

So Now Will Tahoe Stay Blue?

BY MARTHA BRIDEGAM

By the simplest accounts, peace has returned to Lake Tahoe.

California-Nevada cooperation has rescued the Lake Tahoe Regional Compact from years of deadlock and faltering communication over environmental governance by the Tahoe Regional Planning Agency (TRPA). After Nevada threatened in 2011 to withdraw from the Compact, negotiations driven by both state governments' natural resource chiefs led to a major rewrite of the Compact's enforcement rules, the Regional Plan Update (RPU), which was adopted by

TRPA's board in 2012. Further negotiations produced 2013 passage of parallel California and Nevada legislative measures that ended Nevada's pullout threat. The Compact, and hence bi-state governance of the lake, is saved.

If you believe TRPA's accounts of "an unprecedented level of public support" (e.g. <http://southtahoenow.com/story/02/11/2013/trpa-pointless-lawsuit-major-step-backward-lake-tahoe>), it would seem the developer now sits down happily with the environmentalist under conifer, crag, ski lift or casino

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insight
WILLIAM
FULTON

Jerry Brown's Tough Post-Redevelopment Deal

It would appear that, however modest, Gov. Jerry Brown has initiated the post-redevelopment era in California.

Ever since he shut redevelopment down two years ago, Brown has been reluctant to give any signal that he would permit the restoration of any tax-increment system – or, indeed, anything else that remotely resembles the former redevelopment system. In spite of his assurance that he would provide a replacement tool, he has never done so. In 2012, he vetoed a bill that would have

partially restored tax-increment with no impact on the state general fund – and most likely would have done so again last year if the Legislature had sent him the bill again.

But the last month has been different. In his budget message in January, Brown made it clear that he would sign a bill loosening up the rules on little-used "infrastructure financing districts," which allow the use of tax-increment financing without the old "find-the-bligh" requirement from redevelopment days.

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Assembly Majority Leader Toni Atkins has gotten to Governor Brown's desk with a new version of a bill to smooth recurring problems in the dissolution of local redevelopment agencies. A [statement from Atkins' office](#) said the bill is similar to last year's AB 662 but drops a provision on amendments to project contracts that led Brown to veto it. The revised bill contains continuity provisions that would allow projects begun under redevelopment agencies to be carried forward. They include infrastructure financing districts, reimbursement of expenses taken on by housing authorities, and authorization to use bond proceeds on already-approved projects.

Proponents qualify Los Gatos ballot measure to authorize new Netflix HQ

Los Gatos will vote June 3 on the "Albright Way Initiative" to allow construction of a new headquarters for Netflix. Developer John Shenk received town council approval to exceed 35-foot height limits on the project, which calls for four office buildings and a parking garage, but the project has been blocked by litigation. The ballot measure would confirm the prior approval

but it was disputed whether the lengthy proposal might also add permissions beyond what the council granted. Critics said it would allow the town's community development director to be the only approving authority for any subsequent changes to the project.

The *San Jose Mercury News* has coverage [here](#). A city staff report and many public comment letters appear in the town council's [February 3 agenda packet](#).

The staff report said the DA reviewed complaints about allegedly misleading claims by petition gatherers, including that Netflix might leave the area or that there would be "no money for schools," and concluded such statements could not be proven false, hence did not amount to violations of law. The town's page on the initiative is [here](#).

San Francisco to vote on requiring waterfront height variances by referendum

Emboldened by their "No Wall on the Waterfront" win last November, San Francisco neighborhood and open-space activists have qualified a new ballot measure to require

a citywide vote on any proposal for a waterfront project to exceed currently zoned height limits. The measure presumably will go to a vote June 3, 2014. (Ballotpedia has more [here](#). The [proponents' site](#) provides the measure's text.)

The lawsuit met almost immediately [with a lawsuit](#) from opponents who claim that the waterfront is the state's turf, not the city's.

The proposal ties into raging citywide debates on whether residential high-rise construction will reduce housing costs by expanding supply or raise them by skewing the housing stock toward luxury, and on whether large-scale construction serves or marginalizes existing neighbors and public spaces. Projects at issue include a proposal to bring the Golden State Warriors basketball team to a new waterfront arena and a large planned redevelopment of post-industrial Pier 70 in the Dogpatch neighborhood. November's "wall on the waterfront" measure defeated the 8 Washington residential development with backing from many tenant activist groups although, as proposed, the project would have contributed \$11 million in mitigation fees

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toward affordable housing.

More coverage of the 8 Washington debate is [here](#). On the new ballot measure, *SF Weekly's* Joe Eskenazi has a news analysis with emphasis on the role of former mayor Art Agnos in organizing, especially against the Warriors proposal.

San Clemente has a General Plan

San Clemente adopted a General Plan on February 4. The adoption included a zoning change to allow senior housing on a six-acre Shorecliffs Golf Course parcel previously zoned for hotel or timeshare use. The package included a bicycle and pedestrian master plan, a climate action plan, and even an endorsement of skateboards as “an efficient and legitimate transportation mode.” Criticism at the adoption meeting came primarily from residents and management of the Capistrano

Shores Mobile Home Park. City officials offered assurances that the park’s designation would not change under the Plan. Park residents had [previously expressed alarm](#) over Coastal Plan drafts they viewed as seeking to dismantle their neighborhood for open space.

The council now turns to implementation steps: revising zoning and the Housing Element, and preparing a Local Coastal Program to receive delegated permitting authority from the Coastal Commission. The city’s Web page on the plan is [here](#). Details on the approval meeting are [here](#) and, in Council minutes [here](#).

Escondido Approves 99-Cent Store

Interpreting its unusual ordinance that restricts the location of “fixed-price” discount stores,” Escondido

[has voted to permit a 99-Cent Store](#) in the downtown area. Old Navy recently left the downtown area, and a debate ensued as to whether to permit a discount store in its place.

99-Cent Stores are often dismissed as being too downscale for many retail districts and creating problems for neighbors – for example, shopping carts sometimes stack up at nearby bus stops. But as retailing has changed over the past few years, resistance has lessened.

The Escondido Planning Commission [denied the project](#), claiming that it violated the Downtown Specific Plan, which calls for creative and arts-related uses of downtown spaces. But the City Council overturned the Planning Commission on a 3-2 vote. ■



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legal digest

For now, the Coastal Commission retains direct power in the Santa Monica Mountains

BY WILLIAM FULTON

The California Second District Court of Appeal has sided with the Coastal Commission against organic farmers accused of damaging habitat on a ridge above Topanga Canyon. In a January 24 ruling, the Second District refused to block cease and desist and restoration orders issued by the Commission to property owners Stefan, Kathryn and Rahel Hagopian.

The court's decision rested mainly on its finding that, despite a rule drafting process begun in 1982, the Coastal Commission has never approved a Local Coastal Plan for the Santa Monica Mountains area of Los Angeles County, nor had it provided interim permitting authority to the county.

Further, it held the Commission

had no duty to delegate interim powers to the county under Public Resources Code Sec. 30600.5 where the county did not meet the statutory prerequisites.

The court rejected the Hagopians' claim that Los Angeles County gave itself authority to approve permits for that area in a 1989 ordinance.

Further, the court refused to order the County and Commission to agree on an LCP. It found the Commission did not have a duty to ensure the county adopted an approved local coastal program; the county "cannot be compelled" to adopt an LCP that the Commission will approve; and the county had no duty to seek interim permitting authority under Sec. 30600.5.

At issue are three stunningly situated mountaintop parcels, owned by Stefan and Kathryn Hagopian and, in part, Rahel Hagopian. Stefan and Kathryn, an osteopath and doctor, are described in a 2010 *LA Times* article as operators of Skyline Organic Farms, an organic and biodynamic farm founded in 1991. (See <http://articles.latimes.com/2010/jun/04/food/la-fo-marketwatch-20100604>.)

Whether or not the Hagopians farmed conscientiously, the Coastal Commission alleged that they cleared and developed land without coastal development permits in an environmentally sensitive area of live oak woodland and chaparral. It says in 2007 they sought a permit exemption to build

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The court rejected the Hagopians' claim that Los Angeles County gave itself authority to approve permits for that area in a 1989 ordinance.

a guest house and in response were invited to apply for a coastal development permit. They then created vineyards, several county-permitted structures, a pool, tennis court and solar array while continuing to argue they did not need Commission approval -- or not beyond permissions granted by a prior owner's 1987 homebuilding permit on one parcel.

The Second District opinion quotes Commission members during a 2010 public hearing as accusing the Hagopians of "ongoing "massive commercial development" ... without

Commission approval, resulting in "wholesale destruction" and "mountain top removal" reminiscent of "West Virginia coal mining." "

The trial and appellate courts rejected the Hagopians' allegations of due process violations. They also rejected claims that the work on the property fell within an agricultural exemption, saying such claims were not raised at the 2010 Commission hearing. The 2010 Commission staff report is at <http://documents.coastal.ca.gov/reports/2010/8/Th8-s-8-2010.pdf> and <http://documents.coastal.ca.gov/reports/2010/8/Th8-s-8-2010-a1.pdf> . See also <http://www.coastal.ca.gov/meetings/mtg-mmx-8.html> .

But the extra layer of regulation that so frustrated the Hagopians may not continue much longer. Los Angeles County is moving toward qualifying to assume coastal permitting authority by at last securing Commission approval for a complete Santa Monica Mountains LCP. The

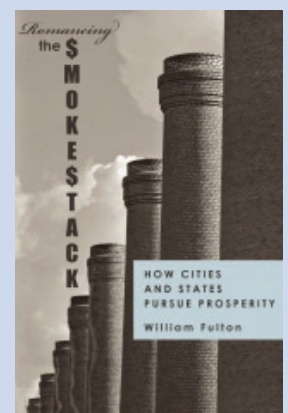
Board of Supervisors will consider a draft LCP in a hearing February 11, 2014. (See <http://planning.lacounty.gov/coastal>). Dennis Slavin, chief deputy director with the LA County Department of Regional Planning, said staff had been working steadily for the last "two-plus years" to complete the current proposal, whose land use component was approved by the supervisors in 2007. He said the county had been working intensively with biologists to make protection choices for the most environmentally sensitive areas and with the Coastal Commission staff in Ventura to create a package the Commission could accept.

Slavin said there was "no direct relationship" between the Hagopians' case and the LCP process. As for the court decision, he said, "That's pretty much how the county felt all along." ■

The case is *Stefan Hagopian, et al., v. State of California*, Case No. B240688, available at <http://www.courts.ca.gov/opinions/documents/B240688.PDF>.

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Bill Fulton's Book On Economic Development



Ceres' West Landing Specific Plan annexation gains from opponents' procedural slip

BY MARTHA BRIDEGAM

A square mile of Central Valley farmland moved closer to development with the defeat, on procedural grounds, of a CEQA and reorganization challenge to the annexation of 960 acres by the City of Ceres under its West Landing Specific Plan.

California's Fifth Appellate District rejected an attempt by an unincorporated citizens' group, Protect Agricultural Land (PAL), to get arguments before the court that the annexation and related changes to Ceres' sphere of influence infringed CEQA and the Cortese-Knox-Hertzberg Local Government Reorganization Act. The initial defendant was the Stanislaus County Local Agency Formation Commission (Stanislaus LAFCO) as responsible agency for the annexation. Ceres was named as real party in interest. Both entities were respondents on appeal.

The appeals panel did not address PAL's substantive objections to the annexation. Instead it upheld the Stanislaus County trial court finding that PAL's petition was formally incorrect under both CEQA and the Reorganization Act because it was filed and served as a petition for writ of mandate. Instead, the court found it should have been brought as a reverse validation action under § 56103

of the Cal. Government Code and, as such, should have met different captioning and notice requirements under Cal. Code of Civil Procedure §§ 860-863, including newspaper publication of a public notice.

The trial court did not allow PAL to complete the missed requirements and did not find good cause for the group's failure to comply. Agreeing, the appellate decision threw out the case entirely.

While the decision turned on the reverse validation requirements, it noted in passing that PAL failed to meet its 30-day deadline under CEQA to challenge the City of Ceres' certification of the EIR and the statement of overriding considerations that enabled it.

The ruling moves the annexed area closer to major residential and business development.

As of the 2011 EIR, properties in the 960-acre area included about 660 acres of farmland of which about 187 acres were under Williamson Act conservation contracts; a small residential subdivision; a governmental complex with jail, social service offices and animal shelter; and the large plant buildings of G3 Enterprises, a bottling and winery services business created by

members of the Gallo family.

The Council resolution said the West Landing Specific Plan Project called for development of "up to 3,635 residential units... up to 884,200 square feet of retail commercial; up to 383,910 square feet of office space; 802,100 square feet of light industrial and/or Research and development uses; 16 acres of schools; and 47 acres of parks," while the county and G3 facilities would continue to expand.

Staff reports and the Ceres City Council approval resolution are at <http://www.stanislauslafco.org/info/reports.htm>. For a map see <http://goo.gl/maps/RG596>. The land was previously unincorporated. Local addresses appear as "Modesto."

The case is *Protect Agricultural Land v. Stanislaus County LAFCO*, opinion text at <http://www.courts.ca.gov/opinions/documents/F066544.PDF>.

Rose M. Zoia was the attorney for PAL. Stanislaus LAFCO was represented by deputy county counsels William Dean Wright and Thomas Boze. Ceres had private counsel: Edward Grutzmacher of the firm of Meyers, Nave, and Michael L. Lyons. For details see the Judicial Council case page via compressed link <http://bit.ly/1fWWo9L>. ■

Trees Are As Important As Forest, First District Says

BY WILLIAM FULTON

In a new case from Humboldt County, the First District Court of Appeals has ruled that Caltrans must see the trees as well as the forest – at least in the environmental impact report for a controversial road widening.

Overturing a ruling by Humboldt County Superior Court Judge Dale A. Reinholtsen, a three-judge panel of the First District ruled that Caltrans should have examined the impact of a Highway 101 widening project on the root systems of individual old-growth redwood trees, rather than examining the impact on the old-growth forest in a more general way. The appellate court also said that Caltrans could not get around finding significant impacts by amending the project description to include proposed mitigation measures.

Writing for the majority in *Trisha Lee Lotus v. Department of Transportation* [<http://www.courts.ca.gov/opinions/documents/A137315.PDF>], Justice Stuart R. Pollak wrote: “Absent a determination regarding the significance of the impacts to the root systems of the old growth redwood trees, it is impossible to determine whether mitigation measures are required or to evaluate whether other more effective measures than those proposed should be considered. Should Caltrans determine that a specific tree or group of trees will be significantly impacted by proposed roadwork, that finding would trigger the need to consider a range of specifically targeted mitigation measures, including analysis of whether the project itself could be modified to lessen the impact.”

The case began when Caltrans undertook to change the alignment

of Highway 101 through Richardson Grove State Park in Humboldt County to make it easier and safer for large trucks to travel on the road. The winding two-lane road is so narrow that standard-sized trucks have a difficult time navigating the road. However, Richardson Grove is also home to more than 300 old-growth redwood trees, which are the first – and most visible – set of redwoods along the highway north of San Francisco. The project did not call for the removal of any old-growth redwoods. However, the environmental impact report did not discuss the impact of the project on the root systems of individual redwood trees. Judge Reinholsten generally ruled in favor of Caltrans, though he did find fault with the fact that the agency had proposed mitigation measures without – apparently – including a mitigation monitoring and reporting plan.

Trisha Lee Lotus and others sued Caltrans, represented – as is so often the case these days in environmental cases – by the Center for Biological Diversity. (Former congressman and one-time presidential candidate Pete McCloskey was also listed as a counsel for the plaintiff.) Overruling Reinholsten, the appellate court bought the Center for Biological Diversity’s argument that the potential impact on root systems of specific old-growth redwoods should have been analyzed in the EIR. “The EIR in this case contains information regarding the overall impacts on the community of redwood trees,” Judge Pollak wrote. “Though somewhat less clearly presented, the EIR also contains information about project activity that will take place within the root zones of specific old growth redwood trees.”

In the case, the Center argued that Caltrans should have used the very specific analytical standards contained in the California Parks Department’s Natural Resources Handbook as the benchmark against which to measure the environmental analysis. Though Caltrans referred to the handbook in its appellate brief, it did not refer to the handbook in the EIR. “The EIR fails to indicate which or even how many protected redwoods will be impacted beyond the tolerances specified in the handbook and, by failing to indicate any significant impacts, fails to make the necessary evaluation and findings concerning the mitigation measures that are proposed,” Pollak wrote.

Making matters worse, the appellate court said, was the fact that Caltrans had incorporated the mitigation measures into the project description, thus allowing the agency to conclude that any impacts were less than significant. Though one could argue that this is the whole point of the California Environmental Quality Act – to make sure impacts are less than significant – the court accepted the Center’s argument that this was not permissible. “As the trial court held,” Pollak said, “the ‘avoidance, minimization and/or mitigation measures,’ as they are characterized in the EIR, are not ‘part of the project.’ They are mitigation measures designed to reduce or eliminate the damage to the redwoods anticipated from disturbing the structural root zone of the trees by excavation and placement of impermeable materials over the root zones.” ■

The Case: *Trisha Lee Lotus et al v. Department of Transportation*, A137315.

>>> So Now Will Tahoe Stay Blue?

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chandelier, and only a few loose ends and sore losers remain to be straightened out.

Except, this is a Western land-and-water fight. It isn't ever all happy, easy, or over. The settlement's costs included a painful schism in Tahoe's close-knit conservation community and some significant resignations.

Two prominent environmental groups now back the RPU: the League to Save Lake Tahoe (creator of the "Keep Tahoe Blue" slogan) and the Nevada Conservation League. Their choice could be viewed as a political concession, or a generational shift, or both: from older views of environmental regulation as a consistent, detailed system of publicly maintained defenses against encroachment, to newer, more pragmatist, incentive-driven compromises with businesses that involve active retrofitting of existing developed properties.

But dissenting groups remain. Two of these, the Sierra Club and Friends of the West Shore, have sued TRPA to block the new RPU and related rules. They allege the new rules allow too much density with mitigation measures that are insufficient or insufficiently tested. The case of *Sierra Club and Friends of the West Shore vs. Tahoe Regional Planning Agency*, Case No. 2:13-CV-00267-JAM-EFB, in the Eastern District of California, was narrowed by a demurrer and goes to hearing March 5 on summary judgment motions by both sides. (The plaintiffs' opening brief is at <http://earthjustice.org/news/press/2013/environmental-groups-file-opening-brief-challenging-update-to-tahoe-regional-plan>.)

Laurel Ames, conservation chair for the Tahoe Area Sierra Club, argues that California and environmentalist negotiators gave up too much to Nevada to secure peace. She says some of her fellow dissenters have joked about printing a bumper sticker: "Save The Compact: Lose The Lake."

Supporters of the 2012 RPU say it reflects new science and urban planning principles as well as new political and budget considerations.

The RPU: Win-Win or Zero-Sum?

With the lawsuit's outcome still uncertain, leading figures from the negotiations insisted the renewed bond between California and Nevada officials would survive even a successful challenge to the RPU. Bill Craven, chief consultant to the California Senate's Natural Resources and Water Committee, said:

"If [the plaintiffs] are successful in their litigation, and I of course have no idea, both states have already pledged to fix whatever the court identifies that needs fixing and get that fixed."

Any definite resolution is good news for many. A long-term watcher of the process said Tahoe has for years suffered a form of "planning blight," in that small business and property owners held back from undertaking development projects or renovations because of uncertainty about permission to build.

Supporters of the 2012 RPU say it reflects new science and urban planning principles as well as new political and budget considerations. It creates incentives to enlist builders and renovators in its mission to limit effects of real estate development within Lake Tahoe's environmental threshold carrying capacities. (For RPU details see <http://www.trpa.org/regional-plan/regional-plan-eis/>.)

The RPU rewards owners for installing new runoff filters and other "Best Management Practices" (BMPs) on existing "legacy" properties, such as those from the pre-Compact building boom of the 1950s and '60s. It seeks to shift density to urban sites deemed least environmentally delicate while compensating for runoff effects of density with improved BMPs. Further, it grants development rights in urban centers as multiples of "coverage" (structures and paving) that developers "retire" from areas rated as more sensitive, such as Stream Environment Zones.

Supporters, including the TRPA as litigants, argue the RPU imposes new standards and analyses rather

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than weakened ones, such as the Total Maximum Daily Load (TMDL) standard under the Clean Water Act. They say it responds to changed circumstances such as reduced concern over ozone levels and greater concern over fine particulate matter, which turns out to affect the lake’s clarity more than nutrients such as nitrogen and phosphorus.

Darcie Goodman Collins, current executive director of the League to Save Lake Tahoe and an environmental scientist by training, said the old 1987 Regional Plan is less effective against recently understood threats, such as particulate matter or aquatic invasive species.

The plaintiffs say the RPU adds too much possible development area to the total that may be approved in the next 20 years: 2,600 residential units, 600 “bonus units” for urban centers, and 200,000 square feet of commercial floor area. Plaintiffs also oppose the RPU’s long-sought delegation provisions. These give municipal governments approval power over larger projects than before, provided they get TRPA approval for “area plans” compliant with the new TRPA standards.

(See http://www.trpa.org/wp-content/uploads/2_Code_Ordinances_Final_2012-12-12_TRACKED.pdf)

The plaintiffs allege that TRPA has not adequately studied the impact of its incentives for more ground coverage in denser areas, places too much faith in under-tested, expensive runoff mitigation, unrealistically seeks to increase compliance through incentives rather than adequate enforcement, monitors ozone insufficiently, and otherwise fails to protect the lake environment under the Compact.

“They don’t have solid evidence that shows that this new strategy is going to work,” said the plaintiffs’ counsel, Wendy Park of Earthjustice. Discussing pressures for development that TRPA faces, she said, “Their strategy is misguided in claiming that development is going to be the solution to the lake’s problems when it’s really the cause, I mean, the biggest cause for clarity decline. It’s indisputable that more urban development results in more stormwater runoff pollution and that stormwater runoff pollution is the cause of the clarity decline at the lake.”

But TRPA general counsel John Marshall argued TRPA did an adequate analysis of denser coverage in

urban areas. He said of the plaintiffs, “They didn’t get the specific analysis that they demanded. That doesn’t mean the analysis that we did was inadequate.”

The new plan imposes standards for reduced automobile dependency through Level of Service (LOS) and Vehicle Miles Traveled (VMT) regulation and sets urban planning goals including walkability and affordability. The Sierra Club and fellow critics question whether density-related goals that may be good urban policy elsewhere might harm the clarity of Lake Tahoe by increasing runoff. Conversely, TRPA board member Clement Shute Jr., a prominent environmental attorney who helped lead the bi-state negotiations, argues it’s inconsistent for the Sierra Club to back SB 375 air quality and density goals elsewhere in California but not at the lake.

Marshall cited a need to favor carrots over sticks in a time of worsened local poverty and limited public budgets: “You can bash existing businesses over the head and say you have to put in these BMPs and you have to do this, and the cost is not insignificant. So either you can take an approach where you try to force businesses to do this – and given the tenuous nature of the economy at South Lake Tahoe and other places,” he said that could push them out of business. “So what really the court is faced with is a policy choice.”

TRPA further argues that its findings about the sufficiency of the RPU to protect the lake and local air quality are policy matters within its discretion that the court cannot properly second-guess.

End of a Nevada showdown

Nevada’s 2011 threat to withdraw from the shared California-Nevada regulatory process came in Nevada’s SB 271 legislation, passed with support from the South Tahoe Alliance of Resorts (STAR), formerly the Lake Tahoe Gaming Alliance (see <http://www.leg.state.nv.us/Session/77th2013/Minutes/Senate/NR/Final/745.pdf>).

SB 271 set a 2015 deadline for Nevada to withdraw from the Compact unless development-friendly changes were made to TRPA’s governance process. Since the demands included revisions to the bi-state Compact agreement, they effectively sought approvals at all levels: from the TRPA board, both state legislatures, and Congress.

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The most substantive demand, which was not met, would have reduced the levels of bi-state agreement required on the 14-member board. For a new project approval, it would have allowed only four rather than five of the required nine votes to come from the project’s home state. It would have allowed any nine votes to pass a variance or rule change, whereas the Compact requires at least four delegates from each state to agree. (Details at <https://nelis.leg.state.nv.us/76th2011/App#/76th2011/Bill/Overview/SB271>.) More symbolic demands called for the TRPA to consider economic conditions and effects on commerce in changing the Regional Plan, and imposed the burden of proof on any challenger to the Plan’s compliance with the Compact.

It was after SB 271’s passage that John Laird of the California Resources Agency and Leo Drozdoff of the Nevada Department of Conservation and Natural Resources created a “bi-state consultation” negotiating group to complete the overdue 20-year revision of Tahoe’s main regulatory document, the 1987 Regional Plan. This group’s recommendations formed the basis for TRPA’s 2012-approved RPU.

But SB 271 may not have been the main driver of those negotiations so much as a shout that drew high-level attention to existing pressures, which included a risk of losing federal environmental funding. Steve Robinson, a significant Nevada political figure who served on the TRPA board through the negotiations, said SB 271 “had very little chance of passage” in its original form as a unilateral withdrawal from the Compact, whereas in the conditional measure that passed, “If progress was shown it allowed the state to stay in, which was what essentially happened.”

Parallel legislative measures, California SB 630 and Nevada SB 229, endorsed the RPU and accepted the economic impact and burden-shifting provisions but did not change the voting rules. (See <http://legiscan.com/CA/bill/SB630/2013> and <https://nelis.leg.state.nv.us/77th2013/App#/77th2013/Bill/Overview/SB229>.) The economic impact provision still requires an act of Congress to take effect but Robinson said that Congressional action “although important, is not an emergency.” All parties, including the Sierra Club’s counsel, Wendy Park of Earthjustice, said the burden-shifting provision did little more than restate existing law.

The Tahoe-area delegation, for its part, was said to be putting its energy into companion measures S 1451 and HR 3390 to reauthorize \$415 million for environmental remediation at the lake.

Who Lost?

Theories vary about who lost in this not entirely win-win deal.

When the *Los Angeles Times* reported, “California blinks, Nevada wins” (<http://articles.latimes.com/2013/sep/15/local/la-me-tahoe-development-20130916>), Shute wrote a heated rebuttal calling the Tahoe compromise “a win for the lake, not Nevada”. (<http://www.latimes.com/opinion/opinion-la/la-ol-lake-tahoe-environment-blowback-20131010,0,1074961.story>). In an interview he said Nevada interests didn’t get all they wanted: that, for example, on the TRPA board’s prior RPU revision committee, he had often cast the sole dissenting vote against developer-friendly proposals, but many of those shifted toward environmental protection under the bi-state process.

Further, the Nevada Legislature’s willingness to approve SB 229 without SB 271’s voting change demands may have been related to the re-election defeat of SB 271’s original author, State Sen. John Lee, after a special effort by the Nevada Conservation League. (See <http://nevadajournal.com/2013/05/31/tahoe-face-california-nevada-retreats/>.)

Three conservationists’ resignations accompanied and arguably enabled the compromise.

At the League to Save Lake Tahoe, long-term executive director Rochelle Nason resigned in 2011, having been singled out by pro-development political figures as too critical and quick to litigate. “There was a great deal of conflict,” she said.

Nason’s successor, Darcie Goodman Collins, joined the bi-state consultation group as the California environmental representative alongside Kyle Davis, then political director of the Nevada Conservation League. Goodman Collins said the League’s decision to back the RPU was “overwhelmingly” supported in a poll of its members. She said participation in negotiations “gave us a strong seat at the table” and a continuing “very strong voice in all of the conversations” including formation of area plans under the RPU. (The area plan process is moving

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fast: Douglas County and the City of South Lake Tahoe already have TRPA-adopted plans for parts of their respective landscapes. See <http://www.trpa.org/regional-plan/area-plans/area-plan-documents/> .)

Davis called the plan an “opportunity to improve conditions on the ground, and should that not happen there are appropriate safeguards in place to keep things from getting worse.”

The TRPA board’s December 2012 RPU approval vote was over objections from two California board members: Byron Sher and Mara Bresnick. Sher, an elder of California environmentalism who served for many years as the chair of the Senate Committee on Environmental Quality, abstained from the final vote pending his imminent resignation. Shute said Sher was “under tremendous personal pressure because he felt loyalty to Secretary Laird” despite opposing the RPU proposal himself.

Bresnick raised objections in detail right up to the final vote (minutes at http://www.trpa.org/wp-content/uploads/January_2013_gb_packet.pdf), then resigned before the January 2014 board meeting.

Bresnick said: “I am not anti-development and my background is representing development interests,” but that she agreed with Sher “there weren’t significant protections” in place for the environment while “there were significant incentives for development and redevelopment.” They contested “what we thought were a lot of holes in the specific language of the plan.” She said they proposed changes to the staff that were not incorporated.

Bresnick cited family reasons for her departure, as Sher reportedly also did. Bresnick said while both

were dissatisfied with the outcome, their resignations were not in protest.

Afterbite

Several supporters of the RPU, including TRPA’s own public affairs office (see e.g. <http://www.trpa.org/sierra-club-out-of-touch-with-environmental-progress-at-lake-tahoe/>), have criticized the Sierra Club as refusing to negotiate constructively, claiming the group and its Tahoe-area allies lack broad support for their dissenting position.

One of these was Shute. Another was Steve Teshara, principal of a firm known as Sustainable Community Advocates [<http://sustainabilityadvocates.com/business-synopsi>] and a past official of Tahoe business organizations. He said: “There were a couple of strong-willed individuals who wouldn’t compromise” and managed to “get organizations like Sierra Club and Earthjustice to support them.”

Teshara agreed with the suggestion that recent political changes partly reflected changes in the personalities involved. He added, “We just need a few more people to change... I have a feeling the litigation will be the last hurrah for some.”

Ames, for her part, said the Sierra Club’s two Tahoe-area chapters together have about 21,000 members and that, if few people are seen to speak for their positions at public meetings, there are others who want to “but they would lose their jobs.” She said, “Every day that I’m out in the Post Office or the grocery store or wherever will just stand there quietly and say thank you for what you’re doing.” She said they’re afraid of trouble if they speak up. “It’s a small town.” ■

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>>> Jerry Brown's Tough Post-Redevelopment Deal

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Jerry Brown has offered cities a deal that's both very straightforward and pretty tough: You can have access to tax-increment financing through infrastructure financing districts. If you settle all your lawsuits against the state.

And then a couple of weeks ago he signed AB 471, a bill put forth by Speaker-elect Toni Atkins, D-San Diego, that took the first modest steps to make IFDs easier to create.

What's going on? Why is Brown softening up on the tax-increment idea? And – a question one always must ask where Jerry Brown is concerned – what's he really up to?

The answers are not that hard to divine.

More than any governor before him, Brown understands that California is becoming much more urban. Given his background as a mayor – and the fact that he lives in a mixed-use redevelopment project above the P.F. Chang's restaurant in downtown Sacramento – he surely understands the unique power of tax-increment to stimulate both public and private investment in urban neighborhoods.

At the same time, he appears very determined to make sure that cities can't game the system again the way they were able to with redevelopment – using tax-increment to finance practically anything anywhere, with the state paying half the cost by reimbursing school districts for lost property tax revenue. And he wants to use every means available to get cities to close out their remaining redevelopment disputes with the state so everyone can move on.

This last point is maybe the most important one. Because even though redevelopment is technically dead, hundreds of redevelopment zombies are walking

the streets in a way that must give Brown a lot of consternation. Using their “successor agency” status under AB1x26, the bill that killed redevelopment, cities around the state are in constant negotiations over which projects can move forward with tax-increment funds and which cannot. These negotiations are placing a tremendous strain on the resources of the Department of Finance, and more often than not if cities lose the DOF negotiation they simply sue the state. The state is in the process of defending hundreds of lawsuits disputing DOF's determinations about which redevelopment projects can move forward.

So Jerry Brown has offered cities a deal that's both very straightforward and pretty tough: You can have access to tax-increment financing through infrastructure financing districts. If you settle all your lawsuits against the state.

And, of course, you still don't get tax-increment money from the schools, so the state's general fund will remain whole.

Atkins' AB 471 clarified one detail of significance to cities – that an IFD can be created in the same geographical area that an old redevelopment project area existed.

Brown is nothing if not wily. He knows cities are desperate to get to Redevelopment 2.0. He knows he's in a commanding position. And he knows that, from the state's point of view, the faster redevelopment winds down the better off everybody will be.

From my vantage point, Brown's IFD proposal was greeted with a combination of joy, relief, and disbelief. Nobody ever thought Jerry Brown would back off on tax-increment. But the fact of the matter is that he *hasn't* backed off. He's offered a very Brown-like compromise, in which the cities get something if they stop giving the state trouble, and in return the state – at least financially – gives up nothing in return.

It's a deal the cities are probably going to have to take. No matter where we go from here, Redevelopment 2.0 inevitably starts with the premise that the state general fund won't subsidize it. That'll make redevelopment deals tougher to do. But it's better than nothing ■

A Black Hole On Wilshire Boulevard

The tar pit –inspired scheme by Swiss architect Peter Zumthor to replace the eastern half of the Los Angeles County Museum of Art is a rare misstep by one of the world’s most gifted architects. Surprisingly, for a Pritzker-winning architect famed for his sensitivity to context and site, this ink blotch of a design shows little understanding of its park site, or, for that matter, the context of Wilshire Boulevard, Los Angeles as a whole, or museums as a building type. It should not be built.

I find myself typing these words in a state of near disbelief. Zumthor ranks high on my short list of favorite living architects, which includes Japan’s Tadao Ando and Portugal’s Alvaro Siza. At their best, each of these designers has combined deep thinking, with quietness, modesty and understatement. Each has produced buildings that provide pleasure to their users while inserting themselves into the existing built environment without violence.

Perhaps it’s understandable that a visitor to L.A. would be impressed by the tar pits that adjoin the county art museum. Yet the tar pits have hardly gone unnoticed: The Page Museum, which stands on a hill overlooking the tar pits, is devoted entirely to fossil findings from the pits, primarily large mammals and birds from the Pleistocene Era (40,000 to 11,000 years ago). Plus, the museum maintains several tar pits as working paleontological sites. And as every Angeleno knows, the pits even make a nod to passing motorists on Wilshire Boulevard, in the form of replica mammoths that mimic the death struggle of animals trapped in tar (although the motorized motion, alas, of the animals no longer operates). So perhaps the tar pits are adequately celebrated as they stand.

More to the point, Zumthor’s proposal razes much of what has constituted the museum campus since its start in 1965. Replacing this set of admittedly imperfect buildings is a single, two-story sea serpent that twists and turns and bifurcates, as if the footprint of the museum itself was a splotchy tar pit. This twisting-and-turning does not accomplish



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much in terms of providing variety in exhibition space, however: Much of the building appears to consist of a single long hallway, which supposedly could be programmed either as “walk through” galleries or divided into smaller gallery rooms. Unless I’m mistaken, I see little opportunity for large installations, for example, of the kind that have made the Tate Modern in London a popular destination.

And as a low-lying building with a considerable setback, I’m not sure the Zumthor building would make much of an impression on either pedestrians or motorists on Wilshire Boulevard, on one of the most visible intersections in L.A. As urbanism, the Zumthor blob is big zero.

Meanwhile, the great black blob appears to encroach, or nearly so, on the Japanese Pavilion, a free-standing structure which represents a rare public building by the late Bruce Goff (completed by Bart Prince.) In homage to traditional Japanese buildings, this eccentric building by a follower of Frank Lloyd Wright was conceived as a building within a garden. Goff’s building needs air and greenery on all sides, but the blob hems in the Pavilion on its western edge.

The LACMA campus has undergone nearly as many facelifts as Joan Rivers, yet remains quirky and disunited. The Anderson Building, part of the original William Pereira design from the 1960s, is a poorly lit set of galleries that seems to scare visitors away from the museum’s world-class ethnological holdings. A streetfront fountain that made a connection to Wilshire Boulevard was abandoned early on, and replaced by an outdoor sculpture garden, which weakens the visual connection of the museum to the important boulevard.

An enlargement from the 1980s by Hardy Holzman Pfeiffer added several buildings, which are serviceable, if undistinguished. The best parts of that scheme was the courtyard framed by new and old buildings on the campus. The

As urbanism, the Zumthor blob is a big zero.

large rectangular space is usually crowded with people – and crowds are the gold standard in campus design. Free jazz concerts on Friday nights are filled to overflowing. In a major city with a dearth of successful public spaces, the LACMA courtyard is an important asset.

A further enlargement, this time by the world’s most prolific museum

designer Renzo Piano, chose not to alter existing buildings, but rather to change the way that visitors enter the museum from a new parking lot, while adding several new buildings. One of the best parts of the Piano enlargement is a prominent artwork by Chris Burden, consisting of a forest of historical streetlamps happily located close to the boulevard. The sight of constant visitors mingling amid the nostalgic lamp posts at last anchors the museum successfully engages the boulevard for the first time in nearly 50 years.

The Zumthor scheme, in contrast, lacks any courtyards or social space. That failing alone should be enough to disqualify the project. True, floor-to-glass windows on the perimeter of the museum could arguably make the exterior friendly for people on foot. But there is no formal gathering place, no high point, no sense of arrival like that provided by the existing courtyard. The lack of a vital public space seems an extraordinary flub by Zumthor, whose 2011 design for a pavilion in London’s Hyde Park — a simple rectangular enclosure., with an open-air garden and surrounded by seating and sheltered by overhangs – was a model way to create a small social space within a larger public area.

The best approach to LACMA may be “Burkean” – that is, to tinker with the historical edifice rather than scraping it. Remember that LACMA sponsored an international design competition about 10 years ago, with big-name architects proposing various approaches to expansion. The winner at that time was a radical scheme by the iconoclastic Rem Koolhaas, who proposed demolishing the campus

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and replacing it with a single giant box. The idea behind the scheme was intriguing: the Dutch architect had proposed arranging the museum's enormous (and largely unseen) ethnological in parallel rows, all coordinated along a giant timeline. Private museum patrons were hostile to the scheme, which was quietly shelved, while the museum went to the reliable Piano for an affordable addition that would meet the approval of big donors.

The Zumthor proposal repeats several of the drawbacks of the Koolhaas proposal – a banal exterior, the destruction of the existing buildings, a lack of genuine social spaces and consolidation of the collection into a single building of monstrous size. I don't know how Zumthor came up with such an inept design. I'm not sure why museum director James Govan should be so enthusiastic about the destructive scheme. All I'm sure of is that the Zumthor scheme should remain a blotch on the drawing board, -rather than a black hole on Wilshire Boulevard.

– MORRIS NEWMAN | FEB 16, 2014 ■

