

OPR staffers’ discussion tour both explains and shapes SB 743 proposal

BY WILLIAM FULTON AND MARTHA BRIDEGAM

The state’s proposed switch in transportation metrics for analysis under the California Environmental Quality Act came into sharper focus during September, as Office of Planning & Research staff provided more detail – and listened to criticism – in a series of forums around the state.

Responding to a directive in last year’s SB 743, OPR released draft CEQA Guidelines in August that would switch transportation analysis under CEQA from the long-used congestion metric, level of service (LOS), to a metric that aligns more with the state’s

greenhouse gas emissions reduction goals, vehicle miles traveled (VMT).

In two road-trip visits to planning audiences and a webinar, OPR staff members clarified some of the draft amendments and began to hint at where they might be willing to back down from the initial proposals. Among other things, here’s what OPR staff said:

- Local governments will still be free to use LOS under their own General Plan policies and police power, but within CEQA analysis VMT will trump General Plan-driven LOS standards.

– CONTINUED ON PAGE 12

insight
WILLIAM FULTON

Everyone wants to keep leverage under CEQA

A few weeks ago I stopped by Bacara for the first time. Bacara is a superfancy resort along the Gaviota Coast, just off Highway 101 west of the UC Santa Barbara campus. With a rack rate of maybe \$700 a night for a room, it’s far from cheap. And it’s beautifully designed

– a collection of Santa Barbara-style white buildings, two and three stories, tumbling down a hill toward the ocean. It’s so beautiful, in fact, that it’s easy to forget that Bacara – or, more precisely, an earlier proposal for a luxury resort on the site – prompted the court case

– CONTINUED ON PAGE 35

NEWS:

- Merced’s new RTP/SCS; Antelope Valley Area Plan Update..... Page 2
- Governor’s signing decisions..... Page 24

CAP-AND-TRADE PROGRAMS:

- SGC proposes 40% of new program’s funds for TOD..... Page 5
- Defining Disadvantage under SB 535..... Page 8

APA CALIFORNIA 2014:

- Special conference coverage..... Page 15

LEGALS DIGEST:

- Appellate Court Upholds Coastal Commission’s Stance..... Page 28

BOOK REVIEW:

- Josh Stephens reviews Paul Bogard on light pollution..... Page 37

Merced CAG approves RTP/SCS, struggles with 2035 goals

The Merced County Association of Governments board approved a Regional Transportation Plan and Sustainable Communities Strategy September 25. Choosing between a “Scenario A” that assumed continuing growth trends, and a “Scenario B” that presumed a 35% density increase over current trends, the board chose “B”. Neither version meets the Air Resources Board’s prescribed goal of reducing greenhouse gas emissions 10% by 2035, so an Alternative Planning Strategy will need to be prepared as required under SB 375. The fairness of San Joaquin Valley county-by-county goals is an ongoing matter of debate. See, e.g. <http://www.cp-dr.com/node/2797>. A staff report included in the MCAG September 27 agenda said that, if considered as a three-county group, Merced, Stanislaus and San Joaquin Counties would meet the 10% goal, though Merced County by itself would not. See <http://www.mcagov.org/agendacenter> for the September 25 agenda and staff reports and <http://www.mcagov.org/209/2014-Regional-Transportation-Plan> for the plan.

LA County Regional Planning approves first of three major Antelope Valley documents

The Los Angeles County Regional Planning Commission voted

September 27 to approve the Antelope Valley Area Plan Update. The measure is the first among three major land use documents affecting large tracts of currently open land across the northern and northeastern desert lands of unincorporated LA County. The plan concentrates development in three “Economic Opportunity Areas” (EOAs) and increases the dimensions of Significant Ecological Areas (SEA) but may change their effect. It sets the zoning stage for a future specific or community plan to build the proposed Centennial new town along Highway 138.

The *Antelope Valley Press*, available by subscription at <http://www.avpress.com>, reported the approval vote was unanimous after an amendment reduced the application of SEA designations to the EOA affecting the Centennial site. Developers affiliated with the Tejon Ranch have proposed to build 23,000 housing units there. However, the paper reported the most discussed concern at the meeting was whether a broad agricultural zoning change would make large solar arrays easier to build.

The county’s public site for the September 27 meeting is at <http://1.usa.gov/1nG0daM>. Plan documents are available via <http://planning.lacounty.gov/tnc>. The same site links to materials on the Draft EIR

for the plan, which is still open for public comment through October 6.

In a separate but closely related process, Los Angeles County is revising the SEA element of its General Plan at <http://planning.lacounty.gov/sea>. A public hearing with the matter on its agenda is set for October 8 but a vote on the proposed SEA Ordinance is not expected that day. See <http://planning.lacounty.gov/generalplan/meetings>. SEAs exist throughout the county but most prominently in northern areas addressed by the Antelope Valley planning process.

Transbay Transit Center deal now uncertain

The *San Francisco Chronicle* reported September 23 at <http://bit.ly/XYT3C8> that a Mello-Roos tax district deal among Transbay Transit Center landlords and San Francisco officials had failed and was “likely to become the subject of protracted litigation”. Two days later the paper described the collapse as possible rather than certain, but still in flux. See <http://bit.ly/1vu5ByG>. The deal is to help finance the downtown Transbay Tower and Caltrain extension.

Fresno City Council rejects planning grant rather than favor high-speed rail

Fresno’s City Council reportedly chose by a tough, close vote at its August 21 meeting to turn down

– CONTINUED ON PAGE 3



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

William Fulton
Publisher
Martha Bridegam
Editor

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

– CONTINUED FROM PAGE 2

\$1 million in planning grants for the city's projected high-speed rail station. The *Fresno Bee* reported at <http://bit.ly/1ISTo4F> that while Mayor Ashley Swearingin supported the high-speed rail program, several City Council members opposed it intensely, viewing it as a misplaced use of money alongside local drought-worsened hardships.

The August 21 vote was Swearingin's second try to get the planning grant through after a prior rejection. In discussing the issue's history August 10, reporter George Hostetter wrote in the *Bee* that "station planning in Fresno has turned into a proxy for a bigger fight on the bullet train's life or death." (See <http://bit.ly/1wFPsM8>.) The Fresno County Board of Supervisors voted to oppose the whole high-speed rail project in July. (See <http://bit.ly/1o9zzVd>.)

Funding comes through for South Bay Area BART extension

In August a major round of California transportation funding awards included a crucial \$39 million installment to the Santa Clara Valley Transportation Authority to finish the BART extension through Milpitas and Berryessa stations toward arrival (at last) in San Jose. See <http://bit.ly/1ISLd8q> for the VTA official announcements.

HUD opens competition for \$1 billion in resilience funds

In a new commitment to framing public services as disaster preparedness, HUD announced a competition for \$1 billion in "disaster resilience" funds. See <https://www.hudexchange.info/cdbg-dr/resilient-recovery> for the HUD site. Smart Growth America has announced a

webinar on the program for October 8. Details are at <http://bit.ly/1pEirUf>. The grant program announcement follows a prior group of grants by the Rockefeller Foundation to cities to hire "Chief Resilience Officers". For coverage of the Rockefeller-supported local programs see e.g. <http://www.planetizen.com/node/71123>.

A big-picture view of Fig bike fight

Drew Reed has a detailed look at Los Angeles's Figueroa Street bike-lane controversy in *CityMetric* at <http://bit.ly/1pOpWb8>, laying out some of the conflict that unfolded over the summer between bicycle activists and City Council member Gil Cedillo. For more from a bicyclists' point of view, see the "Fig4All" campaign's Web site at <http://www.fig4all.org> or its more frequently updated @fig4all Twitter account. For a sampling of this summer's arguments about it, and the text of a letter Cedillo distributed last summer, see *Streetsblog LA* at <http://bit.ly/1oOrIMl>.

In other news --

- Fresno extended the comment deadline on its 2035 General Plan draft until October 9. For city materials and comment instructions see <http://bit.ly/1rW40SY>.

- HUD's Office of Inspector General issued a report at <http://1.usa.gov/1sLXbni> criticizing Pomona's use and monitoring of federal Neighborhood Stabilization Program funds. It recommended that the city pay back \$78,155 to the program and "support or repay" \$584,148 in further spending.

- The Fehr and Peers consulting firm announced it would make presentations about SB 743 jointly

with OPR on October 30 in the Bay Area.

- The Bakersfield *Press-Enterprise* reported that Palen Solar Holdings withdrew its application for a license to build a solar array feeding a 750-foot tower in Riverside County. See <http://www.pe.com/articles/solar-750823-palen-project.html>.

- KPCC reported the Metropolitan Water District had used two-thirds of its reserves: <http://bit.ly/1qAbTpM>.

- *Planetizen* picked up an article in *UrbDeZine* by architect Jim Chappell, former head of the SPUR civic and planning organization, on major changes coming to Fort Mason Center on San Francisco's northern waterfront at <http://www.planetizen.com/node/71234>.

- The Porterville City Council moved toward clarifying its Urban Development Boundary as a first step toward annexing East Porterville areas with dry wells that need municipal services. For details see the *Porterville Recorder* at <http://bit.ly/1Cg40hT>. For a compelling *LA Times* news report on the East Porterville drinking water shortage see <http://lat.ms/1ohA3Gb>.

- Los Angeles Metrolink reported a continuing decline in fares and ridership. The *LA Times* has details at <http://lat.ms/1ISIE6f>.

- The *LA Times* at <http://lat.ms/1oW1ZnD> reported on a planning effort to densify and renew investment in the part-built Warner Center in Woodland Hills, in part by zoning for more commercial development and raising height restrictions.

- A federal draft Environmental Impact Study is out for the Temperance Flat dam project. The

– CONTINUED ON PAGE 4

– CONTINUED FROM PAGE 3

Fresno Bee has details at <http://bit.ly/1qgGUVu> (via the Maven's Notebook blog). the DEIS itself is at http://www.usbr.gov/mp/nepa/nepa_projdetails.cfm?Project_ID=821. Comments are due October 21.

- A report by the Pacific Institute at <http://pacinst.org/publication/hazards-toll/> says “massive public health and environmental costs” could result if no remediation work is done on the Salton Sea. The *San Bernardino County Sun* has details at <http://bit.ly/1qAk6PC>.

- When no legislative deal emerged to give tax breaks to the Tesla company for its battery factory, the company built the factory in Nevada. A widely mirrored *Los Angeles Daily News* editorial blamed CEQA -- see <http://bit.ly/1ISJHmG>. The *LA Times* later reported that benefits of the factory to its new site might be exaggerated. See <http://lat.ms/1pBjPHk>.

- An audit alleged misuse of housing bond funds by the state Department of Housing and Community Development. See <http://lat.ms/1ARMfTx> for an *LA Times* report on the audit and <https://www.auditor.ca.gov/reports/summary/2014-037> for the audit itself.

- The *LA Times* reported Los Angeles began a hotel tax enforcement campaign against AirBnB hosts: <http://lat.ms/1qg1IC8>. At the most recent Coastal Commission meeting, Venice Beach activists speaking in public comment said they feared the city would only monetize short-term rentals without acting to regulate the economic effects or conduct of short-term rental visitors.

- Bloomberg reported the California Oil Marketers' Association was asking State Attorney General Kamala Harris to investigate the legality of the state cap-and-trade program's fuels component: <http://bloom.bg/1u09r3h>.

- Virtu Investments bought the big Natomas Ridge complex in Sacramento. See <http://bit.ly/YlhTXs>.

- The California Public Utilities Commission, Sacramento Area Council of Governments, and others have written to Benicia city officials urging them to study the impacts more deeply before approving a Valero Refining Company plan to bring two oil trains a day across Sacramento-area tracks. See <http://bit.ly/1rmuHg5>. Kern County has already approved a large oil train plan to run to a refinery in Bakersfield. See <http://bit.ly/1rWMZrM>.

- The three-foot buffer law for cyclists is now in effect: <http://sacbee.com/YPrigv>.

- Comments on Cotati's General Plan proposal are due October 24, 2014: <http://bit.ly/1yqCpMB>.

- Cupertino's next General Plan update EIR study session October 7. See <http://bit.ly/1Cg080C> for *Mercury News* coverage and <http://www.cupertino.org/> for the General Plan site itself.

- Menlo Park's "ConnectMenlo" General Plan update is under discussion in a long continuing sequence of public discussion events. See <http://www.menlopark.org/739/ConnectMenlo-General-Plan-Update> and, for *Mercury News* coverage, <http://bit.ly/1sXqc9K>.

- Tulare's City Council was headed toward approval of a 2035 General Plan revision with plans for “transit-oriented development” and “climate action.” The *Tulare Voice* reported at <http://bit.ly/1yqCPmb> and <http://bit.ly/ZcV9jc> that the plan won praise from environmental activist Don Manro, who had challenged the 2008 plan successfully in court.

- *Calaveras Enterprise* columnist Muriel Zeller was thrilled to hear a General Plan draft for Calaveras County would be released for public review “after eight years and consultant fees exceeding \$1 million”. See <http://bit.ly/Y1IGOW>.

- Marin County and the City of Oakland are talking about rent control. See <http://bit.ly/1nGp7Hs> and <http://bit.ly/1uaehtJ>.

- *San Francisco Chronicle* architecture critic John King wrote a favorable review of Fremont's planning for the Warm Springs BART area, suggesting it would outdo San Francisco's Mission Bay by accepting more diverse and welcoming designs. See <http://bit.ly/1mn0H4Q>.

- September 19 was the tenth annual Park(ing) Day, an event founded by the Rebar design firm in San Francisco, when persons who question the prominence of automobiles in cities turn parking spaces into temporary parks. See Rebar's own account of the event at <http://parkingday.org/about-parking-day/>, *Streetsblog* for a photo roundup at <http://bit.ly/1ym2AnI> and the #parkingday hashtag at <https://twitter.com/hashtag/parkingday?src=hash> for much more. ■

SGC proposes 40% of cap-and-trade funds for transit-oriented development

BY MARTHA BRIDEGAM

The Strategic Growth Council has proposed that 40% of its estimated \$130 million in cap-and-trade funds be devoted to transit-oriented development (TOD) projects, and that another 30% be devoted to infrastructure-related programs that may include housing.

The SGC issued [draft program guidelines](#) late September 23. The week before, the Air Resources Board (ARB) adopted guidelines on benefits to disadvantaged communities. (See additional coverage in this issue.)

The newly public documents represent important strands in a braid of agency rules required by prior AB 32 / SB 535 provisions and the new programs set up by this year's SB 862 budget bill.

In particular, SGC has begun more definitely to describe the Affordable Housing and Sustainable Communities (AHSC) program, which as of June 2014 brought housing issues into a statutory scheme previously focused on reducing carbon emissions and environmental disadvantage. (A detailed news analysis of a prior SGC workshop asking the public how to create the new program appears at <http://www.cp-dr.com/node/3556>.)

The final strand in the braid, required by the end of September, will be a definite decision from CalEPA on which of California's 8,000 census tracts to designate as "disadvantaged," most likely through application of the CalEnviroScreen 2.0 environmental/socioeconomic metric. (For prior CP&DR coverage of the "disadvantage" definitions issue see <http://www.cp-dr.com/node/3570>.)

The proposed SGC guidelines refer to the September 18 ARB approvals but state the resulting "disadvantaged community threshold requirements" table is "subject to revision to be available by September 30, 2014."

SGC's main 82-page non-agricultural guidelines draft recommends "two project prototypes", identified as transit-oriented development (TOD) projects, to receive at least 40% of funds, and "Integrated Connectivity Projects" (ICP), to receive at least 30% of funds. It describes the program as offering "gap financing for rental housing

developments that include affordable units, and as mortgage assistance for homeownership developments. In addition, grants are available for [specified eligible] infrastructure improvements."

In the TOD category each project area to receive an award of \$1 million to \$15 million would need a "Major Transit Stop within a 1/2 mile catchment area." The transit stop can connect to high-speed rail, "commuter or light rail," Bus Rapid Transit (BRT), or an "Express Bus." Each TOD area "must" include both affordable housing and a "capital use" from a list that may include a variety of housing, transportation or greenhouse gas (GHG) reduction programs.

The ICP description does not require housing but does require two eligible projects, one of which must be an "Infrastructure-Related Capital Use" that may promote housing, transportation, transit, "green infrastructure," pollution reduction or "planning implementation". It allows for grants of \$500,000 to \$8 million for project areas. Its transit requirement may be met by an ordinary bus or "vanpool/shuttle" stop but it must increase transit use to "key destinations".

(The references to less urban choices such as home mortgage assistance and bus or vanpool transit could be concessions to calls made by rural housing advocates and planners for ways to use AHSC money outside major transit corridors.)

Additional requirements and limits on uses apply, in part according to each project's type of existing landscape and proposed use. Housing infrastructure spending is restricted to \$35,000 per housing unit or \$50,000 per affordable "restricted unit", and program uses are restricted to 10% of each whole grant.

Other limits further push projects away from infrastructure-only planning toward mixed purposes that are likely to include housing. The program forbids any grant-assisted profit that "exceeds the commercially reasonable range for other developments of similar size and level of risk". Further "The applicant must show that Program

>>> SGC draft: anti-displacement rules; ag land plan

– CONTINUED FROM PAGE 5

funds are reasonably necessary for Project feasibility and no other source of compatible funding is reasonably available.” Rental housing developments must carry 55-year affordability covenants.

Projects that demolish or rehab existing affordable housing units must replace them at a level of “equal or greater affordability”. This is a key difference from, for example, the [SB 628 Enhanced Infrastructure Financing Districts](#) program, which also requires any lost low-rent units to be replaced, but at levels of “affordability” targeted to incomes as high as 120% of area median. (Governor Brown signed SB 628 on September 29.)

The SGC application process is to be managed as separate TOD and ICP competitive processes, each handled according to a point scoring system. “Anti-displacement strategies” are among the factors to be considered in the “community orientation” scoring category, though it’s not clear if there would be any requirement to compensate for gentrification effects that do not directly evict existing tenants.

Other factors (among many) include housing affordability levels, “affordability factors” of project locations, blocks shorter than 500 feet, sidewalks, bike facilities, green building techniques, electric vehicle charging stations, and maximum limits on parking. “Co-benefits” that earn points include public health and safety improvements, economic and job training advantages to residents, and reduced pollution exposures.

After 40% of the funds have been allocated to TOD applicants and 30% to ICP applicants, the remaining 30% goes to “Either TOD or ICP based upon score; [Affordable Housing] and [Disadvantaged Community] requirements.”

A cover memo appearing as part of the posted draft guidelines PDF sets out “issues to be resolved prior to Council adoption of the Final Guidelines in December.” It lists “coordination and partnership” with regional government entities, “geographic distribution of funds throughout the state,” “ARB guidance on GHG reductions quantification” and choices of point values for application scoring. (The current draft leaves point values to be filled in later.)

On the roles of Metropolitan Planning Organizations (MPOs) and other regional government entities, SGC

states in the draft guidelines themselves that it is “soliciting input and advice from” such entities and “developing a framework for thorough, meaningful consultation with these institutions.” It does not suggest a more than advisory direct role for them. The draft guidelines do however require funded projects to be consistent with regional agencies’ Sustainable Communities Strategies.

The agricultural lands proposal calls for planning grants of \$100,000 each to “counties and/or cities in collaboration with other partners,” adding up to \$1 million; and agricultural easement grants of unspecified individual amounts, adding up to \$3.75 million. It calls for spending an unspecified further amount on creating incentives for GHG reduction through land management in cooperation with USDA.

The planning grants are to cover purposes such as designing farmland conservation plans or exploring possibilities for agricultural easements. Applicants are to use CalEnviroScreen to determine whether half the proposed project area is in a disadvantaged community or, if not, must show how the proposed project provides “direct, meaningful and assured benefits” to a nearby disadvantaged community.

A resource appendix to the agricultural land preservation draft carries a dense collection of links to state and federal agency Web sites on land use, GHG reduction and conservation.

The main SGC draft guidelines as released September 23 are [here](#). The [workshop notice](#) was recently updated to add specific dates and times for workshops: October 23 in Merced, October 24 in Oakland, October 27 in Los Angeles, and October 28 in Sacramento. All require advance registration, at links via the workshop notice, for limited numbers of free tickets. Merced’s were going fastest as of late September 29. Written comments are due October 31, 2014 to AHSC@SGC.CA.GOV and SGC’s adoption board meeting will be December 11. The agricultural lands draft from SGC is at <http://bit.ly/1wKxcdW> and gives a comments address of AHSC_AG@sgc.ca.gov.

The Council is scheduled to meet October 6 with an agenda that includes an informational item on the Affordable Housing and Sustainable Communities program. The agenda materials are at http://sgc.ca.gov/s_100614meetingmaterials.php. A staff report linked from

– CONTINUED ON PAGE 7

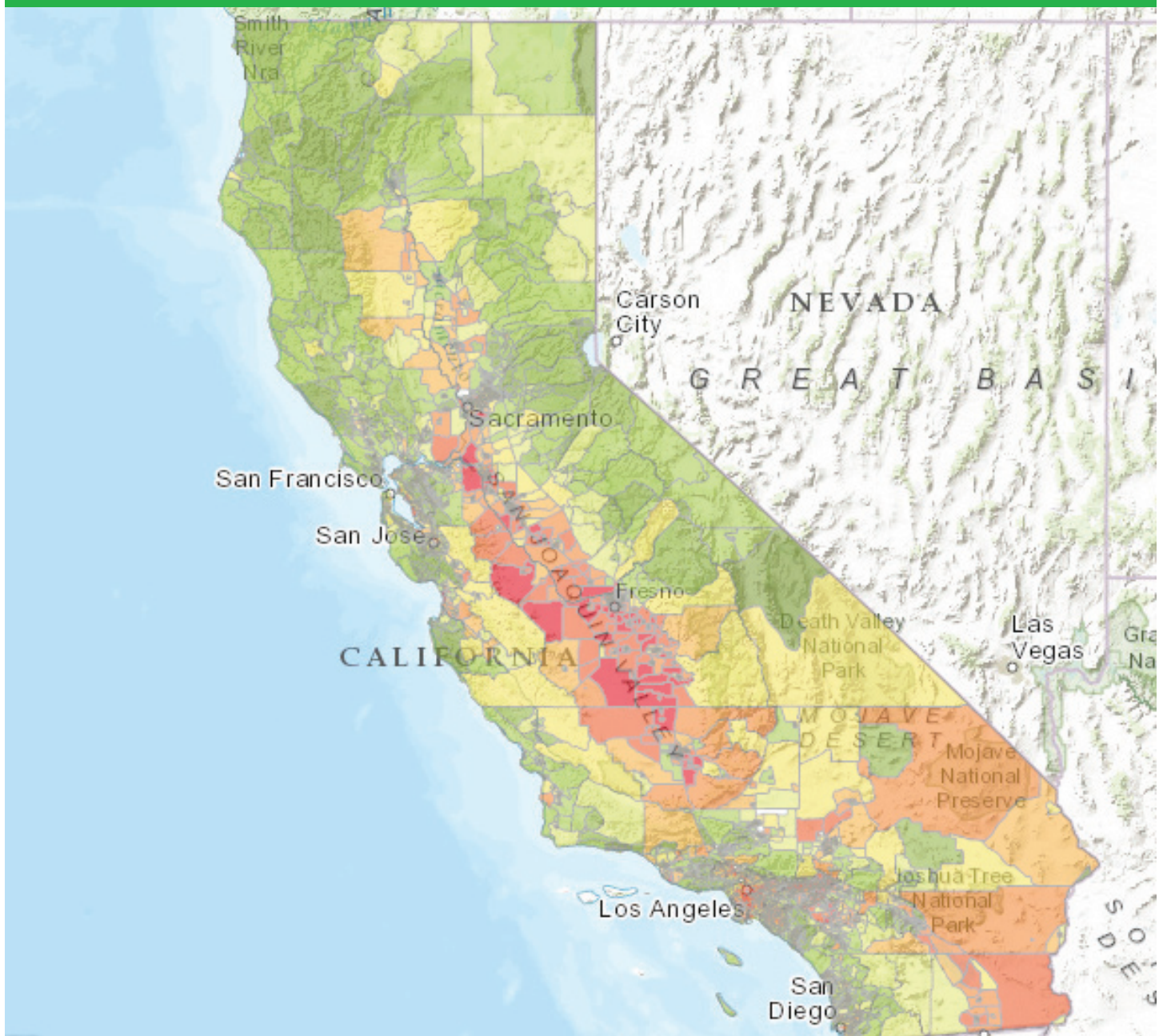
>>> SGC draft: board next meets October 6

– CONTINUED FROM PAGE 8

there at http://sgc.ca.gov/docs/Agenda-Item-8_AHSC_Staff_Report.pdf says public comment on the agricultural guideline drafts is also due October 31, 2014. The

meeting is scheduled to be livestreamed at <http://www.calepa.ca.gov/Broadcast/>. ■

CalEnviroScreen 2.0 results



Environmental justice and housing worlds seek meeting of minds on defining disadvantage

BY MARTHA BRIDEGAM

Environmental justice advocates have a lot in common with housing advocates and subsidized housing professionals, but their goals and assumptions don't always mesh fully. Now the new cap-and-trade law is forcing them to have a more serious conversation. They're especially having to work out grantmaking guidelines under the new Affordable Housing and Sustainable Communities (AHSC) program. It isn't easy. (For prior coverage of the AHSC guidelines debate see <http://www.cp-dr.com/node/3556>.)

Some of the difficulty was already on display in a September 3 workshop in Oakland, held to discuss CalEPA's proposals on how to define "disadvantaged communities" under all of the cap-and-trade programs regulated by SB 535, and related proposals from the Air Resources Board (ARB) on how to define when such communities receive benefits.

And as of late September, advocates were awaiting a major determination due at the end of the month: CalEPA's decision which of California's 8,000 census tracts would count as "disadvantaged".

Anxiety about that decision was especially high in the Bay Area because the whole region tended to score lower in the agencies' proposed statewide rating of disadvantage.

A sign-on letter organized by the SB 535 Coalition, with signers from housing, environmental justice, poverty and transit groups, said grants out of cap-and-trade proceeds should genuinely help disadvantaged groups of people in significant ways, with care taken not to actually burden them. They said programs should "avoid using location as the sole touchstone for assessing whether a project provides a benefit to disadvantaged communities" but instead should determine whether residents who were actually disadvantaged would benefit. (Comments on the proposals are posted publicly on the site maintained for the disadvantage guidelines and workshops at <http://www.arb.ca.gov/cc/capandtrade/auctionproceeds/upcomingevents.htm>.)

At the early-September workshop, some housing

advocates questioned whether the CalEPA approach to defining disadvantage, which emphasizes environmental hazards, might direct additional housing toward areas that are defined as disadvantaged precisely because they are unhealthy to live in.

Another question was how directly the funding process should respond to the specific problems of a given disadvantaged place -- linguistic isolation, for example, or toxics from a particular industrial site, or extreme poverty in some far northern areas of the state that have relatively low exposures to industry, agricultural chemicals or traffic.

First definite guidelines approval is out from ARB

On September 18 the Air Resources Board (ARB) approved a lightly revised version of its previously circulated guidelines on defining benefits to disadvantaged communities. The revisions raised the percentage of CAL FIRE urban forestry grants to serve disadvantaged communities from 55% to 100%, and added, in 26 separate instances, the phrase "direct, meaningful, and assured" as a descriptor for the ways benefits should be provided to disadvantaged communities.

Mari Rose Taruc, state organizing director with the Asian Pacific Environmental Network, reported that in the meeting, ARB Board member John Gioia directed staff to insert further language in response to concerns of the California Environmental Justice Alliance and SB 535 Coalition. In Taruc's summary, the language called for "Prioritizing projects that provide multiple benefits in the section of the Guidance that lays out the process for selecting which projects qualify for SB 535 funds," "directing all agencies to avoid displacement of low-income residents, and "requiring agencies to maximize benefits 'to the maximum extent feasible' rather than simply, "whenever feasible."

Regional differences on an environmentally oriented metric

At the center of the agencies' approach is CalEnviroScreen 2.0 (CES 2.0), the multiply workshopped, politically honed and visually astonishing mapping tool that CalEPA has

— CONTINUED ON PAGE 9

>>> Defining disadvantage: Bay Area advocates puzzled

– CONTINUED FROM PAGE 8

developed to show intersections of environmental and social inequity. This tool -- or some variation on it -- will be the basis for the census tract selections due at the end of the month.

Available at <http://oehha.ca.gov/ej/ces2.html>, the tool now rates census tracts' levels of disadvantage according to measures of toxic exposures, environmental degradation, and aspects of public health and socioeconomic disadvantage (e.g., asthma and poverty) that increase vulnerability to environmental hazards.

Many Bay Area census tracts known for poverty and environmental hazards tend to score lower on CES 2.0 than areas with similar reputations in other regions of the state. CalEPA's proposed "cutpoint" for defining disadvantage is the worst 20% of statewide census tracts. Officials said that in the Los Angeles workshop some commenters from areas with very high disadvantage ratings actually called for the cutpoint to fall at 15%. In the Bay Area however, many areas with significant problems fell into a borderline area between the worst 20% and the worst 25% of census tracts according to statewide ratings. Hence some Bay Area advocates were calling for the cutpoint to fall at 25%.

Taruc wrote in mid-September, "CalEnviroScreen is a good tool for environmental justice overall and is meant to provide data on cumulative impacts based on pollution burden and socio-economic vulnerability. While we would like to see more [environmental justice] communities in the Bay Area identified by the tool, the tool isn't necessarily designed to make sure each region is well represented; it compares scores statewide. We also want to see improvements to CES, including housing indicators; even then, one housing indicator would only be one of about 20 indicators of cumulative impact."

The Bay Area has some tracts rated very high for disadvantage, especially along the east fringe of San Francisco Bay, toward San Jose and along Interstate 80. But there are some surprising results too.

Among the dense downtown neighborhoods of San Francisco, the highest disadvantage rating, of "86-90%", is shown for a tract east of Fifth Street near Moscone Center where many of the residents are seniors living in subsidized housing. Poverty, linguistic isolation, and exposure to environmental hazards are all real problems

in that tract, but other downtown areas known for poverty amid gentrification, such as Sixth Street and the Tenderloin, show much lower disadvantage ratings.

The Bayview-Hunter's Point neighborhood on San Francisco's southeast waterfront, with its long record of economic disinvestment and toxic exposures, shows up with worse disadvantage ratings than many other parts of the city. But even the highest ratings there fall in the "76-80%" range, i.e. they are within the worst 25% but would not qualify as "disadvantaged" under the 20% cutpoint rule.

A similar result was worrying Janet Pygeorge, head of the Rodeo Citizens Association. Her concern is with Census Tract No. 6013358000, which covers the area of Rodeo around the Phillips 66 refinery on the Carquinez Strait. The tract has a CES 2.0 rating of "76-80%" with very high ratings for hazardous waste, asthma and traffic density, but lower concern ratings for some factors such as ozone, drinking water, pesticides and formal educational attainment. (Only agricultural pesticides, not urban ones, are considered in CES 2.0, a circumstance that led at least one commenter to ask if urban burdens were under-measured.)

Pygeorge said the area is vulnerable to releases from the refinery and has dilapidated public housing near there that would be first to suffer in the case of a major toxic event. She wrote after the meeting, "Nobody is at fault, but we are here, drowning." Her submitted comment on the disadvantage determination process, describing effects of toxics on her neighbors, is at <http://bit.ly/1quGE5p>.

Regarding the Bayview-Hunter's Point and Rodeo results, CalEPA Communications Director Alex Barnum said, "We are looking at that in the context of all the other comments."

A further comment by Nancy Rieser, of Crockett Rodeo United to Defend the Environment (CRUDE), supported a "Method 6" proposed by the Bay Area Air Quality Management District in addition to the five approaches proposed by CalEPA. Her comment, at <http://bit.ly/1utoK3k>, said "This method, which still relies on the CalEnviroScreen indicator data, ensures that communities with top ranks in a few indicators will be better represented." Her letter also suggested considering added factors including cost of living and urban pesticide use.

– CONTINUED ON PAGE 10

>>> Defining Disadvantage: where to put the cutpoint?

– CONTINUED FROM PAGE 9

David Armijo, General Manager of the AC Transit district, which serves Alameda and Contra Costa Counties, also submitted a comment supporting “Method 6” and suggesting disadvantage had been undercounted in areas such as West Oakland and Richmond. See <http://bit.ly/1m229Jz>. The *LA Times* reported 20 Bay Area legislators protested. See <http://lat.ms/1sq0Qao>.

The Bay Area’s lower ratings are in part because the region has comparatively clearer air, and it has a relatively small proportion of active industry and industrial agriculture. CalEPA officials noted the designers of the metric chose to weight current exposure indicators, such as toxic emissions from active industrial sites, more strongly than environmental degradation indicators, such as toxic materials buried in a Superfund site. They said the reason is that the exposure indicators are more likely to show a direct impact on health of people than the environmental indicators.

As several housing activists noted, CES also doesn’t directly consider differences in local cost of living. It arguably under-counts the challenges faced by people who, in addition to the CES 2.0 disadvantages, face high prices for housing and other essentials. Hence it considers the differences in air quality between, say, San Francisco and Bakersfield, but it doesn’t directly address the differences in housing or food prices.

(For comparison, HUD’s map of Qualified Census Tracts, available for 2013 at <http://www.huduser.org/QCT2013/qctmap.html>, maps disadvantage very differently, noting census tracts where local incomes are exceptionally low compared with area median incomes, with area rent levels a secondary influence in the calculation. The results track CES 2.0 in some areas but diverge in others.)

Agency officials said “CalEPA could look into a way of incorporating a cost of living indicator into a future version of CalEnviroScreen.” They said the disadvantage definition decision due this month would be based on the current version of the CalEnviroScreen tool with its existing 19 indicators. They said “CalEPA did consider including rent burden as a factor, but plugging it into the tool, it had a high correlation with other indicators,” so they decided instead to use unemployment because that added more to

the analysis.

Agency officials meanwhile noted that because organizations and local governments in the Bay Area often have greater capacity than in the Central Valley, they are likely to produce more grant applications.

People in some other areas of the state have felt slighted as well. Jim Kemp, executive director of the Santa Barbara County Association of Governments, wrote at <http://bit.ly/1tQOaZT> that the proposed processes “do not appear to recognize any ‘disadvantaged communities’ whatsoever in 33 of California’s 58 counties.”

Why a 20% cutpoint, not 25%?

Agency officials said one reason why the department chose 20% as the cut point initially was that many indicators of vulnerability affect about 20% of the state’s population: for example, lack of a high school diploma, unemployment (realistically viewed), and lack of adequate health care. Additionally, they felt the focus on these areas should be concentrated, not proportional to the population.

For most SB 535 programs, the officials noted, 25% is the minimum proportion of benefits required to serve disadvantaged populations according to current agency positions. So a 25% cutpoint would simply be imposing a fair-share rule that 25% of the funds should be spent on 25% of the population.

The SB 535 Coalition’s group letter had argued that the requirement for 25% of cap-and-trade proceeds to “benefit” disadvantaged communities should be in addition to the separate requirement that 10% of the funds benefit projects within those areas.

Barnum said, “We plan to overshoot that 25%. We plan to maximize the benefits to disadvantaged communities. We view that 25% as a minimum.”

In the AHSC program, 50% must benefit disadvantaged communities and 50% must provide housing opportunities for lower-income households.

Officials said the Fresno and Los Angeles groups spent more time discussing CalEPA’s proposed alternative methodologies, which would change the use or weighting of the factors currently used by CES 2.0. They said the

– CONTINUED ON PAGE 11

>>> Defining disadvantage: awaiting CalEPA’s decision

– CONTINUED FROM PAGE 10

strongest focus was either on CES 2.0 as is, or on CalEPA’s “Method 4”, which would make weighting more similar between socioeconomic and pollution burdens.

Major themes at the Oakland workshop were the call for a 25% cutpoint, the concern about cost of living and housing costs, and calls for funding to address the specific types of disadvantage affecting each area respectively. Some commenters who worked in housing also questioned whether the CalEnviroscreen approach, which was largely developed before housing entered the cap-and-trade picture, was properly applied to the new purpose of funding affordable housing, especially in the AHSC program.

Felix AuYeung, a project manager with EAH Housing in San Rafael who attended the workshop, wrote afterward: “the other programs under Cap and Trade work well in terms of prioritizing capital directly into Disadvantaged Communities to invest in new infrastructure and transit, because it would directly improve that community. Housing, however, does not directly improve the conditions that make an area a Disadvantaged Community; in fact, many have argued that more housing in Disadvantaged Communities will put even more people directly in harm’s

way (for example, poor air quality).”

Regarding the comment at the workshop that programs should address the particular problems that are worst in a given area, Arsenio Mataka, Assistant Secretary for Environmental Justice and Tribal Affairs, said afterward that the administrative agencies were looking at that goal. He said if, for example, a project is planting trees in an area with high unemployment, it may be a helpful goal to hire unemployed people to plant the trees. While he called it a valuable thing to strive for, he said it might not be possible in every case.

The September 18 ARB guidelines approval was announced in a press release at <http://www.arb.ca.gov/newsrel/newsrelease.php?id=658>. The guidelines as approved are at <http://bit.ly/1Dm4VPp>. Public comments that were received on the ARB and CalEPA elements of the proposed disadvantaged communities definitions are posted at <http://www.arb.ca.gov/lispub/comm2/bccommlog.php?listname=sb-535-guidance-ws>. The combined workshop page for the ARB and CalEPA processes is at <http://www.arb.ca.gov/cc/capandtrade/auctionproceeds/upcomingevents.htm>. The CalEnviroscreen 2.0 metric is at <http://oehha.ca.gov/ej/ces2.html>. ■



IS ON TWITTER AND FACEBOOK!

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



>>> OPR’s SB 743 tour: comment deadline extended

– CONTINUED FROM PAGE 1

- OPR will not dictate a single transportation modeling methodology but, rather, will provide lead agencies with great flexibility about which models to use and how to use them.
- OPR might be willing to back off of the suggested “regional average VMT” standard for significance under CEQA, especially in the vast Los Angeles region covered by the Southern California Association of Governments.
- The deadline for comments will be pushed back from October 10 to November 21.
- The current draft is really a kind of informal “pre-regulatory draft”. Once OPR finalizes the guideline amendments, they will be forwarded to the Natural Resources Agency, which will conduct a full rulemaking process with more commenting opportunities.

The August draft had been met with a wide variety of concerns from CEQA practitioners around the state. Local planners and transportation engineers expressed considerable fear that they would not be able to use CEQA’s leverage to extract traffic improvements as mitigations. In addition, the real estate law firm of Holland & Knight responded to a list of potential mitigation measures by characterizing it as an impermissible attempt to expand CEQA law by pushing economic and social policies such as affordable housing near transit. (See <http://www.cp-dr.com/node/3560>.)

Comments on the draft are due by November 21 to ceqa.guidelines@ceres.ca.gov. Some of the details released at the September 25 webinar are in a new FAQ document posted at http://www.opr.ca.gov/docs/FAQs_Regarding_SB_743_09262014.pdf and otherwise on the general OPR SB 743 site at http://www.opr.ca.gov/s_sb743.php.

At all the forums, OPR Senior Planner Chris Ganson and Counsel Chris Calfee went out of their way to

explain the reasoning behind the recommendation to back VMT as the new metric. In San Diego, Ganson said LOS as a general standard often focuses on the wrong things – moving vehicles instead of people, for example, and solving the program of localized congestion around a particular project without considering the overall impact on the transportation system. “The scale of analysis is too small,” he said. “Oftentimes, you relieve a bottleneck and end up with a worse bottleneck downstream, which worsens the whole situation.” In other words, he said: “All you did was you moved impact outside of your scope of analysis to somewhere else.”

Discussing multi-modal level of service – which has often been identified as a possible alternative to vehicle level of service – Ganson said it has many of the same defects as vehicle level of service. “There are a lot of situations in which inserting multimodal LOS could be quite useful,” he said. “We found CEQA not to be one of them because it creates some of the same perverse incentives – in infill development it’s again going to trigger impacts on transit, bicycling, ped facilities. It looks at crowding and says adding more people is bad but of course what we want is to add more people.”

Ganson reiterated that even if congestion itself would not be considered a significant impact, the new guidelines would continue to permit actual environmental impacts of congestion – air quality, for example – to be analyzed, and would also permit analysis of safety concerns, a matter of interest to Caltrans in particular.

General Plan LOS Will Be Trumped – But Police Power Won’t

At a forum in San Diego in mid-September (see <http://www.cp-dr.com/node/3571>), Calfee indicated that General Plan congestion standards won’t be counted as significant under CEQA. “Once the guidelines are adopted, then those measures can’t be the basis of a significance finding under CEQA,” he said. He later

– CONTINUED ON PAGE 13

>>> OPR's SB 743 tour: mitigations as impacts?

– CONTINUED FROM PAGE 12

indicated that it may be necessary to revise the CEQA checklist to reflect this viewpoint.

At the same time, Calfee emphasized: “We are only making changes to the CEQA analysis. Local General Plan policies, zoning codes, things like that, those remain in place. This does not interfere with local police power. Local agencies get to keep their impact fees, their planning processes, as otherwise.” Nevertheless, the general impression conveyed by OPR is that the CEQA Guidelines amendments are likely to drive local government policies away from congestion and toward VMT as a standard.

Speaking alongside Ganson and Calfee at the state American Planning Association (APA) convention in Anaheim a few days later, Fehr & Peers’ Ron Milam said that for traffic engineers taking LOS out of CEQA is like “playing golf while taking our seven-iron away.”

But he added that lead agencies must take a much broader view about how transportation analysis will be changing under CEQA. “We’ve become dependent on LOS as a way to get ad-hoc mitigation,” he added. “Traditionally we want to look through the one lens, LOS, which is largely a traffic operations metric. ... What’s happened with 743, is we’re starting to balance the playing field by introducing accessibility, access to goods and services. Access is not a traffic operations metric ... It’s helping understand how efficient our networks are.”

Milam and Calfee both emphasized once again that local governments can still use their police power and their general plan policies to extract increases in roadway capacity from developers.

Will Traffic Congestion Mitigations Become Impacts Instead?

When Ganson and Calfee spoke at the APA convention, the discussion revolved around the question of induced travel created by additional highway capacity – and

whether, under CEQA, additional capacity might actually wind up creating a significant impact, rather than serving as mitigation. Under the LOS standard, congestion can be a significant impact and so therefore additional capacity can be a mitigation. But under the OPR proposal, congestion can’t be considered a significant impact, while big increases in VMT can be. So, if additional lanes mean free-flowing traffic, and free-flowing traffic induces travel, VMT might go up – and trigger a significance threshold under CEQA.

One audience member posed this question: If the Regional Transportation Plan and the Sustainable Communities Strategy has identified the need for a widened road – and the plan-level environmental impact report is done – will project-level environmental review have to look at induced travel?

“The simple answer,” Milam said, “is yes.” But both he and the OPR representatives emphasized that a VMT metric might drive lead agencies in the direction of adding either density or a greater mix of land uses as a mitigation measure to drive VMT down – and this may have some effect on congestion as well.

Regional Average VMT As Threshold

On the webinar Calfee implied willingness to change the draft’s proposed approach to assessing projects’ VMT levels by relating them to regional average VMTs. That approach has been criticized as difficult to apply fairly to local areas that don’t match the averages taken across large regional government areas. (See prior discussion at <http://www.cp-dr.com/node/3560>.)

He said OPR “would really appreciate your input on things like, what might be the appropriate recommendation for a threshold? We started out with regional average but we know others have some good ideas as well so please submit those.” He said the staff knew the safety discussion needed to be further refined, “and also, give us your thoughts on whether the timing that we set out is appropriate.”

– CONTINUED ON PAGE 14

>>> OPR's SB 743 tour: local discretion emphasized

– CONTINUED FROM PAGE 13

(On the webinar recording, which is available at http://opr.ca.gov/video/SB_743_Webinar_092614.wmv, these key comments show up around Minute 41. Note this is a different, more extended recording than the webinar recording shown at http://www.opr.ca.gov/s_sb743.php, which stops just past Minute 38.)

Lots of Discretion on Methodology

Throughout September, both Ganson and Calfee emphasized that it would be permissible, and in fact important, for local lead agencies to choose VMT measurement tools that have sensitivity to different relevant factors. He said standardized measurements may work well in some circumstances but will “miss a big part of the picture in other circumstances.”

At the state APA, Fred Dock, Transportation Director for the city of Pasadena, said his office had already begun calculating VMT on a citywide level. He wasn't certain, however, how the work already done in Pasadena might fit in with the regional-average standard proposed under SB 743 in the guidelines proposed this August by the Office of Planning and Research. (See <http://www.cp-dr.com/node/3576> and <http://www.cp-dr.com/node/3560>.)

OPR's proposed guidelines document links directly to several different Web pages offering “sketch model” interactive worksheets to calculate VMT. (See <http://bit.ly/1kOofPD>, Appendix F, starting Page 36.) The panelists said officials and project proponents needed to understand better which calculation methods would be accurate and respected enough to survive legal challenges – and public agencies would need budgets to put staff time into research on the subject.

Former SANDAG Planning Director Bob Leiter recommended a staff report by Peter Imhof of the Santa Barbara County Association of Governments (SBCAG) on ways regional differences might affect the proposed SB 743 VMT guidelines. The report

appears as an attachment to a recent SBCAG advisory committee agenda at <http://bit.ly/1uFvU4p>.

Leiter and SACOG's Kirk Trost thought it would be helpful to create provisional VMT guidelines and test them out in a feedback process before enforcing definite rules.

Will Infill Projects That Don't Reduce VMT Be Behind the 8-Ball?

At the September 25 presentation, the OPR team said the mitigation measures in question were optional suggestions derived from a list prepared by the California Air Pollution Control Officers' Association. More recently, a widely posted *Sacramento Business Journal* commentary by writer Allen Young at <http://bit.ly/1CwNo5L> quoted Holland & Knight's Jennifer Hernandez as claiming that sponsors of infill projects would be pushed by the new rules to justify projects that did not minimize vehicle trips.

Essentially, the concern is that the new guidelines will force projects into land-use changes to lower VMT – for example, adding housing to a commercial project or a child-care center to a mixed-use project. Ganson and Calfee emphasized over and over again that these are mere examples, though at the APA conference Milam noted that examples endorsed by OPR may be interpreted as significance thresholds by the courts.

When Will The New Guidelines Take Effect?

On the date for full statewide implementation – as distinct from initial implementation in transit-rich areas, or voluntary adoption where local agencies prefer the new metric – Calfee said at the webinar, “We put as a placeholder January 1, 2016, but we know that that time period is likely to move, given how long the rulemaking process is likely to take.” Separately he reassured listeners that the current discussion process was “pre-regulatory,” to be followed by a formal rulemaking via the state Natural Resources Agency. ■

End of Redevelopment: Nobody's a Winner

BY WILLIAM FULTON

The end of redevelopment has never turned into a cash cow for the state, as Gov. Jerry Brown hoped back in 2011. And while the 2012 cleanup law – AB 1484 – has clarified the rules, cities are still losing most lawsuits against the state that seek to retain former redevelopment funds.

That was the message from three lawyers at the Nossaman law firm who gave an update on redevelopment at the California Chapter, American Planning Association conference in Anaheim on Monday. Overall, it was a tale that seemed to suggest everyone is getting less than they had hoped for – not only the locals but the state as well.

“The amount of money -- the \$1.7 billion that was gonna just come flying in to the state -- has not materialized,” Nossaman lawyer Rick Rayl said. “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.”

AB 1484 created a much more constructive relationship between the successor agencies and the Department of Finance and in particular took the pressure off a possible fire-sale of real estate assets by authorizing successor agencies to prepare long-range property management plans subject to state approval. These plans permit agencies to lay out long-term plans for developing or selling former redevelopment agency assets in a way that will maximize value.

Many cities have complained that DOF turns long-range property management plans are very slowly, but Rayl's colleague Jeff Stava said DOF is actually picking up the

pace and getting faster and more responsive to successor agency requests.

Among the other pending issues facing successor agencies:

- Disposition of some 180 lawsuits against DOF – most of which seek to permit the successor agencies to retain former redevelopment funds or real estate assets over DOF's objections. DOF has won most of these cases at the trial court level and the cases are only beginning to trickle up to the appellate courts.
- Credit rating questions for both the successor agency and the underlying city when \$11 billion in redevelopment bonds have been downgraded to junk status. This is especially important as successor agencies begin refinancing bonds – a practice other taxing entities like but, according to Stava, many successor agencies are not motivated to undertake because the underlying city will only receive 15-20% of the benefit. (See <http://www.cp-dr.com/node/3483>, however, for a decision this spring by Fitch Ratings to upgrade its view of successor agencies' tax allocation bonds.)
- Whether and how to spend proceeds from so-called “Mardi Gras” bonds – bonds issued during the hectic period in early 2011 when redevelopment agencies were trying to beat a pending deadline for dissolution. One legislative bill, SB 1129, would have clarified this issue and allowed some of the bond proceeds to be spent. It was vetoed September 29. ■

Planning & Visioning Websites Internet Marketing



URBAN INSIGHT

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

CEQA Guidelines discussion with Calfee becomes comment session

BY MARTHA BRIDEGAM

The presence of OPR Senior Counsel Chris Calfee on the panel turned a discussion on the 2014 CEQA Guidelines Amendments at the California Chapter, American Planning Association conference into a comment session to help Calfee take the conference group's temperature on possible CEQA guideline revisions.

Calfee told the group that although a comprehensive update to the CEQA guidelines had been in the works for some time, OPR had decided not to publish it during the SB 743 traffic impact metrics debate in order not to "distract from those issues." He called the delay "a blessing in disguise" in that it allowed OPR to continue taking comment and revising the guidelines draft accordingly. (He carefully did not offer clues to any timetable for their release.)

Panelist Doug Carstens, of the CEQA petitioners' firm Chatten-Brown & Carstens, praised OPR for publicly posting all comments received on the guideline revisions. Comments and other CEQA regulatory materials are posted at http://opr.ca.gov/s_ceqaguidelines.php. Among three groups of comments linked from the page, the group from summer 2013, indexed at http://www.opr.ca.gov/docs/word_of_index.pdf, got attention for a City of Los Angeles Planning letter posted there.

The letter, appearing on Page 57 at http://opr.ca.gov/docs/CEQA_Guidelines_Public_Comments.pdf, objects to what it describes as the current practice of treating "illegal uses that are already in place" as "part of the existing environmental baseline." It said, "By amending the definition of baseline to include only uses that were legally in place at the time of application, we can require these illegal uses to at least mitigate for the impacts that they create." Or if not, the letter asked that guidelines "include ways to alter the baseline in the record... to catch illegal or unapproved operations."

Calfee singled out the case of *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439 as "a really interesting one" on CEQA baselines -- "the court gave us a really good policy rationale" -- on when to stick with an assessment of existing conditions as

the baseline. (The case is accessible free via search at <http://www.lexisnexis.com/clients/CACourts/>.)

As Bill Fulton explained last year at <http://www.cp-dr.com/node/3392>, the California Supreme Court held in the *Smart Rail* case that lead agencies may be able to use a "future baseline" -- a comparison of projected future conditions with and without the proposed project, rather than comparison with the present day. However, a bare majority of the Court found that future baselines are only permissible with carefully documented justifications.

Panelist Barbara Schussman of Perkins Coie, however, viewed the case as suggesting that an "existing conditions" CEQA baseline could be read more broadly than some people might think, though a "distant future" baseline such as the rail program's 2030 projection did require a strong showing.

Moderator Curtis Alling, of Ascent Environmental, invited shows of hands to tell OPR the relative importance of issues to clarify in the new guidelines. The conference audience cared intensely about more clarity on standards of review, baseline-setting, CEQA's interaction with other environmental rules, and when it becomes acceptable to defer mitigation measures until later in a project. They showed less interest in clarifications on the feasibility and alternatives process or on the types of public paper and online notices require.

Panelists and audience agreed that Internet posting of notices still can't be treated as sufficient to reach the whole public. (Agreement seemed a bit less clear on what Internet posting standard should be met.)

Also on the panel, Mindy Fogg, Planning Manager with the County of San Diego, suggested agencies should help their publics to understand and use the alternatives process, as an underused means of improving projects.

And Alling suggested OPR could make existing CEQA streamlining methods more accessible to local lead agencies by assembling a "CEQA toolbox" of possible methods to consider. ■

Impressions from Anaheim – conference notes

BY MARTHA BRIDEGAM

CP&DR was livetweeting extensively from panels at the APA California conference, as you can see by scrolling back to our September 14 and 15 posts at http://www.twitter.com/Cal_plan. Following are some notes filling out those highlights in context, and adding some further notes on issues raised at the conference.

- Jason Uhley, Chief of Watershed Protection for Riverside County, complained from local experience that infill projects could be put at a disadvantage by rules designed to regulate standalone “greenfield” developments: a requirement to treat all new runoff on a newly developed property could make an infill builder responsible for water traveling along streets from existing developments.
- For new projects’ water effects, speakers on different panels mentioned pressures toward handling new projects’ impacts through off-site compensations. To offset a new demand on local water supply, a developer might be asked to contribute to a regional “water bank”. To compensate for runoff effects, a developer might very well ask for a chance to meet obligations on a difficult site by contributing to an “alternative” mitigation project elsewhere in the region.
- Bryn Evans of the Dudek environmental consulting firm said if the state water bond passed, to look for more integration between management of water supplies and of stormwater. (During the same week’s Coastal Commission meeting at the other end of California, Commission Executive Director Charles Lester was telling the Commission the bond would contain funding sources more relevant to coastal areas than its headline-grabbing dams and hydraulics. He noted the bond package also contains funds for environmental cleanup and restoration, and loan money for integrated water management planning, water recycling and treatment technology, and a little funding for flood management.)
- A discussion of diversity and tourism in Los Angeles County in part explored what former Burbank mayor (and retired City of Los Angeles urban designer) Emily Gabel-Luddy called “the decentralization of experience” through transit. Panelists said improved transit could help draw tourists, including overseas visitors, into a broader variety of Los Angeles physical and cultural landscapes, and could help residents of low-income neighborhoods travel more easily to opportunities elsewhere in the region. The panel also highlighted some major economic development efforts in LA that may result in shifting travel patterns. Former City Council member Jan Perry, now General Manager of the Los Angeles Economic and Workforce Development Department, discussed downtown affordable housing increases (now hampered by the loss of redevelopment financing), efforts to slow traffic and promote cultural tourism on historic Central Avenue, local-hire provisions in project labor agreements, and economic development around the Martin Luther King, Jr. Hospital project in Willowbrook (see <http://planning.lacounty.gov/willowbrook>). Glyn Milburn of Mayor Eric Garcetti’s office described a major expansion of Universal Studios as planning to add 30,000 jobs, which he said would ideally be reached by daily transit commuters – for example, from Santa Clarita. (Specific Plan materials for Universal Studios are at <http://1.usa.gov/1qsqSIG>.)
- In a panel on housing issues in areas “where industry is king”, Amitabh Barthakur of HR&A Advisors said production/distribution/repair (PDR) jobs were declining in Southern California but demand for industrial real estate was rising, especially inland where larger floor areas could be built. The reason? Demand for warehouse and distribution space for goods produced elsewhere.
- Lara Gates, Community Plan Update Project Manager with the City of San Diego Planning Department, recounted some of Barrio Logan’s history as an industrial-residential neighborhood where residential neighbors have organized to assert cultural and environmental rights; the largely resident-supported creation of the Barrio Logan Community Plan (“I went and walked every single parcel”) and its shipyard-backed defeat in two June citywide ballot measures (see <http://www.cp-dr.com/node/3510> for prior coverage). Since the defeat of the plan, Gates said the existing “mishmash” of zoning-authorized uses remained in effect, including industrial zoning “completely ringing an elementary school.” In the negotiations on what

– CONTINUED ON PAGE 18

>>> Impressions from Anaheim – good housing in bad air?

– CONTINUED FROM PAGE 17

should happen next, she said local industry advocates were asking to reinstate industrial uses in the area that the plan had sought to designate as a transition zone. She predicted litigation would follow. She said lessons for planners included working closely with industrial interests to understand their goals; laying down solid baseline data; concurrently reviewing both land use planning and zoning; and engaging community and political support, including understanding what local elected officials are hearing.

- In the housing-and-industry panel, and also in a separate panel on projects near roadways, planners from dense urban areas talked about the difficulty of imposing any outright ban on sensitive uses, such as schools or housing, near industrial polluters or roadways. (Los Angeles County's ban on affordable housing within 500 feet of freeways has actually been opposed by some activists as shutting out freeway-crossed neighborhoods from housing funds that they need. See http://www.shelterforce.org/article/3346/living_in_the_buffer/.)
- Connie Chung of the Los Angeles County Department of Regional Planning said in the roadways discussion that many community development and transit-oriented development effort have focused in areas near major roadways (not solely freeways) that create dense air pollution. Realistically, she said, focus for development in buffer areas near big roadways has to be less prohibition in than mitigation.
- On the other hand, Ian MacMillan, Program Supervisor for CEQA Intergovernmental Review with the South Coast Air Quality Management District, said the 500-foot buffer distance consistently seemed to be the “magic number” for housing. And there are costs to building near freeways with the mitigations that freeway-damaged air quality requires. MacMillan said mitigation in such areas could include use of expensive high-quality indoor air filters that would have to be replaced timely throughout the life of the building – potentially a cost and maintenance issue for affordable housing. Cathy Fitzgerald of PlaceWorks said especially high-level air filters, above the MERV-13 level, can create problems with air flow resistance, high maintenance costs, and possibly a need for special

HVAC systems.

- For jurisdictions or builders looking to estimate roadway emissions, Leland Villalvazo, Supervising Air Quality Specialist with the San Joaquin Valley Air Pollution Control District, offered an online estimator – not necessarily approved by all jurisdictions, but with data available for all California Counties. He offered links to the District's “Inventory and Modeling Resources” links page at http://www.valleyair.org/busind/pto/Resources/resources_idx.htm, and directly to the estimator at <ftp://12.219.204.27/public/Modeling/Final/Roadway/>.
- At the industry-vs.-housing panel, a conference participant from Chula Vista noted a problem with industrial landlords in prime industrial areas who, when demand for industrial uses periodically goes slack, try to fill in their space with non-industrial tenants such as martial arts studios or small churches. The temporary tenants change the character of the area; when heavy industry returns, its effects on the non-industrial tenants create land use conflicts. Laura Stetson of the MIG planning firm said it can be important to set and enforce firm code restrictions against non-industrial uses in such areas.
- A broad discussion that started from the subject of second-round Sustainable Communities Strategies featured a meeting of powerful regional governance figures: Executive Directors Gary Gallegos of SANDAG, Mike McKeever of SACOG, Hasan Ikhata of SCAG, and Ken Kirkey, MTC plan director. Of the four, Ikhata was best at sound bites. In a comment that quickly drew approval online, he said of the Los Angeles transit network, “Right now we are going back to the future. We are building the system that we got rid of.” He said studies showed “Millenials prefer access to ownership.” And with an ironic reference to “the Happiest Place on Earth,” he talked about families packed into overcrowded housing in Santa Ana, not far from the Disneyland conference site; he said people will house themselves somehow.
- Gallegos of SANDAG (the San Diego Association of Governments) reported initial success for San Diego's first Bus Rapid Transit (BRT) project with managed

– CONTINUED ON PAGE 19

>>> Impressions from Anaheim – planning for scarcity

– CONTINUED FROM PAGE 18

lanes; he reported a 40% cost recovery rate from transit fares; McKeever of SACOG (Sacramento Area Council of Governments) said other areas could only aspire to a 40% cost recovery rate. “We’re a light year away from that.”

- Gallegos said he had hoped cap-and-trade would fund ongoing transit operations more than it has.
- Kirkey of the Bay Area’s Metropolitan Transportation Commission mentioned a need to use public funding to develop jobs outside the tech sector that don’t necessarily require college diplomas.
- Anona Dutton, vice president of water resources practice with the firm of Erler and Kalinowski, said water supply assessments required by SB 610 “show me the water” rules would be more under scrutiny to the extent they relied on groundwater. She said project proponents and administrators would also need to consider if water supply assessments put forward during 2014-2015, after several years of severe drought, could still be safely based on the Urban Water Management Plans developed in the better-watered year of 2010. (For delays in the plan deadlines and changed provisions see AB 2067 and SB 1036, bills on urban water management plans, signed since the conference.)
- Dutton said water supply offset requirements for new projects, such as those now applied by EBMUD, are a trend moving west from inland, e.g. New Mexico. She

also said careful conservation and recycling can be used to get projects built. She said one developer of a large project reduced its per capita *potable* use projection to 30 gallons per day.

- Eric Robinson, the water practice manager with the firm of Kronick, Moskovitz, Tiedemann & Girard, said a good “teaching case” on practical application of the state’s water supply assessment rules would be the First Appellate District’s *Sonoma County Water Coalition v. Sonoma County Water Agency* (2010) 189 Cal.App.4th 33.
- Although Disneyland’s fantasy towers and transplanted palm trees formed a viewshed around the conference, news reports of strained natural resources formed its real backdrop: drought conditions, wildfires, and record-setting summer heat. It became routine to hear panelists, especially water and air quality specialists, reporting on pressures imposed by scarcity to acknowledge physical logistical demands, such as depletion of groundwater. As with the questioning of 2010 water plans, many of the experts were warning planners not to presume that formal assumptions could insulate them or the public from jagged facts. For a conference built in part around raising the value of property investments, it gave a great deal of time to the notion that the physical limits of air, water, and transportation systems can and do limit property rights in land. ■



Coastal Commissioners ask staff for more agenda control

BY MARTHA BRIDEGAM

The Coastal Commission met in Smith River this September, just three miles from the Oregon state line. The reduced two-day agenda and remote setting gave the meeting aspects of a retreat. Members used the slack in the session to raise big-picture and procedural questions – and at the end of the second day, a group of Commissioners staged a mini-rebellion seeking greater power to choose agenda items.

The occasion for the agenda rebellion was a board-requested staff presentation on how the staff sets agendas. Wendy Mitchell and Jana Zimmer, with Martha McClure and others chiming in, said they wanted more power to get staff responses to questions – even complex questions requiring research – and to request a discussion or workshop on a general issue. Commissioners noted followup is difficult because Commissioners meet formally just once a month and are restrained by Bagley-Keene ethics rules from meeting informally more than two at a time. Because the discussion itself was on an informational item, no formal vote on the matter could be taken.

Low-cost visitor uses

In other discussion, staff confirmed plans to the Commission for two major big-picture discussions by the end of the year: a hearing in November or December on the long-awaited overarching guidance to help towns plan for sea-level rise, and a December workshop on lower-cost visitor-serving uses.

Commission chair Steve Kinsey appointed Commissioners Martha McClure and Gregory Cox, who have expressed repeated interest in protecting cheap coastal vacations, to work with Executive Director Charles Lester on planning the workshop.

McClure repeated her concern that cheap beachside motels should be renovated, potentially with developers' mitigation money, and kept affordable to middle-class families who might not want to stay in the hostels or campgrounds that have been typical mitigation projects. She said, "This is near and dear to my heart because right now in Crescent City, for instance, there is a motel that the city has had to close down because of the conditions and if that motel were to be rehabilitated, there isn't anyone probably in California that would be willing to invest and pay \$30,000 a room as mitigation" for low-cost visitor-serving accommodations.

North state issues

North Coast officials and community members were eager to use their one chance this year at the Commissioners' undivided attention. Among issues raised:

- An extensive briefing on coastal development and tribal lands included presentations by District Manager Bob Merrill and Tolowa Tribe representatives Briannon Fraley and Loren Bommelyn. Part of Merrill's presentation explained the Commission's role in conducting reviews for consistency with state coastal zone management policy under the federal Coastal Zone Management Act where land use plans involve tribal lands regulated by federal agencies. The briefing starts around the one-hour, 42-minute mark of the September 10 recording at [http://www.cal-span.org/media.php?folder\[\]=CCC](http://www.cal-span.org/media.php?folder[]=CCC).

- In a presentation on Humboldt Bay Sea Level Rise Adaptation Planning, by staff analyst Melissa Kramer and consultant Aldaron Laird of Trinity Associates, Laird said major portions of northern shoreline properties depended on dikes, some of which were actively eroding. He said some became overwhelmed when annual "king tides" temporarily added a foot to local sea level, simulating the expected effects of sea level rise. Laird called for cooperation between owners of diked waterfront properties and managers of utility conduits – and highways – that the dikes protect. He said the Humboldt Bay Power Plant might have to be moved back – "it's likely to become an island". (The *Eureka Times-Standard* gave a detailed preview of his presentation at <http://bit.ly/YAopQ3>.) That led Commission Chair Steve Kinsey to wonder how local governments can "retreat from the maintenance of infrastructure [on eroding shorelines] without becoming responsible for the takings of the private properties that would be affected by that." (The sea level presentation starts around 2:52:00.)

Venice Beach comes to Smith River

The Commission couldn't escape California beach town disputes even at the northern state line. Anti-gentrification activists from Venice Beach and Laguna Canyon followed them to Smith River.

A group of Venice neighbors, some in "Saving Venice" T-shirts, criticized the cumulative impacts of profit-seeking disruption in their neighborhood: short-term Internet-

>>> Coastal Commission: SoCal in Smith River

– CONTINUED FROM PAGE 20

mediated rentals, and projects that replace older, cheaper houses with denser new buildings. They especially contested the 664 Sunset LLC project in Venice, which would demolish two older single-family homes – acknowledged to be affordable housing – and replace them with three new ones. The owners' spokesman, Andy Liu, said "small-lot subdivision projects" like 664 Sunset promoted affordability by placing small new houses on the market. He also said they'd anticipated neighborhood objections by providing covered on-site parking for all units. Speakers who disagreed included appellant Rene Kraus, who public commenter Lydia Ponce said was still living on the property. The Commission found no substantial issue, clearing the way for the project.

Robin Rudisill, chair of the Venice Land Use and Planning Committee (see <http://www.venicenc.org/committees/lupc/>) told the board her committee had been working with other local groups toward a more standardized project review process, currently known as the VNC Approved Expedite Project.

Laguna Beach activist Sharon Fudge, who with her husband has been fighting a makeover project at the Laguna Ranch resort near their house, showed photos of gutted buildings that she said the resort's owner was presenting as a "minor health and safety upgrade." She said, "those buildings are see-through – they've been taken down to the sticks." This summer Commission staff had reluctantly allowed some work, characterized as renovations, to go forward, but the Commission prohibited outright rebuilding pending an enforcement action. Fudge insisted the buildings were being reconfigured, from small apartments that had been rented for low-cost family beach vacations into standard hotel rooms – "They are making this into a luxury resort." And she said the current owners had "stripped" a eucalyptus grove, originally set aside as a camp site for local Girl Scouts, making it into an events center for crowds so large they create traffic problems.

Fudge asked the Commission to reconsider a proposed Laguna Beach LCP amendment that she said would discourage second units, saying it would make affordable stays near the beach more expensive. The Commission extended a time limit to act on that matter.

Other Items

- A discussion from the August meeting continued about

whether or when Commissioners became responsible for avoiding ex parte contacts with landowners who were subjects of enforcement actions. Chiming in, Zimmer asked the staff to notify Commissioners when enforcement actions began, rather than leave it to them to find out.

- Steve Ray of the Banning Ranch Conservancy representative warned that a suit against the Commission by a little-known plaintiff, "Horizontal Development LLC," was a part of the Banning Ranch development effort – an attempt, he said, to do the decontamination and grading work for new development under an old permit issued in 1973.

The Coastal Commission's September agenda is at <http://coastal.ca.gov/meetings/mtg-mm14-9.html>, as annotated with outcomes and including links to staff materials.

In actions separate from the Commission meeting:

- The Commission staff reached a settlement expected to allow U2 guitarist David Evans, known as the Edge, to build a five-house compound in the Santa Monica Mountains. For LA Times coverage see <http://lat.ms/1BVTfBt>.

- The *Monterey County Weekly* reported further hitches for the Monterey Bay Shores Resort plan in Sand City, despite the apparent settlement reached with the Commission last spring. It said a lender had filed court papers seeking to foreclose on the project site for an allegedly defaulted debt and that Coastal Commission staff were not happy with project proponent Ed Ghandour's progress toward meeting conditions of the settlement. See <http://bit.ly/1pmowpf> for details.

- The *Del Mar Times* reported Solana Beach had begun a study to decide what compensation is due to the public from property owners who block coastal access with seawalls. See <http://bit.ly/1oqSzvL> for details.

- News reports and editorials gave cheerful and ample coverage to the San Mateo Superior Court decision favoring coastal access at privately owned Martins Beach. The court opinion issued September 24 is captioned as a tentative statement of decision but it was widely interpreted as an order requiring software billionaire Vinod Khosla to open the beach to public use. See *San Francisco Chronicle* coverage at <http://bit.ly/ZO3eem> and *Mercury News* coverage at <http://bit.ly/1nAP37f>. ■

November ballot measure previews: Pismo Beach, Costa Mesa, El Dorado County

BY LARRY SOKOLOFF

Out of the many ballot questions headed for votes in November, here are a few early picks of measures highlighting local controversies.

Pismo Beach: Price Canyon planning

Residents of Pismo Beach will vote in November on a measure to give them more say in development decisions about a large swath of land that few visitors to the city ever see. It's located inland in Price Canyon, behind the coastal Santa Lucia Mountains that flank the city.

The 1,100 acres that are at the center of debate in Measure H-14 are currently on unincorporated county land but are located in the city's sphere of influence. The city council approved an EIR for a mixed-use development there in 2013. Called Spanish Springs, the development would include over 400 single-family and multifamily homes, a hotel, a nine hole golf course and vineyards. Its proponent is developer Stephen Hester of Orange County.

After the project was approved, opponents from a group called Save Price Canyon got the city council to rescind approval of the EIR in October 2013. Save Price Canyon collected enough signatures at the time to force the council to either rescind the development EIR or place the measure before the voters in a referendum.

Sheila Blake, a member of Save Price Canyon, said residents don't want development in that area, which she describes as a "fire-trapped canyon."

"There's no way out," she said, adding, "There's no water to supply a huge mega-development."

Blake and another member of Save Price Canyon are also candidates for the City Council in the November election.

After succeeding in their 2013 fight against Spanish Springs, members of Save Price Canyon again collected signatures, and put H-14 on the upcoming ballot, to give local residents a chance to vote on the project if it ever comes up again, Blake explained. The measure amends the city's general plan to zone the area as a watershed and resource management area, and limits the area to primarily agricultural uses for the next 30 years.

Those limits only apply if the land is annexed into the

city, according to an analysis of the measure prepared by the city attorney.

Blake thinks the measure will pass. "Most people have no interest in becoming another Huntington Beach," she said.

"We're not in favor of the measure," said developer Hester, from his Orange County office. He called the measure "poorly crafted."

Costa Mesa: 405 freeway toll lanes

While Los Angeles' efforts to widen its 405 freeway have garnered national attention, Orange County also has struggled with congestion along its stretch of the famed freeway, which runs close to many of its coastal cities. A 14-mile section between Seal Beach and Costa Mesa carries 375,000 vehicles a day, and traffic volumes are expected to increase by 35 percent by 2040, according to Caltrans, which is overseeing an expansion project there.

Caltrans announced plans in July to add two toll lanes to the highway, as part of an overall expansion project. Local cities cried foul. One of them, Costa Mesa, has moved its protest onto the November ballot, asking its residents to vote on a measure saying the toll lanes are a bad idea. To increase its impact, mayors and elected officials from other communities also signed the ballot statement, said Costa Mesa Mayor Jim Righeimer.

"At this point, it's a political issue," said Righeimer. "Our city is making a statement to the Governor."

Three lanes of the widened San Diego Freeway are affected by the new project.

A new lane will be built with money from an earlier Orange County sales tax measure, known as M2, which passed in 2006. That lane will be free to commuters. But Caltrans also plans to convert two lanes in the current freeway to toll lanes. One of those lanes is a current carpool lane, and the second lane can now be used without paying a toll.

Righeimer said \$1 billion of the \$1.3 billion project cost is coming from Orange County voters, who increased their sales tax to pay for the expansion. Caltrans is expected to pay the remaining \$300 million from state funds.

>>> November ballot measure previews

— CONTINUED FROM PAGE 22

Righeimer said that most of the expansion cost is to widen more than 15 bridges that cross the freeway. He said voters were never told a toll road would result from the sales tax. He said the new toll road could cost commuters \$19 for a round trip.

Caltrans has stated it is using different money to bring the toll lanes to the freeway.

“We’re not using that sales tax money to do the toll lanes,” said Caltrans spokeswoman Yvonne Washington.

El Dorado County: growth and density controls

El Dorado County voters are no strangers to ballot box planning measures. This fall, voters will have three on their ballot.

The county, which extends from the Sierra foothills to South Lake Tahoe, has been at the center of growth battles for years, as its population has nearly doubled from 85,000 in 1980 to 156,000 in 2000. A landmark growth control measure passed in November 1998, Measure Y, affected some development. A July 1998 CP&DR article noted that the county’s general plan called for a population of 260,000 in 2015. (See <http://www.cp-dr.com/node/1324>.) But growth slowed, and the county had 181,000 residents in 2013.

Measure M, also called “Fix Highway 50”, would place limits on new housing, and would force the county to be more specific about the requirements of Measure Y, including some of its traffic requirements. Highway 50 is

the main road through the county to Lake Tahoe.

“We can’t approve any more large subdivisions unless the road capacity is there,” said Don Van Dyke, a member of Rural Communities United, which placed the measure on the ballot. The county uses its own traffic numbers to approve development projects, Van Dyke explained, while the ballot measure will force the county to use Caltrans’ figures.

Van Dyke said the measure will have no impact on 16,000 residential parcels that have already been approved in the county, but would affect proposals on 17,000 more units.

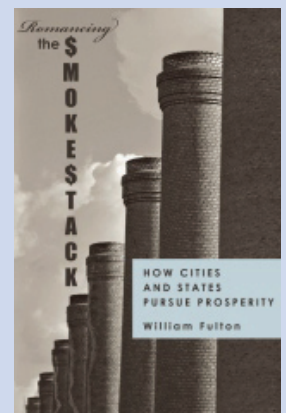
A second environmental measure, Measure O, was placed on the ballot by residents who oppose San Stino, a proposed 1,000-home subdivision near Shingle Springs, according to the *Sacramento Bee*. The project hasn’t yet been voted on by the county’s board of supervisors. The measure would also restrict high density construction in other parts of the county.

A third ballot question, Measure N, was placed on the ballot by a Sacramento builders’ group, Region Builders. It promised to extend Measure Y past its current expiration in 2018, to 2025. The measure, which focused on funding sources to expand Highway 50, was later abandoned by Region Builders, which did not submit a ballot argument in favor of it.

Several building groups are reported to be opposing all the El Dorado County measures. ■

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

Bill Fulton’s Book On Economic Development



Governor's Signing Decisions – Key land-use bills and picks from the ‘Greatest Hits’

By CP&DR Staff, with a portion adapted from work of Senate Governance and Finance Committee staff

In this review of Governor Brown's signing and veto decisions, which by law were due September 30, we start with outcomes on some bills previously covered by CP&DR during the year, then move on to excerpts from the "Greatest Hits" list maintained by Senate Governance and Finance Committee staff:

Within a day of his deadline for signing decisions, Gov. Jerry Brown vetoed AB 2280 late September 29. Carried by Assemblymember Luis Alejo, D-Salinas, AB 2280 would have revived redevelopment-style tax-increment financing in narrowly chosen urban areas, with 25% affordable housing set-asides, to bring back a narrowly focused form of tax-increment financing usable in populous cities.

AB 2280 had passed the Legislature after extended negotiations among business, local government, and housing advocates. (See <http://www.cp-dr.com/node/3563>.) The bill represented the latest attempt by the Legislature to revive redevelopment in a more limited form – and the second time in the last three years that Brown has vetoed such a bill. (There was no veto last year because Senate leader Darrell Steinberg chose not to forward a bill to Brown's desk.)

In the same signing/veto list issued late September 29, Brown vetoed other redevelopment bills including Steinberg's SB 1129 post-Redevelopment cleanup measure. He also vetoed Assembly Speaker Toni Atkins' AB 1999 historic rehabilitation tax credit and Assemblymember Jose Medina's AB 1399 California New Markets Tax Credit. See <http://gov.ca.gov/news.php?id=18741>.

Brown's veto messages are linked from the announcement press releases. The AB 2280 [veto message](#) reads in part, "I applaud the author's efforts to create an economic development program, with voter approval, that focuses on disadvantaged communities and communities with high unemployment. The bill, however, unnecessarily vests this new program in redevelopment law. I look forward to working with the author to craft an appropriate legislative solution."

Brown sounded [even less pleased](#) with AB 2493, saying "The cost to the general fund to backfill schools could be

significant, to the tune of \$500 million."

For details on AB 2280's history and surrounding politics, see comparisons mentioned in CP&DR's prior coverage of SB 628, which the Governor signed on September 29. (See prior coverage at <http://www.cp-dr.com/node/3563>.) Appeals to Brown to sign AB 2280 had been published by a politically broad coalition of business and housing advocates on the League of California Cities site at <http://bit.ly/1Bdj51w>, and by top officers of the American Planning Association's California chapter at <http://bit.ly/1mTiiC1>.

Some of this year's major land use bills that were signed or awaiting signature this month are discussed more fully in past CP&DR news briefs at <http://www.cp-dr.com/node/3564> and <http://www.cp-dr.com/node/3580>. They include:

- SB 270, the first-ever statewide ban on single-use plastic bags in the United States, was signed early September 30. See <http://gov.ca.gov/news.php?id=18742>.

- The Pavley-Dickinson groundwater package, AB 1739, SB 1168, and SB 1319, signed September 16 – see <http://gov.ca.gov/news.php?id=18701>. *Sacramento Bee* coverage is at <http://bit.ly/XdAZ6S> and a *National Geographic* analysis of the expected delayed effects is at <http://bit.ly/1pjFC61>.

- AB 52, the CEQA bill on consultation with Native American tribes over projects that may affect tribal cultural resources, was signed September 25: <http://gov.ca.gov/news.php?id=18726>.

- SB 1077, to create a pilot program testing an approach to vehicle taxation based on measuring miles traveled, was signed.

- Six bills were signed September 21 on electric vehicles and high-occupancy toll lanes. See <http://gov.ca.gov/news.php?id=18720>.

- SB 1183 and AB 1193, benefiting bike lanes and bike paths, signed.

- SB 1300 on public disclosures by refineries, signed.

- AB 141, Treasure Island Transportation Management

– CONTINUED ON PAGE 25

>>> Governor's signing decisions: highlights

– CONTINUED FROM PAGE 24

Act, signed.

- **AB 523**, allowing interest reductions on public loans to rental housing developments, was signed. See <http://gov.ca.gov/news.php?id=18715>.

- **AB 2067** and **SB 1036**, urban water management plans, were signed.

Governor Brown made a last-day decision, on September 30, to sign **SB 968**, the Martin's Beach coastal access bill. See <http://www.gov.ca.gov/news.php?id=18744>. In the meantime a court ruling in favor of public access was issued in the Surfrider Foundation's suit, San Mateo Superior Court Case No. CIV 520336; the decision is available at <http://openaccess1.sanmateocourt.org/openaccess/civil/default.asp>.

On Sunday the Governor vetoed **AB 69** and **AB 1521**, relief bills for new and newly expanded Inland Empire towns – including Jurupa Valley, which may now have to disincorporate. The veto messages are linked via <http://gov.ca.gov/news.php?id=18738>. For detailed past coverage see <http://www.cp-dr.com/node/3561>. For post-veto impact coverage from the *Press-Enterprise* see <http://www.pe.com/articles/valley-750953-governor-vetoes.html>.

On September 30 Brown signed **AB 1537**, to redefine Marin County as “suburban” for affordable housing density zoning purposes. See <http://www.gov.ca.gov/news.php?id=18744>. For past coverage see <http://www.cp-dr.com/node/3561>.

The Governor did sign **AB 1513**, possession by declaration, a pilot program directed against squatters that some tenant and criminal defense advocates fear could criminalize new aspects of homelessness and erode tenants' rights to standard unlawful detainer process. See <http://gov.ca.gov/news.php?id=18733> for the signing announcement; see the earlier legislative analyses on the official Legislature page for summaries of the debate.

The Governor's September 26 signing list, in press release form at <http://gov.ca.gov/news.php?id=18731>, included **AB 2282** on building standards for recycled water systems. His main September 27 signing list, at <http://gov.ca.gov/news.php?id=18733>, included several measures on affordable housing and post-redevelopment law. An additional September 27 list highlighting veterans' bills

included signatures on some measures relevant to land use and housing. See <http://gov.ca.gov/news.php?id=18732>. A September 28 signing list at <http://gov.ca.gov/news.php?id=18736> emphasized elder care and seniors' bills. Lists got thicker after that as the deadline approached – see <http://gov.ca.gov> for the full set of press releases.

From the SGF 'Greatest Hits' list

As to the rest of the bill-signing picture, staff at the Senate Committee on Governance and Finance have again performed the major public service of preparing a “Greatest Hits” list of major bills affecting public finance and local governance. The final memo was posted late September 30 under the “2014” link at <http://sgf.senate.ca.gov/legislation>.

The following is derived from the “Greatest Hits” list, edited to focus on bills in categories related to land use and skipping bills that didn't pass the Legislature at all. To check on bills not mentioned here, see SGF's posted list, the Governor's press site at <http://gov.ca.gov>, and the Legislature's bill tracking site at <http://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml>.

Descriptions below are by the legislative staff. Links to articles and sites other than the Legislature's are CP&DR's:

LAFCOs & Boundary Changes

AB 2156 (Achadjian) adds joint powers agencies and joint powers authorities to the list of entities LAFCOs may request information from for purposes of conducting studies. *Signed – Chapter 21, Statutes of 2014.*

AB 2762 (Assembly Local Government Committee) proposes several changes to laws affecting local government organization and reorganization. *Signed – Chapter 112, Statutes of 2014.*

Land Use Planning & Development

SB 1353 (Nielsen) repeals the sunset dates in statutes that allow counties to increase the assessed values of Williamson Act land and divert the resulting property tax revenues. *Signed – Chapter 322, Statutes of 2014.*

AB 2188 (Muratsuchi) requires cities and counties to adopt an ordinance streamlining the permit process for small rooftop solar energy systems. *Signed – Chapter 521, Statutes of 2014.*

– CONTINUED ON PAGE 26

>>> Governor's signing decisions: 'Greatest Hits' excerpts

– CONTINUED FROM PAGE 25

AB 2241 (Eggman) modifies fees charged when contracting parties rescind a Williamson Act or Farmland Security Zone contract to enter a solar-use easement contract, and allows the county to keep 50% of the rescission fee. *Signed – Chapter 582, Statutes of 2014.*

Local Finance & Infrastructure

SB 69 (Roth) establishes vehicle license fee adjustment amounts for newly incorporated cities. *Vetoed.* Veto message at http://gov.ca.gov/docs/SB_69_Veto_Message.pdf.

SB 614 (Wolk) allows local officials to use tax increment financing to fund infrastructure improvements in disadvantaged unincorporated communities. *Signed – Chapter 784, Statutes of 2014.*

SB 628 (Beall) allows local officials to create Enhanced Infrastructure Financing Districts. *Signed – Chapter 785, Statutes of 2014.*

SB 936 (Monning) allows the Monterey Peninsula Water Management District and other financing entities to issue water rate relief bonds to finance water supply infrastructure. *Signed – Chapter 482, Statutes of 2014.* – see <http://www.cp-dr.com/node/3580>.

AB 1521 (Fox) changes the formulas for calculating annual vehicle license fee adjustment amounts to account for territory annexed to cities since 2004. *Vetoed.* Veto message at http://gov.ca.gov/docs/AB_1521_Veto_Message.pdf.

AB 1883 (Skinner) allows a public agency to transfer its interest in voluntary contractual assessments and makes several other changes to the statutes governing those assessments. *Signed – Chapter 599, Statutes of 2014.*

AB 2119 (Stone) allows a county board of supervisors to impose a transactions and use tax within the county's unincorporated area with the approval of voters within that area. *Signed – Chapter 149, Statutes of 2014.*

AB 2170 (Mullin) specifies that the common powers that public agencies may jointly exercise pursuant to a joint powers agreement include the authority to levy a fee or a tax. *Signed – Chapter 386, Statutes of 2014.*

AB 2211 (Ting) requires each county to make available to taxpayers on its internet website a graph visualization of how ad valorem property tax revenues are allocated

countywide. *Vetoed.* Veto message at http://gov.ca.gov/docs/AB_2211_Veto_Message.pdf.

AB 2274 (Gordon) makes several changes to the California Debt and Investment Advisory Commission's authorizing statute. *Signed – Chapter 181, Statutes of 2014.*

AB 2292 (Bonta) adds public capital facilities or projects that include broadband to the types of facilities that an infrastructure financing district can fund. *Signed – Chapter 783, Statutes of 2014.*

AB 2618 (Peréz) amends the Property and Business Improvement District Law of 1994 to conform its provisions to constitutional requirements established by Prop 218. *Signed – Chapter 240, Statutes of 2014.*

Local Powers & Governance

SB 827 (Liu) extends, until January 1, 2020, the sunset date on statutes allowing Los Angeles County to charge fees and mail notices related to recorded real estate documents. *Signed – Chapter 65, Statutes of 2014.*

AB 155 (Alejo) allows the Monterey County Water Resources Agency to use counties' design-build contracting procedures to construct a pipeline or tunnel connecting two lakes owned and operated by the agency. *Signed – Chapter 865, Statutes of 2014.*

AB 745 (Levine) allows a Regional Park and Open Space District's general manager to enter into non-construction contracts worth less than \$25,000 without a formal bid process. *Signed – Chapter 42, Statutes of 2014.*

AB 1963 (Atkins) extends, until January 1, 2016, the date by which the Department of Finance must approve a redevelopment successor agency's long-range property management plan. *Signed – Chapter 146, Statutes of 2014.*

AB 2551 (Wilk) requires statement on total cost of debt service to be included with sample ballot information on local agencies' bond elections. *Signed – Chapter 908, Statutes of 2014.*

Parcel Taxes

AB 2109 (Daly) requires the State Controller to report annually on locally assessed parcel taxes and requires local government to provide information required by the

– CONTINUED ON PAGE 27

>>> Governor's signing decisions: redevelopment vetoes

– CONTINUED FROM PAGE 26

Controller to complete the report. *Signed – Chapter 781, Statutes of 2014.*

Property Taxes

SB 1113 (Knight) extends the deadline for County Tax Collectors to refund taxes for the disabled veterans' exemption from four to eight years. *Signed – Chapter 656, Statutes of 2014.*

SB 1203 (Jackson) cancels assessments on low-income housing excluded from the welfare exemption. *Signed – Chapter 693, Statutes of 2014.*

AB 777 (Muratsuchi) enacts a property tax exemption for property used in space flight. *Signed – Chapter 13, Statutes of 2014.* (See <http://www.cp-dr.com/node/3564>.)

AB 1760 (Chau) prohibits local agencies from imposing payment-in-lieu-of-taxes (PILOT) agreements; presumes PILOTs don't affect a low-income housing project's welfare exemption. *Signed – Chapter 671, Statutes of 2014.*

AB 2231 (Gordon) revises and reenacts the senior citizens' and disabled citizens' property tax postponement program. *Signed – Chapter 703, Statutes of 2014.*

AB 2257 (Cooley) diverts excess proceeds from tax sales from taxing entities to the county. *Signed – Chapter 501, Statutes of 2014.*

AB 2415 (Ting) requires property tax agents to register with the Secretary of State's Office. *Vetoed.* Veto message at http://gov.ca.gov/docs/AB_2415_Veto_Message.pdf.

Redevelopment

(For prior CP&DR coverage on this year's post-redevelopment bills see primarily <http://www.cp-dr.com/node/3563>, <http://www.cp-dr.com/node/3492> and <http://www.cp-dr.com/node/3480>.)

SB 1129 (Steinberg) amends several statutes governing redevelopment agencies' dissolution. *Vetoed.* Veto message at http://gov.ca.gov/docs/SB_1129_Veto_Message.pdf.

AB 471 (Atkins) allows infrastructure financing districts to include portions of former redevelopment project areas and amends several statutes governing redevelopment agencies' dissolution. *Signed – Chapter 1, Statute of 2014.*

AB 1450 (Garcia) directs how a county auditor must

allocate specified revenues derived from an extraordinary property tax rate approved by voters to pay for pension programs. *Vetoed.* Veto message at http://gov.ca.gov/docs/AB_1450_Veto_Message.pdf.

AB 2280 (Alejo) allows local governments to form Community Revitalization and Investment Authorities to administer economic development and affordable housing programs. *Vetoed.* See <http://gov.ca.gov/news.php?id=18741>. Veto message at http://gov.ca.gov/docs/AB_2280_Veto_Message.pdf.

AB 2493 (Bloom) allows redevelopment successor agencies to spend proceeds from bonds issued by former redevelopment agencies in 2011. *Vetoed.* Veto message at http://gov.ca.gov/docs/AB_2493_Veto_Message.pdf

State Bonds & Indebtedness

AB 1471 (Rendon) replaces the \$11.4 billion water bond on the November 2014 ballot with a new \$7.2 billion general obligation bond and enacts the "Water Quality, Supply, and Infrastructure Improvement Act of 2014." *Signed – Chapter 188, Statutes of 2014.*

State Personal & Corporate Income Taxes

AB 1393 (Perea) conforms state law to federal law for mortgage debt forgiveness. *Signed – Chapter 152, Statutes of 2014.*

AB 1399 (Medina) enacts the California New Markets Tax Credit. *Vetoed.* Veto message at http://gov.ca.gov/docs/AB_1399_Veto_Message.pdf.

AB 1839 (Gatto) enacts \$1.6 billion in tax credits for qualified motion picture and television production. *Signed – Chapter 413, Statutes of 2014.*

AB 1999 (Atkins) allows a 20% or 25% tax credit for rehabilitation of a certified historic structure. *Vetoed.* Veto message at http://gov.ca.gov/docs/AB_1999_Veto_Message.pdf.

AB 2434 (Gomez) excludes from gross income amounts received as a rebate, voucher, or other financial incentive issued by a local water agency for participation in a turf removal water conservation program. *Signed – Chapter 738, Statutes of 2014.* ■

legal digest

Appellate Court Upholds Coastal Commission's Tough Stance on Encinitas Seawall

BY WILLIAM FULTON

In a split decision, the Fourth District Court of Appeal has upheld the Coastal Commission's conditions on two property owners' reconstruction of a seawall in Encinitas after it was destroyed in a storm, including limiting the new seawall's permit to a 20-year term.

The majority ruling by Presiding Justice Judith McConnell is written much like a dissent, whereas the dissent by Justice Gilbert Nares reads like a majority opinion. This suggests that the third justice, Cynthia Aaron, may have switched her position during the writing of the opinion.

In any event, the ruling is a strong affirmation of the Coastal Commission's muscular approach

to permit conditions, as the majority concluded that the reconstruction of the seawall is subject to a coastal development permit even though it was destroyed in a storm. In the majority opinion, Presiding Justice McConnell explicitly rejected the property owners' argument that they had agreed to conditions on the permit approval under duress and therefore were entitled to relief from those conditions.

The case involved a deteriorating sea wall that protected the properties of Barbara Lynch and Thomas Frick from the ocean in Encinitas. In 2009, Encinitas had approved replacement of the seawall, including reconstruction of a stairway to the

beach. However, in 2010 – while this approval was pending in front of the Coastal Commission – portions of the seawall, including the stairway, were destroyed in a storm.

In 2011, the Coastal Commission approved a permit to replace the seawall but the permit included conditions specifically precluding reconstruction of the stairway and also limited the duration of the permit to 20 years. The permit also required that the property owners accept a deed covenant including the conditions.

Lynch and Frick sued, and San Diego Superior Court Judge Earl Maas ruled in their favor. On appeal, however, the two-justice majority reversed Maas and ruled in favor of

– CONTINUED ON PAGE 29

ABBOTT &
KINDERMANN, LLP
ATTORNEYS AT LAW

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

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

>>> Encinitas Seawall: court upholds tough enforcement

– CONTINUED FROM PAGE 28

the Coastal Commission.

The majority noted that the the property owners – represented by local attorneys with the assistance of the Pacific Legal Foundation – argued “there is or should be an ‘under protest’ exemption for permit applicants who are opposed to nonfee conditions like those at issue in this case and desire to build their projects while simultaneously challenging the conditions.”

The majority rejected this idea, saying such an exemption would make it impossible for the Coastal Commission – or any other land use regulatory agency – to adequately address a project’s impacts. “If an agency learns a nonfee condition is invalid before a project is built, the agency may be able to address the impacts underlying the condition in an alternate manner,” McConnell wrote. “However, if an agency learns a nonfee condition is invalid after a project is built, the agency may have no practical means of addressing the underlying impacts.”

Importantly, McConnell’s opinion upheld the validity of the 20-year permit limitation in part based on the Coastal Commission’s emerging – but still vague – guidance on sea-level rise. She noted, among other things, that “shoreline protection strategies are evolving, particularly in light of climate change and sea level rise,” and concluded that the Commission had to right to revisit the

permit during a time period more or less consistent with the lifespan of the homes in question.

The property owners had argued that [Public Resources Code Section 30235](#) gave them the right to rebuild the seawall under any circumstances, but the majority concluded that this right is “permissive, not exclusive ... The statute does not purport to preempt other sections of the Act that require the Commission to consider other factors in granting coastal development permits.”

The majority also upheld the Coastal Commission’s right to remove the stairway from the project plans, saying that the Coastal Act “allows the replacement of an existing structure without a permit only if the structure was destroyed by a disaster, conforms to applicable zoning regulations, is for the same use, is no more than 10 percent larger than its previous size, and is in the same locations.” Subsequent to the storm, the court noted, the nature of the stairway replacement changed significantly.

In his dissent, Justice Nares concluded that the time-limit on the permit is unconstitutional, an argument likely picked up from the Pacific Legal Foundation, which often makes constitutional arguments in land-use cases. He said the 20-year expiration clause “unconstitutionally forces the homeowners to waive their rights and property interests without any nexus or ‘rough proportionality’

to potential adverse impacts caused by the seawall” – a reference to the *Nollan/Dolan* line of U.S. Supreme Court cases which requires nexus and rough proportionality to uphold the validity of exactions.

In this case, Nares said, the Coastal Commission makes so nexus claim regarding the 20-year limit but simply reserves the right to re-examine the permit at a later time – and most likely reject continuation of the permit. “The Commission has made clear its opposition to seawalls in general, and the homeowners’ seawall in particular. When the homeowners’ seawall permit expires, the Commission will have a negative easement over the homeowner’s bluff, without paying for it as required by the takings clause.”

The Case: Lynch v. California Coastal Commission, No. D064120 (filed September 9, 2014). <http://law.justia.com/cases/california/court-of-appeal/2014/d064120.html>.

Further links:

- Sheppard Mullin legal analysis: <http://bit.ly/1vrgFg2>
- Pacific Legal Foundation: *Union-Tribune* 2013 coverage: <http://bitly.com/JbK5L0>; recent blog post linking to a local columnist’s protest: <http://bit.ly/1ryLwpm>.
- Local coverage by *The Coast News*: <http://bit.ly/1nCijKP> ■

Appellate Court Clarifies Costs Recovery Rules in CEQA Litigation

BY KATHERINE J. HART, ABBOTT & KINDERMANN, LLP, SACRAMENTO.

In *Coalition for Adequate Review v. City and County of San Francisco* (September 15, 2014, A135512), the Court of Appeal, First Appellate District, reversed in part and remanded in part, a trial court's denial of San Francisco's ability to recover costs for the record of proceedings where the Coalition failed to include all relevant documents in the record the Coalition elected to prepare.

The effect of the case is to allow the City and County of San Francisco ("City") to collect a portion of a \$64,144 bill for work the city paid for to complete the record in a CEQA dispute related to the City's Market and Octavia Area Plan.

This case is of first impression as to two issues. First, the court ruled that an agency may recover its costs to prepare a supplemental record, and second, an agency may *not* recover its costs for reviewing a petitioner-prepared record for completeness and/or certification. Additionally, this case highlights the extensive discretion trial courts are given when determining questions of fact as to whether a cost item was reasonably necessary to the litigation, and thus, is recoverable by the agency.

In 2013, Plaintiffs and Respondents Coalition for Adequate Review challenged the City's approvals of various projects under CEQA. The Coalition's petition for writ of mandate was denied. Accordingly, the City filed a memorandum of costs to recover \$64,144. This amount included the City's costs of production (e.g., copying,

binding, and page numbering) of the supplemental record it prepared, the costs the Coalition charged the City for a copy of the record prepared by the Coalition, paralegal and planning staff time in reviewing the record for completeness and for preparing the supplemental record, and professional courier costs. The Coalition filed a motion to tax costs – or challenge to the City's motion to recover its costs, which the trial court granted. The City appealed.

In a prior unpublished decision, the court of appeal reversed the trial court's denial of the City's request for cost recovery on the supplemental record, and remanded to the trial court the issue of *what other costs* would be recoverable by the City.

In reversing in part and remanding in part the trial court's grant of the Coalition's motion to tax, the appellate court noted that the cost provision in Public Resources Code section 21167.6(b)(2) places the costs that an agency incurs in preparing the record of proceedings on the *parties*, *not the public agency*.

Additionally, the court of appeal acknowledged that when a petitioner prepares a record, it has a duty to include all relevant documents. The court of appeal held that to the extent a supplemental record is required to be lodged by an agency to ensure the entire record is before the court, the costs for preparing the supplemental record are recoverable by the agency under section 21167.6(b)(2). Of note in this case, the City had attempted to negotiate with the Coalition about

including various key documents in the record, to no avail. As a result, City filed a motion for leave to supplement the record of proceedings, which the Coalition opposed. The City's motion was granted and the City prepared and lodged a supplemental record with the trial court.

In an effort to guide the trial court on remand, the appellate court reviewed the law on what costs are recoverable by the agency when a petitioner prepares the record.

For the first time in a published case the appellate court said the City may claim "reasonable labor costs required to prepare the supplemental record." This ruling appears to be the result of the Coalition's assertions that it solely controlled the administrative record and that the City's proposed additions to the record were unnecessary, resulting in its refusal to work with the City to supplement the administrative record with relevant documents considered throughout the administrative process. This case should serve as an incentive to plaintiffs and petitioners to work with a lead agency and reasonably negotiate the contents of an administrative record.

However, also for the first time in a published opinion, the appellate court refused to concede that costs to review a petitioner-prepared record of proceedings for completeness in connection with certification were recoverable, reasoning that such a review is a "chore public agencies face in every case ... and if an agency could always claim a sizeable

>>> Appellate Court Clarifies Costs Recovery

– CONTINUED FROM PAGE 30

amount for review ‘for completeness’ or ‘certification’ that would defeat the Legislature’s aim of providing for lower-cost record preparation alternatives.”

In explaining its decision, the appellate court noted that an agency’s review of a record for completeness “can easily blur into review for strategy, implicating the kind of attorney fee award neither authorized nor sought here.” In short, the court of appeal did not want to circumvent the provisions of 21167.6 related to reducing petitioners’ costs of bringing a CEQA action, nor allow for the recovery of attorney’s fees by an agency where none are awardable under the statute in the first place. On remand, the appellate court ordered

the trial court to distinguish between the City’s claim for paralegal costs on preparing the supplemental record versus paralegal costs regarding review of the record for completeness.

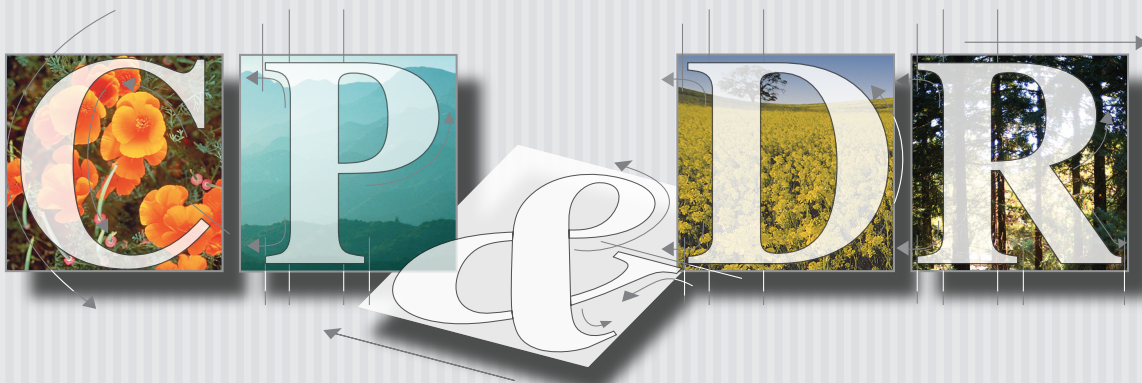
As to other costs, the court of appeal held that messenger costs related to transferring and retrieving documents from different departments in an effort to prepare the supplemental record were recoverable. It also held that copying and binding costs of excerpts of the supplemental record were recoverable by the City if the trial court determines that they were reasonably helpful to aid the trier of fact.

As to the copy of the record prepared for the City by the Petitioners, the City

could recover those costs if the trial court determined that the City was reasonably entitled to the additional copy. On the other hand, the court held that postage and express delivery costs are expressly disallowed under Code of Civil Procedure section 1033.5(b). Messenger fees, however, may be allowable at the trial court’s discretion.

The case is at <http://www.courts.ca.gov/opinions/documents/A135512.PDF>. The prior unpublished ruling upholding denial of the writ petition is at <http://www.courts.ca.gov/opinions/nonpub/A131487.PDF>. For the Market and Octavia Area Plan that was disputed see <http://www.sf-planning.org/index.aspx?page=1713>. ■

Join us online ...



Is now on TWITTER
and FACEBOOK!



Follow our tweets @Cal_Plan and search
for us to become a fan on Facebook

Court rejects Fresno approvals on procedural grounds but accepts ‘historic resource’ decision

BY MARTHA BRIDEGAM

A developer proposing to replace two century-old houses in Fresno with 28 new two-story townhouses lost its appeal of a CEQA writ of mandate but won significant points from California’s Fifth District Court of Appeal in *Citizens for the Restoration of L Street v. City of Fresno*.

The August 29 ruling upheld the trial court’s finding that the city failed to comply with CEQA in granting approvals for the houses to be demolished and the project built. But it nevertheless found the trial court properly applied the “substantial evidence” test in declining to second-guess the city’s determination that the houses were not so historic as to qualify for an EIR review of their proposed demolition. The court upheld the idea that CEQA certification can be delegated to a non-elected entity but called out Fresno for not properly doing the delegation in this case.

The plaintiff citizens’ group had opposed the project, seeking to have the houses preserved both for their own sake and as part of a larger proposed historic district. One house had been designated a “Heritage Property” but the court’s narrative said both were “in disrepair.”

Fresno’s Historic Preservation Commission issued approvals to demolish both houses; the City Council endorsed its action.

A month after the last city action in late 2011, the plaintiff group’s writ petition was filed -- and within that same week, both houses were demolished.

The court refused to consider the question moot, allowing the parties to continue disputing whether the Preservation Commission had acted with proper authority and whether it properly determined the houses lacked “historical resource” status.

The trial court granted the plaintiffs’ writ petition based on city officials’ procedural errors. However, it held that the Preservation Commission properly held the houses were not sufficiently historic.

In August the Fifth District upheld both of the trial court’s actions.

Writing for a unanimous three-judge panel of the Fifth District Court of Appeal, Justice Donald Franson, Jr., joined by Justices Dennis Cornell and Jennifer Detjen, held that Fresno, and local lead agencies in general, do have power “to delegate authority to approve a mitigated negative declaration and a project to a nonelected decisionmaking body” such as the Preservation Commission. However, it found that in this case Fresno, by its municipal code, “did not actually authorize the Preservation Commission to (1) complete the environmental review required by CEQA and (2) approve the mitigated negative declaration,” hence that the resulting approvals did not comply with CEQA.

Further, Franson’s opinion found deficiencies in the “Notice of Intent to Adopt a Mitigated Negative Declaration”.

Although the City Council endorsed the Preservation Commission’s actions

in a separate vote, Franson found the Council’s action did not cure defects in the initial process. He found the Council did not genuinely review the matter using its own independent judgment under CEQA-compliant procedures, and it approved only the mitigated negative declaration rather than the demolition permit or the proposed project itself.

Although the houses were long gone, Franson wrote that the matter was still not moot because it was still possible to grant a form of relief: if the court saw fit to do so, it could still require the City to prepare an EIR for the project replacing the houses.

However, the court found there was no need for an EIR because whether or not the plaintiff presented a “fair argument” for the properties’ “historical resource” status, the necessary standard for the court to apply in evaluating the “historical resource” determination was one of “substantial evidence”, as previously held in *Valley Advocates v. City of Fresno* (2008) 160 Cal.App.4th 1039. So although the court did uphold the writ based on the city’s procedural errors, it did not reject the city’s decision to deny “historical resource” status to the buildings.

The case is at <http://www.courts.ca.gov/opinions/documents/F066498.PDF>. The Stoel Rives firm, which represented the city and the developer in the case, has its own detailed writeup at <http://bit.ly/1qKrgzD>. Art Coon of Miller Starr Regalia has an analysis at <http://bit.ly/1p5u6vb>. ■

Legal Briefs

Rominger: tentative subdivision maps are CEQA business

The Third District Court of Appeal held in *Rominger v. County of Colusa* that a proposed subdivision map was a “project” for CEQA purposes where it concerned tentative subdivision maps -- a topic that the Court said was defined in Sec. 21080 of the Public Resources Code as categorically CEQA subject matter.

Although the map had been the subject of a mitigated negative declaration certified by the county, the trial court was willing to find it exempt from CEQA on the grounds that it did not count as a “project”. The appellate court rejected several of the petitioners’ underlying allegations, in an extended point-by-point analysis that Art Coon’s developer-side law blog has already identified as worth a careful read for practitioners. The Third District found merit only in one of the petitioners’ allegations, over traffic impacts -- but it still remanded the matter for preparation of an EIR. The case is at <http://www.courts.ca.gov/opinions/documents/C073815.PDF>.

Writeups from real estate law firms include Miller Starr Regalia’s at <http://bit.ly/1uzhcO0> and Nossaman’s at http://www.nossaman.com/Application_Project_Under_CEQA.

Appellate court to rule soon on SANDAG SB 375 suit

California’s Fourth District Court of Appeal heard oral arguments in August on the major suit by conservation groups against the San Diego Association of Governments over its Regional Transportation Plan and Sustainable Communities Strategy. The court took the case under submission August 27 so a decision is expected in the next month or two. For the online docket see <http://bit.ly/1uSBoHd>. The case concerns the first Sustainable

Communities Strategy that was issued under SB 375. The Cleveland National Forest Foundation, the Center for Biological Diversity and others contend that it does not adequately consider and explain public health impacts of projected freeway expansions and that it does not respond adequately to the 2080 greenhouse gas reduction targets set in Executive Order S-3-05. *CityLab* wrote up the dispute in 2012 at <http://www.citylab.com/commute/2012/01/fight-future-san-diego/910/>.

Another administrative record case favors city officials’ cost recovery

The Fourth District Court of Appeal held San Diego County could recover from petitioners the cost of attorney and paralegal time to prepare an administrative record on a CEQA cause of action. By the court’s account, the petitioners initially elected to prepare the administrative record, but after a disagreement over the record’s proper contents they voluntarily dropped their CEQA cause of action; the county then told the court it would prepare the record at the petitioners’ expense and they did not object; after the county presented an 18,000-page record the petitioners dismissed their whole case. The petitioners were former owners of a target shooting range in Chula Vista who alleged that the current owner’s environmental remediation plan for the site should not have been approved without an EIR and other additional review. The court found the petitioners had to pay \$59,545 for the attorney and paralegal time as well as \$7,093.14 for clerk and staff time and production costs. In unpublished holdings, the court held two of three petitioning entities lacked capacity to sue and rejected late-submitted evidence. The case is *The Otay Ranch, L.P., v. County of San Diego*, at [\[D064809.PDF\]\(#\). It follows a September 15 ruling by the First District Court of Appeal that allowed a lead agency to recover some \(but not all\) costs of supplementing an administrative record in *Coalition for Adequate Review v. City and County of San Francisco* \(See separate coverage in this issue.\)](http://www.courts.ca.gov/opinions/documents/</p>
</div>
<div data-bbox=)

Mobile home park owner can sue over ‘interference’ with subdivision application

The partnership that owns a mobile home park in Fillmore, California received a Ninth Circuit determination September 2 that it has standing to sue the city over “interference” with its application to subdivide the park.

The El Dorado Estates park was seniors-only when its owner applied to subdivide the property. In the court’s description, the partnership alleged that city officials imposed “unreasonable delays and extralegal conditions” on the subdivision application for fear that, if approved, it might allow families to move in. The partnership therefore alleged it had suffered losses as a result of discrimination prohibited under the Fair Housing Act.

Without reaching the merits, the court found the partnership had standing to pursue its claim in federal court because it alleged it had suffered losses directly in the form of extra expenses caused by the city’s allegedly unfair treatment of its application.

The case is *El Dorado Estates v. City of Fillmore*. For the opinion see <http://1.usa.gov/1qxmtkT>.

‘Friendly Village’ owners blocked from raising rents

The San Jose Mercury News reported that a federal judge sided with the city of Milpitas in its effort to stop the owners of “Friendly Village Mobilehome Estates” from raising their tenants’ rents by 50 to

– CONTINUED FROM PAGE 33

90 percent. The city's rental review board had found the proposed increases violated the local mobile home rent control ordinance. For details see the *Mercury News* report at <http://bit.ly/YvOY9B>.

ADA claim upheld over street parking for local government offices

The Ninth Circuit ruled September 5 that a wheelchair user's right of access to local government offices in the city of Lomita included his need for accessible diagonal-stall on-street parking outside the buildings. The city had argued unsuccessfully that since no specific ADA regulations existed specifically for on-street parking, it was not required to provide that type of access. For the opinion see [1.usa.gov/1xmoqqC](http://www.usa.gov/1xmoqqC).

Governor's concurrence in federal casino ruling not subject to CEQA

The Third District Court of Appeal found the Governor's concurrence in a federal casino review decision was not subject to CEQA because Governor Jerry Brown was not himself a "public agency" under CEQA definitions. The case is *Picayune Rancheria of Chukchansi Indians v. Brown*, available at <http://www.courts.ca.gov/opinions/documents/C074506.PDF>. The Turtle Talk blog on American Indian legal issues has copies of briefs in the matter at <http://bit.ly/1ovVPWM>.

CEQA held not to cover freight operations approval

The First District Court of Appeal upheld a Marin County trial court decision that CEQA review is not required for a contract to use rail lines. The contract would open the rails of the public North Coast Railroad Authority to use by the private Northwestern Pacific Railroad Company. Two petitioners, the Friends

of the Eel River and Californians for Alternatives to Toxics, had sought CEQA review of the project's EIR, but the trial and appellate courts both held CEQA was preempted in the matter by federal law. The appellate decision summarizes extensive administrative and court disputes on various aspects of the rail line contract. The September 29 decision is *Friends of the Eel River v. North Coast Railroad Authority*, at <http://www.courts.ca.gov/opinions/documents/A139222.PDF>.

More of the ParkMerced decision ordered published

The California First District Court of Appeal, in two increments on September 4 and 5, ordered publication for all of Part II of the ruling that approved San Francisco's ParkMerced expansion project. Part II addresses General Plan consistency. Part III, the CEQA review, remains unpublished. The case is *San Francisco Tomorrow v. City and County of San Francisco*. See <http://bit.ly/1mGwnNa> for the online docket showing the publication history and <http://www.courts.ca.gov/opinions/documents/A137753N.PDF> for the opinion. Initial reports on effects of the decisions appeared in the *SF Chronicle* at <http://bit.ly/1qpnusx> and the *SF Business Times* at <http://bit.ly/1w8ikcl>. The city's page for this large, dense project in the west of the city is at <http://www.sf-planning.org/index.aspx?page=2529>.

Newhall Ranch litigation inches along with Cal Supremes

In the Newhall Ranch litigation before the State Supreme Court, *Center for Biological Diversity v. Department of Fish and Wildlife*, the plaintiffs'/respondents' opening briefs on the merits have been filed (see <http://bit.ly/1uvpcwY>), and the Court has refused to grant a stay to the related case of *Friends of the Santa*

Clara River v. CA2/5 (County of Los Angeles). See <http://bit.ly/ZgpqNL>.

In other legal news --

- In an unpublished decision September 29, the Third District upheld a Nevada County permit for a cell phone tower over objections that it failed to apply local zoning rules regarding visually important ridgelines. The case is *Lockyer v. County of Nevada*, at <http://www.courts.ca.gov/opinions/nonpub/C075249.PDF>.
- The Citizens for a Sustainable Treasure Island petitioners' group asked the California Supreme Court to hear an appeal of the First District appellate ruling that approved Treasure Island's massive EIR in July. For the online docket see <http://bit.ly/1umclzJ>.
- The League of California Cities noted a *Napa Valley Register* report that a housing civil rights suit against the city of St. Helena has been dismissed pending settlement. See <http://bit.ly/1rumPux>.
- On August 27 the California Supreme Court extended its own deadline until October 6 on deciding whether to accept the case of *Sierra Club v. Co of Fresno* for review. Petitioners' attorneys have argued the case is relevant to the still-pending SANDAG SB 375 appeal where the Fifth District Court of Appeal held it was necessary to explain a project's likely air pollution effects as well as simply stating the expected tonnage of emissions. For the online docket see <http://bit.ly/1vuOrji>. ■

>>> Everyone wants to keep leverage under CEQA

– CONTINUED FROM PAGE 1

that made the California Environmental Quality Act what it is today.

When you ask experts what the most important case in the 44-year history of CEQA is, usually they'll say *Friends of Mammoth v. Board of Supervisors of Mono County*, 8 Cal.3d 247 (1972) – the case establishing that government approvals of private development projects are subject to environmental review. And there's no question that *Friends of Mammoth* is a seminal case. But for my money, the defining CEQA case is *Citizens of Goleta Valley v. Board of Supervisors*, 52 Cal.3d 553, handed down by a much more conservative California Supreme Court on New Year's Eve 1990.

It was *Citizens of Goleta Valley* that cleared the way for the eventual construction of Bacara. More important, it transformed CEQA from a project-killing mechanism into a mitigation machine. As a result, almost a quarter-century later, all kinds of organizations use CEQA's mitigation power to gain leverage (and that's a polite word) over all kinds of things. And that, more than anything else, is the reason it's impossible to repeal CEQA or even reform it in a truly meaningful way.

Environmental and citizen groups have always used CEQA to gain leverage, of course – that's the point of the law. But today, unions, business trade associations, rival local government agencies, and even the building industry all use CEQA to gain leverage over some local political process, and in most cases there's no other way for them to get so much leverage.

That's what *Citizens of Goleta Valley* changed. At issue was whether the private owner of the Bacara property had to consider alternative locations for the project as part of the alternatives analysis under CEQA.

The Supreme Court — which was then newly more conservative thanks to appointments by Gov. George Deukmejian — said no. But more than that, the Court — in an opinion written by Deukmejian's longtime friend Armand Arabian — basically told environmental groups to stop using CEQA to try to kill projects. The purpose of CEQA, Arabian said, was not to re-fight the local general plan's land use decisions in an environmental impact report, which is what the plaintiffs were trying to do. The purpose, he reminded everybody, was to inform the public about the environmental consequences of governmental decisions and mitigate the damage as much as possible.

The switch from killing projects to extracting mitigation meant, essentially, a switch from CEQA as blunt instrument to CEQA as a means to specific ends. Over time, more and more organizations saw that, through CEQA, they could gain unique political leverage via CEQA, whether they had environmental concerns or not.

For example, CEQA has been consistently used by labor unions to try to shut down retail development projects they don't like — especially Wal-Marts — for reasons that have to do with labor practices, not environmental damage. This has led to many lawsuits. It has also led Wal-Mart to attempt to evade CEQA by trying to get projects approved via ballot initiative — a practice that was upheld recently by the state Supreme Court in *Tuolumne Jobs & Small Business Alliance v. Superior Court of Tuolumne County*.

But it's not just unions. More and more, CEQA has also become a tool that business groups use to try to quash regulation they don't like.

Take the recent city-by-city battle in California over

– CONTINUED ON PAGE 36

>>> Developers, agencies have reasons to like CEQA

– CONTINUED FROM PAGE 35

banning single-use plastic bags. Whatever you think of this type of regulatory approach, it's hard to argue that banning plastic bags is bad for the environment. Indeed, when I was working in San Diego, our back-of-the-envelope estimate was that the ban would eliminate the use of *500 million* plastic bags per year in the city. My view – highly personal but strongly held – is that a plastic-bag ban is a slam-dunk exemption under Class 7 and 8.

Still, every time cities or counties proposed such a ban, they had to look over their shoulders for the plastics industry, which was sure to file a lawsuit unless the locality undertook an environmental impact report that used the industry's own studies about the lifecycle cost of plastic versus paper bags. The plastics industry was singularly unsuccessful in this litigation, losing a Supreme Court case from Manhattan Beach and appellate cases from Marin County and San Francisco (which the Supreme Court declined to take – see <http://www.cp-dr.com/node/3426>.) Even after that, cities and counties still had to watch out for the plastics industry, because the Supreme Court had not laid down a conclusive, all-encompassing ruling. (The recent passage of the state's plastic-bag ban, SB 270, should put this question to rest. Governor Jerry Brown signed the bill September 30.)

Developers, who often complain the most about CEQA, frequently invoke the law to sue each other in order to stop development projects and gain a competitive advantage. They also sometimes use CEQA to challenge government policies they don't like – as when the California Building Industry Association tried to claim that the creation of significance thresholds under CEQA creates a significant impact that must be

analyzed under CEQA. (The appellate court didn't buy the argument – see <http://www.cp-dr.com/node/3395>.) Obviously, if the building industry had won that case, the consequences on all future CEQA analysis would have been profound – and the building industry wouldn't have been happy.

(Although that case, *CBIA v. BAAQMD*, is now before the state Supreme Court – see <http://bit.ly/1wOXR9o> – the high court granted review only on the separate issue of when if ever CEQA may “require an analysis of how existing environmental conditions will impact future residents or users (receptors) of a proposed project”.)

Even cities and counties, which also often complain about being hamstrung by CEQA, are skeptical of any change that suggests the possibility of surrendering leverage. The best current example is the local government hand-wringing over taking traffic congestion level of service standards out of CEQA as a result of SB 743. (See <http://www.cp-dr.com/node/3571>.) It's been so long since traffic engineers used anything other than CEQA to extract traffic improvements from developers that they can't figure out how it can be done without CEQA.

So that's the crux of the problem: CEQA provides a way for anybody who wants anything out of a public agency to get some leverage over the situation – whether that's unions, environmentalists, businesses, developers, and even local governments themselves. And no matter how much all these folks say they want CEQA streamlined, they don't want anything to change that will cut into their leverage. Until that equation changes, you won't see much in the way of meaningful CEQA reform. ■

The Dark Side of Environmental Quality

BY JOSH STEPHENS

You think this is going to be another piece about the shortcomings and backfires of the California Environmental Quality Act. It's not.

The most affecting moment in Paul Bogard's book *The End of Night* describes a Cherokee ritual called "opening the night." Participants sit in a quiet place – forest, desert, front lawn, mountaintop – and listen to the sounds within an armspan. Then the radius doubles. It doubles again. It keeps doubling until the listener has beheld the entire spectrum of perceptible sounds, taking in the landscape with an intimacy that those of us in busy, bright places can only imagine.

The marriage of silence and darkness is an utterly appropriate bit of synesthesia: they are two sides of the same globe. Both are in woefully short supply in California.

Lives Under the Dome

Almost everyone reading *CP&DR* spends half his or her life in a crepuscular third space created by artificial light. Without it, we would see brilliant darkness, unknown stars, meteors, the ballet of the heavens, and a Milky Way true to its name. Bogard, a professor of creative writing at James Madison University, describes the sublimity of the true night sky first and foremost in aesthetic terms. It is a beauty that all people deserve to enjoy. He explains why van Gogh's "Starry Night" might have been more the product of observation than of madness. Crazy or not, that's what a real night is supposed to look like.

The trillions of points of light in the true night sky are no match for the mere billions on the ground. You know the culprits: streetlights; parking lots; gas stations; billboards; preening McMansions; "security" lighting; athletic fields; headlights... and on and on. Parking lots alone can account for up to 50% of a city's outdoor lighting. It all piles up in icteritious "domes" that hover above every urban area in the country.

Just as Americans in the 1950s gleefully inhaled smog in the name of progress, Americans now surrender the night for much the same reason. Tablets and smart phones are today's cigarettes, enabling us to further disrupt our eyesight, hormone production, and circadian rhythms. Nocturnal animals don't fare so well either. Bogard is

particularly protective of bats, which, he writes, consume insects, rarely carry disease, and are way too good at flying to get tangled in anyone's hair.

The Bortle Scale measures the night sky on a scale from 9 (Times Square, the Vegas Strip) to 1 (antediluvian void). If you're reading this at night, a Bortle 9 is probably seeping through your curtains this very moment. Bogard numbers his chapters backwards, from 9 to 1, in a march through time and space that begins with the spotlight atop the Luxor Hotel and ends in an empty Moroccan desert. Under a Bortle 1 sky, he writes, even your first glance is revelatory. Then give your eyes an hour or two to adjust. Then you'll see what's really going on up there.

California features prominently in *The End of Night*. Los Angeles' light pollution is described as second only to that of Las Vegas. At the same time, one of Bogard's many lyrical descriptions of a real night sky (they never get tedious, I promise) – of which there is little in the western United States and next to none in the east – comes from the still backroads of Death Valley. It's amazing to think that California was once so dark that some of the world's most important telescopes were here. (They're still here, of course. They're just not important any more.)

It's worth reading *End of Night* just to reach his most inspiring quotation, from the gonzo naturalist Edward Abbey. Referring to nowhere in particular: "this is the most beautiful place on earth. There are many such places." Unlike so many other environmental ravages, light pollution's effects are not necessarily permanent. The depths of Vernon wears the same crown as does Half Dome. The stars are all up there, waiting like cut diamonds to be disinterred.

Planning for Darkness

The End of Night is not a book of urban planning, but the role that planners can play is clear as, well, day.

A few cities around the world, primarily in Europe, are already trying to get their light under control. Flagstaff, Ariz., is the only U.S. city that has implemented a comprehensive program to combat light pollution. It has been a modest success. Even Walmart and Target conform to the city's regulations without, apparently, going out of business. Bogard reports that between 2000 and 2010,

– CONTINUED ON PAGE 38

>>> The Dark Side of Environmental Quality

– CONTINUED FROM PAGE 37

the city's brightness increased only 17 percent, with a 25 percent increase in population. He isn't thrilled with achieving merely a lower rate of increase, but it's better than nothing.

Ordinances regulating light pollution could be integrated into a general plan, replete with Bortle ratings to set goals and track progress. The International Dark-Sky Association, an admittedly quirky organization to which Bogard makes repeated reference, has model programs that can help cities reconnect their citizens to the sublime. It invites cities to join its International Dark Skies Communities, taking a vow if not of darkness than of less brightness. A few cities in California have taken this vow (see [CP&DR July 2003](#)). But, in my many years of discussing environmental issues with planners, the topic has never come up. It was nowhere on the agenda at this fall's California APA conference.

Of course, the dimming of lights could be an invitation for mayhem. But maybe not. Bogard notes that dark places do not necessarily have more crime than bright places do. As in architecture so in public safety: well lit doesn't have to mean brightly lit. Without lights, the would-be burglars can't see either. Shadows give assailants places in which to lurk. Someone who has adjusted to the darkness is more keen than someone assaulted by glare. Eyes on the stars can also be eyes on the street.

It takes generations to construct a built environment. It could take months to retrofit a neighborhood with more sensible lighting, especially in the age of sensors and LED's. Cities could transfer the funds to policing, to calm

the paranoid. And, yes, there's an argument to be made that atmospheric light pollution should be covered under the California Environmental Quality Act. CEQA does refer to light pollution, but that typically refers to nuisances in an immediate area (like this). The entire skyscape might be a tough one for public officials to regulate: it is either immutable or, at a few light years' remove, too far out of their jurisdiction. But surely the health risks of artificial light to 39 million people might justify action?

Why, ultimately, should cities put try to something as amorphous as darkness into their finely tuned plans? Bogard's finest chapter is Chapter 4, midway between light and dark on the Bortle scale and a far piece into the human psyche. In it, he addresses not just literal darkness but metaphorical darkness. He cites English professor Eric Wilson who, in his book *In Praise of Melancholy*, insists that sorrow, darkness, and contemplation are all crucial elements of, if not happiness per se, then at least of satisfaction – of the fullness of being human. This ethos runs contrary to the superficial happiness that is ascribed to Californians. And yet, to banish, ignore, or devalue darkness is to lose authenticity, forsake ambiguity, and stunt our souls.

But we can get it back. We just have to extend an arm, and flip the switch.

The End of Night

Paul Bogard

Back Bay Books

\$16.00 (paperback) ■