other projects has been less widely expressed in the six years since then.

The March amended 10-K stated, "The Conservation Agreement we entered into with five major environmental organizations in 2008 is designed to minimize the opposition from environmental groups to these projects and eliminate or reduce the time spent in litigation once governmental approvals are received. Litigation by environmental groups has been a primary cause of delay and loss of financial value for real estate development projects in California."

Solar up next

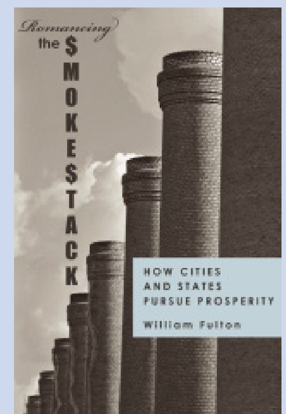
On a slower schedule, hearings are expected this winter on a renewable energy land use ordinance for projects such as solar arrays. Tae wrote that the draft EIR would likely appear in November, with the Regional Planning Commission to take it up in January. Tae and Child wrote that the ordinance has to reach the Supervisors by March to help the county qualify for a grant out of the Renewable Resource Trust Fund related to Assembly Bill X1-13.

Child said there had been anxieties that a large-scale upzoning of about 190,000 acres to A-2, "heavy agriculture," in the Antelope Valley Area Plan would allow large solar arrays as of right. In fact he said that while A-2 zoning is a prerequisite for solar arrays, the ordinance would regulate such approvals and they would require conditional use permits to go through.

The county's public tally of proposed utility-scale renewable energy projects to date shows most such projects are solar; there have been a few wind turbine schemes. The renewable energy ordinance review will need to interact with the California and federal EIR/EIS for the Desert Renewable Energy Conservation Plan, which was posted for review September 26. Major solar energy developers are among the commenters on early stages of the energy ordinance. ■

Romancing the $moke $tack
How Cities And States Pursue Prosperity

Bill Fulton's Book On Economic Development



As Deadline Approaches, SGC Tweaks Cap-And-Trade Program

BY MARTHA BRIDEGAM

As the new Affordable Housing and Sustainable Communities (AHSC) grant program neared its October 31 public comment deadline, the program was showing a more definite sense of institutional purpose, focused on promoting dense transit-oriented urban streetscapes. The Strategic Growth Council – now including one new member, former Los Angeles and San Diego planning director Gail Goldberg, who was appointed by Assembly Speaker Toni Atkins – is expected to approve the program in early December.

Would-be grant applicants may be disappointed if they expect AHSC to focus on maximizing affordable housing construction or promoting healthier living in small inland towns. Housing is a major statutory goal of the AHSC program, and the proposed grant criteria do allow some leeway for use in less dense areas. But this is not the comprehensive housing construction and rehabilitation program that housing and economic justice advocates would like to see the state enact.

The presentation materials released in late October for the current, final round of public workshops on the program were full of reminders about AHSC's narrow focus. The materials said the program is able to make only a few grants – 13 to 23 in the main part of the program for the coming year.

Out of the $130 million allocation for fiscal 2014-15, $120 million would be offered in AHSC's main point-based competition for grants and loans. The program's smaller agricultural land preservation component, using $5 million in 2014-15, would provide ten $100,000 planning grants and a small fund for agricultural easements. That's not much money from a statewide point of view. But for 2015-16 and beyond, the program has been promised a continuous appropriation thereafter of 20% of the annual Greenhouse Gas (GHG) Reduction Fund created by cap-and-trade proceeds.

Under the proposed SGC guidelines for the funding competition, at least 40% of that funding would be reserved for projects that meet the program's own definition of transit-oriented development (TOD). At least 30% would be reserved for less housing-oriented and smaller Integrated Connectivity Projects (ICP). (See http://www.cp-dr.com/node/3578 for a detailed initial review of the draft.) At the SGC meeting in October, staff described the TOD and ICP competition areas as mutually exclusive "doors" or "buckets". Vehicle miles traveled (VMT) would be the primary measure of GHG reduction.

Meanwhile, the presentation materials for the late October workshops called attention to a proposed requirement that appears in text surrounding Table 4 of the Draft Guidelines released in September. It would provide that housing developments supported by the program must have a transit station within a "walkable route" of half a mile. They would need to contain at least 100 units in a metropolitan area or 50 units elsewhere. Minimum net density for all-housing buildings would range from 20 to 60 units per acre by type of area; for mixed-use projects, minimum floor-to-area ratios would range up the same scale from 1.5 to 3.0.

On two major outstanding questions – identification of "disadvantaged communities" and definition of a role for regional government entities – the new materials added little beyond the early-October staff report and SGC hearing discussion. On the belated CalEPA designation of "disadvantaged" census tracts that must be "benefited" by half of AHSC funds, the new materials said the choices "will be available in the next few weeks."

At the SGC meeting in October, several speakers criticized the plan to reserve 40% of the money for projects that by definition must be on or near dense transit routes. Natural Resources Secretary John Laird questioned how the proportions were chosen, raised the possibility that a "complete streets" program might fall between the two "buckets", and asked, "Why divide them at all? Why not see what comes on through the door?"

In public comment, Rob Wiener of the California Coalition for Rural Housing, who has been vocal at every AHSC public meeting, alleged that restrictions in the eligibility rules for TOD projects meant they "will not benefit rural

– CONTINUED ON PAGE 9

>>> As Deadline Approaches, SGC Tweaks Cap-And-Trade Program

– CONTINUED FROM PAGE 8

communities, and in fact will not benefit most communities in the state."

The housing part of the discussion was already influenced by Goldberg, who had been appointed just a few days before. At the SGC meeting, Goldberg elicited staff explanations that every TOD project must have an affordable housing component, whereas ICP projects needn't – but that, since half the funding block must go to affordable housing, most projects would be likely to have some affordable housing. Later she spelled out a distinction that not all housing drafters make: between "displacement and replacement, which are two separate issues." Goldberg will soon be joined by an appointee of Senate leader Kevin deLeon, who has not yet announced a selection.

The presentation materials released in late October for the current, final round of public workshops on the program were full of reminders about AHSC's narrow focus. The materials said the program is able to make only a few grants – 13 to 23 in the main part of the program for the coming year.

One public commenter asked the Council to make anti-displacement measures a threshold requirement for all projects rather than only granting extra points for such measures, as the current draft guidelines would.

Pressure from Bay Area and other northern and coastal areas was evident in a staff report posted with the AHSC agenda item. On geographic distribution of funds, it said, "SGC and the implementing state agency and department staff see merit in designing the AHSC Program to account for the distribution of funds statewide. California's cities and communities statewide are diverse and vary in market dynamics, community need, capacity to manage and deliver projects, track greenhouse gas emissions, population density and size, and the availability of local resources. The method to account for geographic distribution of funds is still undetermined."

The phrases about "geographic distribution" may refer to controversy over perceived slighting of the Bay Area in CalEPA's CalEnviroScreen 2.0 mapping tool for environmental, public health and socioeconomic factors. CalEPA has proposed to use CalEnviroScreen in defining "disadvantaged communities" under SB 535. The AHSC program must use 50% of its grant money to benefit communities that fit the SB 535 definition. Bay Area legislators and others have protested that the CalEnviroScreen map tends to favor inland areas of the Central Valley and Southern California. (See http://lat.ms/1sq0Qao and detailed discussion, including CalEPA officials' responses, at http://www.cp-dr.com/node/3570.)

Laird warned that geographic distribution requirements could be "an absolute nightmare," where an arbitrary line drawn across a map could mean "you always had applications that weren't a hundred percent in the right place."

The staff report also addressed the distinction between disadvantaged neighborhoods and disadvantaged people – raising, once again, the old question of whether it is better to improve disadvantaged neighborhoods with high-quality affordable housing projects or improve the lot of disadvantaged individuals by placing them in affordable housing in more affluent neighborhoods.

The Air Resources Board adopted lightly revised guidelines after a difficult discussion September 18 on defining disadvantaged communities, and what "benefits" disadvantaged communities, under SB 535. Those guidelines will affect the AHSC program in common with other programs for cap-and-trade auction proceeds.

At the October SGC meeting, one speaker from the Infill Builders Federation said some members who develop affordable housing "are trying to get away from gentrification," hence were hoping to serve disadvantaged communities with affordable housing without necessarily siting projects in the heavily polluted and impoverished neighborhoods identified as "disadvantaged" by CalEnviroScreen. She noted that many neighborhoods,

– CONTINUED ON PAGE 10

>>> Cap-and-Trade: AHSC uncertainties remain

– CONTINUED FROM PAGE 9

especially in the Bay Area, have varied income levels, and it can be a goal to avoid neighborhoods that have single income levels.

The Rural County Representatives of California wrote separately, in a statement about the agricultural lands portion of the program: "RCRC is concerned that it will be difficult for rural counties to compete for these funds, especially if they adopt the CalEnviroScreen as the sole tool for selecting "disadvantaged communities."

At least one Council member called for serious attention to technical assistance for potential grant applicants who may be less prepared to file successful applications, such as towns whose planning departments have been cut back.

There was a definite sense of unfinished business on the role of metropolitan planning organizations (MPOs) in selecting and coordinating projects. The staff report describes an "initial concept for coordinated review... currently being developed" that is largely new since the September 23 guidelines. It "would allow for MPO technical review of program thresholds, specifically GHG [greenhouse gas] quantification and SCS [Sustainable Communities Strategy] application in Phase 1. In the Phase 2 Full Application, MPOs would concurrently review applications in conjunction with the State to identify priority projects within their respective region[s]."

Discussion at the meeting was actually less specific on how strongly the MPOs' recommendations would be allowed to affect outcomes. Laird said the Legislature had rejected a provision that would have given the MPOs a formal role and he didn't want to see that issue "re-litigated" in the guidelines.

The staff report for the meeting also invited discussion on "a more precise measure" for each project's effect on GHG reduction and on vehicle trips, suggesting a retreat from the draft guidelines' suggestion to express GHG reduction "relative to scale and cost of the project." Some Council members called for more specific measurement approaches to GHG reduction.

Materials from the October 6 SGC meeting, including a link to the staff report and video of the meeting, are at http://sgc.ca.gov/s_100614meetingmaterials.php. The AHSC portion begins about an hour and 15 minutes into the session and runs almost two hours.

The SGC Web site now provides a dedicated Web page for the AHSC program and a separate page for its separately administered farmland fragment, the Sustainable Agricultural Lands Conservation Program (SALC) Comments on both program designs are due October 31, respectively to http://sgc.ca.gov/s_ahscwebcommentform.php and ahsc_ag@sgc.ca.gov. ■

legal digest

PLF Scores Two Legal Victories

BY MARTHA BRIDEGAM

The Pacific Legal Foundation (PLF) won two major takings law victories in late October. Clients championed by the property rights organization defeated a San Francisco law on compensation to tenants evicted under the Ellis Act in a trial court decision, and managed, on appeal, to undo a coastal easement requirement that the court said was an unfair permit condition.

San Francisco city attorney to appeal Ellis Act ruling

San Francisco City Attorney Dennis Herrera announced he would appeal a ruling by U.S. District Court Judge Charles R. Breyer that struck down the city's new ordinance on compensation for tenants evicted under the Ellis Act. From its effective date in June until Breyer blocked it effective October 24, landlords who took an occupied unit off the rental market were required to pay their evicted tenants two years' worth of difference between the lost rent rate and the market-rate rent for a comparable unit in the city. The ruling in *Levin v. City and County of San Francisco* accepted arguments by the Pacific Legal Foundation (PLF) that the ordinance violated constitutional property rights. The PLF victory press release said the lead plaintiffs in the matter would have had to pay $118,000 to the tenant of the duplex where they live in order to rent their extra unit to friends or family. The *SF Chronicle*'s Bob Egelko has details of the ruling. He quotes Breyer as calling the compensation amount "an enormous payout untethered in both nature and amount to the social harm actually caused by the property owner's action." A copy of the ruling is available on PLF's Web site. [http://www.pacificlegal.org/cases/levin-4-1528]

Coastal property owners vindicated

On October 23, the Second Appellate District reversed itself on rehearing in *Bowman v. California Coastal Commission*. The court had agreed as of April 15 to depublish its initial ruling in March and rehear the matter.

The new ruling is a victory for the

– CONTINUED ON PAGE 12

Abbott & Kindermann, LLP
Land Use, Environmental and Real Estate Law
Counseling, Advocacy and Litigation

2100 21st Street, Sacramento, California 95818
916-456-9595

>>> PLF Scores Two Legal Victories

– CONTINUED FROM PAGE 11

PLF's clients, Sandra Bowman and her sisters, who inherited a large San Luis Obispo County property, partly along the coastline, from their father, Walton Emmick. The sisters have been disputing Coastal Commission efforts to enforce a public access easement as a condition for a coastal development permit (CDP) to improve the dilapidated house and barn on a part of the property a mile inland.

As discussed at http://www.cp-dr.com/node/3452, the court's earlier ruling backed the Coastal Commission in finding that collateral estoppel barred the sisters from repudiating a public access easement that the county initially required of them as a condition for a CDP. The March decision gave a somewhat confused account of the facts, saying Emmick did renovation work in anticipation of that first CDP although it was issued after his death – hence that he and his successors accepted the CDP's burdens along with its benefits. Accordingly the March court agreed with the Coastal Commission that the sisters could not take advantage of the county's decision to grant their application for a second CDP without the easement.

The new opinion accepted the PLF's version of the facts: that Emmick did renovation work on the property only under county permits that were exempt from the CDP requirement because they did not "change the use or dimensions of the structure." It stated Emmick "did not make the repairs for which he sought authorization" under the initial CDP, hence that neither he nor his successors accepted any benefit under it.

However, the court's new opinion was not based solely on this fresh understanding of the facts. It also said the easement exaction was unfair: "There is no rational nexus, no less rough proportionality, between the work on a private residence a mile from the coast and a lateral public access easement." The court found it immaterial whether the requirement was the Commission's or the county's fault. Regardless, the court said collateral estoppel doctrine calls for equitable results. Because of both the reinterpreted fact pattern and the lack of nexus between the renovations and the easement, the court found the equity requirement was not met.

In a statement in April, the court had requested letter briefing on the standard of review. It said "the parties appear to agree" that the March ruling misapplied the substantial evidence rule to the administrative mandate question, in that it chose to consider only evidence supporting the prevailing party rather than "all relevant evidence even if it detracts from the administrative decision," as called for in *La Costa Beach Homeowners' Assn. v. Cal. Coastal Comm.* (2002) 101 Cal.App.4th 804. The court asked the parties whether the Commission should be treated as the sole authority to determine credibility of evidence, or, if not, how the *La Costa* case should apply.

In the opinion that followed, the court looked to a phrase in *La Costa* saying "Courts may reverse an agency's decision only if, based on the evidence before the agency, a reasonable person could not reach the conclusion reached by the agency." It then based the decision on its own interpretation of the facts.

The new, currently effective opinion is at http://www.courts.ca.gov/opinions/documents/B243015A.PDF. ■

Planning & Visioning Websites Internet Marketing

Phone 877-872-6150 Fax 877-944-6792
www.urbaninsight.com

Legal Briefs

Treasure Island EIR approval allowed to stand

The State Supreme Court denied review October 22 in the major case of *Citizens for a Sustainable Treasure Island v. City and County of San Francisco (Treasure Island Community Development)*. As discussed in the CP&DR July 2014 issue, the ruling upheld the massive environmental impact report for a $1.5 billion development plan on Treasure Island, the man-made island at the middle of the San Francisco Bay Bridge. As legal precedent the case is important for its holding that an EIR's original status as program-level or project-level doesn't matter as much as whether, practically speaking, it provides enough information to support necessary decisions.

High-speed rail bonds approval confirmed

The State Supreme Court confirmed a victory for high-speed rail by declining to review the Third District's ruling in *California High-Speed Rail Authority v. Superior Court (Tos)*. The case upheld the High-Speed Rail Authority's authorization to issue bonds for the project. The Sacramento Bee had details on immediate reactions. For details of the ruling see http://www.cp-dr.com/node/3546. Planetizen has more context at http://www.planetizen.com/node/71723.

Supreme Court agrees to review Friant Ranch case

The California Supreme Court agreed on October 1 to review a major CEQA case, *Sierra Club v. County of Fresno*, (2014) 226 Cal.App.4th 704, in which the Fifth District Court of Appeal blocked the "Friant Ranch," a large planned development focused on seniors' housing. (See prior coverage at http://www.cp-dr.com/node/3504.)

The ruling walks through several forms of CEQA analysis, so it's difficult to interpret the court's review announcement, which reads in substantive part: "This case presents issues concerning the standard and scope of judicial review under the California Environmental Quality Act." The online docket with the grant of review and links to the original opinion is at http://bit.ly/1vuOrji.

The case was cited by conservationist petitioners in their important appeal of the challenge to the Regional Transportation Plan and Sustainable Communities Strategy (RTP/SCS) adopted by the San Diego Association of Governments (SANDAG). As explained at http://www.cp-dr.com/node/3584, the SANDAG case has been awaiting decision since August 27.

To the SANDAG petitioners, who have been alleging insufficient analysis in the RTP/SCS, the importance of the Fresno case is that it found an EIR for a project wasn't finished when it quantified projected air pollution effects numerically. The ruling said the EIR should also inform readers about the expected public health impacts of the emission tonnages that it mentions.

CA Supreme Court denies review on Westlands CEQA exemption

The State Supreme Court denied requests for both review and depublication of the Fifth District's ruling in *North Coast Rivers Alliance v. Westlands Water District*. That ruling upheld the application of a grandfathering rule to exempt a two-year interim water contract from CEQA review because its predecessor contract was set up in 1963, before CEQA was invented. For details of the Fifth District decision see http://www.cp-dr.com/node/3539. (And in separate news, the *LA Times*' Bettina Boxall wrote a stemwinder of a water feature on a proposed deal to let the Westlands Water District off from a $360 million debt to the Bureau of Reclamation for its part in the extension of the Central Valley Project.)

No rent control end run via Costa-Hawkins in LA

California's Second Appellate District blocked an attempted end-run around Los Angeles rent control in *Burien v. Wiley.* The ruling was by the Second District's Division Five, in an opinion by Justice Sandy Kriegler joined by Justices Paul Turner and Richard Mosk. In Kriegler's summary, the case concerned a rent-controlled apartment building on Sawtelle Boulevard that received its original certificate of occupancy in 1972. The landlord converted it to condominiums and obtained a fresh certificate of occupancy in 2009. He then sought to exempt the building from rent control under the Costa-Hawkins Act by claiming an exemption for units with certificates of occupancy issued after 1995. The tenant who objected, James Wiley, would have faced a rent increase from $1,401 to $3,000 per month. The court found "the exemption can only apply to certificates of occupancy that precede residential use of the unit." The case is at http://www.courts.ca.gov/opinions/documents/B250182.PDF.

Jurisdiction argument fails to stop Graton casino

The First District Court of Appeal on October 3 rejected a challenge to the Graton Tribe's planned casino at the edge of Rohnert Park. Opponents of the project, Stop the Casino 101 Coalition, alleged that, although the planned casino site

– CONTINUED ON PAGE 14

– CONTINUED FROM PAGE13

was accepted into federal trust by the Department of the Interior, the tribe still lacked jurisdiction over the land. The court rejected the jurisdiction argument, holding primarily that federally recognized tribes exercise jurisdiction over their reservations, and that even if state consent is required, "such consent is implicit in the [gaming] compact signed by the Governor and ratified by the Legislature." The case is *Stop the Casino 101 Coalition v. Brown*, at http://www.courts.ca.gov/opinions/documents/A140203.PDF.

DWR must reopen review of Kern Water Bank

Judge Timothy Frawley ruled October 2 that the Department of Water Resources must reopen the EIR on the "Monterey Plus Project" with respect to the "use and operation" of the Kern Water Bank." For our detailed news feature on this matter see http://www.cp-dr.com/node/3597.

In other legal news –

- Encinitas homeowners Thomas Frick and Barbara Lynch, whose effort to build a seawall has been blocked by the Coastal Commission and the Fourth District state appellate court, have now requested review from the California Supreme Court. The attorney filing their appeal was Paul J. Beard of the Pacific Legal Foundation. Beard told the San Diego Union-Tribune, "We are asking the California Supreme Court to hear this case so that these homeowners, and all property owners along the coast, can be protected from the Coastal Commission's obsessive crusade against seawalls." For detailed coverage of the Fourth District's decision, see http://www.cp-dr.com/node/3572. The Fourth District's online docket shows it denied a request for rehearing in September.
- Alaine Patti-Jelsvik, an attorney with the Counsel Press filing service, posted a detailed commentary on the new California Rule of Court 8.701 implementing SB 743, saying it "severely shortened and tightened... filing and service requirements and procedure for appellate relief in CEQA cases."
- The Point Reyes oyster war that you thought was already over had one more battle in early October. On October 6 the *Marin Independent-Journal* reported that Marin County officials asked the Coastal Commission to confirm the Drakes Bay Oyster business was shut down by federal courts without a consistency determination from the Commission. (Steve Kinsey, a Marin County Supervisor who is also chair of the Commission, criticized the Commission's role in the matter to the paper, while Amy Trainer of the Environmental Action Coalition told the paper there was no action requiring a consistency review, because the oyster beds' lease had simply expired.) But then, on the same day the *I-J* wrote that news, the *Santa Rosa Press Democrat* reported the oyster operation announced it had reached a settlement agreeing to shut down after all. The owners announced they would remove their oyster farm from federal wilderness property in Drakes Estero and would open a retail oyster business in nearby Tomales Bay. For prior coverage see http://www.cp-dr.com/node/3547.
- The Supreme Court rejected a depublication request in the case of *Citizens for a Green San Mateo v. San Mateo Community College District*. The case was a June ruling by the First District Court of Appeal that said a community group raised its objection too late to be heard against the cutting of more than 200 mature trees on the College of San Mateo campus. For coverage see http://www.cp-dr.com/node/3518 and a discussion of the timing issue by William Abbott on his firm's land use weblog.
- Prominent developer-side firms had asked the State Supreme Court to order publication of *Save Our Heritage Organisation (SOHO) v. County of San Diego*, but the high court refused. What remains on the record is only the Fourth Appellate District's unpublished ruling in favor of the EIR to replace a city-owned historic warehouse building with mixed-use development.
- Local coverage in the *Willits News* celebrated the North Coast Rail Authority's CEQA exemption victory last month over two environmental groups who opposed increased use of an existing rail system. The paper reports the First District appellate decision (see http://www.cp-dr.com/node/3584) may allow lumber to be shipped from Willits by rail for the first time since the 1990s.
- The landlord of the "Friendly Village" mobile home park in Milpitas has appealed the city's federal court victory (see http://www.cp-dr.com/node/3567), which blocked it from raising rents by 50 to 90 percent. The *Mercury News* reported the city has already approved $30,000 for attorneys' fees to fight the appeal before the Ninth Circuit. (Item via League of CA Cities.) ■

October Coastal Commission: celebrities, a cheering squad, marine mammals, and other madness

BY MARTHA BRIDEGAM

The Coastal Commission's October docket in Newport Beach served up a fair slice of Southern California celebrity-involved madness and possibly more items than usual of old business of the it's-never-over variety.

The Commission's most widely reported act of the month was to postpone consideration of an appeal on an unpopular proposal by entities linked to U2 guitarist David Evans, known as "The Edge," to build five large new houses in the Santa Monica Mountains. The Malibu Times and LA Times reported the postponement was for lack of adequate notice to stakeholders and the Commission would likely take up the matter again in January. The paper quoted Frank Angel, attorney for the Sweetwater Mesa Homeowners' Association, as calling the continuance "a huge game changer" because the Santa Monica Mountains Local Coastal Plan (LCP) was to take effect the Friday after the October Commission meeting. (On that approval see http://www.cp-dr.com/node/3559; http://www.cp-dr.com/node/3474.) In a commentary ahead of the meeting, *LA Times* columnist Steve Lopez had questioned how Evans managed to get the hearing scheduled just before that effective date.

In the staff report, summaries of public comments included celebrity relationship gossip and a mention of a Web site that formerly discussed the project, www.leavesinthewind.com. As of 2011 that site explained the plan as it then stood in some detail, promoting it in terms of environmental responsibility and high-concept design. Rejected in its original form that year, the project has since been reduced and redesigned for a less visible group of sites.

The *Laguna Beach Independent* reported that Mark Christy, proponent of a renovation and rebuilding project at "The Ranch" in Aliso Canyon, brought three busloads of supporters to speak in public comment sessions at the Coastal Commission. It said speakers in Christy's favor included the Mayor Pro Tem and two City Council members. The *Newport Beach Independent* reported more than 60 supporters of The Ranch appeared, outnumbering participants in the monthly anti-fracking protest. The Commission has had rocky relations with Christy for some time. This month, as reported further at http://www.cp-dr.com/node/3595 and in the Coastline Pilot, the Commission determined The Ranch had done unpermitted work on its outdoor landscape, including creation of a 7000-square-foot dance floor. Additional disputes concern whether Christy's proposed additions to the site will cause too much environmental harm, and whether the work he has already done on the mid-century resort buildings constitutes renovation or new construction. And this month the *Coastline Pilot* published a letter by Christy on an additional issue: the lack of a public trail on the site. He wrote that it wouldn't work for safety reasons because the resort includes a golf course.

The Commission granted approval, with conditions, for a plan allowing the City of Los Angeles to sell the last seven house lots it owns on the rim of Potrero Canyon in Pacific Palisades. The plan comes with approvals for filling and grading by the city to stabilize the canyon rim. Proceeds will go into a special restoration fund for the park below the lots. The staff report recounts that the city bought 22 residential lots along the canyon in 1991 following litigation over landslides. Since then the city has been conducting restoration work in the area and selling house lots a few at a time to pay for each next stage of the project. This month's approval allows the city to sell the last seven lots without keeping an earlier promise that it would first complete a new park and riparian "habitat installation." Per the *Los Angeles Times'* online archives the original landslide was in 1978 and coverage of city efforts to fix the problem dates back to at least 1985 and 1989.

Caltrans won confirmation of a 2012 approval to move about three miles of Highway 1 inland in San Luis Obispo County near Piedras Blancas. Shoreline erosion and bicycle safety were among the major concerns. The plan also brings the road farther away from a beach that is massively popular with elephant seals, hence decreasing the risk of sofa-sized marine mammals entering the roadway.

– CONTINUED ON PAGE 16

>>> October Coastal Commission: Sean Parker's penance

– CONTINUED FROM PAGE 15

On reconsideration, the Commission granted permission to the City of Los Angeles to install a seasonal ice rink on Venice Beach. The Commission had denied the permit initially in September because of objections to the city's prior handling of a zipline attraction and maintenance of nearby public bathrooms.

San Diego got approval for its LCP amendment to license and regulate food trucks at parks and beaches.

The *Daily Pilot* reported the Commission approved 23 "townhomes" for the former site of a Christian Science church in Newport Beach. The paper wrote, "The site along the 3300 block of Via Lido isn't far from where the former Newport Beach City Hall is to be replaced by a boutique hotel. Officials hope the move will inject life into the area."

The Commission was still planning a workshop for December to consider methods of preserving public access to the cheap seaside family vacation. A cheerful mission at first glance, but conflicts over mitigation costs to developers to preserve low-cost access were less than cheerful through the summer, especially in July (see http://www.cp-dr.com/node/3528).

The Commission's meeting agenda, annotated with outcomes, is at http://coastal.ca.gov/meetings/mtg-mm14-10.html.

News of the Commission during the rest of October was a mix of grants, enforcement actions and appeals.

Napster and Facebook billionaire Sean Parker and his wife Alexandra Lenas got the label of "philanthropists" from a *Monterey Herald* report on their steps to comply with a Coastal Commission settlement. The settlement is in compensation for environmental damage caused at Big Sur by elaborate preparations for the couple's wedding in June 2013. Parker and Lenas agreed to sprinkle $1.2 million among eight environmental and education nonprofits on the Central Coast as part of a $2.5 million settlement payment. Parker also agreed to create a mobile app for the Commission to help coastal visitors to find beach access points.

In another resolution of long-running old business, the Commission announced its approval of a "final plan to restore public access" to the Ontario Ridge trail in San Luis Obispo County. More details from the *Tribune* here.

Commission staff contributed to an Assembly hearing September 25, primarily on dangers of desalination to sea life.

The city of San Clemente got a $90,000 planning grant to work toward finishing its Local Coastal Program (LCP) certification. Newport Beach is applying for a similar grant. More jurisdictions' pending planning grant applications are posted online, awaiting decisions during the next couple of months. KIEM-TV reported the city of Eureka got a $250,000 grant to prepare a risk analysis on sea level rise.

The *Orange County Register* reported Long Beach officials were moving toward approval of the Belmont Beach and Aquatics Center, a pricey remodel of the existing Belmont Plaza Pool for use in diving competitions. Columnist Bob Keisser objected that the new pool would be less ambitious than the old one in the scale of competition events it could host; he was among those calling for a bigger effort to potentially host 2020 Olympic trials.

The local *Daily Breeze* reported the city of Rancho Palos Verdes was working on an amendment to its LCP to comply with a Coastal Commission determination that the current 70-foot flagpole at the Trump National Golf Club violated the existing LCP.

San Diego's Friends of the Children's Pool filed suit over the Coastal Commission's decision to reserve the Children's Pool beach for seals during pupping season. Beach access advocates were additionally calling on the city to open sluiceways in the seawall to clean the sand. Sadly for an already-contested resource, the pool was reportedly part of an area closed for safety due to an October 14 sewage spill.

The *Santa Cruz Sentinel* reported that Ross Eric Gibson of the La Bahia Coalition filed an appeal with the Coastal Commission against city approval of a plan to partly replace, partly renovate the historic La Bahia Hotel. The project would convert it from a 44-unit apartment building into a 165-room hotel, conference center and day spa. ■

Report Recommends Giving More LIHTC Points For Cost Containment

BY MARTHA BRIDEGAM

California's state housing finance administrators published a long-delayed study October 13 on the cost of building affordable housing. It found no single factor to blame for California's high costs per unit. But it said economies of scale tend to help, and multiple layers of restrictions don't help, and that perhaps cost containment should be a more important factor in awarding housing tax credits.

The study found per-unit new construction costs averaged about $288,000 across the period from 2001 through 2011, for all units financed by the California Tax Credit Allocation Committee (TCAC). Those units would have been financed primarily with state and federal low-income housing tax credits, but with other funding sources layered in as well, especially where deep affordability subsidies were used to house people living on public benefits or minimum-wage incomes.

Overall, costs increased when projects involved community opposition, local design-review requirements, underground or podium parking, or funding from redevelopment agencies. Smaller units cost less; higher construction or energy-efficiency standards cost more. Economies of scale were possible when a big developer, a big project, or a general contractor was involved: "for each 10 percent increase in the number of units, the cost per unit declines by 1.7 percent."

Among other findings, the study said high land costs tended to raise per-unit costs even when the price of the building site wasn't part of the calculation, because expensive building sites tended to be used for taller structures that were more expensive to build.

In general the study concluded that developers' own choices can influence costs, and costs rise when requirements are added by the demands of a particular location or cooperating funding source. It suggested adding "a greater emphasis placed on cost containment or cost efficiency" in the competitive application process for tax credit allocations.

The authors reported they attempted to gather market-rate project costs as a basis for comparison but received few sufficiently complete responses from developers so the results were unscientific. In general they found market-rate construction costs averaged higher.

The cosponsors of the study were four state agencies: the Department of Housing and Community Development (HCD); the California Tax Credit Allocation Committee (TCAC), which distributes state and federal LIHTC credit allocations; the California Housing Finance Agency; and the California Debt Limit Allocation Committee.

The full text of the report as posted this month is on the HCD Web site at http://bit.ly/1rtNZN6. Although the project was described as prepared "over the course of a year," it appeared to be the institutional descendant of a September 2011 hearing on affordable housing costs before the TCAC.

Materials from that initial discussion are still posted under the heading, "Affordable Housing Cost Study" at http://www.treasurer.ca.gov/ctcac/tax.asp. The September 14, 2011 hearing transcript contains extended testimony by leading subsidized-housing developers, housing administrators and affordability activists about the reasons why it is expensive and difficult to build new affordable housing in California. See http://www.treasurer.ca.gov/ctcac/staff/2011/20110914/transcript.pdf.

The RFP for a study that followed the hearing set a timetable entirely within 2012. It is still posted at http://www.hcd.ca.gov/2012_affordable_housing/Final_AH_cost_study_RFP.pdf.

Both the 2012 RFP and the final study included a section interpreting the notion of cost containment more broadly. In the final study, this section sets out a case for affordable housing as a means to reduce greenhouse gases, improve local economies, educate children into employable, manageable adults, and reduce the costs of police, medical and social programs that are commonly applied to lives disrupted by the lack of adequate housing.

A *Los Angeles Times* report that includes further summaries of the final study results is posted at http://lat.ms/1wDBSBz. Highlights as viewed by the National Housing & Rehabilitation Association are here. ■

Some blame unions' CEQA appeal for killing factory expansion

Local political and business figures have joined Kinkisharyo International in blaming union-linked complaints, including a CEQA appeal, for deterring an expansion of the company in Palmdale. Kinkisharyo currently assembles light rail cars for LA Metro at a temporary plant. The expansion could have made it a major local manufacturing employer for the longer term.

The LA Times reported Kinkisharyo had been prepared to shift some heavy rail car manufacturing work to Palmdale from its main plant in Japan, in a deal worth millions of dollars to the local economy. But a dispute began over a position taken by members and supporters of the International Brotherhood of Electrical Workers (IBEW) Local 11 supporting "card check" unionization for future new hires at the site. The paper reported what happened next was a CEQA appeal against construction of the proposed new plant, filed by activists who included Local 11 members.

The *Antelope Valley Times* reported that Kinkisharyo withdrew its permit application October 10. It described a group called Antelope Valley Residents for Responsible Development (AVRRD) as the filer of the appeal; The Palmdale Council's October 1 agenda also identifies AVRRD as the appellant.

In a letter posted by the AV Times site, the company's U.S. general manager, Donald Boss, wrote that the project had become "too risky" because AVRRD and IBEW had "refused to withdraw the various appeals they have filed, and have given no assurances that they would not file a court action to object to any final action by your city council." The letter described AVRRD's CEQA objections as "simply a pretext to gain leverage in their attempt to force us to agree to a card check agreement regarding the unionizing of our workforce."

Earlier, on October 7, the *AV Times* published a statement by AVRRD that in turn linked to a letter by the group's counsel, Tanya Gulesserian of the firm of Adams Broadwell Joseph & Cardozo. The letter, dated October 1, said it sought "to fill the void left" by the City of Palmdale's "failure to perform any environmental review of the Project and thus failing to protect air quality, public health, biological resources and supplies of fresh water." It proposed that Kinkisharyo conduct specified air quality reviews of toxics and Valley Fever hazards; that it either transplant 51 Joshua trees or purchase land in mitigation equal to twice the acreage the project would affect, and that it "acquire a new water entitlement for the Project."

The *LA Times* reported Supervisor Mike Antonovich led a press conference Oct. 20 to cry foul and seek support from Governor Jerry Brown. The *AV Times* reported the Antelope Valley Air Quality Management District board also unanimously appealed to Governor Brown to help prevent Kinkisharyo's departure. Kinkisharyo was reportedly planning to move the expansion elsewhere in the U.S. but Maria Elena Durazo of the LA County Federation of Labor told the Times that to do so would violate the company's contract with Metro.

IBEW Local 11 posted a comment on its Facebook page October 14 saying "The company is threatening to leave Los Angeles County as a way to incite elected officials and transit officials into bailing them out." It said the company's contract still required it to create "at least 194 good-quality, full-time jobs in LA County. And it must fully comply with state environmental laws, just like any other company in California."

Al Jazeera America reported the Kinkisharyo contract followed an effort for a "U.S. employment provision" by the Jobs to Move America project of the Los Angeles Alliance for a New Economy (LAANE). It described Jobs to Move America as prodding Metro and Kinkisharyo to live up to hiring commitments but did not attribute any role to it in the CEQA complaint. ■

>>> Seventy Land Use Measures On Local Ballots

– CONTINUED FROM PAGE 1

measures.

It may also help to glance back at our July ballot-measures preview (http://www.cp-dr.com/node/3532) and Larry Sokoloff's discussion last month, at http://www.cp-dr.com/node/3565, of ballot measures in Pismo Beach, Costa Mesa and El Dorado County. As Larry discussed in his article, Costa Mesa's City Council is fighting the planned Highway 405 toll lanes in its advisory Measure P.

So – May the best measures win.

San Francisco County

Propositions A-L: San Francisco's 12 ballot measures are mostly about land use. (Full city ballot pamphlet here.) All are up for a vote against the background of a nasty contest, fought partly on housing issues, between Supervisors David Chiu and David Campos to succeed termed-out Assemblymember Tom Ammiano.

Proposition A is a relatively straightforward $500 million bond measure for roads and transportation, including for the Muni and BART systems. The more disputed Prop. B is Supervisor Scott Wiener's effort to strengthen funding for San Francisco's Muni transit system in proportion to future daytime and nighttime population increases.

Proposition F is a safe-harbor approval request backed by proponents of the major Forest City redevelopment plan for the decayed Union Iron Works plant at Pier 70. The developers reportedly began preparing the measure for the city ballot even before the passage of June's waterfront height limit. While the height limit remains in effect, even the relatively uncontested Pier 70 plan must receive voter approval for the height variances it's seeking. The *SF Chronicle* reported recently that the San Francisco Giants were watching Prop. F in light of their own ambitions along San Francisco's waterfront south of AT&T Park. (See further background at http://www.cp-dr.com/node/3510.)

Proposition G, viewed by proponents as an anti-speculation tax, would increase transfer taxes for most multi-unit residential properties resold within five years of their last purchase or transfer. Opponents have papered voters' mailboxes with splashy mailers setting out possible unintended consequences, such as the possibility that cash-poor owners might be harmed, or that the tax itself might be passed through to a subject building's tenants. CP&DR's own Morris Newman has questioned (at http://www.cp-dr.com/node/3519) whether an anti-speculation tax could really stop gentrification, and whether its attempts to do so would be fair. Prop. G narrowly won support from the local Democratic Party Central Committee. More wholehearted proponents of the measure include the San Francisco Tenants' Union. The group has invited supporters to campaign for Prop. G in memory of its recently, unexpectedly deceased director, Ted Gullicksen: a newly sombre end to a campaign that began by invoking the legacy of Harvey Milk.

Stunning amounts of ink and trouble have gone into Propositions H and I, competing measures on whether to add astroturf, nighttime stadium lighting, and other renovations to the Golden Gate Park playing fields. The project has approval from city agencies and the Coastal Commission, but Proposition H, opposing the use of artificial turf and lighting, was placed on the ballot by a signature campaign. Proposition I, in answer, was placed on the ballot by seven of the 11 county Supervisors. Prop. H supporters have primarily questioned the effect of astroturf on children's health – the fields are extensively used by youth soccer leagues. Light pollution is a secondary issue. Prop. I supporters have argued the renovations would increase access to sports fields and other amenities.

As discussed at http://www.cp-dr.com/node/3532, Measure K represents a compromise between more and less aggressive affordable housing measures. The result has been criticized as unenforceable but it does commit the city to general policies against displacement of existing city residents and in favor of finding land and money to build new affordable housing.

Proposition L, the "Restore Transportation Balance" measure, is a November-cycle interest of tech billionaire and aspiring political investor Sean Parker (q.v. also in this month's Coastal Commission coverage.) Starting from the premise that San Franciscans depend on their cars, it seeks to lock in free Sunday parking (reinstated earlier this year after a controversy), freeze public parking fees, prohibit new "demand-responsive pricing" on parking meters unless a majority of neighbors petition for it, and otherwise shift city priorities to favor car drivers. Supported by Republicans and libertarians, by some major business groups, and by associations from neighborhoods that tend to be conservative, outlying or hilly, the measure has been

– CONTINUED ON PAGE 20

>>> Ballot measures: Santa Monica airport fight

– CONTINUED FROM PAGE 19

ridiculed by public transportation advocates and opposed by Democratic, environmental and labor groups.

And the ballot measures that aren't about land use? Prop. C is about school funding; Prop. E is a New York-style ban on "sugary drinks"; Prop. J is about the minimum wage. Even Prop. D is indirectly about land use: it's a housekeeping measure to preserve retirement health benefits for staff of the city's post-redevelopment successor agency.

Santa Monica

There's no place like Santa Monica, unless of course it's Berkeley or San Francisco. If you live in any of those towns you think everyone else wants to live in your town too and you're not entirely wrong. So in every election there will be ballot measures on competing visions for local land use.

For the November election Santa Monica has five active ballot measures, and all are about land use. (For some of our prior coverage see http://www.cp-dr.com/node/3532.)

The petition campaign against the Bergamot Transit Village "Hines Project" would have made a sixth ballot measure – but members of the City Council saw thousands of signatures coming their way and rescinded their approval of the megaproject. (The City Council has selectively encouraged other redevelopment efforts in the Bergamot Station area.)

There has been no similar resolution to a dispute on whether to close and redevelop Santa Monica's small airport, which sits among residential neighborhoods at the south end of the city. The ballot still includes two competing airport measures. Confusingly, both are promoted with rhetoric designed to punch coastal liberal voters' buttons.

Measure D, an initiative petition, would prohibit new development of the airport property without voter approval. Its supporters include airport-related businesses. A campaign Twitter account for Measure D at @SantaMonicans, run by Santa Monicans for Open and Honest Development Decisions, emphasizes rhetoric about the risks of overdevelopment. The rival Measure LC, placed on the ballot by the city Airport Development Council, would also prohibit new development on the site without voter approval, but would except parks and related facilities, and would also "affirm the City Council's authority to manage the Airport and to close all or part of it." Its supporters at itsOurLand.org and @YesonLC emphasize the goal of local control. Measure LC reportedly has support from most Santa Monica City Council candidates and the Sierra Club. Proponents of Measure D have published ballot arguments calling LC an attempt to confuse voters into watering down their own power over the site. (See both measures' arguments at http://www.smvote.org/BallotMeasures/.) Proponents of LC complain of "'D' for Deception".

This week The New York Times' Christine Negroni reported on the dispute, viewing the airport's noise, danger and disruptions as the major issue, and the two ballot measures as being fundamentally about whether the City Council or the voters will control the site's future. Activists who want to close the airport have been to court repeatedly, most recently seeking a city takeover of the airport from the Federal Aviation Administration. (See more prior notes and links at http://www.cp-dr.com/node/3532.)

But a Santa Monica ballot wouldn't be complete without ballot measures arguing competing versions of housing equity. Measure FS would raise registration fees for rent-controlled landlords from $174.96 to amounts of up to $288 per unit per year, allowing half of each unit's fee to be passed through to its tenant. And then, in a reported attempt to replace lost redevelopment funds, Measure H would raise the local real estate transfer tax from $3 to $9 per thousand of sale price, only on sale prices of $1 million or more. Measure HH asks voters on an advisory basis whether proceeds from the single-H measure should be spent on affordable housing. Some opponents of the measure argued it would encourage "over-development" in the city.

Parks and open space:

It's not just in San Francisco and Berkeley that parks and open space measures are prominent on ballots. For Santa Clara County, Measure Q is a big deal. Endorsed and promoted by the SPUR planning organization, the measure would raise funds over 15 years to preserve open space across San Jose, four suburban cities, and unincorporated areas. The City of Alameda's former Crab Cove measure is off the ballot because the City Council adopted it. In Los Angeles County, Measure P for park funding comes across as a less widely welcomed proposition: The *LA Times* endorsed against it, calling it regressive and saying the Supervisors placed it on the county ballot without enough discussion. And if that measure involves a little acrimony,

– CONTINUED ON PAGE 21

>>> Ballot measures: Fracking, Hotel tax, Prop 1

– CONTINUED FROM PAGE 20

Irvine's Measure V involves a lot: The *OC Register* reports the measure's emphasis on transparency, protection for whistleblowers, and other accountability measures has to do with an ongoing audit of the management of Irvine Great Park. And then the city of Isleton has a Measure D for parks, but it's more like the typical local taxation measures on this ballot, establishing a transactions and use tax to fund "Public Safety and Parks and Recreation projects and services."

Fracking:

Mendocino, San Benito and Santa Barbara Counties vote on fracking measures this month, while a Butte County measure was postponed. San Benito's Measure S has support from Congressman Sam Farr. Because Santa Barbara County has an actual oil industry, Measure P is the hardest-fought.

Hotel and transient occupancy taxes:

Ballots are especially rich with measures to raise hotel and transient occupancy taxes. It's natural considering this year's AirBnB disputes, and a general economic environment where the most obvious sources of funding are the fortunate few with disposable income to splash around. They include Measure B in Palo Alto; Measure_O in Santa Barbara County; Measure L in Hollister; Measure_E in Marina; Measure S in Fountain Valley, and Measure I in San Benito County.

Prop. 1: State Water Bond

You can tell that the Legislature worked on its water bond plan over several years, and engaged in a tough summer-long negotiation that at last led to placing Proposition 1 on the ballot. When this water bond proposal finally landed in front of voters it had something to offer everyone.

Lots of opinion-makers have fallen in behind the bond campaign. Small newspapers all over the state did their bit for the cause this fall by posting locally focused versions of "What The Water Bond Can Do For Us." There's something for desalination. There's something for water recycling. There's a lot for San Diego.

The Association of California Water Agencies is energetically in favor. The Farm Water Coalition, a 501(c)(3) group associated with large-scale farmers and farm-oriented water districts, can offer a convincing "Regional Look at Proposition 1". Dividing the state into eight regions, it notes specific funding amounts in each, and sometimes specific projects, that the bond measure could support.

With Governor Jerry Brown campaigning for the measure in person, and drought pressures driving support for anything that may increase local water supplies, opponents are stuck in the defensive position of "yes, but..." Opposition to the bond has been successfully framed as an opt-out choice: voters have to be aware of some specific item to dislike before they can credibly oppose the bond measure at all.

Small wonder, then, that the Public Policy Institute of California recently found a 56% majority of likely California voters favored Proposition 1.

One ground for opposition has to do with the allegation that, despite claimed best efforts, the bond measure isn't "tunnel neutral" but has the effect of supporting Governor Jerry Brown's ambivalently received Delta twin-tunnels project.

Further opposition has to do with dam projects that the bond bill would support, notably for the disputed proposed Temperance Flat Reservoir, to hold additional water on the San Joaquin River below Friant Dam, and the Sites Reservoir, proposed for land in Colusa and Glenn Counties between the Snow Mountain Wildnerness and the town of Maxwell on I-5.

Some environmental groups support the bond measure or at least don't oppose it. The Sierra Club California takes no position on the measure. The Nature Conservancy is in favor. The Natural Resources Defense Council is in favor.

But the "No on Prop 1" campaign prominently includes the Restore the Delta group and also lists endorsers who include many of the frequent petitioners in water-related environmental litigation, such as the Center for Biological Diversity and California Sportfishing Protection Alliance. As the *Courthouse News* noted, the San Francisco Crab Boat Owners Association is also opposed.

As on all water issues, some of the best places to follow rhetoric on Prop 1 as it gets down to the wire may be the Twitter accounts for Maven's Notebook and for water journalists Bettina Boxall, Matt Weiser, and Alex Breitler. ■

insight WILLIAM FULTON

>>> Post-Redevelopment financing: is it getting easier?

– CONTINUED FROM PAGE 1

its peak provided local governments (mostly cities) with $6 billion a year for urban projects. But a more nuanced answer would be that the state is now doing lots of little things – some formal, some informal – to try to give the locals some running room.

In vetoing the latest tax-increment revival bill (see http://www.cp-dr.com/node/3586), Gov. Jerry Brown made it clear – for the third year in a row – that he has no interest in permitting redevelopment to rise from the grave. There has always been a theory (floated by me among others) that tax-increment revival would be a second-term Jerry Brown thing, but given Brown's animosity toward the League of Cities and his general stubbornness, this seems unlikely. Furthermore, Senate leader Darrell Steinberg – urban development's most effective advocate in the Legislature and one of the few in Sacramento who could go toe-to-toe with Brown – is now termed out, and Redevelopment has no obvious new main legislative champion in the wings.

Is DOF subtly "letting up on the gas pedal" and permitting more redevelopment work to move forward?

Of course, the Brown Administration is currently ramping up the Affordable Housing and Sustainable Communities program, which will expend the Strategic Growth Council's cut of the state cap-and-trade money. That means $130 million in the first year will be pushed out the door, mostly to fund affordable housing and infrastructure projects that support smart growth goals. (See coverage in this issue.) And the number could go up to several hundred million dollars annually in the out years. It will be the biggest infusion of cash into urban development that we've seen since Brown took office. But it's still just a fraction of the amount redevelopment provided.

Meanwhile, the redevelopment wind-down front is settling down a little. The state is actually winning most of the hundreds of lawsuits filed by cities. (See http://www.cp-dr.com/node/3575.) The cities have consistently argued that they should regain control over a wide variety of redevelopment projects and tax-increment revenue flows – and they have mostly lost. Even so, post-redevelopment experts say the state windfall of $1.7 billion per year that was expected a couple of years ago simply isn't materializing.

In part, that's because successor agencies – guided by AB 1484 – have taken a cautious approach to selling former redevelopment agencies' real estate assets. Instead of taking a "fire sale" approach as originally required by the redevelopment dissolution bill, agencies are now preparing "Long-Range Property Management Plans" that focus on the orderly development or sale of assets over time. This will probably produce substantial long-term benefits for all taxing agencies concerned – including the cities that used to have redevelopment agencies – but it hasn't created a lot of short-term cash. As Nossaman lawyer Rick Rayl said at the California Chapter, American Planning Association, conference, last month: "The assets have produced a lot less than anyone ever thought. If you asked Gov. Brown, he might second-guess the whole decision. I don't think it has accomplished what he intended."

That I'm not so sure about. It's not like Brown to admit a mistake, especially a high-profile one. But the bottom line is that if the end of redevelopment isn't producing as much cash for the state as Brown thought, it doesn't really matter. Between an improving economy and the temporary tax

– CONTINUED ON PAGE 23

insight WILLIAM FULTON

>>> Post-Redevelopment financing: a San Diego war story

– CONTINUED FROM PAGE 22

increase he secured in last year's election, his problem is not how to cover a deficit. It's what to do with a surplus.

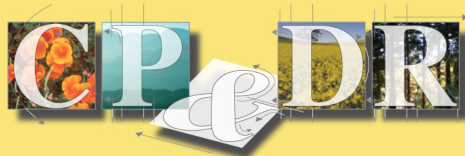
Which leads me to think that what's really happening – informally, with a law or an executive order or any formal policy direction – is that the Department of Finance is beginning to ease up on its demands to repurpose ex-redevelopment funds. Yes, the hundreds of lawsuits will continue to drag on – many of them are now pending in the appellate court. Yes, long-range property management plans will work their way slowly – very slowly – through the system. And yes, DOF will continue to drive successor agencies crazy with opacity and resistance every day on issues large and small.

But DOF also seems to have figured out that, as a general principle, holding things up doesn't do anybody any good – least of all the state general fund. The greatest asset that former redevelopment agencies had in the bank when the program was killed wasn't real estate owned or cash in the bank. It was the potential upside of pending redevelopment projects then in the works. And the longer those holes in the ground sit there, the less money the state, the cities, and the other taxing entities will get in the long run.

I'll tell one war story from my time in San Diego to make my point. At the time redevelopment was killed, Center City Development Corp. and Westfield were working on renovating Horton Plaza Park, outside the famous shopping center downtown. The project got caught up in the redevelopment wind-down and it was literally a hole in the ground with a tarp around it the entire time I worked in San Diego. But during that time, the successor agency and DOF successfully worked through two problems that were holding the project up – first, the transfer of the property from Westfield to the successor agency, and, second, the allocation of additional funds to finish the project when the bids came in higher than expected.

At the beginning of redevelopment wind-down in 2012, you might not have seen much cooperation from DOF. But eventually DOF apparently realized that the value of the successor agency's real estate assets – including the park itself and whatever benefit might be derived from a long-delayed renovation of Horton Plaza itself – was likely to increase more and faster if the project moved along.

All this doesn't mean that Brown will back off of his resistance to tax-increment financing in his second term, and as I said before it's not likely to end the distrustful dance between successor agencies and DOF. But it does mean that – now that the state has the luxury of focusing on long-term asset value rather than short-term cash – long-standing redevelopment projects throughout the state will have an easier path to completion. ■



IS ON TWITTER AND FACEBOOK!

Please follow our tweets @Cal_Plan,
and search for us and become a fan on Facebook.

– CONTINUED FROM PAGE 2

tanker trucks headed for the Bay Area. And the *Sacramento Bee* reported that a draft environmental impact report out of San Luis Obispo County used a qualitative risk assessment to decide that the cumulative effects of oil trains in California could realistically include oil spills and fires, and to discuss possible safety measures. The referenced report appears to be this one. In Kern County, environmental advocates filed a CEQA suit to stop the Alon Bakersfield Refinery Crude Flexibility Project, which would increase rail transport of Bakken crude oil by rail to Bakersfield and would and reopen a local refinery.

MORE BRIEFLY

A big cluster of Strategic Growth Council grant applications fall due in the next several days, mostly on November 13. The League of California Cities has posted the list more or less as distributed by SGC.

A generally favorable feature article *in the* 7x7 *arts and leisure magazine alternates eye-candy renderings of San Francisco's futuristic "Transbay District" project plan* with brief accounts of some of the project's challenges. The project would build large office and apartment towers and raised public spaces around the city's old bus station in the eastern South of Market district. Developers hope the site also will become a terminal for the Caltrain and High-Speed Rail. It recently hit a snag when the Board of Supervisors and developers turned out to disagree on the tax structure for a "community benefit district" to which the major developers would contribute.

The Los Angeles Times reports *a motion before the L.A. City Council* would begin local implementation of the Legislature's Urban Agriculture Incentive Zones Act, but the Board of Supervisors must approve the idea first.

Hudson Sangree of the Sacramento Bee *posted news features* on increased infill development in Sacramento and on plans by developer Michael Heller to convert the Crystal Ice and Cold Storage plant building to retail and office use.

The Monterey Herald reported *another in a series of delays is holding up the draft EIR* on the "Monterey Downs" plan for a mixed-use development at decommissioned Fort Ord. The project would include 1,280 units of housing and a racetrack. The City of Seaside's page for the specific plan on the project is at http://tinyurl.com/pgccpma.

The law firm of McKenna Long & Aldridge posted an update *suggesting* people who follow CEQA law and land use should look into efforts by the Office of Environmental Health Hazard Assessment (OEHHA) to update regulatory documents in the Air Toxics Hot Spots Program. See http://www.oehha.ca.gov/air/hot_spots/Sept2014HotSpotsRags_SRP.html

The Bureau of Indian Affairs issued a finding of no significant impact (FONSI) on the Environmental Assessment for the application by the Santa Ynez Band of Chumash Indians to add the 1400-acre "Camp 4" property to their federal trust lands. The "fee-to-trust" process would convert the land from ordinary real estate under county jurisdiction to land more fully under tribal sovereignty. For details see reports by the KEYT news station and the Santa Barbara Independent. The FONSI and other Camp 4 environmental review documents are at www.chumashea.com.

In a Sacramento Bee interview, *new CalHFA director Tia Boatman Patterson,* who is the former chief consultant to the Assembly Committee on Housing and Community Development, talked about financing affordable housing in a time of pinched housing budgets. She described approaches that include finding lots in cities where low-cost manufactured houses can be added with CalHFA financing.

Large-scale San Francisco housing development has finally branched out into the low-rise residential Inner Sunset neighborhood. J.K. Dineen reports in the *SF Chronicle* that Westlake Urban of San Mateo has proposed to replace the 86-unit Kirkham Heights apartment complex with 460 units of housing likely to serve medical staff and students from nearby UCSF.

Sacramento Bee water writer Matt Weiser visited the Carlsbad desalination plant for a news feature on the project as test case. He writes that it's being widely watched to see if similar plants can work for the rest of California. His article makes a helpful companion piece to an earlier, more legalistic Latham and Watkins review of the Carlsbad project as "a case study of permitting and approvals."

Curbed *and the* LA Times *reported* that the legendary La Mirada Avenue Neighborhood Association

– CONTINUED ON PAGE 25

– CONTINUED FROM PAGE 24

and attorney Robert Silverstein may have reversed the opening of a 22-story, 299-unit residential development in Hollywood; the first 40 tenants may have to move out.

President Obama designated a new San Gabriel Mountains National Monument in a 350,000-acre area of the Angeles National Forest. The *LA Times* has details at http://lat.ms/1waSn83. The White House announcement, including a map, is at http://1.usa.gov/1qxxFLc.

Judge Timothy Frawley confirmed his rejection *of* both of the CEQA lawsuits against the Sacramento Kings basketball arena project. Demolition was nearly over at the site as of late October, and groundbreaking was scheduled for October 29. For prior recent moves in the case see http://www.cp-dr.com/node/3599.

Potential applicants for HUD's $1 billion in resiliency money may be interested in a large, varied calendar of webinars discussing the program and its goals. The program's page on the HUD site also includes an FAQ updated as of October 24. For prior notes on the program see http://www.cp-dr.com/node/3587.

As Environment California has been reminding the public, the comment deadline is November 14 on EPA's "Waters of the United States" proposed rule. The deadline has already been extended twice. If approved, the EPA's proposal would extend the definition of waters that the Clean Water Act regulates to include smaller bodies of water and even wetlands. The proposal's Web page is at http://www2.epa.gov/uswaters.

Last summer in San Francisco the MonkeyParking app startup was cease-and-desisted, parodied, and finally left town. Now it's having a similar time in LA County. Santa Monica and Beverly Hills have banned the app, which helps people to sell the news that they're about to leave a public parking space. West Hollywood was considering a ban, and the LA City Council's transportation committee voted to draft an ordinance banning private sales of public parking.

The LA Daily News reported *the City Council* gave Anschutz Entertainment Group "an additional six months to find a football team to play in the developer's proposed downtown stadium."

The U-T reported the San Diego City Council gave initial approval to a compromise "linkage fee" ordinance that would raise developer fees to support affordable housing.

Los Angeles River Artists & Business Association (LARABA) in downtown Los Angeles was fighting proposals for a Metro maintenance facility that turned out to conflict with LARABA's plans for the Arts District.

The "Coast Dairies" property near Davenport on the Central Coast, an inland open space of almost 6,000 acres, was transferred to the Bureau of Land Management as a gift from the Trust for Public Land.

The SPUR planning organization announced plans to open a new Oakland office, to join its founding San Francisco office and its more recent San Jose branch.

Capital Public Radio reported *that opponents* haven't given up fighting the SB 270 plastic bag ban now that Governor Brown has signed it. They've received clearance from the state attorney general to collect signatures on a statewide repeal referendum. For some history on the bill see http://www.cp-dr.com/node/3568.

A video dramatizing gentrification tensions went viral in San Francisco. First posted by Uptown Almanac, it depicts an argument in which young men playing pickup soccer on a public playground in the city's Mission District are approached by players from Dropbox who say they have paid a fee to reserve the field. San Francisco's own Julia Carrie Wong has a summary in the New Yorker of the political moment it represented.

San Francisco's Board of Supervisors passed legislation October 8 legalizing AirBnB rentals. The San Francisco Chronicle and the San Francisco Bay Guardian (just days before its closure) reported the measure limited rentals of whole living spaces such as houses but not "hosted rentals, such as spare bedrooms."

The City of Los Angeles issued *a "Great Streets for Los Angeles*" transportation plan with emphasis on improving safety for bicyclists and pedestrians. The *Los Angeles Daily News* has details.

The City of Fresno finally accepted *a million-dollar grant* to start plans for a station of the locally vilified High-Speed Rail project. See http://www.cp-dr.com/node/3568 on prior rejections of the grant. ■

An Unfortunate Education in Prop. 13

BY JOSH STEPHENS

As if we needed another story about Prop 13's unintended impacts on education, here's a new twist.

The Archer School for Girls inhabits a covetable property – a resplendent 1930s Spanish Revival complex designed by William Mooser – on one of the most unenviable corners in the free world. It's on Sunset Boulevard, about a mile west of the 405 freeway, in Brentwood. It's the bottleneck through which every single commuter coming from Santa Monica and Pacific Palisades crams in an effort to get to the Valley or wherever. When the evening rush hour gets going (around 3pm) you're lucky if it takes you a half-hour to drive that mile.

Needless to say, the traffic was there long before the school, which moved to that campus in 1999. But, if you ask some people, the traffic is the fault of Archer.

Needless to say, the traffic was there long before the school, which moved to that campus in 1999. But, if you ask some people, the traffic is the fault of Archer. They'll say that plenty of other things are the school's fault too.

Some background: When Archer acquired the property and applied for its conditional use permit, neighbors raised holy hell. They feared every manner of impact, from noise, to errant soccer balls, to unsightly renovations, to unspecified hooliganism. Despite the arguable importance of educating the city's 600,000 or so school-age children, there's no such thing as "school zoning" in LA. So, the school is, like all other private schools, governed by a conditional use permit. Archer's conditions that would make even the most vulturous attorney blush. It has something like 85 conditions, and most of them are unheard-of for a school. If Archer was a bar, it'd be forced to serve beer out of thimbles.

(Disclosure: I taught at Archer in the early 2000s.)

Essentially none of the neighbors' fears has come to pass. Traffic has gotten worse, but it's done so very much of its own accord. Even so, now that Archer is proposing an expansion of its campus – without, mind you, an increase in enrollment – the forces of neighborhood concern are at it again. Sure, more cars would make traffic worse. But there's worse and then there's imperceptibly worse.

Archer wants all sorts of things that schools tend to want: a performing arts complex, a gym, more evening events, and a parking structure. I don't have a position on exactly what conditions Archer should or shouldn't agree to. That's for the school and the neighbors to work out.

I am, however, interested in how we got into this mess in the first place. And here's where it gets ironic.

Many of the homeowners in Brentwood who are anxious about Archer have been there quite a while. That means, they may have voted on Prop 13. If they owned homes at the time, they probably voted for Prop 13. (Who in their right, self-interested mind wouldn't have?) And it certainly means that they've benefited from Prop 13. A home that was worth $100,000 north of Sunset in 1978 might be worth north of $5 million today. And that's just for the lot.

(Check out this map of property taxes in LA County and zoom in on Sunset and the 405. You'll see plenty of blue lots, indicating tax rates of less than $2 per square foot. Then ask yourself if any of those properties should be taxed at that rate when many others are above $10.)

The rest of the story is no secret: Howard Jarvis goes bonkers, Prop 13 passes, local revenues dry up, the state back-fills (sort of), and big urban school districts,

– CONTINUED ON PAGE 27

>>> An Unfortunate Education in Prop. 13

– CONTINUED FROM PAGE 26

like LAUSD, get clobbered while suburban school districts thrive on revenues from new construction and pro-education residents.There is no greater tragedy in modern California than the demise of our urban schools.

The well-off families of Los Angeles, many of whom also probably voted for Prop 13, have responded by supporting private schools at up to $30,000 or so per student per year. It's no coincidence that many of LA's private schools didn't exist before 1978. Mind you, there's a public high school about two miles south of Archer. Most Archer students would probably go there (or to their respective neighborhood schools) if their parents were comfortable with the education there. But, who can blame them?

The neighbors won't know it, because Prop 13 is surely a distant memory for many of them, but they want to have it both ways. They get the estimable tax benefits of Prop 13. But they also don't want to be impacted in the slightest by an institution that owes its very existence to Prop 13 – and that, aside from traffic impacts, costs them nothing. This brings up one of the hidden costs of Prop 13. The neighbors' (grandfathered) property taxes may be low, but now everyone is spending time, money, and energy on yet another CUP battle. Where's Howard Jarvis when we need some simplistic wisdom to sort this all out?

The way the negotiations are going, the neighbors are going to get much of what they want, including further restrictions on car traffic, number of school events, and the size of the new buildings and parking garage. That's how politics often works in LA. Powerful homeowners' groups are politically galvanized. And planners can't even use a fiscalization argument to support the school, since the school doesn't enrich the city via sales taxes. So, the conversation naturally turns to traffic and construction noise and the school gets squeezed.

I only wish Archer's neighbors were as concerned about the local public school's utter shortage of facilities as they are about Archer's desire to build new ones.

It's hard not to think that one consequence of an underfunded public school system is that civics goes by the wayside. A little education in the unintended consequences of Howard Jarvis' crusade would have saved the world a lot of pain. Instead, Archer's neighbors get to remain blissfully ignorant while they issue their demands. The worst thing – except, of course, for under-educated children – is that if LA had better schools, it's likely that everyone's property values would rise.

Back when I taught at Archer, my favorite course was AP Human Geography. It has a chapter on urban form. I regret that even I never touched on Prop 13. The school is certainly learning its lesson now. ■