

# Post-Redevelopment Legislation Seeks Direction

BY MARTHA BRIDEGAM

The California Legislature’s post-Redevelopment landscape is in a state of crumble and tentative growth. Like sprouts on a redwood stump, bills have crowded the space left by the 2011 abolition of local redevelopment districts and their tax-increment financing structures. The sprouts have begun variously to strengthen, clump together, or falter, but with little coherence: some of the most vigorous stems are tending in different, possibly incompatible directions. It’s uncertain which if any will become new main trunks.

The whole effort proceeds in a state of nervous awareness that Governor Brown has used veto power to shape post-redevelopment legislation to his liking – mostly, to date,

in the direction of Infrastructure Finance Districts (IFDs). Picture him surveying the new growth day by day, pruning shears in hand.

In the current political moment, before the best-nourished saplings shoulder out the rest or the pruning shears descend, what’s happening on the broad stump of Redevelopment is a quiet, nerdy debate about the proper functions of government and the reasons why redevelopment districts were created in the first place. It’s an opportunity to reconsider what approaches to municipal structures and services are equitable and useful – one that seems surprisingly little discussed among political activists or the larger public.

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**insight**  
WILLIAM FULTON

## How Will Demography Drive California’s Destiny From Now On?

Demography drives destiny, the old saying goes. And in the past few months, we’ve gotten a couple of pieces of important demographic news that are likely to help shape the future of California – if we can understand what they mean.

The first one is pretty historic: Early in 2014 – that is, along around now – the number of Latinos in California will surpass the number of whites. (Each group has about 40% of the population.)

This trend is likely to keep going for the foreseeable future – the latest estimate is that by mid-century, there will be 10 million more Latinos than whites in the state. And there’s a ripple effect coming along behind it. For example: Just a few days ago, the University of California reported that, for the first time, the system had admitted more in-state Latinos than in-state whites. (<http://abclocal.go.com/kabc/story?id=9508925>) This is an enormously important symbolic step,

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## San Francisco plastic bag case published, denied review

The ruling by California's First District that upheld San Francisco's ban on plastic bags last winter has been shored up by official publication and a denial of review. Bill Fulton's detailed account of the appellate decision is at <http://www.cp-dr.com/node/3426>. The court's online docket, available at <http://bit.ly/1tRLtoW>, shows multiple requests to publish the decision were granted in January, and then on April 16 the state Supreme Court denied a petition for review by the plaintiff/appellant, the "Save the Plastic Bag Coalition."

## Bergamot development will be on Santa Monica's November ballot

A challenge to the proposed large Bergamot-area development in Santa Monica, also known as the Hines project, has qualified for the November ballot, according to the local *Santa Monica Lookout*: <http://bit.ly/1iqOQj2>. The paper reports the Bergamot measure won its signatures with the help of project opponent Residocracy.org, an organization and multi-topic petition Web site founded by former City Council candidate Armen Melkonians. Other opponents include the Santa Monica Coalition for a Livable City, at <http://www.smclc.net/>, which filed suit against the project in March.

## PG&E fights cities and neighbors on trees around pipelines

PG&E has temporarily suspend a newly draconian vegetation removal program that could cut thousands of trees from areas around its gas pipelines. The utility has cited safety

as its reason for the program but faces strenuous objections from cities and residents. The *Contra Costa Times* (reprinted in the *Mercury News*) has more at <http://bit.ly/1nxDT0I>. Earlier this month PG&E was indicted on federal charges in connection with the 2010 gas pipe explosion that killed eight people in a residential neighborhood of San Bruno. For details in the *SF Chronicle* see <http://bit.ly/1jyjPIK>.

## Mine methane protocol approved

On April 24 the Air Resources Board approved an offset protocol for methane capture at coal mines, although California is not itself a large producer of coal. Details, including extensive public comments, are at <http://www.arb.ca.gov/regact/2013/capandtrade13/capandtrade13.htm>. The board's announcement is at <http://www.arb.ca.gov/newsrel/newsrelease.php?id=602>. Criticisms had raised the possibility that the sale of methane offset credits might increase U.S. coal mining's profitability, inducing mining companies to expand operations.

## Drought proclamation suspends HOA landscaping rules

The Governor's April 25 emergency drought proclamation includes a declaration that homeowners' association rules and policies are unenforceable where they conflict with the proclamation's calls for water-saving measures. The order's phrasing is a more generic echo of provisions in the proposed AB 2104, by Assemblymember Lorena Gonzalez, D-San Diego, which has been approved by the Assembly and

as of late April was pending in its first State Senate policy committee. AB2104 would permanently invalidate HOA rules that impose landscaping standards : <http://bit.ly/1k9b1r3>. At a macro level, the proclamation's effects include suspending competitive bidding for several state agencies' drought projects. For details and the full text see <http://gov.ca.gov/news.php?id=18496>. The *Sacramento Bee's* Matt Weiser has the proclamation's highlights at <http://bit.ly/1hEL93o>.

## In more drought news –

Our extended April 22 news roundup at <http://www.cp-dr.com/node/3477> has links and summaries on some of this month's water litigation and regulatory announcements. It also has extensive links on the continuing disputes around the Delta tunnel project – including the 20,000-page Fresno-to-Bakersfield EIR – and links to both academic and governmental materials on the move to get serious about groundwater regulation in California. On the groundwater issue see especially materials from the Governor's April 16 groundwater management conference at [http://www.opr.ca.gov/s\\_groundwater.php](http://www.opr.ca.gov/s_groundwater.php) and a Stanford report, "Before the Well Runs Dry: Improving the Linkage Between Groundwater and Land Use Planning," at [http://waterinthewest.stanford.edu/groundwater\\_landuse](http://waterinthewest.stanford.edu/groundwater_landuse).

The State Water Resources Control Board is urging disadvantaged communities to apply for \$4 million in grants for interim replacement drinking water. See [http://www.waterboards.ca.gov/water\\_issues/programs/grants\\_loans/caa/dw\\_droughtfund/](http://www.waterboards.ca.gov/water_issues/programs/grants_loans/caa/dw_droughtfund/). The state/federal

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drought operations plan announced April 8, with revisions and comments that have followed, is at [http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/drought/tucp.shtml](http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/tucp.shtml). It includes a notice of a May 6 public workshop on the controversial plan. Litigation news on the drought includes a unanimous en banc opinion by the Ninth Circuit backing the National Resources Defense Council's challenge to 41 long-term contract renewals for Delta irrigation water, holding that the Bureau of Reclamation should first have sought expert biological opinion on what could be done to protect the Delta smelt. The *SF Chron's* Bob Egelko has more at <http://bit.ly/1eYcByh>. The case is *NRDC v. Jewell*, decision text at <http://1.usa.gov/1kz1Hiz>. AP reports the decision "won't affect water flows because protections for the smelt were kept in place during the lawsuit" but it does affect water planning prospectively. <http://bit.ly/1fim5PU>. In negotiations separate from the Ninth Circuit ruling, the Dept. of Water Resources was near agreement with the State Water Contractors on provisions that may extend water contracts to 2085. The essential Maven's Notebook water blog has details at <http://bit.ly/1ibhmz9>.

### Storm water Industrial General Permit adopted

The State Water Resources Control Board on April 1 adopted a much stricter statewide Industrial General Permit for "storm water discharges associated with industrial activity". The General Permit covers entities in California including oil, gas and mining facilities, landfills, recyclers, feedlots, factories and food processors, airports, certain vehicle maintenance shops, and sewer systems. The approval updated a prior document, long since expired, that had been in effect by default since 1997. The new proposed permit applies National Pollutant Discharge Elimination System (NPDES) standards under the Clean

Water Act. It requires specified levels of effort, depending on circumstances and type of pollutant, to keep runoff within limits based variously on the contents of the effluent and the carrying capacities of the bodies of water receiving the runoff. Unlike the prior 1997 General Permit, it requires minimum Best Management Practices statewide along with other new standards. Details of the rulemaking are at [http://www.swrcb.ca.gov/water\\_issues/programs/stormwater/industrial.shtml](http://www.swrcb.ca.gov/water_issues/programs/stormwater/industrial.shtml). The adoption announcement is at [http://www.swrcb.ca.gov/press\\_room/press\\_releases/2014/pr040114\\_sw.pdf](http://www.swrcb.ca.gov/press_room/press_releases/2014/pr040114_sw.pdf).

### In-law units legalized in San Francisco

As Phil Frank's "Farley" cartoon said years ago, "If in-laws are outlawed, only outlaws will have in-laws!" Phil Frank didn't live to see it, but the San Francisco Board of Supervisors has finally created a process for homeowners to legalize "in-law" units built within single-family homes. In-law unit owners will be allowed to submit information to the city for a pre-screening process in which owners will suffer no penalty if they decide not to go through with improvements that the city's reviewers prescribe for legalization – unless the city notes an "imminent and substantial hazard". Legalization will be closed to units that have been the subject of no-fault evictions in the past ten years. The *SF Chron* story is at <http://bit.ly/1kEbjx3>. Draft minutes from the April 1 approval meeting, including notes of amendments, are at <http://bit.ly/1hmBwMa>. The Council's tracking page on the legislation, including ordinance draft texts and staff reports, is at <http://bit.ly/1imIUlQ>.

### EPA/Corps propose new definition of 'waters of the United States'

A rule proposed March 25 by the EPA and Army Corps of Engineers

could broaden the definition of "waters of the United States" subject to Clean Water Act regulation. Among much else, that could expand the areas where developers need Section 404 permits from the Corps to go forward, in a parallel permitting process in addition to local government. The Association of California Water Agencies says the rule apparently would place "most intermittent and ephemeral streams as well as wetlands located near rivers and streams" under Clean Water Act protection. (See <http://www.acwa.com/news/water-news/proposed-rule-clarifies-clean-water-act-protections>.) The firm of Alston & Bird LLP has posted its analysis at <http://bit.ly/Pdlybx>. The proposed rule is in the April 21 *Federal Register* and on Regulations.gov at <http://1.usa.gov/1iqRxRK>.

### Eminent domain upheld for new Sacramento Kings arena

Sacramento won its eminent domain action to take over a former Macy's store at 600 K Street for a Kings basketball arena. The *Sacramento Bee* reported that when the Third District Court of appeal refused to block a Superior Court order allowing the action, it gave the city "full control" of the whole site for the planned arena. The land on the site is owned by the California Public Employees Retirement System. Securities investors represented by a U.S. Bank trustee are owners of the building and the trustee contested the eminent domain on their behalf. CalPers reportedly did not contest the city's action. The city now turns to finalizing terms of the eminent domain purchase deal and completing public design review. A City Council approval vote on the deal is set for May 13. See news reports at <http://bit.ly/1jlg0AI> and <http://bit.ly/NVXxVE>. The city Planning and Design Commission approved aspects of the arena plan, including its EIR, at an April 10 meeting. The minutes are at <http://bit.ly/1jW5l0b>. The March 20

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court decision, available at <http://bit.ly/1iqn4zj>, cited briefly to last fall's SB 743. As CP&DR reported last fall at <http://www.cp-dr.com/node/3404>, some of the less far-reaching provisions of SB 743 authorized eminent domain actions at the specific address of the intended Kings site. <http://bit.ly/1IM4qY8>. The *Sacramento Bee* has a relatively favorable detailed review of the deal the public is getting at <http://bit.ly/PldsXS>.

### Meter prices teach SF drivers which parking hopes are realistic

UCLA Prof. Donald Shoup, author of *The High Cost of Free Parking*, has a study out that says San Francisco's SFPark approach to meters has reduced circling ("cruising") in search of parking by half. *NextCity* has details at <http://bit.ly/1eaAgeM>. SFPark varies parking meter prices by time of day in some busy areas of San Francisco according to measured levels of demand. The system makes a smartphone app available for finding open parking spaces, but the main point of the study is that any driver, smartphone user or not, will learn from this congestion-charging approach to look for parking in lower-demand areas where prices are set lower, and hence won't take up space with unrequited searching for available places on high-demand blocks of downtown. A direct link to the study is at <http://bit.ly/1g1XezG>.

### Local sales tax measures mostly pass in April 8 local elections

Voters in Marin, Mendocino and Sonoma Counties approved some parcel taxes and a bond issue in April 8 local elections but Bodega Bay rejected a fire protection district parcel tax and the city of Sierra Madre in Los Angeles County rejected a utilities tax. The city of Long Beach voted to tax medical marijuana. For summaries see Ballotpedia at [http://ballotpedia.org/April\\_8,\\_2014\\_ballot\\_measures\\_in\\_California](http://ballotpedia.org/April_8,_2014_ballot_measures_in_California).

### Could this golf course make more money as a marsh?

The *San Diego Union-Tribune* reports on a proposal to turn a golf course near the San Luis Rey River into a wetlands, creating a "land bank" of environmental mitigation credits that would be sold to developers by the acre. For more on this "inverse real estate development" scheme, see <http://m.utsandiego.com/news/2014/apr/06/bonsall-golf-land-bank-wetland/>.

### LA City Council rolls back Hollywood zoning code to 1988

CBS affiliate KNX1070 (item via CACities.org) is reporting the LA City Council has agreed to repeal the much-contested 2012 amendments to the Hollywood Community Plan pending negotiations over new zoning. It reported the 2012 provisions were recently defeated in litigation and that the old 1988 code will take effect while disputes are resolved over changes in the new code, especially height limits. See <http://cbsloc.al/1hkmP6i>. The Council's tracking page on the Hollywood Community Plan Update is at <http://bit.ly/1hyplWV>. According to a city staff report at [http://clkrep.lacity.org/onlinedocs/2012/12-0303-S4\\_misc\\_d\\_03-18-14.pdf](http://clkrep.lacity.org/onlinedocs/2012/12-0303-S4_misc_d_03-18-14.pdf), the Los Angeles Superior court decision defeating the 2012 plan amendments was issued February 11 in *Fix the City v. City of Los Angeles*, Case No. BS138580.

### Housing even more 'out of reach'

The National Low-Income Housing Coalition has its annual *Out of Reach* report out on housing costs, and it's more dismal than ever. See <http://nlihc.org/oor/2014> for the latest granular data by state, county and MSA on just how many minimum-wage jobs it takes to afford a two-bedroom apartment on the increasingly quaint assumption that housing should cost 30 percent of total income. Per the report's California state data

page, at <http://nlihc.org/oor/2014/CA>, the average California "housing wage" is \$26.04 per hour, or \$54,168 per year, which works out to 3.3 minimum wages per household at the California statewide minimum of \$8 per hour.

### TMDL revision comment periods open on coastal creeks

The State Water Resources Control Board has opened comment periods for proposed changes to "Total Maximum Daily Load" (TMDL) standards for pollutants in three coastal areas. All of these have been locally approved but now are in new comment periods before consideration by the state board. Separate metals and toxics changes for Ballona Creek, and a toxics change for Marina Del Rey, have comments due May 13 at noon per State Department of Water Resources notification emails. See items marked R13 and R14 at: [http://www.waterboards.ca.gov/losangeles/water\\_issues/programs/tmdl/tmdl\\_list.shtml](http://www.waterboards.ca.gov/losangeles/water_issues/programs/tmdl/tmdl_list.shtml) A new TMDL for toxicity and pesticides in the Santa Maria River Watershed was approved by the Central Coast Water Board January 30. Comments are due to the state board by noon May 21. The proposed new standard is at [http://www.waterboards.ca.gov/centralcoast/water\\_issues/programs/tmdl/docs/santa\\_maria/pesticide/index.shtml](http://www.waterboards.ca.gov/centralcoast/water_issues/programs/tmdl/docs/santa_maria/pesticide/index.shtml).

### Proposed rule would limit chromium 6 in drinking water

The California Dept. of Public Health has proposed a rule limiting chromium 6 in drinking water to about 10 parts per billion. Per the *LA Times* it's the first drinking water standard for that chemical in the U.S.: <http://lat.ms/1mlmSV4>. The proposed regulation is at <http://www.cdph.ca.gov/Pages/NR14-038.aspx>. Erin Brockovich, known for her challenge to chromium 6 contamination, has said it's not enough: <http://bit.ly/1tkwALv> The

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Natural Resources Defense Council is dissatisfied as well: <http://www.nrdc.org/media/2014/140415.asp>

### **Tone of oil train and fracking concern shifts from principled to pragmatic**

At first, concern about trains carrying oil from the North Dakota fracking fields or pump-priming at oil rigs came across as climate-focused activism – a campaign serving big-picture environmental goals as much as any one locality. This spring, however, it began to resonate more as a local safety concern. Cities have been cooperating in Northern California to protect local safety on the route taken by oil trains from the North Dakota fracking operations to refineries in Benicia, Martinez and other coastal cities. Assemblymember Roger Dickinson, D-Sacramento has promised to introduce legislation to train and inform local first responders about petroleum shipments through their areas, and to set up contingency plans and grant programs for responses.

Anti-fracking measures are before local governments mainly in Southern California, apart from a largely symbolic legislative effort in Butte County. The Los Angeles City Council is waiting for city staff to draft an ordinance. Culver City's Council was considering a ban. Long Beach, with serious profit from wells at stake, was resisting proposals for a ban. Beverly Hills was also

reportedly working on a fracking ban: <http://www.publicceo.com/2014/04/beverly-hills-pursues-a-ban-on-fracking/>.

At the legislative level, a field hearing in Santa Barbara filled the local Supervisors' chambers. The Mitchell-Leno anti-fracking bill, SB 1132, to block all "well stimulation treatments" until a study could be completed on public safety requirements, has passed its first policy committee and has been amended and re-referred in a second. The *Culver City Observer*, in Democratic Sen. Holly Mitchell's district, quoted Mitchell saying, "The largest urban oil field in the country is in a predominantly minority, residential neighborhood of my district." <http://bit.ly/1eRnEte> The bill, which has won its first committee approval, is at <http://bit.ly/1eMTmP>. See <http://www.cp-dr.com/node/3475> and <http://www.cp-dr.com/node/3448> for further information and links to details.

### **Steinberg's cap-and-trade measure would favor housing, transit**

Budget-watchers will have heard of Senate President Pro Tem Darrell Steinberg's proposal to put more proceeds of cap-and-trade auctions of pollution rights into affordable housing and public transit. The plan itself first went to the public as a detailed "strategy" paper rather than drafted legislation. It called for compliance with Steinberg's own sustainability measure, SB 375, and

with other existing requirements on cap-and-trade proceeds allocation. The plan's "framework" called for up to \$610 million in dollar-denominated yearly spending for watersheds, water projects, waste projects, a "climate dividend" on transportation fuels, electric vehicles and a small "Green Bank" of \$10 million to "assist the financing of clean energy and other environmentally sustainable projects." Any additional cap-and-trade fees beyond that amount – and the additional could be \$3 billion to \$5 billion – would become "permanent sources" of funds allocated by percentage: Out of a 40% allocation to fund "affordable housing and sustainable communities," at least half would fund housing and the rest of that category's funds would go to planning and "smart growth" development. Another 30% would go to "transit construction and operations." Sen. Steinberg did reconcile himself to Governor Brown's insistence that the high-speed rail project be in on the funds: it would get 20%, permanently. The last 10% would go to highways and roads. For our further summary and links to details and bill-watchers' pages, plus a roundup in links on the high-speed rail project, see <http://www.cp-dr.com/node/3477>. The *Wall Street Journal* recently posted a solid new review of the high-speed rail funding situation, linked via *Planetizen* at <http://www.planetizen.com/node/68506> ■

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# Oakland eyes new stadiums to keep pro teams

BY MORRIS NEWMAN

Stadium proposal is battling stadium proposal in Oakland, a mid-sized city with limited resources that wants to keep its name on big-time sports marquee. So far, professional sports team owners appear to be tilting toward a proposal to build a new football stadium, and possibly a new venue for baseball, on the current Oakland-Alameda County Coliseum site. At the same time, Mayor Jean Quan and some powerful downtown Oakland business leaders are pushing a competing project in a site closer to downtown, on the Howard Terminal; and yet Quan is hedging her bets by supporting the Coliseum-site option as well, just to make sure the city ends up with new stadiums to keep sports teams in the East Bay city. Any predictions, however, may be premature until August, when developers of the two competing projects are slated to file proposals with the city.

One question for Oakland sports fans is whether the city or local developers can convince some restless local sports franchises that Oakland remains a good place to play ball and make big-league money. Subsidies in Oakland, a city with a broad swath of poverty and limited resources, are already a thorny issue among some City Council members and Alameda County Supervisors, especially in view of the poor deal that the city made to bring the Raiders back more than a decade ago.

As a venue for Major League Baseball and the National Football League, Oakland is a glass half full. The city has not shared equally in the rising tides of high-tech wealth that have lifted many boats in San Francisco and Silicon Valley. On the plus side are the availability of land, the support of elected officials and a central location in the Bay Area, in terms of both freeways and mass transit, especially in relation to neighboring San Francisco. In the minus column, however, is a public image of Oakland, fair or not, as an unglamorous place with some patchy, even dangerous neighborhoods.

Team owners are eyeing the suburbs. Despite the recent trend of building stadiums in downtown areas, Oakland team owners are aware that their fan base is made up largely of well-heeled suburbanites, who can afford season tickets. The San Francisco 49ers moved this year from the unpopular Candlestick Park in the tough Bayview Hunters Point district of the city nearly 40 miles east to affluent Santa Clara. In a similar bid to court the bulging wallets of Silicon Valley, the Oakland A's last year attempted to move the franchise to San Jose last year. Despite enthusiasm from local officials, Major League Baseball nixed the San Jose deal. (The proposed venue is less than six miles

from the 49ers stadium in Santa Clara, and the 49ers want to control the South Bay baseball market. But the City of San Jose is still pursuing an antitrust appeal on the matter before the Ninth Circuit.)

One thing that's certain is that the status quo is a no-go. Both the city's baseball team, the Oakland A's, and its football club, the Raiders, are dissatisfied with the aging Oakland-Alameda County Coliseum. Football aside, the Coliseum qualifies as one of the oldest stadiums in baseball, a sport that places a high value on newness. Neither team has adjusted well to the hybrid facility, which attempts to accommodate both sports by awkwardly reconfiguring the field for each.

Baseball and football are not the only pro sports franchises itching to leave the city of Jack London behind. Basketball no longer seems a possibility in Oakland: On April 21, Oakland's basketball team, the Warriors, announced they were buying a 12-acre site in the Mission Bay area, near the UC San Francisco medical school campus. The purchase, which won praise from coastline-preservation activists including former mayor Art Agnos, is less controversial, and a far easier candidate for government approvals, than the previously intended site on the Piers 30-32 just south of the Bay Bridge.

The forced marriage of baseball and football at the Coliseum has bred discord between the sports and made headaches for Coliseum management, a joint effort of Oakland and Alameda County. The squeakiest wheel among team owners is arguably Lew Wolff of the A's, who angered many Oakland fans last year by attempting to move the team south to San Jose. For the inconvenience of staying in the Coliseum, Wolff wants a consolation prize in the form of a giant new scoreboard. He wants the scoreboard so much, in fact, that the A's owner has proposed relocating the team "temporarily" to another Northern California stadium until the Coliseum buys and installs the new hardware — an idea described as "flying-unicorn nuts" by *Mercury News* sportswriter Mark Purdy.

When the stadium balked at paying for the signage, Wolff said he could pay the bill if it were amortized over five years and offered to sign a lease extension for that duration.

Surprisingly, Coliseum officials said no. The reason was concern about alienating the Raiders. Last year, team owner Mark Davis, the Dutch Boy-coiffed son of the legendarily flinty Al Davis, signed a one-year lease extension at the Coliseum. The younger Davis, who appears no

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less decisive than his dad in the bid to elevate the Raiders brand, apparently believed that the old Coliseum was soon to be demolished (or that the Raiders were soon to be playing in another city). Accordingly, the Coliseum may not have five years to wait for Wolff to pay off his new scoreboard.

New development at the Coliseum site may solve problems for both teams, however. The program calls for two new stadiums, along with plentiful housing and retail on 800 acres. Colony Capital, a real estate financier, assumed control of the floundering project after the previous developer, Forest City, dropped out of the deal, presumably for lack of financing. To date no deal has been publicly announced, although Colony Capital, a real estate finance firm, is lobbying strongly for the project. Colony must assemble a development team and come up with a preliminary design before approaching the city for a building permit. According to the Mayor's office, however, the deal needs another \$500 million to \$600 million, and even in the high-rolling world of commercial real estate, that sum is considered a lot of money.

Coliseum City is just a recent example of the growing trend among developers to use sports stadiums as "anchors" for large-scale development. Recent stadium developments nationally, such as the proposed Atlanta Braves stadium in suburban Cobb County, Ga., routinely include plans for retail, commercial and/or housing development, on a large scale. An optimistic way to view this stadium-plus style of development is that sports facilities attract investment and credibility to the immediate area, and cities can use stadium projects as a way to pursue large-scale urban reinvestment schemes. A skeptical view is that developers and team owners impose high costs of stadium development on the public sector while using the generous development rights attached to the project to enrich themselves with multi-family and retail projects.

Oakland's rival to Coliseum City is Howard Terminal, a waterfront site controlled by the Port of Oakland. On March 1, port officials removed an obstacle to stadium development by reviewing, and turning down, three alter-

nate uses for the waterfront site. As a precondition for conveying the 170-acre site to stadium builders, the port had to demonstrate that commercial development would not displace any important maritime use. With that formality out of the way, the port appears open to proposal from a group of Oakland businessmen calling for multiple stadiums at Howard Terminal.

The waterfront site was endorsed by Mayor Jean Quan, who has also spoken glowingly of the Coliseum project. Quan's endorsement may be a mixed blessing: Quan is an unpopular mayor with limited political capital. Further, Quan embarrassed herself, and potentially the financiers behind the Coliseum project, by incorrectly stating that the crown prince of Dubai was a partner in the deal. (Her spokesperson later backtracked on the claim.)

With or without Quan's support, the Howard Terminal proposal looks jinxed, largely by the disinterest of the team owners. Davis, the Raiders owner, has come out publicly in support of the Coliseum City project. Wolff, for his part, says the A's will never play at Howard Terminal, nor is he willing to sell the team to a new owner who would field the team at the port location.

If developers are serious about building a new stadium complex in Oakland, they may have to do it without subsidies. A number of elected officials, including several Alameda County Supervisors and Oakland City Council members, oppose tossing public money into a new stadium deal. Those officials have a genuine basis for concern: Oakland has still not paid off the \$200 million spent on improvements to the Coliseum 20 years ago, as part of the arrangement that brought the Raiders back to Oakland from Los Angeles. Taking on that debt was a tall order for a city whose budget for FY 2013-14 is \$430.16 million.

The next proverbial shoes to drop are a feasibility report for Howard Terminal, to be followed by actual proposals in August. At that point the city expects at least one of the projects to be far enough along to sign an exclusive-right-to-negotiate with the city. Will Oakland, the long-suffering suitor of sports teams, participate in either project? "We'll see then," says mayoral spokesperson Sean Maher. ■



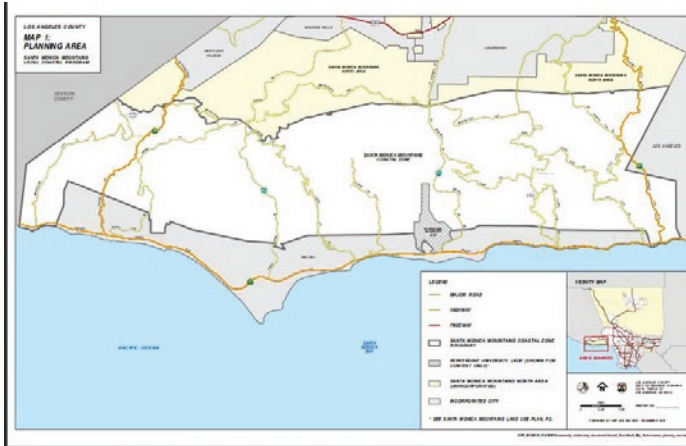
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# Coastal Commission passes Santa Monica Mountains LCP

BY MARTHA BRIDEGAM



The Santa Monica Mountains coastal area, one of the largest still under direct Coastal Commission permitting authority, on April 10 won Commission approval of a Land Use Plan, which was the most significant step toward final certification of its Local Coastal Program (LCP). The Commission will take up the interpretive Local Implementation Plan separately, probably at its June meeting.

The LCP plan area covers a broad swath of the Santa Monica Mountains inland from the Malibu city limits and Pepperdine University, running approximately five miles to the crest of the mountains and covering 50,000 acres. A further mountainous “North Area” is subject to similar planning approaches but is inland of the Coastal Act’s jurisdiction. The area under the Santa Monica Mountains LCP touches the coast only briefly on either side of Malibu’s long, narrow strip of coastline. The traditionally fractious City of Malibu has had its own separate LCP since the Legislature forced it to adopt one in 2002.

Final Commission approval for an LCP would delegate coastal permit approval powers to the county, removing a layer of regulatory process from most construction approvals but requiring the county to operate per the Commission-approved plan.

The plan passed the Commission with environmental groups generally in favor and mixed positions by affected property owners, with farmers and vintners most strongly in opposition. A brief political season leading up to the meeting included a letter-writing campaign against the plan’s agriculture restrictions.

After a long history of past false starts, the LCP project was reportedly restarted by LA County Supervisor Zev Yaroslavsky, in order to wrap up the matter before the end of his last term as Supervisor. He vigorously cheered the county and Commission efforts to completion. A statement on his weblog after the Land Use Plan certification called it “a vote that will resonate for generations”.

Richard Bruckner, director of the LA County Department of Regional Planning, said the Santa Monica Mountains LCP policies, crafted mainly by the County, took a new approach to the usual starting binary for a Coastal Commission permit discussion: whether land qualifies as “Environmentally Sensitive Habitat Areas” (ESHA) or not. He said they worked out “a much more nuanced plan where there are gradations of habitat.”

Bruckner said previously each permit application began a negotiation over the extent to which development on a property could be limited without effecting a taking. The new approach would be clearer, hence less time-consuming, he suggested.

The new plan classifies land in three categories of sensitivity, H1 through H3, ranging from severe limitations on development in H1 to relatively relaxed standards in H3 zones that are already developed. Long-term Commission watcher Susan Jordan, director of the California Coastal Protection Network, said the H2 standard applied development restrictions that would be typical of restrictions on development in ESHA areas. Don Schmitz, an organizer of opposition to the plan who frequently represents permit applicants before the Commission, said “I understand it was a hard-fought compromise that was hammered out with the Coastal Commission staff.”

The plan allows existing farming and vineyards, and new or old personal gardens. However, it creates a heavy presumption against “new crop-based agricultural uses” and prohibits new vineyards outright, based on concern about runoff, erosion, pesticides, and habitat disruption, especially on steep slopes. Initial drafts would have prohibited all new “crop-based” uses, but in light of the pro-agriculture campaign, the Commission approved an addendum whose major provisions clarified that not all new crops were prohibited, and described small-scale gardening and farming that could still be allowed if organic and biodynamic methods are used.

Yaroslavsky wrote on his weblog that the Commission added the additional wording about authorized agriculture due to “misinformation” from opponents including Schmitz, whom he singled out by name. In the earlier of two weblog posts focused on the April meeting, he gave a heated defense of the LCP against claims that it would unreasonably restrict property use, especially with respect to crops and animals.

Schmitz in turn accused the plan’s creators of failing to observe protections for agriculture as a use centrally enshrined in the Coastal Act and of moving the approval process too fast. He said the original proposal was for an “outright and complete ban on any agriculture in the Santa Monica Mountains,” but that he and other opponents were “chastised” for saying so because the proposed rule “magnanimously” would allow existing agriculture to continue.

Schmitz described himself as a farmer and vineyard owner

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## >>> Coastal Commission passes Santa Monica Mountains LCP

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and a spokesperson for a new group, the Coastal Coalition of Family Farmers, which was the plan's most visible opponent as of April. Schmitz said this group was newly formed in response to news of the plan proposal. He said the proposal took farmers by surprise and did not leave much time for them to organize a response.

In an email Jordan wrote, regarding opposition complaints on timing, "all legal time requirements were fulfilled, all sides - supporters and opponents - had the same access to information, and were well informed of the direction it was going."

A Change.org petition bearing the logo of Schmitz's group is still posted at <http://www.change.org/petitions/local-coastal-program-protect-the-future-of-farming-in-the-santa-monica-mountains>. The page introducing the petition refers to "Banning future agricultural land use". The petition had received 922 signatures as of this writing, many added after the April meeting, some from as far away as Nevada, Ohio and Italy.

The Commission staff's 179-page addendum, containing last-minute responses and revisions to the proposal, included letters showing a mix of strongly held local sentiments: support from environmental and community groups and some landowners, and opposition from other local landowners, the Farm Bureau, Pacific Legal Foundation and Malibu Chamber of Commerce. The opponents' letters contained varying phrasing about whether what was to be banned was new farms and vineyards, or agriculture in general.

Bruckner and Jordan said the many established equestrian facilities in the Santa Monica Mountains would be helped to come into compliance before they faced hard-edged enforcement actions. Jordan, herself an equestrian, said descriptions of the help with compliance as an "amnesty" program were, however, inaccurate.

The Santa Monica Mountains LCP process has spanned most of Yaroslavsky's long-running political career. He was first elected to the LA City Council in 1975. The LA County Supervisors took the first step toward an LCP in 1982 by approving a Land Use Plan for the Malibu area. The Commission certified that plan in 1986 but because the Supervisors had not passed zoning and planning ordinances to implement it, the Commission could not approve the whole LCP. The Supervisors partially restarted the process in 2007, then stalled, then recently redid the whole package.

And now, at last, the plan is headed toward final certification, with only the meeting on implementing details to get through, presumably at the meeting scheduled in Huntington Beach in June.

Looking toward June, Bruckner said, "It's the details, but I'm very pleased that we've got ... agreement on the policies between the Commission and the County. And I think we can

work through the details with the Commission staff. They've been very generous with their time and we've had a good dialogue with them."

The lack of a Santa Monica Mountains LCP was recently an issue in *Hagopian v. State of California*, discussed at <http://www.cp-dr.com/node/3440>, in which organic farmers at the top of Topanga Canyon attempted to develop their property based on county approval without going to the Commission. Participants on all sides of the LCP debate declined to comment on the *Hagopian* matter, all distancing themselves from the Hagopians' position that the LCP had not been needed at all.

Bruckner said he anticipated the LCP would bring the county about 30 to 40 new permitting cases a year, depending on economic conditions, and then there would be work to do with nonconforming property owners. He said "by the commission staff's own reckoning there are as many violations or unpermitted improvements in the Santa Monica Mountains as in the ... rest of the coastal areas combined."

While the new Santa Monica Mountains LCP may transfer that much workload off of the Coastal Commission, it won't be as much of a change as in 2002. That was when the Commission, under orders from the Legislature's AB 988, created and approved an LCP for the City of Malibu, ending a long tradition of extended fussing over Malibu local issues at meetings of the statewide body. Some of the history is explained in Malibu's LCP, as created in 2002, appearing as an attachment to the September 2002 agenda at <http://coastal.ca.gov/meetings/mtg-mm2-9.html>. Connoisseurs of legislative dudgeon may appreciate the last three staff analyses on the 1999-2000 session's AB 988, available at <http://bit.ly/PK0b0V>.

### Links:

- *Malibu Times*: <http://bit.ly/1p0Wg0a>
- *Thousand Oaks Acorn*: <http://bit.ly/1IZfLR5>
- *LA Business Journal*: <http://bit.ly/QTS4Qn>
- LA County LCP planning page: <http://planning.lacounty.gov/coastal>
- Yaroslavsky's weblog: <http://zev.lacounty.gov/news/a-high-note-for-mountain-protections>
- For a list of coastal segments where Coastal Commission permit authority had not yet been transferred as of November 2013 see <http://www.coastal.ca.gov/lcp/LCP-StatusSummFY1213.pdf>.
- Coastal Commission April agenda, annotated with results, LCP documents attached: <http://coastal.ca.gov/meetings/mtg-mm14-4.html>

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## >>> Coastal Commission: Sand City, Goleta approvals

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### Monterey Bay Shores Resort

The Coastal Commission approved developer Ed Ghandour's proposal for the 39-acre, 368-unit "Monterey Bay Shores Resort" in Sand City, which has been before the Commission intermittently since 1998. The decision overrode intense objections from environmental groups and agencies that had sought stronger habitat protections for species including the Western Snowy Plover, Smiths Blue Butterfly and Monterey Spineflower.

During the three-day session, the Monterey resort proponents -- formally, Security National Guaranty, Inc., or SNG -- settled 13 years of litigation with the Coastal Commission. The parties managed to both dismiss an appeal of the court case and conclude approval of the project. The U.S. Fish and Wildlife Service had called for SNG to prepare a habitat conservation plan and apply for an incidental take permit but the final plan called for created a "habitat protection plan" with fewer enforceable specifics.

When it was time for the approval, the Monterey Herald said it took four minutes.

*(Disclosure: the judge in the San Francisco Superior Court case, Harold Kahn, heard an unrelated matter in March in which Martha Bridegam participated as an attorney.)*

#### Links:

- *Monterey Herald*: <http://bit.ly/1qu4jzR>; <http://bit.ly/1hEpbG>; <http://bit.ly/OZbodM>
- *Monterey Weekly* on the marathon April 9 debate: <http://bit.ly/1klDagR> and on the outcome: <http://bit.ly/1gXQu5A>
- Audubon Society: <http://bit.ly/1qW4F0E>
- Sierra Club: <http://bit.ly/1enOKb2>
- Appeal of *Security National Guaranty v. CA Coastal Commission*, online docket: <http://bit.ly/1kVsyUH>
- Related San Francisco Superior Court dockets: <http://bit.ly/1IYcVgb>; <http://bit.ly/1IYg5AC>.

### Paradiso Del Mare approval disappoints Surfriders

The Commission approved the Paradiso Del Mare proposal for two large private homes on Brooks Street in Santa Barbara County west of Goleta, sought by CPH Dos Pueblos Associates. The approved proposal provided for coastal trail and habitat restoration mitigations including \$500,000 "for public access trail implementation" and \$20,000 for a new "Seals Watch" volunteer group, but local environmental activists condemned them as insufficient or even harmful. The Surfrider Foundation and other objectors have said the plan could harm habitats on the shore, and that it calls for blocking an existing trail and replacing it with a beach access route that would cost as much as \$750,000 for a stairway. They say the path would run near a seal rookery, limiting surfers' access to the beach

because the access would sometimes have to be closed to protect the seals. The Surfriders also objected to a last-minute presentation of settlement agreement revisions during the meeting that reportedly startled some Commission members. Surfrider and the Gaviota Coast Conservancy are plaintiffs in a pending court challenge to the EIR. The chapter's Bob Keats wrote that the suit would now name the Coastal Commission as well.

#### Links:

- *Santa Barbara Independent*: April 8: <http://bit.ly/RgI7gF>; April 15: <http://bit.ly/1kXRMWx>
- *Noozhawk* on the court case: <http://bit.ly/1kmfWa9>

#### In other Coastal Commission news:

- The Commission unanimously disapproved the Beach Plaza Motel teardown and reconstruction on Ocean Blvd. in Long Beach. The *Long Beach Press Telegram* reported the Commission found the proposed swankier replacement would violate a Local Coastal Program provision "to "protect access to the coast for people of low and moderate incomes." The plan had been opposed by UNITE HERE Local 11, environmentalists and neighbors. For the *Press Telegram* report see <http://bit.ly/1khfQk8>. The *Long Beach Post* has more at <http://bit.ly/1m59CUD>.
- Santa Monica received Coastal Commission approval, with conditions, to replace the deteriorated 84-year-old California Incline Bridge, Ocean Avenue to PCH, with bluff stabilization, better structural stability and improved sidewalks and bike lanes. The project is expected to close that heavily used link between the PCH and Ocean Avenue for 12 to 18 months.
- The Commission approved revised findings in a staff report in support of a disputed athletic fields renovation in Golden Gate Park in San Francisco. Neighbors are divided over the planned use of artificial turf, bright lights for night games, and more formalized development at that end of the park. As reported at <http://bit.ly/1hDliOM>, a signature campaign has begun for a ballot measure against the renovation.
- The Commission approved a proposal to truck in extra sand to replace erosion at Broad Beach in Malibu. *Malibu Times*: <http://bit.ly/1kVNpGW>; Surfrider Foundation: <http://bit.ly/1m0NahW>
- Items noted at the meeting as not requiring a coastal permit included an emergency dust control project at the Oceano Dunes State Vehicle Recreation Area. ■

## San Francisco won't require EIR on tech commuter shuttles

BY MARTHA BRIDEGAM

You've likely heard of the San Francisco Supervisors' April 1 decision to grant a Class 6 categorical exemption from CEQA to a pilot program for tech industry commuter shuttles: yes, this is about the "Google Bus." The program allows employee shuttles for Google and other South Bay tech employers to pick up and drop off staff at San Francisco public bus stops in exchange for a \$1 payment to the city every time a bus makes a stop. The coach-sized double-decker shuttles reduce car trips, but they have been criticized for causing displacement by bidding up housing on the bus routes, and for blocking public buses at the bus stops, damaging roads, and themselves polluting the air. A related charge is that they relieve pressure on Peninsula towns such as Mountain View to allow more housing closer to the campuses. Environmental and social activists may appeal the Supervisors' decision.

Some perspectives in links:

- Board of Supervisors tracking page on the agenda item, with activists' appeal letter contesting the CEQA exemption and SFMTA transit agency's staff response: <http://bit.ly/1g235oR>
- *San Francisco Chronicle* account of the meeting: <http://bit.ly/PhELs4>
- League of Pissed-off Voters argument against shuttles: <https://medium.com/p/9765445ad685>

- Pacific Legal Foundation objecting to use of CEQA: <http://bit.ly/1mOwM1W>
- Exchange between writers Julia Wong and Darwin Bond Graham, on whether CEQA aids or blunts activism: <https://twitter.com/DarwinBondGraham/status/451190095131848705>
- Alfred Twu's renderings of Silicon Valley tech campuses if each contained all the housing needed by its thousands of workers: <https://sites.google.com/site/techcampushousing/>
- Stamen Design's maps of corporate shuttle routes: <http://stamen.com/zero1/>
- A 2010 commentary from Berkeley's Institute of Transportation Studies suggesting private commuter buses can be brought into a shared transit system: <http://its.berkeley.edu/btl/2010/fall/private-buses>
- At the April 26 conference of the California Studies Association, Prof. Jason Henderson made a similar point about including tech shuttles in transit, saying, "There's opportunity out of this mess." Some of his work on San Francisco transportation is at <http://geog.sfsu.edu/person/jason>.
- Soon after the EIR vote, the small "Bigcommerce" company sent recruiters to chat up workers waiting at a major tech bus stop: <http://bit.ly/1IHelt6> One recruiter told the *Chronicle*: "We're just trying to get people off the bus... I mean, why have a three-hour commute to the valley?" ■

## Fish & Wildlife files water complaint against San Jose on encampment

BY MARTHA BRIDEGAM

The California Department of Fish and Wildlife has placed its water quality concerns in direct conflict with the state's affordable housing shortage by filing a complaint with the Regional Water Quality Control Board against the City of San Jose over its Coyote Creek encampment, unofficial home to 150 or more people who reportedly live without access to basic utilities.

The *Mercury News* reported the complaint came from Lt. Byron Jones of Fish and Wildlife, "a retired 22-year veteran of the San Jose Police Department" and it "charges that city administrators and police 'have refused to remove the encampments and protect the water.'" The charges followed two years of pressure for cleanups amid strongly expressed resentment by conventionally housed neighbors. See at <http://bit.ly/1gGkC4Q> and <http://bit.ly/1snjvRp>.

U.S. cities with encampments increasingly face the choice whether to provide (or permit the provision of) infrastructure such as clean water, sewage and garbage removal, sturdy shelters, electricity or responsive policing, or instead remove the encampments themselves because of nuisance conditions that appear at high population densities in the absence of urban systems

such as sewerage.

A news analysis based on interviews with experts about the San Jose situation is at [www.mintpressnews.com/city-san-jose-cleansing-homeless-encampments/187406/](http://www.mintpressnews.com/city-san-jose-cleansing-homeless-encampments/187406/). Prior news reports on grave environmental concerns about Coyote Creek water pollution include two from 2012: the *Mercury News* at <http://bit.ly/1eilrkJ> and the *San Francisco Chronicle*, focusing on the Save the Bay organization's "trash hot spot" rating, at <http://bit.ly/11Hl0rF>. Last summer a photo essay in *Business Insider* called the site "the largest homeless encampment in the continental United States." <http://read.bi/1pEM4uD>. It said up to 175 people may live there at a time.

Another perspective is offered by a report prepared on Sacramento's 2011 American River encampment conditions by the U.N. Special Rapporteur on the human right to safe drinking water and sanitation. The rapporteur, Catarina de Albuquerque, called on the United States to meet the needs of all its people for access to sanitation with dignity. See <http://www.sacbee.com/2012/02/04/4238427/un-investigator-urges-sacramento.html> and the UN report (PDF) at <http://bit.ly/1g22rrn> ■

# legal digest

## Brentwood appeals ruling that upheld post-redevelopment clawback

BY MARTHA BRIDEGAM

As expected, the city of Brentwood has appealed a major April 2 Sacramento County Superior Court ruling that upheld a “clawback” of former redevelopment agency funds by the state Department of Finance (DOF). It’s uncertain how much tax money statewide could be affected by the decision; state officials have said \$3 billion or more.

Judge Allen Sumner’s decision in *City of Brentwood v. California Department of Finance* said the DOF properly told Brentwood to return \$19.6 million in tax money that the city received from its own former redevelopment agency (RDA). Using tax increment funds collected under former redevelopment rules, the RDA made, and kept, an agreement that it would pay the city to work on a park, a community center, a “streetscape” project, and other public projects. DOF said \$15.5 million of that money should be returned and redistributed among other local taxing entities such as

schools, and another \$4.1 million in bond proceeds should be returned to the RDA’s successor agency.

Among the scores of lawsuits over ex-redevelopment funds, the Brentwood case is significant because it answers a widely asked question: whether an agreement between a local government and its own RDA was an “enforceable obligation” if the agreement was signed, and the money paid to the local government, after January 1, 2011 – the date that marked the beginning of the end for California’s redevelopment agencies. If an RDA owes a legitimate “enforceable obligation”, then its successor agency may properly pay off the obligation; if an obligation is not enforceable, clawback follows.

A DOF spokesman told the *LA Times* the decision affected about \$3 billion at about 150 former RDAs. <http://lat.ms/1fh1BvZ>. A supplemental brief that DOF filed in January put an even higher

value of \$3.4 billion on transfers in “approximately 150 localities... from RDAs to their creator entities” between the start of 2011 and January 31, 2012, the day before redevelopment was abolished in California. But J. Leah Castella, who represented the city of Brentwood, questioned whether the total of genuinely similar transfers could be so high. “I have a lot of these cases,” she said. “I feel like all of my cases are ones where the clawback was invalid but there are dozens of these cases around the state and I just don’t know enough about the facts in each of those cases.”

Sumner’s especially ambivalent decision almost completely reversed his tentative ruling. “There are parts of it that are similar [to the tentative]” said Castella. But “it is really a 180.” She said, “I have seen courts reverse tentatives before. I have not seen courts reverse tentatives that were this complex.”

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## >>> Brentwood appeals ruling that upheld post-redevelopment clawback

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The opinion reads like a three-act drama: after setting out the basic conflicts, it descends into a tangled wood of procedural history and precedent. Just as all seems murky if not lost, the court turns for guidance to the ancients. Led by the words of John Marshall and Oliver Wendell Holmes, it adopts ringing phrases on constitutionally mandated deference to the Legislature. It arrives at a decision in the state's favor but leaves plenty for an appellate court to chew on.

Castella said the court did make clear from the start that the initial tentative ruling analysis was no more than tentative. "I think the court thought about this really hard," she said. While she saw a lot of reasons for the decision, she said, "at the end of the day they want the appellate court to decide the issue."

In the opinion, Sumner recounted Redevelopment's dissolution by AB 1X 26 in 2011, the landmark *Matosantos* case (53 Cal.4th 231) upholding its legality, and the Legislature's followup passage of the AB 1484 dissolution measure in mid-2012. He found AB 1484 made the previously legal RDA-to-city type of agreement unenforceable, retroactively to January 1, 2011.

Sumner found the Legislature both intended the clawback to be retroactive and had the power to make it so. As "subordinate political entities of the state," he wrote, the city or its former RDA could not object based on their respective constitutional contract rights.

The tough part seemed to be convincing himself that the clawback was not barred by Proposition 22, the 2010 measure limiting transfers from RDAs "to or for the benefit of the

State" or to other "jurisdictions".

He reached that conclusion after first accepting several of the city's arguments: he noted that the transfers required by redevelopment dissolution would be solidly for the state government's benefit in that, for example, the largest share of the transfers would go to local school districts' budgets, allowing the state to pay correspondingly less. Further, he rejected several DOF arguments as unpersuasive because overly technical, and agreed there was a "fundamental difference" between funds still held by an RDA as of dissolution, and funds the RDA had already spent.

After granting so many points to the city, in part on close readings of the *Matosantos* ruling, Sumner got past Prop. 22 by backing up to look at the big picture: the Legislature's power to legislate, and the long-established heavy presumption that it does so constitutionally. This is where the quotations from Holmes and Marshall came in on judicial restraint, framing the choice to declare a legislative act unconstitutional as a court's "gravest and most delicate duty".

Braced with this new perspective, he found *Matosantos* "interpreted Proposition 22 more narrowly than the City argues," in that *Matosantos* found Prop 22's purpose was to stop legislative transfers from RDAs to county educational revenue augmentation funds (ERAFs) — and not to stop all reallocations of RDA funds. He wrote, "The clawback is not like the ERAF shift which Proposition 22 was adopted to end" in that it neither demanded a percentage of the tax increment, nor restricted transfers to schools.

Further, "the clawback is directed only at the successor agency — not the RDA." Finally, Sumner found the Legislature had power to declare the agreements between the city and RDA unenforceable.

The DOF order, which took the form of a "Due Diligence Review" (DDR) letter, included other instructions as well, notably an attempt to rescind a transfer of nine land parcels to the city for \$10 each. The court found the land transfer issue was not ripe for review. Castella said it would come up when the city prepared its long-range property management plan, which would not be until after a resolution to the current litigation resulted in a finding of completion on the repayments.

The Notice of Appeal was filed April 23, 2014. The case now goes to the Third District Court of Appeal.

The April 2 decision text is at <http://bit.ly/1nB7abo>.

The Sacramento Superior Court case number is 34-2013-80001568-CU-WM-GDS.

The online docket is currently available free at <http://bit.ly/1kdSwmQ>. The pleadings are currently available for free download with free registration but as of July 1 a new system of steep records fees will apply.

The DDR letter underlying the litigation is at <http://bit.ly/1fc7drN>

The Gibson Dunn firm's extensive April 16 summary of statewide post-redevelopment litigation is at <http://bit.ly/1mMsrP9>

A dated but even more detailed summary, as of February 18, is on the League of California Cities site via <http://bit.ly/1jNWNdy> ■

# EIR overturned for slim ‘urban decay’ mitigation

When a new shopping center at the edge of town might skim off customers from existing businesses, how far can a planning department go to protect against “urban decay”?

Quite some distance under current CEQA law, and a little farther in light of an April 1 partial publication order from California’s Third District appellate court. The order gives the weight of precedent to the core of a February 28 decision in *California Clean Energy Committee v. City of Woodland*. The February ruling overturned an EIR for a new shopping center, saying it did not impose enough mitigations of the urban decay risks and did not fully justify its rejection of a mixed-use alternative.

The court got requests to publish the decision not only from the Davis-based California Clean Energy Committee (CCEC) as successful plaintiff, but also from the Center on Race, Poverty and the Environment; the Santa Cruz environmental law firm of Wittwer Parkin; and noted Los Angeles attorney Beverly Grossman Palmer of Strumwasser & Woocher LLP, representing the Santa Monica Coalition for a Livable City. (The Santa Monica group is in its own separate litigation against a large development project proposed for the Bergamot stop on the expanding LA County light-rail line, but that matter is not mentioned in Palmer’s letter.) The city and developer opposed publication.

Amanda Berlin of the Remy Moose Manley firm, which represented the city of Woodland, wrote, “The decision focuses on the record for the Gateway II project, so if the decision remains published, it’s not clear whether it will have significant implications for other cities.”

But Ryan Moroney, an associate with Wittwer Parkin, said the opinion helpfully stated a need for “objective

measurable criteria” in mitigation measures, whereas “We see a lot of EIRs that have this sort of wishy-washy mitigation measure that says, ‘We’re not sure what we’re gonna do but when the time comes we’re gonna do our best’.” He said it re-enunciated CEQA’s basic purpose: “The whole principle is you’re supposed to mitigate to the extent feasible if you’ve identified impacts.” And while some deferral of mitigation measures may be allowed, “you’ve got to really have a plan about what you’re going to do.”

At issue in Woodland was an edge-of-town shopping center known as Gateway II, proposed by Petrovich Development Company, LLC. Petrovich’s Gateway I, an existing 49-acre residential and commercial development, was already completed and leasing when the company proposed Gateway II. The *Woodland Daily Democrat* reported the existing Gateway Center now contains a Costco, Target and Best Buy.

Woodland’s City Council granted annexation and zoning approvals for the Gateway II project but reduced it from the proposed 234 acres to 61.3 acres, and imposed mitigation measures to reduce urban decay both downtown and at the existing County Fair Mall. The Council’s approval resolution predicted the project “would result in physical deterioration and urban decay” of existing retail centers, especially if existing big box retailers moved to the new property -- though it said changes imposed on the project would “avoid or substantially lessen” such effects.

Plaintiff CCEC argued the mitigation measures weren’t enough. The trial court mainly sided with the city but the Third District held the city should have done more under CEQA to protect its existing retail businesses.

The parts of the decision that were granted publication mainly considered whether the city imposed correct and sufficient requirements to mitigate “urban decay” effects. The city had required the developer to seek a master conditional use permit requiring uses that would not compete directly with existing downtown retail; to prepare its own market study; pay half the cost of two city planning studies; and work with the County Fair Mall on a strategic land use plan.

The court found the market study should not have been delegated to the developer to prepare and that it failed to require specific mitigations. It found the rest of the measures weren’t improper, but lacked enough clear promises of action to protect existing retail elsewhere in town. The court was not reassured by the city’s plan to conduct later more detailed reviews of individual construction plans that would be tiered on the initial larger-scale approvals.

Palmer’s letter, provided by the Santa Monica group, emphasized aspects of the ruling that limited deferred mitigation and required enforceable criteria in promised mitigations: notably, “fair-share” payments for measures whose cost and methods are not yet spelled out, and abatement efforts “lacking any ‘criteria for success’”. She described one holding as “a logical extension” of *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, “which held that development of mitigation measures may not be delegated to unaccountable agency staff members.” She wrote that the Woodland case went a step farther in the same area by refusing to delegate the task of developing mitigation measures to the project proponent.

Palmer’s letter further noted findings that an issue was sufficiently

## >>> EIR overturned for slim ‘urban decay’ mitigation

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preserved on appeal “so long as the ‘specific objections’ are raised by any member of the public”.

In a less detailed section of the opinion that Palmer’s letter likewise flagged as important, the court agreed with CCEC that the city gave inadequate reasons for turning down a mixed-use alternative that would have developed 93 acres of housing and commercial uses, including “a local-serving commercial town center” with housing above the shops, on a 154-acre annexation parcel. It said the draft EIR emphasized claims that mixed-use or reduced commercial use alternatives were economically infeasible, but the city’s final decision claimed without real evidence that the mixed-use alternative would have worse environmental impacts than the proposed project.

Further, the court accepted CCEC’s argument that the energy impacts, including transportation effects, were not properly analyzed. Palmer

saw importance there in the court’s finding that reference to state energy standards were not enough because they “do not address several impacts that are within the scope of CEQA, such as transportation impacts, and the question of whether a project should be built at all.”

In sections of the decision that remain unpublished, the court rejected a CCEC objection based on alleged noncompliance with the city General Plan rather than CEQA, finding CCEC asserted it too late in the litigation. The court also refused to call the city the “prevailing party” in deciding who should pay for preparation of the record.

The CCEC organization has a modest public profile despite some environmental litigation and regulatory successes in recent years. Public records show CCEC shares an address with its lawyer, Eugene Wilson, in Davis. Reached for this article, Wilson declined to comment

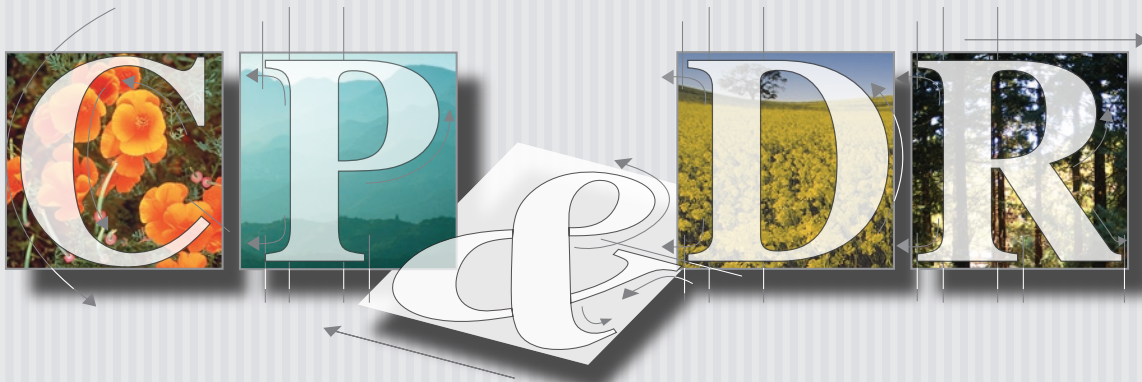
about the case or the organization.

Two members of the original three-judge panel, Justices Ronald Robie and Andrea Lynn Hoch, issued the publication order. The third member, Justice Elena Duarte, joined in the original decision but not in the publication order.

### Links:

- The case: <http://www.courts.ca.gov/opinions/documents/C072033.PDF>.
- Online docket including notes on the publication requests: <http://bit.ly/1qrIrFt>.
- Analysis by Amanda Berlin on the Remy Moose Manley site: <http://bit.ly/1eqAi2b>.
- Background from the *Woodland Daily Democrat*: <http://bit.ly/1sKwbBK>.
- On Santa Monica’s Bergamot project litigation: <http://bit.ly/1sTQL2J> ■

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# TRPA wins Tahoe plan update approval

BY MARTHA BRIDEGAM

A summary judgment ruling April 7 by U.S. District Judge John Mendez upheld the Tahoe Regional Plan Update, endorsing a new regulatory approach to protecting Lake Tahoe that emphasizes incentives for more centralized, better mitigated development. His decision helps to ratify a high-level accord that in 2011 and 2012 resolved political tensions between California and Nevada over shared governance of Lake Tahoe.

The suit rejected a challenge to the regional plan update (RPU) brought by the Sierra Club and Friends of the West Shore, both represented by Earthjustice. The challenge had claimed the RPU weakened previous standards, in part by adopting insufficiently tested new standards and relying too much on incentives to focus development in built-up areas while mitigating runoff effects.

During the Regional Plan Update process, in a painful division of Lake Tahoe's conservation community, some other conservation groups, including the League to Save Lake Tahoe, had participated in the RPU negotiations and endorsed their 2012 outcome. See <http://www.cp-dr.com/node/3435>.

The court's order endorsed the RPU's regulatory approach solidly. It did not rely on two new cases that TRPA's counsel proffered as relevant in the last week before oral argument. One of these was Judge Jay Bybee's call for deference to administrative-branch expertise in the Ninth Circuit's Delta Smelt decision (See <http://www.cp-dr.com/node/3448>). The other was the California Second District's choice to accept "adaptive management" of the endangered spineflower in proposed Newhall

Ranch development areas. (See <http://www.cp-dr.com/node/3461> and *Center for Biological Diversity v. Department of Fish and Wildlife* at <http://www.courts.ca.gov/opinions/documents/B245131.PDF>.) For a further account of the fierce early-2014 briefing see <http://www.cp-dr.com/node/3463>.

The successful defendant, Tahoe Regional Planning Agency (TRPA), issued a statement that quoted executive director Joanne Marchetta as saying, "The pace of environmental restoration will accelerate under the new plan with more opportunities for healthy, sustainable communities." The statement said the RPU would use "cutting-edge transfer of development rights policies" and incentives to protect or restore sensitive lands to improve lake clarity, and that it would reduce vehicle use to improve air quality.

Attorney Wendy Park of Earthjustice said in an interview, "We're very disappointed because we think that this will bring a radical change to the lake with more concentrated development and urbanization around Lake Tahoe's shores." She repeated the Sierra Club plaintiffs' concern that the RPU presumed "more urbanization is the solution to the very problems caused by urbanization." Park said the plaintiffs had not decided whether to appeal.

Park continued to question whether, or how carefully, the Best Management Practices (BMP) maintenance requirements would be enforced under the RPU, either on sites where they are installed as conditions for new development or

redevelopment, or at older structures that need retrofitting.

In February briefing, TRPA had reassured the judge that a requirement was in place for "all new development to maintain a log of BMP inspection and maintenance activities". Park said that wasn't in the original EIS and that TRPA should make clear to the public how the log-keeping process would work and be enforced.

TRPA spokesman Jeff Cowen responded by email: "Ensuring that BMPs are maintained is part of the Regional Plan and we will continue to implement this on a permit by permit basis. Public education has always played a key role in the BMP program and we have been focusing more of the advertising and outreach on maintenance."

More generally he wrote: "We will continue implementing the Regional Plan and anticipate the decision will remove any uncertainty about the incentives that it provides. We think the plan will encourage a greater degree of environmental redevelopment."

## Links:

- TRPA's full statement: <http://www.trpa.org/court-upholds-lake-tahoe-regional-plan/>
- The court's order (20pp): <http://www.trpa.org/wp-content/uploads/RPU-Litigation-Order-Granting-Defendant-Win.pdf>
- *Lake Tahoe News*: <http://bit.ly/1jsY904>
- *Reno Gazette-Journal*: <http://on.rgj.com/1hXEyFp> ■

## Rodeo's CEQA exemption allowed despite alleged creek pollution risk

An appellate court has upheld a CEQA exemption for the 2011 deputy sheriffs' charity rodeo at the Santa Cruz County fairgrounds in Watsonville. Although it was the first rodeo held there in a generation, the court held a categorical exemption was proper for the event on the grounds that, environmentally speaking, the rodeo was much a "normal operation" as any other livestock or equestrian event at that venue.

Plaintiffs objecting to the rodeo had claimed "unusual circumstances" existed that might have a "significant effect" on the environment because of a risk that manure from the event would harm nearby Salsipuedes Creek, and also, per the court, because of "proximity to residential and agricultural land, or a public safety risk of bull riding".

The March 26 decision by California's Third Appellate District upheld decisions by Sacramento County Superior Court judge Lloyd Connelly that had allowed the 14th District Agricultural Association, which runs the fairgrounds, to grant the rodeo a Class 23 categorical exemption from CEQA environmental review as "normal operations of existing facilities for

public gatherings."

Per the case history in the decision and local news reports, Connelly allowed Stars of Justice Inc., a nonprofit created by the Santa Cruz County Deputy Sheriff's Association, to go ahead with its charity rodeo in October 2011 after the county had gone "two decades" without one. Just under 1000 people reportedly attended. Connelly later confirmed his approval in 2012. (See [http://www.santacruzsentinel.com/ci\\_18993102](http://www.santacruzsentinel.com/ci_18993102); [http://www.mercurynews.com/breaking-news/ci\\_19819481](http://www.mercurynews.com/breaking-news/ci_19819481); <http://bit.ly/1jSZyJO>.)

Since the rodeo itself was over long ago, the appeal that followed from rodeo opponents was moot, but the appellate court chose to rule on the environmental issue as a public interest matter "likely to recur and capable of evading review."

The court found the rodeo was part of "normal operations" at the fairground because it was essentially similar to other events held at the same site. It said the site did not have to be compared to other kinds of public venues, nor to other fairgrounds, to determine what was normal. It distinguished a series of cases involving refusals to grant categorical exemptions, arguing

that the exemptions were denied not because nearby neighbors or watercourses presented unusual circumstances, but because the activities in question were new ones, with new, unaccustomed effects.

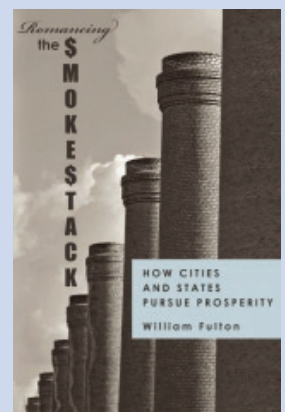
Plaintiffs had claimed that, in adopting a Manure Management Plan to protect the creek, the fairground managers essentially gave up their claim to a categorical exemption by admitting there was a hazard to mitigate. The court found the same sanitation measures applied to all events involving horses and livestock, not just the rodeo, and were not new, just recently formalized and possibly increased.

The plaintiffs contesting the rodeo were Citizens for Environmental Responsibility, Eric Zamost, and his Stop the Rodeo organization. The stoptherodeo.org Web site objects to rodeo events as promoting a culture of violence entailing mistreatment of animals and also, in fewer words, to the discharge of "raw manure" into Salsipuedes Creek.

The case is *Citizens for Environmental Responsibility v. State of California ex rel. 14th District Agricultural Association*, at <http://www.courts.ca.gov/opinions/documents/C070836.PDF> ■

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

*Bill Fulton's Book On Economic Development*



# ‘Measuring Sprawl’ finds California metros denser than many

An academic study that gauges sprawl in cities nationwide has placed San Francisco very high in its compactness rankings — one alternate standard, buried deep in the report, actually ranks it first. It also rates Los Angeles above a surprising number of other cities, considering it’s stereotyped as suffering from low-rise growth.

The study, “Measuring Sprawl,” rates cities on a spectrum from “sprawl” to “compact and connected” based on four factors, each representing a basket of variables: “development density” (residential and otherwise), “land use mix” (based on data about WalkScores and types of jobs near each other), “activity centering” (roughly, whether downtowns are busier than peripheries), and “street accessibility”, which values short blocks, four-way intersections and “blocks that are urban in size”.

This four-factor approach ranks the New York/White Plains/Wayne NY-NJ metro area highest for compactness, followed by San Francisco/San Mateo/Redwood City, California. Next in California are Santa Barbara/Santa Maria/Goleta, #4, Santa Cruz/Watsonville, #6, and Santa Ana/Anaheim/Irvine, #10. The Los Angeles/Long Beach/Glendale metro comes in at #21. San Diego-Carlsbad-San Marcos is #103 and Sacramento-Arden-Arcade-Roseville is #120. At the other end of the scale, the Riverside-San Bernardino/Ontario metro comes in at #215 out of 221 areas rated. The most sprawling metro in the ranking is Hickory/Lenoir/Morganton, NC, just below Atlanta.

The co-authors of the study are

Professor Reid Ewing and Shima Hamidi, a graduate research assistant, both of the University of Utah’s Metropolitan Research Center. The report texts mention project team members from the National Cancer Institute and Smart Growth America and says it was prepared for those entities plus the Ford Foundation. The Smart Growth America site offers an executive summary and 51-page version of the report at <http://www.smartgrowthamerica.org/measuring-sprawl>. A 203-page version of the report and other supporting material are posted at <http://gis.cancer.gov/tools/urban-sprawl/>.

Asked about the California compactness ratings, Ewing wrote: “The favorable results for California probably mostly [result] from high housing costs, which translates into higher densities.”

The 2014 study built on a 2002 predecessor effort by Ewing, who was then at Rutgers University, together with Rolf Pendall of Cornell and Don Chen of Smart Growth America. That study, with its separately posted ranking table for high and low levels of sprawl, is at <http://www.smartgrowthamerica.org/research/measuring-sprawl-and-its-impact/>.

Ewing confirmed the research team chose to make few comparisons between the 2014 study and its 2002 predecessor due to the risk of “apples to oranges” misunderstandings. He wrote: “Metropolitan area definitions changed, and the variables we used to measure sprawl changed.”

The main 2002 study ranked Riverside-San Bernardino worst for sprawl. At the top end of the

scale, the New York City MSA’s top ranking was followed by Jersey City, the Providence, R.I. area, and only then San Francisco. Los Angeles was then 39th, just below San Diego.

Ewing noted that an alternate set of “apples to apples” comparisons appears in Chapter 9 of the large report text on the Cancer Institute site. That chapter sets out and applies an alternate sprawl standard that is able to use data available in the same forms for both 2000 and 2010 with respect to 162 large “urbanized areas” (as distinct from metropolitan areas) that had populations of 200,000 or more as of 2010.

Tables on Pages 109-111 of the large report’s PDF show urbanized areas’ compactness levels changed little from 2000 to 2010 according to these “apples to apples” standards. In each case the most compact urban area was San Francisco-Oakland, California — this is the alternate form of the study in which San Francisco actually ranked highest. In 2010 the top-ten list also included Oxnard and Los Angeles-Long Beach-Anaheim in eighth. In 2000, the only California urban area after San Francisco-Oakland on the top-ten list was Visalia. In both decades the only California urbanized area among the “most sprawling” ten was Victorville-Hesperia. In each case the “most sprawling” metro area was Atlanta, Georgia.

Boston and other Massachusetts towns weren’t in either the 2014 rankings, nor the 2000-to-2010 comparisons, because they used Local Employment Dynamics (LED) data, which Massachusetts is alone in choosing not to collect. ■

## >>> Post-Redevelopment Legislation Seeks Direction

– CONTINUED FROM PAGE 1

The following seems to be the picture, based on reviews of the public record and conversations with Capitol insiders, most of whom asked not to be identified.

Two dominant tendencies appear among the bills: one is to follow signals the Governor gave in January and February that he would look favorably on efforts to expand use of IFDs. The other main approach, which has many supporters other than the Governor, would re-create Redevelopment-like agencies under other names in diminished, restricted forms. The two approaches are in some tension but may not be mutually exclusive.

Among the minor tendencies, SB 1260 uniquely seeks to hedge bets by replacing Redevelopment's old 20% affordable housing set-aside, plus a bit more. It would impose a 25% affordable housing set-aside requirement on either Redevelopment-type or IFD tax-increment districts. Then there are a handful of bills proposing special laws for local circumstances, including in Oakland, Milpitas and San Francisco. And there are breakaway efforts to meet traditional Redevelopment goals by other tax or debt mechanisms entirely.

Two anxious bass notes could be heard under the experts' rapid-fire technical summaries. One was fear that none of the proposed approaches would really gather sufficient tax increment funds fast enough to fund needed (or wanted) projects. Another was fear that, since IFDs do not require any showing of disadvantage in a project area, the IFD approach might not include any requirement for poverty relief to replace Redevelopment's long-misused "blight" requirement.

### Infrastructure Structures

As CP&DR has described previously (see <http://www.cp-dr.com/node/3429>, <http://www.cp-dr.com/node/3433>, and Bill Fulton's February Insight column in our PDF issue), Governor Brown indicated in January that he was willing to see the previously little-used IFD device expanded as tax increment financing – but subject to limits: an exclusion from affecting school budgets, a "finding of completion" and wrap-up of all repayment disputes involving the sponsoring local government's former redevelopment agency, and a requirement that each IFD be approved by a 55% vote in the proposed district.

On February 18, to the surprise and relief of some, Brown signed Speaker-elect Toni Atkins' AB 471, which allowed IFDs to overlap with former redevelopment districts. However, he did not budge on the requirement to first pay off

all ex-Redevelopment obligations to the state's satisfaction. The many local governments that are in litigation with the Department of Finance over ex-Redevelopment money may thus have to compromise their existing claims in order to use the new funding sources.

The Governor's abbreviated January thoughts on the subject appear at pp. 133-135 in his budget summary at <http://bit.ly/1rzfckp> (3.4MB PDF). His trailer bill expanding those thoughts, dated February 21, is on the Department of Finance site via <http://bit.ly/1hCRcFN>.

When read alongside existing code, the trailer bill says the requirement to approve an IFD would be a 55% vote that would vary according to the district's nature: if more than 12 registered voters lived there, they would decide on the ordinary basis of one person, one vote. If there were fewer resident registered voters, then the vote would be taken among the landowners, on a basis of one vote per acre or fraction thereof.

Criticisms of these restrictions, and more fundamentally of the IFD model as envisioned to date, appeared in March from the Legislative Analyst's office at <http://bit.ly/1mSq4YJ> and in notes by the staff of the state Senate's fourth budget subcommittee at <http://bit.ly/1itqyFp>.

SB 33 by Sen. Lois Wolk, D-Davis, would revoke the requirement of a vote for an IFD. However, Wolk told CP&DR in January (at <http://www.cp-dr.com/node/3433>) that last year she held back SB 33 from the final Assembly vote that would have sent it to the Governor because his office "gave clear signals... that he wasn't read to sign it."

As of late April there was no indication of any signal received to the contrary. But SB 33 was being mentioned as part of the picture. Dan Carigg, legislative director for the League of California Cities, said his organization supported it. He was not alone in suggesting the vote requirement made IFDs difficult to use in populated areas.

On the other hand, the appearance of the trailer bill and the signing of AB 471 have been taken as indicators that Brown is willing to have more of a "conversation" about IFDs this spring than previously.

Bills to expand IFDs in specific ways include AB 229 (Perez), for military base reuse and for other environmental and public-works projects in addition to standard IFD purposes; AB 243 (Dickinson), which would carry Brown's 55% vote requirement, somewhat expand standard IFD purposes, and also grant a 25% housing set-aside; and SB 628 (Beall), which would expand IFDs for transit and

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## >>> Post-Redevelopment: rebuild on the old model?

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transit-oriented development, with a 25% housing set-aside. Some of these are formally inactive but all have been mentioned as part of the continuing discussion.

### Redevelopment Redux

The measures that could re-create redevelopment districts are at some risk of a veto, but they were discussed as of late April as live bills that could possibly be brought forward for passage. The main such bills include SB 1, by Senate President Pro Tem Darrell Steinberg, D-Sacramento, a bill emphasizing transit-oriented “smart growth” that has been on inactive status since September, and AB 2280, introduced this February by Assemblymember Luis Alejo, D-Salinas.

Likely anticipating the Governor’s objections, both SB1 and AB 2280, like the IFD bills, would require a finding of completion from the Department of Finance before the contemplated type of new district could be formed.

SB 1 as of last September’s legislative analysis had support from several local governments and associations of local governments, labor groups, the Natural Resources Defense Council, and the Western Center on Law and Poverty. Its primary emphasis is less on relief of traditional “blight” than on transportation, environmental and health problems to be remedied by meeting transit and sustainability goals. There is, however, a 25% affordable housing requirement.

Carigg emphasized the League’s support for AB 2280. (The League was opposed to Redevelopment’s dissolution in the first place.) He did not consider it contradictory to support a redevelopment-type measure alongside IFD-related legislation, but called on the Governor to allow “a variety of tools in the toolbox”. It might be possible, he suggested, for one city to create “an Alejo district” for a poorer area of town, “an SB1” for a transit-oriented project on a rail line, and “on the edge of town there’s some new project or something” suitable for an IFD.

As of an early-April legislative analysis, AB 2280 had support from several public employees’ associations, the California Building Industries Association, the Western Center, California Rural Legal Assistance and the California Coalition for Rural Housing, in addition to the League. As of that date – a little over two months past introduction – it was a smaller list of endorsers than SB 1.

Carigg highlighted provisions in AB 2280 that were meant as safeguards against aspects of redevelopment agencies that became notorious in the past. He said the League had worked extensively with Alejo on “accountability” protections because “it doesn’t do anybody any good” to restore the “tool” of redevelopment-type financing only to have “some issue in the newspaper or something” that

would lead to legislative re-restriction.

The current AB 2280, which includes Speaker Toni Atkins among its coauthors, would create “Community Revitalization and Investment Authorities” on a restricted Redevelopment-type template. The simplest restriction would exclude school funding from the tax increment arrangements automatically.

In response to redevelopment districts’ histories of finding “blight” in unlikely places, AB 2280 would define “blight” partly by local statistics tending to indicate disadvantage, though partly also by the presence of two conditions that seem open to definitional hair-splitting: “deteriorated or inadequate infrastructure” or “deteriorated commercial or residential structures”.

In partial response to old and deep urban grievances over “urban renewal” removals of communities of color, AB 2280 would provide for two of five members of an authority’s governing board to be local residents. Additionally it would grant local residents and landowners an opportunity every ten years to revoke the authority itself, if they could navigate a difficult double procedure resembling labor union certification: in order to qualify for an election to revoke the authority, opponents would first have to organize a “majority protest”, which would be achieved “if protests have been filed representing over 50 percent of the combined number of property owners and residents, at least 18 years of age or older, in the area.”

A proposal not exactly in this category, and not itself having much of a chance, but drawing some related heat from property-rights activists, is the Rutan & Tucker “Jobs and Education Development Initiative”. This is a statewide initiative measure that, if qualified for the ballot and approved, would restore redevelopment agencies wholesale, but with a lower housing set-aside. The Legislative Analyst’s Office analysis is at <http://www.lao.ca.gov/ballot/2013/130773.aspx>. Opponents and skeptics have derided it as the “Return of the JEDI”. (See e.g. <http://ij.org/california-redevelopment>)

### Hedging Housing

SB 1260, by Sen. Mark DeSaulnier, D-Concord, would apply a 25% affordable housing set-aside to either a Redevelopment-type or an IFD-type district, or to both side by side if need be. Like some of the piecemeal IFD bills mentioned above, it addresses the fear for affordable housing that follows from the lack of poverty-relief provisions in IFD law.

A “Fact Sheet” from the Senator’s office said it “harmonizes the housing provisions of redevelopment law

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## >>> Post-Redevelopment: single-issue bills, new approaches

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(as proposed to be amended by SB 1 (Steinberg)) with those of Infrastructure Financing District law.” Further, it sets requirements within the affordable housing requirement for targeting to moderate-, low-, and very-low-income residents.

As of an April 2 legislative analysis the measure had formal support from California Rural Legal Assistance and the Western Center. The *Santa Monica Mirror* reported the Santa Monica City Council endorsed SB 1260 in March. <http://bit.ly/1h2QZfr>

Carigg of the League of California Cities criticized the IFD end of the bill. He said an affordable housing set-aside could make a pro-IFD ballot measure more difficult to pass where affordable housing is unpopular, and if an IFD is intended for a small discrete project such a sewer line update, the housing set-aside could create enough extra complication to stop the mechanism from being used at all.

### City-Specific Bills

A few city-specific bills are stating geography-based claims amid the political morass.

San Francisco’s city government is the driving force behind Sen. Mark Leno’s SB 1404, which, per a “fact sheet” from Leno’s office, would “provide a remedy for the destruction of low- and moderate-income housing units in San Francisco during urban renewal (1955-1975) that were never replaced.”

The bill is based on an argument that, owing in part to a bill by then-State Sen. John Burton in 2000, San Francisco’s redevelopment agency effectively owes the city 5,947 units of unreplaced housing for Urban Renewal’s wholesale destruction of densely populated housing, which would have been largely in the Western Addition and in the Yerba Buena region South of Market. The bill would allow tax-increment financing for such housing to continue to flow from six defined redevelopment project areas. Supporters listed in addition to city government figures are local and regional housing organizations. The Senate Local Government Committee’s published legislative analysis is mildly skeptical.

Another bill based on a claim of special crisis is AB 2549, brought by Assemblymember Mark Ridley-Thomas on behalf of Milpitas, which is embroiled in especially high-stakes litigation with Santa Clara County and the state over large, allegedly improper transfers of assets from the redevelopment agency to the city government that created it. An early version of the bill puts the loss at \$39 million in local tax revenues with more money sought in the lawsuit. As of April 24 the measure was amended to refer generically

to “recent losses of local funding” and “a lack of economic development tools.” The meat of the bill hasn’t changed, such as it is: it calls for creation of a commission of local dignitaries and area representatives to figure out what can be done about the shortfall, and especially how to continue encouraging “economic activity” in “the McCarthy Ranch area of the city near the Newby Island landfill”.

Assemblymember Rob Bonta, D-Oakland, has introduced a little-known economic development measure, AB 2292, that does not claim any crisis, but would provide for additional projects at three hotly debated Oakland locations: the former Oakland Army Base, Howard Terminal and Coliseum City. The first of these locations is the site of the much-debated Oakland Global development. The latter two locations are candidates for a proposed pro sports stadium complex. (See <http://www.cp-dr.com/node/3476>; <http://oaklandglobal.com/index.php/project/history-of-site>; <http://thealamedan.org/news/development-report-meanwhile-oakland>.) Rep. Bonta’s office referred inquiries on the bill to a staffer who had not responded as of this writing.

### New Territory

Some legislative plans for purposes that might once have used redevelopment money are moving into other kinds of political territory entirely.

SB 391, by DeSaulnier, would fund housing with a statewide \$75 recording fee for real estate documents – see <http://lat.ms/1eYa86W>.

The more technically ambitious AB 2729, by Assemblymember Jose Medina, D-Riverside, is titled “Infrastructure Financing” but refers to an entirely separate funding scheme. The bill, which is still in a discussion phase, would expand use of the California Infrastructure and Economic Development Bank, or “I-Bank”, to finance more infrastructure surrounding shipping in all its forms, including airports.

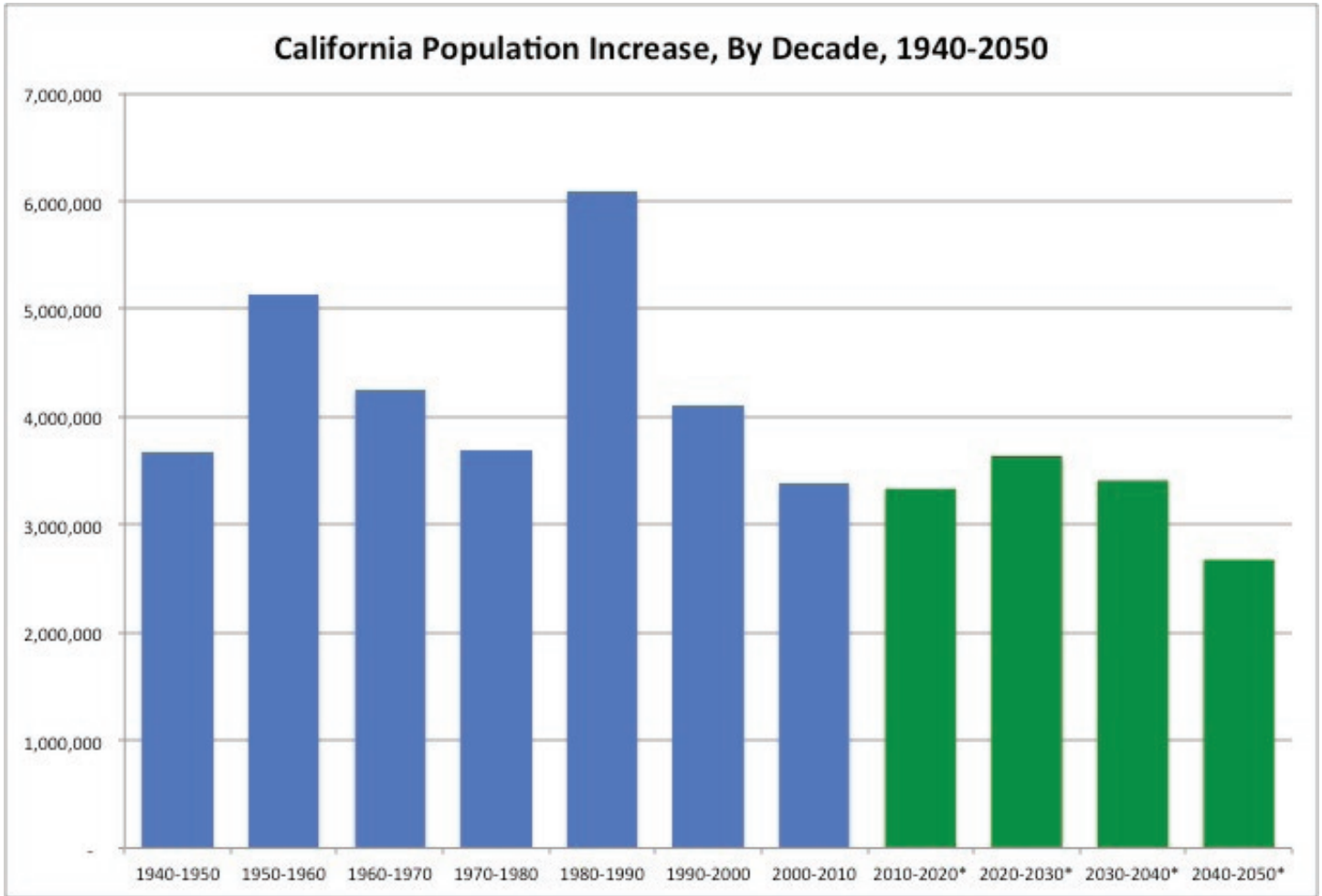
### What Next?

It’s unclear when a break may appear in the current state of uncertainty about which post-Redevelopment bills are possible. The May budget revisions, with their news about the April tax season, could create an occasion for the Governor to announce a changed position, but nothing at that stage is certain.

Which leaves members of the Legislature tending their respective bits of unevenly verdant regrowth, reaching neighborly accommodations as to gardening in some matters, but mainly waiting for the man with the shears to go to work. ■

## >>> How Will Demography Drive California's Destiny From Now On?

- CONTINUED FROM PAGE 1



given the fact that Latinos have been running so far behind whites in educational attainment – and, as a result, prosperity – than whites.

The second one is a little less surprising but, nevertheless, historic: It's going to take a lot longer to get to 50 million Californians than we previously thought: 35 more years. The Department of Finance's Demographics Research Unit now believes that we won't hit 50 million until 2049. (<http://bit.ly/1katfZ4>) The bottom line: We're going to see a lot slower population growth than the state previously predicted.

So, a California that's predominantly Latino and that's growing much more slowly than anybody previously

expected. What does that add up to?

The slowing population growth could potentially make it more difficult for the state to provide the public infrastructure necessary to provide a high quality of life for its residents in the future – in large part because we have built up such an infrastructure deficit since the passage of Proposition 13 more than 35 years ago. Population growth has often driven new development, which in turn has often financed new infrastructure, so that things seem to be getting better.

But as the chart below shows, DOF's population growth projection over the next 40 years – which adds up to about 300,000 people per year – actually looks pretty

## >>> Demography: more New Deal Democrats?

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realistic. I've often made the point that since 1940 – that's almost three-quarters of a century – California has averaged an increase of about 500,000 people per year. But if you break it down by decade, what you'll see is that this average was spiked by a couple of boom periods – the great middle-class population boom after World War II and the great Latino baby boom of the 1980s and '90s. The 300,000 figure represents the historic average, not counting the booms.

But what's interesting is that it's the boom times – not the normal times – that stimulate extraordinary infrastructure investment and, often, the tax increases required to fund them. The postwar boom led to the construction of now-famous Pat Brown triad of the freeways, the state water project, and a vast increase in higher education facilities. The '80s and '90s boom led to a vast increase in rail transit construction on K-12 schools. The bust periods, by contrast, led to retrenching. California's population growth hit net-zero in the early '70s – just about the only time in postwar history that happened – and only a few years later Proposition 13 came along, virtually halting infrastructure construction for a decade or more.

So if DOF is right – and there are no population booms ahead for California – then we probably won't see a big increase in public investment that will catch us up, right? The historic trend would seem to suggest that this is true. But that brings us to the political role of California's growing Latino population.

As my friend Dowell Myers at the University of Southern California (<https://priceschool.usc.edu/dowell-myers/>) always likes to say, the important point about the

ethnic change is not how many Latinos there will be in California's future, but what it means to be a Latino in California in the future.

We don't know for sure what it will mean to be a Latino in California in the future. But here's what we know about what it means now: Latinos have different attitudes about government services and public investment than whites do. Polling consistently finds that Latinos are more supportive of higher taxes for government investment – especially jobs, schools, and housing – and more supportive of unions. In other words, Latinos in California today are, essentially, New Deal Democrats: They want the government to help them with upward mobility. That could lead to support for increased investment in infrastructure and other public services even if population grows slowly and steadily, as DOF projects.

Of course, all this could change. There could be an unexpected spike in population. The world economy could change such that increased public investment doesn't lead to more prosperity and more upward mobility. Or the big bubble of Latinos moving through the chronological cycle now could change their political attitudes as they change. That, after all, is what happened to the whites – the same folks who voted for Pat Brown's expansion voted for Proposition 13 and against practically everything in the 1980s.

That kind of change is probably a long way off. With Latinos focused on upward mobility, California may pull itself out of the current infrastructure deficit – and set itself up for a few more decades of prosperity. ■

